

Final Report  
OIGC Case No. 2024-001

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State University System of Florida Board of Governors  
Office of Inspector General and Director of Compliance  
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**State University System of Florida Board of Governors  
Office of Inspector General and Director of Compliance**

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## Executive Summary

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### Overview

On June 30, 2023, Chancellor Ray Rodrigues began receiving concerns about the Florida Atlantic University (FAU) presidential search. Alan Levine, a Board of Governors (BOG) member who served on the FAU Presidential Search Committee, brought forth concerns regarding how the search committee was narrowing and selecting candidates. On July 7, 2023, another individual<sup>1</sup> made Chancellor Rodrigues aware of potentially inappropriate interactions between the search firm and applicants.

In response to the concerns raised, and in consultation with the Chair of the Board of Governors, on July 7, 2023, Chancellor Rodrigues recommended the suspension of the FAU presidential search. Chancellor Rodrigues subsequently requested the BOG inspector general's assistance in conducting an investigative review of the FAU presidential search process that included an assessment of the process's compliance with laws, regulations, and university policies and a review of alleged anomalies.

Florida universities are authorized to conduct nationwide searches for their presidents within state law and BOG regulations. The FAU Presidential Search Committee was led by FAU BOT Chair Brad Levine and was composed of representatives from the FAU BOT, faculty, student body, and community. To aid in its search, FAU contracted with AGB Search, a firm that specializes in providing tailored executive search services exclusively for higher education institutions.

In the spring of 2023, the Presidential Search Committee began meeting and initiated a nationwide search for the next FAU president, which resulted in 65 applicants. In May 2023, Chair Brad Levine directed a process to narrow the applicant pool and select semi-finalists using a preference survey (whereby candidates are ranked and results are aggregated) outside of the Presidential Search Committee's meetings. This preference survey was supported by other committee members, including Governor Alan Levine, because it was a common practice that had been used in other presidential searches as an open process, with the results fully transparent to the members of the committee. However, the preference survey was not done openly.

### Process to Narrow Candidates of Presidential Applicants

Contrary to their standard practice, AGB Search created an anonymous survey. At no point in the meeting was the committee told the survey would be conducted anonymously. A draft of the survey and a draft of the cover email containing the link to and instructions for the survey were sent to Chair Brad Levine for his feedback. Although the survey had already been designed to be anonymous at that point, Chair Brad Levine requested that the word "anonymous" be added to the instructions in the cover email. The survey results that were used to focus the committee's deliberations concerning semi-finalists were obfuscated by anonymity. At the end of June, Chair

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<sup>1</sup> This individual is confidential pursuant to section 1004.098, F.S.

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Brad Levine proposed a second preference survey to narrow the semi-finalists and aid the committee in selecting finalists; however, Governor Alan Levine objected to using a second preference survey based on the administration of the first survey.

The legality of using a preference survey conducted by a third party whereby members anonymously ranked candidates during a presidential search and selection process was questioned in light of Florida's Sunshine Law. This question also prompted examination of Board of Governors Regulation 1.002, which guides institutions on how to conduct presidential searches and selections, and whether the regulation needed to be amended to align with the appropriate interpretation of the law. The BOG approved submitting a request for an Attorney General Opinion for further guidance. On October 30, 2023, an Attorney General Opinion was issued and concluded that "the Sunshine Law prohibits ranking that occurs by way of anonymously surveying and organizing members' input, even if those rankings are not a final vote and are only used to replace or limit discussion at a future meeting."

In addition to the issues with the Sunshine Law, the preference survey directed by FAU was flawed. Administering the survey anonymously limited accountability and the ability to validate its responses. Additionally, the preference survey results displayed to the committee by FAU staff were inaccurate and incomplete.

### **Questionnaires Administered to Applicants**

AGB Search sent applicants, upon submission of their application, an optional diversity questionnaire that included questions about gender and sexual orientation. In the transmittal of the diversity questionnaire to applicants, AGB Search represented that the purpose of the questionnaire was to meet reporting responsibilities to their client, which was inaccurate. FAU staff and the Presidential Search Committee members were unaware of the diversity questionnaire, nor did they receive the survey responses.

Once semi-finalists were selected for the FAU president on June 6<sup>th</sup>, AGB Search initiated a due diligence process<sup>2</sup> through a contracted third-party. While completing a consent form, applicants were given the option to volunteer their personal pronouns. According to AGB Search, this optional data field was requested to help identify individuals when conducting the due diligence since they do not collect the social security numbers of candidates. While this practice is discouraged by the Equal Employment Opportunity Commission, there were no legal grounds that would prohibit this information in a consent form.

### **Compliance with Board of Governors Regulation 1.002**

There were instances in which the FAU presidential search did not comply with Board of Governors Regulation 1.002, Presidential Search and Selection. The regulation stipulates that a presidential search committee is not to exceed 15 members. However,

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<sup>2</sup> Due diligence referred to reference calls, internet (i.e., Google and other search engines) and Nexis reviews, and social media research, the purpose of which was to identify potential issues that candidates may need to address.

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during the FAU presidential search, Chair Brad Levine added a 16<sup>th</sup> member to the committee when the FAU student body president turned over. While Chair Brad Levine did inform BOG Chair Lamb of the change and its impact on the number of committee members, no evidence was submitted to support that Chair Lamb approved an exception to the requirement.

Additionally, Board of Governors Regulation 1.002(c)(6) specifies that the committee is responsible for vetting applicants by ensuring that available public records and online resources are checked in order to narrow the pool of qualified applicants who will be invited to participate in interviews with the search committee. This vetting process was incorporated into AGB Search's due diligence process; however, the due diligence process was not initiated until after the committee already narrowed the pool of qualified applicants and selected the applicants that would be invited to participate in interviews. Failure to follow this regulation also resulted in two semi-finalists being interviewed before the Presidential Search Committee was notified of the availability of completed due diligence.

### **Non-conformance with Non-Disclosure Agreement**

All Presidential Search Committee members and some of the university's senior management signed a non-disclosure agreement in accordance with Board of Governors Regulation 1.002(3). The non-disclosure agreement provided that only the chair is authorized to speak to the media on behalf of the university. Following the announcement of finalists, Presidential Search Committee member Dick Schmidt authored, in collaboration with university officials, an op-ed about the halted presidential search. Records support that FAU BOT Chair Brad Levine, General Counsel David Kian, and Vice President of Public Affairs Peter Hull met with Mr. Schmidt about the op-ed before its publication; Mr. Kian provided suggested edits; and Mr. Hull provided media contact information for distribution. This level of FAU employee involvement appears to make it a communication on behalf of the university, and therefore a violation of the signed non-disclosure agreement.

### **Withholding of Information**

There were concerns that AGB Search withheld material information from the Presidential Search Committee. Based on the review, it was evident that throughout FAU's presidential search, AGB Search communicated about search-related business primarily with Chair Brad Levine, who had final authority over what was provided to the committee. However, information provided to Chair Brad Levine was not always shared with the Presidential Search Committee as a whole. AGB Search sent Chair Brad Levine the results of the first preference survey before the committee's June 6th meeting and testified that he was informed of a survey response received after the survey deadline. The Presidential Search Committee was never informed that a survey response was received outside of the survey window, nor was it advised of the response's impact on the top candidates as presented to the committee.

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Additionally, prior to the search committee's July 5<sup>th</sup> meeting, AGB Search contacted the semi-finalists to inquire about their interest in moving forward publicly if selected as a finalist. Two of the semi-finalists expressed they were hesitant to move forward for differing reasons. AGB Search shared with Chair Brad Levine that two of the six semi-finalists were hesitant or had concerns about moving forward publicly. However, that information was not shared with the committee as a whole, which could have impacted the committee's actions with respect to its selection of finalists.

**Conclusion and Recommendations**

Overall, the FAU presidential search was not compliant with Florida's Government in the Sunshine Laws and aspects of the search were out of compliance with Board of Governors Regulation 1.002. We recommend the BOG require FAU to restart their search for their next president. The failure to comply with Florida Statutes and Board of Governors regulation raises questions regarding the competence of the search; therefore, the BOG should consider whether BOT Chair Brad Levine should be prohibited from serving as the chair of the university's next Presidential Search Committee given his involvement and oversight of the search process assessed by this investigative review.

We also recommend the BOG consider updating Board of Governors Regulation 1.002, Presidential Search and Selection, to provide more detailed direction to BOTs related to presidential searches to address the deficiencies identified during the FAU presidential search.

## Introduction

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On June 30, 2023, Chancellor Ray Rodrigues of the State University System of Florida Board of Governors (BOG) received concerns from Governor Alan Levine<sup>3</sup> related to a process the Florida Atlantic University (FAU) Presidential Search Committee was planning to use as a means to narrow its semi-finalists and focus its discussion and selection of finalists. As a result, BOG staff inquired about the process and questioned the appropriateness of using a search firm to administer a preference survey to help identify top candidates for the committee to discuss and select from at its upcoming meeting. A similar preference survey was used earlier in the search process<sup>4</sup> without objection because there was an expectation that the survey results would be fully known and transparent to the committee. However, Governor Alan Levine did not believe the results of that first preference survey were fully transparent and, therefore, objected to using a second preference survey. After making his opposition known to the university, the committee member brought his concerns to the attention of Chancellor Rodrigues.

