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## NFOIC provides funding for open meetings lawsuit in Florida

### **Attorney seeks invalidation of ballot referendum after city commissioners negotiated development rules in secret meetings.**

COLUMBIA, Mo. (July 18, 2011) – The Knight FOI Fund, a legal war chest administered by the National Freedom of Information Coalition (NFOIC), has awarded a \$5,000 grant to support a Florida lawsuit that could invalidate a March 2011 ballot referendum in St. Pete Beach on the grounds that the city commission made improper, closed-door decisions authorizing the citywide vote.

Attorney Kenneth Weiss of Treasure Island, FL said he would file a lawsuit on behalf of St. Pete Beach resident Jim Anderson contending that the city made decisions authorizing the vote in illegal secret meetings in November 2010 and January 2011.

Weiss said the city has begun a practice of using so-called “shade meetings” to decide all kinds of controversial issues.

“The City has institutionalized the use of shade meetings to discuss and decide controversial issues, particularly about the city’s future development. This was done to prevent voters from learning about how and why those decisions were made, leaving the citizens in the dark,” Weiss said.

In announcing the grant, Kenneth Bunting, NFOIC’s executive director, said, “NFOIC doesn’t have a stake in a Florida development squabble. But when a city government tries to use the emotions surrounding such an issue to expand how much public business it can conduct behind closed doors, it gets our attention.”

Voters approved the charter revision with 53 percent of the vote. The change to the charter allows the city commission to make decisions on development height limits without voter approval—a voter-held authority citizens had given themselves in a separate vote in 2006 over the size of future hotels and other developments in the beach community.

Weiss said the new lawsuit would show that the election should be invalidated because the commission violated the Florida Sunshine Law with the decisions it made in closed meetings. He said the city of St. Pete Beach has been using an expansive interpretation of state law that allows them to use shade meetings for “whatever they want to discuss.” Weiss also contends that the ballot language was deceptive and improperly framed.

Florida’s Sunshine Law allows officials to discuss a lawsuit, legal strategy or settlement negotiations in closed-door meetings. But the exception does not allow decisions to be made in those meetings.

City officials will likely contend that they have properly “cured” any potential violation of the Sunshine Law by discussing at a public meeting and taking official action on what transpired at the closed-door sessions. The cure doctrine is a controversial, judicially-created interpretation that has raised alarm with open government advocates.

“The access community has always been concerned with the cure doctrine because of the possibility of abuse,” said Jim Rhea, director and general counsel for the First Amendment Foundation, a Tallahassee, FL-based NFOIC organization that strongly endorsed the grant award.

Weiss previously filed a Sunshine Law suit to gain access to transcripts of previous “shade meetings” and is currently appealing the trial court’s ruling that no decisions were made in the shade meetings. However, Weiss contends that subsequent secret meetings included even more violations, and this new lawsuit is about those meetings.

The Knight FOI Fund grant, in the amount of \$5,000, was announced by the National Freedom of Information Coalition, which administers the Fund that was created by the John S. and James L. Knight Foundation.

The Knight FOI Fund award was made to defray the legal costs Weiss will incur in his challenge of the city’s shade-meeting practices. Bunting and Rhea said the civic debate over the development issues are not the main concerns as far as their organizations are concerned.

“We would not expend Knight FOI Fund resources to stop a beachfront hotel, to enter the civic debate over who pays for the infrastructure surrounding it, or take a stance on how tall new developments can be,” Bunting said. “But we think those bringing this challenge make a very good argument that the city is stretching the so-called 'shade' exception beyond what current law or good government common sense now allows.”

Since it began in January 2010, the Knight FOI Fund has assisted NFOIC member organizations, their allies and other litigants with 19 grant awards in FOI or access cases. Among significant access victories were a California case that kept the nation's largest pension fund from hiding details of a \$100 million real estate investment loss, a U.S. Supreme Court case regarding election-qualifying petitions, and a case involving a New Mexico state college that had declined to disclose records detailing building projects and a search for a new president. The awards have resulted in 12 favorable court orders or settlements that achieved greater access or disclosure.

The NFOIC, a nonpartisan coalition of open government groups and advocates headquartered at the Missouri School of Journalism, administers the Knight FOI Fund. It is part of a \$2 million, three-year grant from the John S. and James L. Knight Foundation announced in 2010.

The Knight FOI Fund does not pay attorney fees. It is set up to fuel and assist the pursuit of important FOI cases by helping to defray upfront costs such as filing fees, depositions, court costs and other expenses associated with legal actions. The Knight Fund only seeks reimbursement if resulting awards in the cases cover fees and costs for which the Knight Fund money was spent.

For more information on the Knight FOI Fund, including the selection process for grants and how to apply, see <http://www.nfoic.org/knight-foi-fund>.

The John S. and James L. Knight Foundation advances journalism in the digital age and invests in the vitality of communities where the Knight brothers owned newspapers. Since 1950, the Foundation has granted more than \$400 million to advance quality journalism and freedom of expression. Knight Foundation focuses on projects that promote community engagement and lead to transformational change. For more information, visit <http://www.knightfdn.org/>.

The First Amendment Foundation is a private, non-partisan, non-profit organization dedicated to promoting the public's right to oversee state and local government action through Florida's Sunshine Law and Public Records Law. Acting as the public's advocate, the Foundation provides a variety of services to citizens, government officials and the media, including "Sunshine Monitoring," FOI Hotline, education, litigation and numerous publications. For more, visit <http://www.floridafaf.org/>.

The National Freedom of Information Coalition is a national network of state freedom of information advocates, citizen-driven nonprofit freedom of information organizations, academic and First Amendment centers, journalistic societies and attorneys. Its mission is to foster government transparency at the state and local level. A unit of the Missouri School of Journalism, the NFOIC is an affiliate of the Donald W. Reynolds Journalism Institute. NFOIC is based at the University of Missouri, home to the nation's oldest Freedom of Information Center. For more, visit <http://www.nfoic.org/>.

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