About a week later, Chancellor Rodrigues received concerns about the FAU presidential search from another individual about potentially inappropriate interactions between the search firm and presidential applicants. Specifically, those concerns related to whether it was legal or appropriate for an applicant to be asked about their gender, sexual preference, and personal pronouns.

Chancellor Rodrigues communicated the abovementioned concerns to FAU Board of Trustees (BOT) Chair Brad Levine on July 7, 2023. Based on those concerns, and in consultation with BOG Chair Brian Lamb, Chancellor Rodrigues recommended the suspension of the FAU presidential search to provide an opportunity for BOG staff to obtain the facts around the concerns. FAU BOT Chair Brad Levine accepted the suspension. On July 10, 2023, Chancellor Rodrigues shared the concerns he had received about the FAU presidential search with the BOG's Office of Inspector General and Director of Compliance (OIGC) and requested assistance in conducting an investigative review of the FAU presidential search process.

## Governance

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In 2003, the Board of Governors (BOG) was constitutionally created to operate, regulate, control, and be fully responsible for the management of the State University System of Florida (SUS).<sup>5</sup> The BOG implements its constitutional regulatory authority through the adoption of regulations, which are statements of general applicability to guide the conduct or action of universities, constituents, or the public.<sup>6</sup>

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<sup>3</sup> Alan Levine served on the university's Presidential Search Committee as the BOG representative.

<sup>4</sup> The earlier preference survey was done in late May/early June 2023 to help the committee narrow the overall applicant pool and focus their discussion and selection of semifinalists.

<sup>5</sup> Article IX, Section 7 of the Florida Constitution.

<sup>6</sup> Regulation Development Procedure, adopted by the Board of Governors in March 2006.

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The BOG is comprised of 17 members, of which 14 are appointed by the governor of Florida, confirmed by the Florida Senate, and serve staggered seven-year terms. The remaining three members consist of the Florida Commissioner of Education, the chair of the advisory council of faculty senates, and the president of the Florida student association.

In July 2007, the OIGC was statutorily created to promote accountability, efficiency, and effectiveness and to detect fraud and abuse within state universities.<sup>7</sup> To achieve and maintain independence and objectivity, the inspector general and director of compliance (inspector general) reports functionally to the BOG, through the chair of the audit and compliance committee (AACC), and administratively to the chancellor. The OIGC charter outlines SUS-related investigative responsibilities, including complaints alleging fraud, waste, abuse, misuse of funds, or misconduct regarding activities carried out or financed by a state university.

The SUS is comprised of 12 public universities located throughout the state. A 13-member BOT administers each university. The BOT at each university consists of six governor appointees, five BOG appointees, the university's faculty senate chair, and the university's student body president. The appointed members are confirmed by the Florida Senate and serve staggered five-year terms.

### **Background**

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#### **Florida Atlantic University (FAU)**

FAU, established in 1961, officially opened its doors in 1964 as the fifth public university in Florida. Today, the university serves more than 30,000 undergraduate and graduate students at sites throughout its six-county service region in southeast Florida.

Dr. John Kelly was the university's seventh president, serving from January 17, 2014, through December 31, 2022. In June 2022, Dr. Kelly announced his plans to resign at the end of the calendar year. On September 19, 2022, the FAU BOT selected Dr. Stacy Volnick<sup>8</sup> to serve as the university's interim president, effective January 2023, while the university conducted a search for its next president. Subsequently, the BOG confirmed Dr. Volnick as the interim president on November 9, 2022.

#### **State University System (SUS) of Florida Presidential Search Process**

Universities are authorized to conduct nationwide searches for their presidents within the parameters of state law; BOG regulations; and university regulations, policies, and procedures.

Board of Governors Regulation 1.002 requires the chair of a university BOT, in consultation with the chair of the BOG, to appoint a search committee. Search

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<sup>7</sup> Section 20.155, Florida Statutes.

<sup>8</sup> FAU's Chief operating officer and vice president of administration.



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committees are subject to Florida’s Government-in-the-Sunshine Law, section 286.011, Florida Statutes (F.S.), commonly referred to as the Sunshine Law. The Sunshine Law declares all meetings of a university BOT, at which official acts are to be taken, are public meetings, meaning they must be open to the public at all times. BOTs must reasonably notice their meetings and promptly record minutes.

In 2022, the Florida Legislature enacted a new law<sup>9</sup> that made the personal identifying information of an applicant for a state university president confidential and exempt from public inspection and copying.<sup>10</sup> However, the confidentiality provisions cease to apply to individuals in the final group of applicants considered for the presidency. The new law also made any portion of a meeting held to identify or vet applicants for a state university president exempt from the open, public meetings requirement.<sup>11</sup> As a result, BOT meetings to discuss confidential applicants are no longer required to be publicly noticed and open to the public. However, the public body must make a complete recording of any portion of a closed meeting according to the new law.

Board of Governors Regulation 1.002, Presidential Search and Selection, outlines a presidential search’s requirements, powers, and duties at both the BOT and BOG levels, as well as the functions and responsibilities of a search firm, if contracted. A university’s designated search committee is responsible for vetting and interviewing applicants and selecting a group of finalists for the BOT’s consideration. The BOT is responsible for choosing a president-elect from among the committee’s recommended finalists. The chancellor is responsible for briefing the president-elect in preparation for a meeting at which the president-elect shall be presented to the BOG for confirmation. The BOG is responsible for confirming the selected candidate as president of the university.

Section 5.4, “Presidential Search Committee,” of the FAU Board Operations Policies and Procedure addresses the duties of the BOT and the requirements to select the university president in accordance with BOG procedures, subject to ratification by the BOG.

## Matters of Investigative Review

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Chancellor Rodrigues requested the OIGC’s assistance in conducting an investigative review of the FAU presidential search process to ascertain the facts related but not limited to the following:

1. The process used to narrow the list of presidential applicants;
2. The administration of questionnaires to presidential applicants that included questions related to gender, sexual orientation, and personal pronouns; and

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<sup>9</sup> Section 1004.098, Florida Statutes.

<sup>10</sup> Section 119.07(1), F.S., and Section 24(a), Article I of the State Constitution.

<sup>11</sup> section 286.011, F.S., and Section 24(b), Article I of the State Constitution.

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3. Whether the search firm withheld material information from the search committee.

The purpose of this investigative review was to assess the FAU presidential search process's compliance with laws, regulations, and university policies and to review the alleged anomalies as noted above.

The OIGC conducted this administrative investigative review in accordance with sections 20.055 and 20.155, F.S., BOG regulations, OIGC policies and procedures, and the Principles and Standards for Offices of Inspectors General as published by the Association of Inspectors General.

Investigative work was conducted from July 10, 2023, through November 9, 2023. This work included a review of records and actions taken as part of the FAU presidential search process. The OIGC's investigative work included the following:

- Researched, compiled, and reviewed relevant governing directives which served as criteria against which to evaluate the FAU presidential search process;
- Conducted sworn interviews with select candidates, FAU Presidential Search Committee members, FAU employees, FAU contractors, and BOG members;
- Requested, received, and reviewed pertinent information from FAU related to the presidential search;
- Requested, received, and reviewed pertinent information from AGB Search related to their contractual obligations, communications, and activities in support of the FAU presidential search;
- Reviewed various FAU BOT and Presidential Search Committee meetings along with their associated materials and minutes, as applicable; and
- Reviewed relevant BOG meetings wherein updates about FAU's presidential search were provided.

## Results of Investigative Review

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Based on the OIGC's investigative work, the summaries below represent the OIGC's observations concerning the FAU presidential search process in general, the issues the OIGC was asked to review, and other matters noted during the review.

### Overview of the FAU Presidential Search Process

The below timeline illustrates, at a high-level, an overview of the FAU presidential search process, prior to its suspension.

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Figure 1: FAU Presidential Search Process Timeline

After the announcement of then President Kelly's retirement, FAU executed a contract with Washington Education Strategies, LLC<sup>12</sup>, to support the FAU BOT chair [Brad Levine] in his role in the university's pending presidential search. The goal of the engagement was to provide strategic advisement and counsel to the chair during the search and selection process, ultimately leading to a successful slate of candidates for consideration by the university BOT.

During the summer of 2022, FAU researched potential executive search firms that other SUS universities used for their recent presidential searches. Based on feedback from those universities, proposals were solicited from multiple search firms in September 2022, and AGB Search was selected. AGB Search provides tailored executive search services exclusively for higher education institutions. On November 1, 2022, FAU finalized its contract with AGB Search to provide executive search services for the position of president.

Around December 2022, FAU BOT Chair Brad Levine established the Presidential Search Committee and appointed 15 members in consultation with BOG Chair Brian Lamb. Chair Brad Levine served as the chair of the Presidential Search Committee. FAU developed and distributed a non-disclosure agreement for the Presidential Search Committee members, university support staff, and the consultants to execute. FAU created a website<sup>13</sup> to inform the public of the search's status. The website contained information about the members and activities of the search committee.

The Presidential Search Committee held its first meeting on January 26, 2023. During this meeting, the committee members received training on Florida's Sunshine Law and heard presentations about the presidential search process from AGB Search and Washington Education Strategies, LLC.

During the spring of 2023, AGB Search conducted multiple in-person and virtual listening sessions at different campus locations to solicit input from university and community constituents about what characteristics the next FAU president should possess. The outcomes of the listening sessions were used to create the Presidential Profile, which was approved alongside the Marketing Plan by the Presidential Search Committee at a public meeting on April 11, 2023. The FAU BOT subsequently

<sup>12</sup> Contract executed July 22, 2022.

<sup>13</sup> <https://www.fau.edu/presidential-search/>.

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approved the Presidential Profile at its public meeting on April 23, 2023, which was incorporated into the position advertisement published on April 26, 2023.

Overall, FAU's presidential advertisement resulted in 65 applicants. AGB Search evaluated the applicants based on the elements of the FAU Presidential Profile and categorized them into one of three groups: highly qualified, qualified, or not qualified. AGB Search created a summary document for each of the three categories that contained brief biographies for all the individuals within each category. AGB Search established a ShareFile site that enabled them to share applicant information, organized by category, with the Presidential Search Committee members. As the search progressed, separate folders were created in the ShareFile site for the semi-finalists and finalists to streamline the committee members' access to their information.

On May 19, 2023, the Presidential Search Committee held its first shade meeting<sup>14</sup> under section 1004.098, F.S. During this meeting, AGB Search provided the committee with an overview of the applicant pool as of the date of best consideration (May 16, 2023). The summary documents prepared by AGB Search for the highly qualified and qualified applicant categories were displayed during the meeting. Dr. Rod McDavis, the Managing Principal for AGB Search, complemented the committee on drawing a successful pool of candidates and highlighted several candidates listed in those documents. Discussions ensued regarding the process the committee should use to narrow the applicants and select a group of semi-finalists for interviews. As a result of the discussions, Chair Brad Levine directed AGB Search to develop a preference survey for committee members to submit to AGB Search their top six candidates in priority order. Members of the committee, including Governor Alan Levine, supported the idea of this preference survey because it was a common practice used in other presidential searches and it was thought that it would be an open process, the results of which would be fully transparent to the other members of the committee.

After the Presidential Search Committee's meeting on May 19, 2023, AGB Search continued to receive and evaluate applications for the position and upload the applicants' information to the ShareFile site in the appropriate category. AGB Search developed an online "Top-6 Candidate Preference Survey" for the committee members to complete before their next meeting. However, contrary to their standard practice, they created the survey to be anonymous to protect the identity of the respondents. To aid the committee members in their evaluations, AGB Search provided updated summary documents for the highly qualified and qualified applicant categories. AGB Search also developed an optional candidate assessment form that committee members could use to evaluate the applicant pool and select their top preferred applicants.

On June 6, 2023, the Presidential Search Committee held a second shade meeting to review the ranked listing of preferred candidates based on the preference survey results. At the beginning of the meeting, Chair Brad Levine allowed committee member

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<sup>14</sup> A term used to describe a confidential meeting that is held outside of the sunshine in accordance with state law.

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Governor Alan Levine to share with the committee his concerns about how discussions during the May 19<sup>th</sup> meeting heavily favored one of the candidates and may have unduly influenced committee members' top six preferences. The committee then reviewed the ranked list of preferred candidates, debated the candidates on that list, and voted to interview the top six candidates, which resulted in seven semi-finalists because two candidates were tied for sixth place. After the meeting, one of the semi-finalists declined consideration for the position, leaving six semi-finalists to be interviewed. After the meeting, AGB Search conducted due diligence on the six semi-finalists. Due diligence referred to reference calls, internet (i.e., Google and other search engines) and Nexis reviews, and social media research, the purpose of which was to identify potential issues that candidates may need to address. The due diligence results were loaded into the ShareFile site upon completion.

The semi-finalist interviews were scheduled over two days: June 14, 2023, and June 29, 2023. AGB Search and Washington Education Strategies worked with Chair Brad Levine to develop eight semi-finalist interview questions based on the elements of the Presidential Profile. To ensure candidates were treated equally, each semi-finalist interview was limited to an hour and 15 minutes. The first hour was for the semi-finalist to answer the established questions, with the remaining time set aside for committee members to ask any follow-up questions they had of the candidate. After the interview, committee members were permitted 24 hours to submit additional questions for a semi-finalist through AGB Search. The semi-finalist was then granted 24 hours to respond.

On June 29, 2023, after concluding the semi-finalist interviews, Chair Brad Levine and Dr. McDavis went over the next steps of the search process with the committee. The committee members were informed there would be a second preference survey, wherein they would rank their top three candidates in priority order. During the meeting, committee member Dr. Jose Mellado objected to using a survey that forced members to submit a specific number of candidates. Additionally, after the meeting, committee members Governor Alan Levine and Ms. Barbara Feingold submitted written objections to completing this preference survey, and legal guidance was sought from the BOG's general counsel. Based on the committee members' objections and the guidance the BOG's general counsel provided, the second preference survey to identify the top three candidates was not conducted.

Email records reflect that before the Presidential Search Committee's meeting on July 5, 2023, Dr. McDavis contacted each semi-finalist over the July 4<sup>th</sup> holiday. He emailed them to coordinate a phone call to "discuss the rest of the FAU search process." Testimonial evidence indicates that during those phone calls, at least two semi-finalists expressed concerns to Dr. McDavis about their name being public.

AGB Search and Chair Brad Levine felt it was important that the semi-finalists understood that their names would be in the public domain if they were selected as a finalist. Dr. McDavis expressed that he thought the candidates wanted to know whether they had a realistic shot at the presidency if they were selected as a finalist. He noted that at least one of the semi-finalists expressed they would need to be pretty sure they were in the top one or two to go public. Dr. McDavis said he discussed this with both

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Chair Brad Levine and Mr. Kian, who asserted that was not how things worked and all the finalists would have the same chance of being selected.

According to Chair Brad Levine and Mr. Kian, their conversations with Dr. McDavis about candidate concerns were more general in nature. They did not recall Dr. McDavis sharing specific concerns from any of the candidates, but instead, they discussed how all candidates have concerns about their names being made public. During his interview, Dr. McDavis said he sat at the final selection meeting on July 5th, not knowing whether the candidates would move forward.

On July 5, 2023, the Presidential Search Committee held its final shade meeting to select the finalists that would be moved forward for the BOT's consideration. During this meeting, before discussing any of the semi-finalists, committee member Ms. Feingold asked when the committee's decision about finalists would be made public. Chair Brad Levine explained that following the meeting, the information would be considered public; however, Dr. McDavis would make a courtesy call to each of the selected finalists to let them know of their selection and confirm their desire to move forward publicly. The committee went through the list of semi-finalists alphabetically, engaged in debate, and took a roll call vote on whether the semi-finalist should advance as a finalist. Five received a majority vote of the committee and were moved forward as finalists.

After the meeting, Dr. McDavis contacted the five finalists<sup>15</sup>, informed them of their selection as a finalist, and inquired if they wished to move forward in the process. Two declined to move forward publicly. One declined due to their current position and the fact that they were not a sole finalist. When questioned during their interview about being a sole finalist and the requirement of BOG regulation that more than two candidates be presented to the BOT, the individual responded that they shared their concerns with Dr. McDavis during the process but continued through the semi-finalist round based on a precedent set by the University of Florida's (UF) presidential search.<sup>16</sup> The other individual who withdrew reported they made the decision not to move forward as a finalist due to their current position, the number of finalists selected, and concerns that none of the six BOT members who served on the committee and who the individual would ultimately be working for attended their interview in-person.

After Dr. McDavis contacted the selected finalists, FAU issued a press release publicly announcing the three finalists that chose to remain under consideration: Vice Admiral Sean Buck, Dean Michael Hartline, and Dr. Joseph Sartarelli.

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<sup>15</sup> Phone calls were placed to all the finalists between 10:27 a.m. and 10:43 a.m. on July 5, 2023.

<sup>16</sup> In UF's presidential search, three finalists were selected, but two withdrew; this resulted in a sole finalist being presented to the UF BOT for consideration.

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**Issue 1: Process Used to Narrow the List of Presidential Applicants**

Legality of the Top 6 Candidate Preference Survey

As previously noted, during the Presidential Search Committee's shade meeting on May 19, 2023, the decision was made to have AGB Search solicit from committee members outside of the meeting their top candidate preferences to assist in narrowing the applicant pool. The results of the preference survey were intended to be shared transparently by AGB Search with the committee at the next meeting on June 6<sup>th</sup> and used as the basis for debating and selecting the semi-finalists.

After the May 19<sup>th</sup> meeting, AGB Search developed the online "Top 6 Candidate Preference Survey," which was sent to the Presidential Search Committee via email on May 26, 2023, with the following note:

*AGB Search has created an anonymous survey for you to use to enter your top 6 candidates for the Florida Atlantic University presidency. When you click on the link to the anonymous survey below, please list your top 6 candidates in rank order, with #1 being your highest rated candidate... Please note that the anonymous survey will close on Sunday, June 4, at midnight EDT, so we ask that you submit your top-6 list no later than June 4<sup>th</sup>.*

At the June 6<sup>th</sup> meeting, the results of the preference survey were shared with the Presidential Search Committee in aggregate. Committee members were unaware of each other's preferences as the survey responses were submitted anonymously. The anonymous, aggregate results were presented to the committee to streamline the discussion of candidates.

Sunshine Law prohibits the use of an intermediary to be used as a liaison for board members. As a collegial body created to solicit, screen, and recommend presidential candidates to the university BOT, the Presidential Search Committee is subject to the Sunshine Law. The legality of using a preference survey conducted by a third party whereby members anonymously ranked candidates during a presidential search and selection process was questioned in light of Florida's Sunshine Law. This question also prompted examination of Board of Governors Regulation 1.002, which guides institutions on how to conduct presidential searches and selections, and whether the regulation needed to be amended to align with the appropriate interpretation of the law. The BOG approved submitting a request for an Attorney General Opinion for further guidance. On October 30, 2023, an Attorney General Opinion was issued and concluded:

Florida's Government in the Sunshine Law does not permit members to use anonymous communications with an intermediary search firm about their preferences for certain candidates when such communications are subject to the Sunshine Law and the search firm gathers such input in lieu

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of the members' discussion. Overall, in the absence of an applicable exemption, the Sunshine Law prohibits ranking that occurs by way of anonymously surveying and organizing members' input, even if those rankings are not a final vote and are only used to replace or limit discussion at a future meeting.<sup>17</sup>

**Conclusion:** The Presidential Search Committee's use of an anonymous preference survey to narrow the presidential applicants to replace or limit discussion at a future meeting violated Florida's Government in the Sunshine Law.

**Implementation of the Top 6 Candidate Preference Survey**

*The Inception of the Survey*

During the Presidential Search Committee's shade meeting on May 19, 2023, after Dr. McDavis gave an overview of the applicant pool, committee members began engaging in an open discussion about one of the applicants, Candidate A. Candidate A was among the publicly disclosed finalists for the position of FAU president. Committee member Elycia Morris offered additional information, based on her experience, to provide more context around Candidate A's curriculum vitae because it was a non-traditional curriculum vitae. Ms. Morris' input led to Dr. McDavis and three other committee members<sup>18</sup> offering favorable commentary about Candidate A for approximately ten minutes.

Subsequently, Dr. Mellado was recognized to speak and characterized the focused discussions as that of an "infomercial" favoring Candidate A, which he felt was inappropriate at that time. He expressed that each committee member should independently evaluate each candidate and choose six to eight candidates for additional discussion. Later in the meeting, Ms. Feingold also suggested that committee members individually review the applicants, select their candidates to interview, submit those names to AGB Search, and have AGB Search provide the committee with a list of top candidates based on the submissions they received.

Chair Brad Levine supported the suggestion and asked AGB Search to create a survey for committee members to nominate their top candidates in order of preference, send it to committee members, compile the results, and present the information at the next meeting. Committee members sought clarification about the survey and discussed the idea in depth. Three members expressed that a greater discussion of or more information about candidates would help inform their decisions about whom to select among their top preferred candidates. Committee members Ava Parker and Steve Schmidt expressed a desire to engage in further dialogue about individual applicants before selecting their top candidates because they felt they would benefit from hearing others' perspectives on the applicants. Committee member Dick Schmidt expressed

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<sup>17</sup> Attorney General Opinion AGO2023-04.

<sup>18</sup> Dr. Kimberly Dunn, Dr. Julie Pilitsis, and Dr. Joel Herbst.



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that while he could choose and submit names now if needed, his selections would be uninformed without additional information.

Committee member Governor Alan Levine supported the approach Dr. Mellado and Ms. Feingold put forward, noting it was “a best practice.” He conveyed his understanding of the process as each committee member applying their own set of values while reviewing the applicant information currently available to select their top candidates. He noted the process would likely yield a larger list of top candidates, at which time they would see a natural separation between a top tier of candidates and a second tier. The committee could then consider eliminating the second tier and engage in further discussions concerning those individuals in the top tier to narrow and select the individuals they wish to interview.

Chair Brad Levine reiterated that the committee would review the results of the preference survey at their next scheduled meeting on June 6, 2023, and have the opportunity to actively discuss the top candidates and then select those they would like to interview. Following Chair Brad Levine’s comments, Governor Alan Levine noted that committee members would have the opportunity to argue why they picked their top candidates and that, in doing so, individual preferences may change during the discussions. Both Chair Brad Levine and Governor Alan Levine indicated that during the June 6<sup>th</sup> meeting, there could be multiple votes regarding the ranking and selection of the top tier candidates, ultimately resulting in a group of semi-finalists the committee would interview.

Based on his testimony and comments during the May 19<sup>th</sup> committee meeting, Governor Alan Levine expected to know who each of the other committee members selected, which is contrary to how his support concerning the preference survey has been portrayed by FAU officials. The “best practice” referenced by Governor Alan Levine was to know the committee members’ top candidate preferences and the rationale behind them. There was no expressed expectation by committee members to conduct the preference survey anonymously.

Near the end of the May 19<sup>th</sup> meeting, committee members were instructed to evaluate all candidates in the FAU presidential applicant pool before completing their preference survey. Ms. Feingold questioned why the committee should evaluate the entire pool of candidates since AGB Search had already identified a highly qualified group. It was explained that people might have different opinions on the candidates and disagree with AGB Search’s categorizations; therefore, they should conduct their own analysis and select their preferred candidates based on their own assessment. Ms. Feingold also questioned why Interim President Volnick was included in the pool of candidates when she agreed at the time of her appointment as interim president that she would not apply for the position and thus far had not applied for it. Chair Brad Levine informed the committee he decided to include Interim President Volnick as a candidate due to the number of support letters AGB Search received nominating her for the position.

*The Development and Administration of the Survey*

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Before AGB Search developed the online preference survey, email records demonstrated that Dr. McDavis received a phone call from a committee member after the May 19<sup>th</sup> meeting, who verbally reported their top candidate preferences. Records reflect AGB Search was unsure how to handle the verbally reported preferences. AGB Search staff considered whether they should ask all committee members to complete the online survey even if they had already shared that information with AGB Search by other means or whether Dr. McDavis should confirm with the committee member that the preferences were ranked and then instruct that member not to complete the online survey so they could factor in the member's preferences manually after the survey closed. During his testimony, Dr. McDavis did not recall which committee member called him. He indicated AGB Search hoped that all committee members would submit their responses through the online survey after it was disseminated to the committee. Ultimately, AGB Search received 16 electronic responses to the survey.<sup>19</sup>

AGB Search developed the "Top 6 Candidate Preference Survey" using an online survey tool. Documentary and testimonial evidence demonstrated that AGB Search uses preference surveys as part of their routine search processes; however, they do not conduct them anonymously.

During his testimony, Dr. McDavis stated, "The basic difference between what we do and what we were asked to do by Florida Atlantic was the anonymity of the people responding." He noted AGB Search had to figure out a way to make the survey anonymous. Dr. McDavis also stated, "In my opinion, Chair Brad Levine was concerned about some of the people on the search committee being in vulnerable positions because there was so much external focus on this search. I think he was concerned about people feeling free to express their preferences without any retribution. And so, he wanted there to be a way to protect the committee members. I don't think his purpose was to do something secretive that would curtail people expressing themselves, but rather to get people to become more forthcoming with their preferences."

Records reviewed by the OIGC revealed that the survey was not initially designed to be anonymous. It originally contained a field for each committee member to insert their name so that survey responses could be recorded for each committee member. However, based on his opinion of Chair Brad Levine's concerns, Dr. McDavis emailed his staff member, instructing him to remove the field for the committee members' names. In the email dated May 22, 2023, he wrote, "I'm pretty sure that the Chair will ask us to remove the slot for people to put their names. So, let's do it now." During his interview, Chair Brad Levine said he did not recall instructing Dr. McDavis to make the survey anonymous. When asked whether he had concerns about potential retaliation against committee members, Chair Brad Levine responded, "Retaliation? I don't know what you mean." When provided additional context, Chair Brad Levine stated, "I can't comment. I have no idea what you're talking about."

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<sup>19</sup> In May 2023, the number of the Presidential Search Committee members increased from 15 members to 16 members.

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On May 23, 2023, records reflect Chair Brad Levine reviewed and approved an email Dr. McDavis drafted regarding the process's next steps. FAU staff member Andrew LaPlant<sup>20</sup> sent that email to the Presidential Search Committee members on Chair Brad Levine's behalf. The email instructed committee members to send any questions about highly qualified and qualified applicants to Dr. McDavis by May 29<sup>th</sup> so he could respond by June 2<sup>nd</sup>. Committee members were informed that their questions and Dr. McDavis' responses would be uploaded to the ShareFile site for the benefit of all committee members. Additionally, members were told that the deadline to submit their top six candidates to Dr. McDavis would be June 4<sup>th</sup> and that Dr. McDavis would, by May 29<sup>th</sup>, inform them how to submit their top six candidates anonymously. Lastly, the committee was reminded that the preferences should only be viewed as a "straw poll" and that they would make a final decision regarding the top candidates at their meeting on June 6<sup>th</sup>.

On May 25, 2023, AGB Search sent a draft of the survey and a draft of the cover email containing the link to and instructions for the survey to Chair Brad Levine for his feedback. Although the survey had already been designed to be anonymous at that point, Chair Brad Levine requested that the word "anonymous" be added to the instructions in the cover email. After receiving Chair Brad Levine's approval, the cover email was sent to the Presidential Search Committee on May 26, 2023. Committee members were told they had until midnight eastern daylight time on June 4, 2023, to complete the survey and were instructed to list their top six candidates in rank order, with #1 being their highest rated candidate.

### *The Compilation of the Survey Results*

AGB Search received 16 responses through the online preference survey, the results of which they compiled into a "Top-6 List Summary." The "Top-6 List Summary" was comprised of 22 top candidates that were ranked based on a points system<sup>21</sup> and sorted in descending order by points. On June 5, 2023, Dr. McDavis emailed the final "Top-6 List Summary" to Chair Brad Levine.

The OIGC recalculated and compared the survey results to AGB Search's "Top-6 List Summary." The OIGC observed that two responses were submitted outside of the survey window<sup>22</sup>. One was submitted on May 25, 2023, before the committee received the survey link. Another was submitted on June 5, 2023, after the survey deadline. During his testimony, Dr. McDavis indicated Chair Brad Levine knew about these responses being received outside the survey window and decided to include all the survey responses. However, Chair Brad Levine did not recall being aware of any submissions being received outside the survey window during his testimony. He confirmed that while reviewing the draft survey on May 25, 2023, he completed it to test it from a user perspective. Chair Brad Levine indicated he was fairly certain he completed the survey after it was sent to the committee but could not recall specifically

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<sup>20</sup> Board of Trustees Operations Coordinator.

<sup>21</sup> Candidates were given between one and six points, depending on how they were ranked. The #1 candidate received the highest number of available points (6), while the #6 candidate received the least amount of points (1).

<sup>22</sup> May 26, 2023 through June 4, 2023.

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whether he did so.<sup>23</sup> Regarding the survey deadline, Chair Brad Levine explained it was just to keep the process moving forward. He opined that early or late responses were irrelevant since the survey's purpose was to guide the committee on where members stood, and everybody could express their preferences during the subsequent meeting.

During his testimony, Chair Brad Levine said he did not know how the survey results were compiled. He said they hired a firm with integrity, and AGB Search managed the process. The results compiled in AGB Search's "Top-6 List Summary" included the preferences from both the early and late survey responses. Including the late survey response impacted the composition of the top six candidates. Specifically, it changed the ranking of a candidate (#42) who was included in three other preference survey responses and ranked in ninth place. The late survey included this candidate as the top preference, which added six points to the candidate's total points and elevated their ranking to a tie for sixth place.

*The Presentation and Discussion of the Survey Results*

On June 6, 2023, Chair Brad Levine emailed Mr. LaPlant a document named "FAU Committees Rank." The OIGC compared AGB Search's "Top-6 List Summary" with Chair Brad Levine's "FAU Committees Rank." The OIGC observed that the survey results in AGB Search's "Top-6 List Summary" were reformatted as the "FAU Committees Rank" document. Specifically, columns were rearranged, colors were added to the headers, and a column was inserted to show each candidate's rank. The OIGC made the following observations while comparing the two documents:

- The total number of preferred candidates did not align between the two documents. The "Top-6 List Summary" included 22 candidates, while the "FAU Committees Rank" document only included 21. A candidate (#27) included in a committee member's preference survey response was inadvertently not included in the "FAU Committees Rank" document.
- On the "FAU Committees Rank" document, a candidate's name (#44) was inaccurately listed twice, replacing the name of another candidate (#41). This error was identified and verbally corrected during the meeting when considering additional candidates for interviews. Chair Brad Levine stated during the meeting, "That was my mistake."

During his interview, Chair Brad Levine confirmed he "cleaned up" the spreadsheet he received from AGB Search to "make it look more organized," which resulted in the "FAU Committees Rank" document. He characterized the discrepancies between the two documents as "scrivener's errors."<sup>24</sup>

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<sup>23</sup> One of the preference survey responses provided by AGB Search received during the survey window had the same candidates lists as the test response that was received prior to the survey window.

<sup>24</sup> Scrivener's errors are commonly referred to as unintentional mistakes while drafting a document.

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On June 6, 2023, the Presidential Search Committee held its second shade meeting, which lasted approximately 70 minutes. At the start of the meeting, Governor Alan Levine shared his concerns about how discussions at the previous meeting [May 19<sup>th</sup>] heavily favored Candidate A, which may have unduly influenced committee members' top six preferences. Later in the meeting, Ms. Feingold agreed with Governor Alan Levine's concerns and expressed that she did not think the [May 19<sup>th</sup>] meeting should have been an "infomercial" for Candidate A. Following Governor Alan Levine's comments, two other committee members offered opposing opinions and advocated for Candidate A.

The results of the preference survey were displayed to the committee. OIGC staff confirmed that the results matched the "FAU Committees Rank" document. During the meeting, the committee was not informed that survey responses were submitted outside the survey window but included in the results. Since the survey was conducted anonymously, AGB Search and the Presidential Search Committee members were unaware of each member's preferences or rationale. During the first half of the meeting, six committee members<sup>25</sup> asked questions or provided commentary about five of the candidates listed among the top seven candidates on the "FAU Committees Rank" document. While Dr. Herbst, Dr. Dunn, and Dean Gropper shared favorable comments regarding the candidates they discussed, only Governor Alan Levine disclosed how he voted, sharing that one of the candidates he discussed was among the top candidates he submitted to AGB Search.

Chair Brad Levine reminded the committee their goal was to narrow the list to those they would like to interview. He suggested they could take the top six as discussed during their last meeting, adding they could consider the top seven since the 6<sup>th</sup> and 7<sup>th</sup> candidates were tied, or they could vote individually for each candidate as there may be other candidates for whom committee members may advocate. Ms. Feingold questioned why the committee was discussing candidates and opined that it was not productive to go back and forth on the pros and cons for a particular candidate or several candidates; instead, it was logical to focus on whether they should interview the top group of individuals. A motion was made to advance, as a group, the candidates listed as the top seven forward as the semi-finalists. The motion was properly seconded and unanimously passed by committee vote.

During the latter half of the meeting, four other candidates were suggested for interview consideration by three committee members.<sup>26</sup> One of the four candidates suggested was the candidate whose name was inadvertently left off the "FAU Committees Rank" list. However, when a motion to consider the extra candidates was made, that individual was excluded from the motion because Chair Brad Levine incorrectly stated the individual did not receive any votes. The three candidates included in the motion

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<sup>25</sup> Governor Alan Levine, Dr. Joel Herbst, Steve Schmidt, Barbara Feingold, Dr. Dunn, and Dean Daniel Gropper.

<sup>26</sup> Dean Gropper, Senator George LeMieux, and Dr. Dunn.

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did not receive the votes necessary to be added to the group of semi-finalists that the committee would interview.

Interim President Volnick was included in the selected group of semi-finalists because she ranked second on the “FAU Committees Rank” document. Ms. Feingold questioned whether the committee would interview her since she had not applied for the position. Chair Brad Levine explained he suggested to AGB Search that they include her as highly qualified, see where the votes land, and if selected, she could choose whether she wanted to be interviewed and submit an application. On June 9, 2023, Interim President Volnick communicated to Chair Brad Levine and Dr. McDavis that she would not be submitting an application and would not participate in an interview as a semi-finalist.

**Conclusion:** Based on the above information, the OIGC has determined the top candidate preference survey was improperly administered. During the May 19, 2023, committee meeting, some of the committee members expressed an interest in knowing the preferences of their peers and the rationale behind those preferences. At no point in the meeting was the committee told the survey would be conducted anonymously.

Based on the records reviewed and testimony provided, it was clear that AGB Search changed its normal practice and crafted an anonymous survey based on their opinion that Chair Brad Levine wanted to be able to protect committee members and prevent possible retaliation. Records support that Chair Brad Levine was aware of and supported the survey being conducted anonymously.

Conducting the survey anonymously limited accountability and the ability to validate the responses. The preference survey responses reflect that the early submission matches another response submitted within the survey window. During his testimony, Chair Brad Levine confirmed that he tested the survey and may have also submitted his preferences within the survey window. Since there were 16 survey responses, one of which was Chair Brad Levine’s test response, someone else from the committee did not submit their top preferences. As a result, the survey results, as presented, were not a true representation of the committee’s overall opinion of the top candidates. The manner in which the survey was administered prevented AGB Search from knowing which committee members responded, whether committee members responded more than once, or whether the responses submitted were from actual committee members.

At the chair’s direction, committee members ultimately considered Interim President Volnick when completing their preference surveys, even though she had not applied for the position. Her inclusion in the survey potentially precluded an actual candidate from being included among the group of top candidates that the committee selected as semi-finalists.

Including the late survey response changed the composition of the top six candidates by elevating a lower-ranking candidate to a tie for sixth place. Given that this was not disclosed to the committee and the fact that the displayed survey results did not align with the actual survey results compiled by AGB Search, the OIGC determined the

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survey results were not transparent and the information concerning the top candidates was not accurately represented to the Presidential Search Committee.

## **Issue 2: Questionnaires Administered to Applicants**

### **AGB Search Diversity Questionnaire**

Documentary and testimonial evidence confirmed that upon submission of an application for the FAU president position, each applicant received an acknowledgment email from AGB Search that contained a link to a diversity questionnaire. The records reflect that the applicant's participation in the diversity questionnaire was voluntary, the data collected would not be associated with individuals, and the responses would not impact their candidacy. The rationale for the questionnaire, according to the email, was "to meet reporting responsibilities to our client and to assess and enhance AGB Search's long-term AA/EEO<sup>27</sup> recruitment and selection efforts."

According to Dr. McDavis' testimony, AGB Search has conducted this survey for approximately eight years without any concerns being raised. Records reviewed demonstrate that during AGB Search's recent presidential search for Florida Gulf Coast University,<sup>28</sup> the AGB Search acknowledgment email sent to the applicants of that search read, "to meet reporting responsibilities to our clients and to assess and enhance AGB Search's long-term AA/EEO recruitment and selection efforts." At some point, the language in AGB Search's acknowledgment email for FAU applicants was modified from clients plural to client singular.

Dr. McDavis was not able to explain the language change. He expressed that while there may have been a "tweak," the substance remained unchanged. However, despite the questionnaire being presented as voluntary, by stating that AGB Search had a reporting responsibility to a singular "client," that being FAU, applicants could reasonably interpret that to mean they needed to complete the questionnaire because of an expectation by the university to receive the information.

The OIGC interviewed the members of the Presidential Search Committee. In their testimonies, committee members consistently reported having no knowledge of or expectations for AGB Search to collect or report any information concerning applicants' gender or sexual orientation.

During his interview, Dr. McDavis explained there were two purposes for AGB Search's diversity questionnaire. The first was that most of their clients want to know who is in their candidate pool, so they want to make sure they have that information readily available to provide it to their clients if and when they ask. The second purpose was that, as a firm, one of AGB Search's core values is diversity. The questionnaire helps

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<sup>27</sup> Affirmative Action and Equal Employment Opportunity.

<sup>28</sup> On or around March 28, 2022, Florida Gulf Coast University executed a contract with AGB Search for their presidential search.

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them evaluate how well they are meeting their commitment to diversity in generating a diverse pool of candidates.

The OIGC reviewed the diversity questionnaire, which consisted of eight questions. The first set of questions identified the university and position to which the applicant was applying and inquired how the applicant learned of the position. The remaining questions asked about the applicant's race/ethnicity, gender, sexual orientation, and veteran and disability status. The question about gender provided the following options: male, female, transgender/male, transgender/female, and do not disclose. The question about sexual orientation provided the following options: gay, lesbian, bisexual, queer, straight, other, and do not disclose.

During the Presidential Search Committee meeting on May 19, 2023, Dr. McDavis shared select demographics related to the pool of candidates, noting, "By state law, you'll be required to provide a breakdown of the pool of qualified candidates." He identified the number of men, women, and people of color for the 45 applicants categorized as highly qualified or qualified at that time. During his testimony, Dr. McDavis did not recall what "state law" he was referencing but said he was informed of the requirement during a meeting with Chair Brad Levine and Mr. Kian. He shared that the demographic information he reported to the committee was not based on the diversity questionnaire results, as they typically only generate a 20-30% response rate. He explained that he manually compiled the information based on his research of the applicants.

A letter from FAU BOT Chair Brad Levine to Chancellor Rodrigues, dated July 10, 2023, asserted, "AGB Search has advised FAU that the [diversity questionnaire] responses are processed by AGB Search's operations team into aggregate data. Individual responses are never seen by the search consultants who assist the universities. In our search, we have three consultants, none of whom have ever seen any individual or aggregate responses." However, records reviewed revealed that there were email communications between AGB Search staff about a "Diversity Report" on the morning of May 19, 2023. Dr. McDavis asked their research associate if they had the "diversity report on the FAU candidates." In his reply, the research associate indicated the report is usually asked for after the application submission deadline passes, but he had not requested the report yet. The report was subsequently requested and provided to Dr. McDavis when the Presidential Search Committee's meeting was scheduled to start on May 19, 2023.

The OIGC requested and reviewed the "diversity report" referenced in the AGB Search emails. The review confirmed that only 22 applicants completed the diversity questionnaire and that the responses were anonymous. The OIGC determined that Dr. McDavis would not have been able to use the results of the diversity questionnaire to compile and report on the applicant pool demographics because he did not receive the results until the morning of the committee's meeting, not all applicants submitted a response to the questionnaire, and he would not have been able to determine which applicants responded and which applicants he had to research. The OIGC did not identify any emails demonstrating that AGB Search provided any diversity reports or



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questionnaire responses noted above to any individuals affiliated with or employed by FAU, including search committee members, employees, or other contractors.

During his interview, Mr. Kian opined that the “state law” referenced by Dr. McDavis may have been related to section 1004.098, F.S., or the law related to the annual equity report that universities must submit to the BOG Office each year. Mr. Kian noted that under the new law, the age, race, and gender of qualified applicants are not confidential, and, therefore, the university would need to know that information if they were to receive a public records request for it. Chair Brad Levine was unaware of what “state law” Dr. McDavis referenced.

In regard to the equity report requirement, OIGC staff reviewed FAU’s 2021-2022 Florida Educational Equity Report. The report cited section 1000.05, F.S.,<sup>29</sup> and Board of Governors Regulation 2.003<sup>30</sup> as the basis for the report. Section 1000.05, F.S., contains no reporting requirements concerning university employment data. Board of Governors Regulation 2.003(5)(a) requires each university to annually prepare and submit a Florida Equity Report that includes, at a minimum, “information on the institution’s progress in implementing strategic initiatives and performance related to equity and access as they pertain to academic services, programs, and student enrollment; equity in athletics; and employment.” A review of FAU’s equity report revealed that the university does include data on the gender and ethnicity of its employees in faculty and senior administrative positions but not of its applicants for employment.

**Conclusion:** OIGC confirmed AGB Search’s diversity questionnaire was voluntary, and answers were not associated with any individual applicant for employment decision-making purposes. If requested by their clients, diversity questionnaire responses are compiled and provided in an aggregate, anonymous format. The Presidential Search Committee was not aware AGB Search had sent the diversity questionnaire to applicants. The statement to “meet reporting responsibilities to our client” was not based on any statutory reporting requirement or any request from or contractual obligation to FAU.

While the investigative review did reveal that Dr. McDavis received a copy of the diversity report on the FAU candidates, the review did not identify any evidence that AGB Search provided the diversity report or the data contained therein to FAU or the Presidential Search Committee. Additionally, testimonial evidence was consistent in that the Presidential Search Committee members did not expect AGB Search to collect or report any information concerning applicants’ gender or sexual orientation.

While the facts presented in this review do not rise to a violation of law, the United States Equal Employment Opportunity Commission has asserted, “Questions about an applicant’s sex [including sexual orientation and gender identity]... are generally viewed

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<sup>29</sup> Discrimination against students and employees in the Florida K-20 public education system prohibited; equality of access required.

<sup>30</sup> Equity and Access. This regulation was last revised November 5, 2020, and is currently under public notice for revision.

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as not job-related and problematic under Title VII unless a defense or exception applies.”<sup>31</sup> Additionally, sections 1000.05 and 1004.098, F.S., and Board of Governors Regulation 2.003, the authorities relied upon by the university to gather the information, do not require the collection of such information.

Furthermore, while there is nothing prohibiting AGB Search from soliciting applicant information for their purposes, representing to applicants that the information was being requested based on reporting responsibilities to the client, which was in this case FAU, was inaccurate.

### **Mintz Group’s Due Diligence Consent Form**

Under the FAU presidential search contract, AGB Search was responsible for conducting due diligence on candidates identified as semi-finalists. AGB Search contracts with Mintz Group, LLC, to assist with the social media research for the due diligence.

After the Presidential Search Committee selected semi-finalists on June 6, 2023, AGB Search instructed Mintz Group to send each semi-finalist an electronic invitation (“eVite”) to initiate the due diligence process. The email sent by Mintz Group to the semi-finalists contained a link that routed the semi-finalists to their secure online platform, where the semi-finalist could input their personal information and give consent for the due diligence review. The email noted the review would include an assessment of “all publicly available web sites including but not limited to social media, internet, news feeds or articles from any source...”

The semi-finalists were asked for their personal details, including gender and personal pronouns. The field available for the semi-finalists’ gender was marked by an asterisk, indicating a mandatory field; it had a drop-down list to select female, male, or other. The field available for the semi-finalists’ personal pronouns was labeled as “(optional)” and was a standard text field.

During his testimony, Dr. McDavis confirmed he was aware of the option for semi-finalists to indicate their personal pronouns but emphasized that this was voluntary. He explained that since Mintz Group does not ask for social security numbers, and many people have the same name, they ask for other defining characteristics to help identify the correct person in the candidate pool and ensure they conduct the research for the right person.

During their interviews, the Presidential Search Committee members consistently reported having no knowledge of or expectations for information about candidates’ personal pronouns being collected or reported out on. Additionally, they all indicated they had not received any information concerning any of the candidates’ personal pronouns.

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<sup>31</sup> <https://www.eeoc.gov/pre-employment-inquiries-and-gender> (last accessed October 12, 2023).

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The OIGC reviewed the due diligence reports completed by Mintz Group for each of the semi-finalists. The OIGC confirmed those reports did not contain information about the semi-finalists' gender or personal pronouns.

**Conclusion:** The OIGC confirmed that while filling out Mintz Group's mandatory consent form to complete the due diligence reviews, semi-finalist candidates were given the opportunity to volunteer the personal pronouns to which they identify. Testimonial evidence confirmed the Presidential Search Committee members had no expectations to receive information about the semi-finalists' personal pronouns. Investigative review did not identify any evidence that FAU or the Presidential Search Committee was provided data related to the semi-finalists' personal pronouns. Lastly, the OIGC did not find any legal grounds that would prohibit Mintz Group from including an optional field for personal pronouns in their consent form.

### **Issue 3: Whether AGB Search Withheld Material Information from the Presidential Search Committee**

The assertion by FAU that AGB Search did not inform the university or the Presidential Search Committee about the questions asked of applicants as part of the firm's diversity questionnaire raised additional concerns about whether the firm withheld material information from the search committee.

The standard process for AGB Search to communicate with or provide information to the Presidential Search Committee was either in-person during the committee's meetings, electronically through the ShareFile site, or through emails that were routed through FAU. Most, if not all, of the official information provided to the Presidential Search Committee was routed through FAU, after conferring with and receiving approval from Chair Brad Levine. While records indicate that a few committee members emailed AGB Search directly to ask procedural questions at different points in the process, AGB Search did not have routine, direct contact with committee members.

In general, documentary evidence supports that Chair Brad Levine had final approval over what information was sent to the Presidential Search Committee. On May 9, 2023, committee member Dr. Dunn shared an Excel document with Chair Brad Levine, Dr. McDavis, and Mr. LaPlant that contained a compilation of anonymous comments about the presidential search process and a prospective candidate that were received in March and April 2023. Chair Brad Levine replied to Dr. McDavis and Mr. LaPlant, with a copy to Mr. Kian, that they [AGB Search and the university] would not share "anonymous comments about prospective/confirmed candidates" with the Presidential Search Committee.

After the official launch of the presidential search at the end of April 2023, AGB Search uploaded incoming applicant materials into the ShareFile site. On May 15, 2023, AGB Search provided Chair Brad Levine with information on how to access the ShareFile site. Upon Chair Brad Levine's instructions, Mr. LaPlant subsequently provided the ShareFile site access information to the Presidential Search Committee members on May 16, 2023. The committee met on May 19, 2023, to review the applicant pool;

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during the meeting, the summary documents for the highly qualified and qualified categories were displayed. On May 22, 2023, AGB Search provided Mr. LaPlant with revised summary documents that were updated based on the committee members' feedback during the May 19<sup>th</sup> meeting. Mr. LaPlant provided the information to the Presidential Search Committee members on that same day.

The OIGC observed, during its review of the records, that additional applicants applied for the position after AGB Search provided the updated summary documents for the highly qualified and qualified categories to FAU on May 22, 2023. Three of those applicants were categorized by AGB Search as qualified. AGB Search uploaded the applicants' application materials into the qualified folder on the ShareFile site, but they did not add biographies for those applicants to the summary document for qualified applicants and send it back out to the committee.

The OIGC did not identify any emails explicitly notifying Chair Brad Levine or the Presidential Search Committee of additional qualified applicants. During his testimony, Chair Brad Levine expressed he did not believe they received additional applications after the date of best consideration. He did not know whether AGB Search made the committee aware of the additional applicants and noted that if AGB Search added their names to the summary document then that was how they made the committee aware. However, if AGB Search did not add their names to the summary document, then they did not make the committee aware.

Conversely, the OIGC did identify an email record demonstrating that AGB Search notified the Presidential Search Committee of an applicant who was selected as a priority candidate in another search and thus should no longer be considered as part of their individual evaluations and top-six preferred candidate selections.

After the committee selected semi-finalists on June 6, 2023, AGB Search initiated the due diligence process. AGB Search timely uploaded the results of the due diligence into the ShareFile site for each of the semi-finalists within 24-48 hours of each semi-finalist's respective reports being completed. Additionally, on June 13, 2023, AGB Search notified Chair Brad Levine and Mr. Kian that the results of the due diligence process for two of the semi-finalists were available in the ShareFile site. Chair Brad Levine responded to the email that he would let the committee know tomorrow [June 14<sup>th</sup>]. However, the information was not disseminated to the Presidential Search Committee by Mr. LaPlant until June 16, 2023. AGB Search had the due diligence results for the remaining semi-finalists uploaded to the ShareFile site by June 26, 2023; Mr. LaPlant notified the committee of that information being available in the ShareFile site on that same day.

Documentary and testimonial evidence confirmed that AGB Search had contact with semi-finalists between the time of their interviews and the committee's July 5<sup>th</sup> meeting. During those contacts, there was discussion regarding whether the semi-finalists intended to move forward publicly if selected as a finalist at the upcoming July 5<sup>th</sup> meeting. Two of the semi-finalists expressed concerns related to moving forward publicly; however, those individuals did not want to withdraw from the process at that

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time. They wanted to make their final decision after they knew whether they had been selected as a finalist and how many finalists were selected.

Documentary evidence supports that AGB Search had a conversation with Mr. Kian wherein they discussed, at least in general terms, some of the concerns of the semi-finalists. Testimonial evidence supports that AGB Search had a conversation with Chair Brad Levine, during which they discussed some of the concerns of the semi-finalists. However, there is no evidence to support that AGB Search told either Mr. Kian or Chair Brad Levine that specific semi-finalists planned to withdraw from the process if they were not selected as a “sole finalist.” There was no evidence that the Presidential Search Committee, as a whole, was informed of the specific concerns of any of the semi-finalists.

**Conclusion:** Based on the records reviewed by and the testimonies provided to the OIGC, there is insufficient evidence to support that AGB Search withheld material information from the search committee. However, the OIGC noted instances wherein information provided to Chair Brad Levine and/or Mr. Kian was not shared with or disseminated to the Presidential Search Committee as a whole. In general, Chair Brad Levine had final authority over what was provided to the Presidential Search Committee.

While AGB Search did not explicitly notify the chair or the Presidential Search Committee of additional qualified applicants who applied after the May 19, 2023, committee meeting, the application materials for those applicants were timely added to the ShareFile site, which was accessible by committee members during the time in which they were evaluating the applicant pool and selecting their preferred candidates.

As previously detailed under Issue 2, testimonial evidence indicated that AGB Search verbally informed Chair Brad Levine of the two “Top 6 Candidate Preference Survey” responses that were received outside of the survey window. However, Chair Brad Levine did not recall being informed of that information. The OIGC found no evidence of this information with the Presidential Search Committee members either preceding, during, or after the committee’s meeting on June 6, 2023.

Testimonial evidence supports that AGB Search knew that two of the semi-finalists were concerned about moving forward in the search process publicly if selected among multiple finalists; however, they did not communicate an intent to withdraw from the process before the committee’s July 5<sup>th</sup> meeting. Documentary and testimonial evidence supports that AGB Search communicated, in general terms, the concerns of those semi-finalists to Chair Brad Levine and Mr. Kian. Testimonies consistently noted it was common knowledge in these types of executive searches that candidates who are already in high-level positions tend to have the types of concerns described and could ultimately withdraw if they are uncomfortable going public. None of the testimonies support that AGB Search told Chair Brad Levine or Mr. Kian that two of the semi-finalists were going to withdraw from the search process unless they were a “sole finalist.” All the semi-finalists interviewed indicated that they wanted to make the decision to go public or withdraw after the committee voted on the finalists because they

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wanted to know if they were even selected as a finalist and, if so, how many other finalists were selected. The members of the Presidential Search Committee were not informed of any of the specific concerns semi-finalists had, which could have impacted the committee's actions with regard to its selection of finalists.

#### **Issue 4: Compliance with Board of Governors Regulation 1.002**

The FAU Presidential Search process did not fully align with the requirements of Board of Governors Regulation 1.002, Presidential Search and Selection, as summarized below.

##### **Vetting of Applicants**

Presidential search committees are responsible for “vetting applicants by, at a minimum, ensuring that available public records and online resources are checked in order to narrow the pool of qualified candidates who will be invited to participate in interviews with the search committee....”<sup>32</sup> FAU's contract with AGB Search stipulated that AGB Search would “provide due diligence on candidates identified on a short list and those identified as semi-finalists and finalists.” As previously described, due diligence referred to reference calls, internet (i.e., Google and other search engines) and Nexis reviews, and social media research, the purpose of which is to identify potential issues that candidates may need to address.

During his interview, Dr. McDavis explained the “short list” is the semi-finalist list. He confirmed AGB Search does not start the due diligence process until candidates are identified as semi-finalists. In his testimony, Chair Brad Levine explained he was not part of the contracting process and did not review the proposals or contracts. He stated all the background checks [due diligence checks] were done and the committee had all the information prior to the interviews for each of the candidates. He said he was not aware of any issues with the timing of the checks. He noted he was not familiar with whether they complied with the regulation or not in this regard, but the university's contract with AGB Search was mirrored after FGCU's contract with AGB Search.

On June 6, 2023, the Presidential Search Committee met and selected a group of semi-finalists that would be invited for interviews with the committee. The information provided to the Presidential Search Committee prior to their selection of semi-finalists included the information the applicants submitted when they applied (such as their resumes, curriculum vitae, and letters of intent), as well as the summary documents of highly qualified and qualified applicants prepared by AGB Search, but not the results of the due diligence checks.

**Conclusion:** AGB Search completed the due diligence in accordance with the timeline specified in its contract with FAU. However, according to Board of Governors Regulation 1.002, the results of the available public records and online resources [due diligence] should have been provided to the committee members while they were

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<sup>32</sup> Board of Governors Regulation 1.002(1)(c)(6).

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vetting applicants and before selecting candidates who would be invited to participate in interviews with the search committee.

The OIGC found that the narrowing of the qualified applicants to select who would be invited for an interview with the committee began with the May 19<sup>th</sup> committee meeting and ended with the June 6<sup>th</sup> committee meeting. Completed due diligence was not provided to the search committee members prior to their selection of candidates that would be interviewed by the committee as required by Board of Governors Regulation 1.002.

### Non-Disclosure Agreement Compliance

Board of Governors Regulation 1.002, Presidential Search and Selection was amended on November 9, 2022, to require all persons with access to confidential applicant information protected by section 1004.098, F.S., to execute a non-disclosure agreement to ensure confidentiality of the information as required by law. The regulation further states that failure to abide by the requirement of the non-disclosure agreement may subject an individual to civil or criminal penalties under Florida's Sunshine Laws.

In November 2022, FAU created two non-disclosure agreements that were modeled after one used by the University of Florida during its presidential search: one for the Presidential Search Committee members<sup>33</sup> and another for the internal university staff and external consultants supporting the presidential search.<sup>34</sup> Records show that at the end of November, Mr. Kian sought feedback on the university's non-disclosure agreement from the BOG general counsel at the time, who responded, "It looks good."

OIGC staff confirmed the consultant from Washington Education Strategies, as well as the three main consultants and the research associate assigned to the FAU presidential search for AGB Search signed a non-disclosure agreement. However, records indicate there were other AGB Search employees who had access to confidential applicant information and who did not execute an FAU non-disclosure agreement. Testimony from Dr. McDavis indicated AGB Search only had employees with direct access to the ShareFile site that contained confidential applicant information execute a non-disclosure agreement. However, at least three other employees at AGB Search had knowledge of and access to applicant information which included confidential information.

During the review, OIGC staff confirmed that each member of the Presidential Search Committee signed a non-disclosure agreement in accordance with Board of Governors Regulation 1.002. By signing the non-disclosure agreement, the committee members, in pertinent part:

- Acknowledged that only the chair was authorized to speak to the media on behalf of the university;
- Committed to maintaining the absolute confidentiality of all prospects and applicants to prevent and protect confidential information from disclosure;

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<sup>33</sup> *Florida Atlantic University Presidential Search Advisory Committee Guiding Principles*

<sup>34</sup> *Florida Atlantic University Presidential Search Committee Guiding Principles*

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- Agreed not to reveal the name of or any information about any prospects or applicants before or after the committee completed its work; and
- Acknowledged their understanding of the confidentiality provisions of section 1004.098, F.S.

The Presidential Search Committee concluded its work on July 5, 2023, when it selected finalists for the BOT's consideration. After the suspension of the presidential search, members of the Presidential Search Committee received an email on July 7, 2023, wherein Mr. Kian asked them not to comment on the matter publicly and instructed them to refer contact by any media to FAU Media Relations.

Subsequently, Presidential Search Committee member Dick Schmidt, penned an op-ed<sup>35</sup> that was published by multiple media publications around July 12, 2023, titled, "Suspension of FAU Presidential Search is a Bad Decision." His op-ed referenced that other press reports suggested the search was halted because the search committee did not include the governor's reported personal selection for the position among the finalists.

Prior to Mr. D. Schmidt's op-ed, other media outlets had referred to a politician being encouraged by the governor or the governor's administration to apply for the position. As part of the FAU non-disclosure agreement, the Presidential Search Committee members agreed to "maintain the absolute confidentiality of all prospects and applicants." Any public comments regarding an individual whose name had been in the media as a prospect of the FAU president position is contrary to the FAU non-disclosure agreement. Further, any public comments regarding the suspension of the presidential search were contrary to the instructions provided to the members of the Presidential Search Committee by Mr. Kian on July 7, 2023.

Based on the records reviewed and testimonies provided, FAU BOT Chair Brad Levine, Mr. Kian, and Peter Hull<sup>36</sup> all had knowledge of Mr. D. Schmidt's intention to write an op-ed prior to its publication. On July 8, 2023, following Chancellor Rodrigues' request to suspend the presidential search, university officials participated in a phone call, wherein the op-ed was discussed. Additionally, Chair Brad Levine, Mr. Kian, and Mr. D. Schmidt had a subsequent phone call the morning of July 10, 2023. After that phone call, Mr. D. Schmidt emailed a draft copy of his op-ed to Mr. Kian, who subsequently suggested edits to the document.

Chair Brad Levine did not recall who specifically was present for the July 8<sup>th</sup> meeting or what was discussed. He stated he was not an active participant in that meeting. He did not know who introduced the idea of the op-ed or what the conversations were regarding the op-ed. He also did not recall the purpose for or the discussions of the July 10<sup>th</sup> meeting, despite being the organizer of the meeting. He expressed he was not

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<sup>35</sup> A narrative essay that presents the writer's opinions or thoughts about an issue.

<sup>36</sup> Vice president of public affairs.



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familiar with Mr. Kian's subsequent actions providing feedback to the content of the op-ed.

During his interview, Mr. D. Schmidt stated, "I did have a conversation about it with Brad Levine and told him I was going to write an op-ed and he did not discourage me from doing that." Mr. D. Schmidt also shared the op-ed with Mr. Kian to make sure he "wasn't running afoul with the NDA [non-disclosure agreement] or anything." He expressed he did not run afoul of the non-disclosure agreement because his "comments were strictly personal regarding what the effect of halting the search was doing to the university." According to Mr. Kian, while he had knowledge of the op-ed and provided feedback on it, he expressed it was not done on behalf of the university and thus did not contradict the non-disclosure agreement.

On July 10, 2023, Mr. D. Schmidt received an email from Mr. Hull in which he was provided contact information for multiple media outlets to submit his op-ed. Mr. D. Schmidt indicated he asked Mr. Hull to send him contact information for newspapers that would be interested in publishing the op-ed. During his interview, Mr. Hull confirmed he had a conversation with Mr. D. Schmidt's assistant who asked for guidance on how to submit an op-ed and to whom it should be submitted. Subsequently, he provided her with contact information for media outlets and directions on how to address the emails to the editorial departments. Mr. Hull expressed that Mr. D. Schmidt was speaking as a concerned independent citizen and not as a FAU employee or member of the BOT; therefore, the op-ed was not authored on behalf of the university. Chair Brad Levine became aware that Mr. Hull provided the contact information to Mr. D. Schmidt after the fact, and expressed it was Mr. Hull's job to help relative to media or public relations.

Chair Brad Levine expressed during his interview that it was not up to him to discourage or encourage Mr. D. Schmidt regarding the op-ed, citing an individual's right to free speech.

**Conclusion:** Contrary to the requirement in Board of Governor Regulation 1.002(3), AGB Search did not have all their employees with access to confidential applicant information execute a non-disclosure agreement. While Presidential Search Committee members and university employees signed a non-disclosure agreement in accordance with the regulation, committee members D. Schmidt and Chair Brad Levine, university employees Mr. Kian and Mr. Hull acted contrary to the non-disclosure agreement. While those individuals claimed that Mr. D. Schmidt's op-ed was not done on behalf of the university, officials at the university had knowledge of the op-ed, discussed and/or provided feedback on its content, and provided media contacts for distribution. These actions were contradictory to non-disclosure agreement and the instructions Mr. Kian provided to the Presidential Search Committee members on July 7, 2023.

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### Number of Committee Members

The chairs of university BOTs are responsible for appointing the members of the presidential search committee, in consultation with the chair of the BOG.<sup>37</sup> The BOG's regulation specifies the types of individuals that should serve on a presidential search committee. The regulation also limits the number of presidential search committee members to "no more than 15 members."

At the onset of the presidential search, the number of committee members was consistent with the requirements of the BOG regulation. However, during the FAU presidential search, the FAU student body president who was serving on the committee as a representative for the student body graduated from the university. Since Board of Governors Regulation 1.002 requires a presidential search committee to consist of individuals from the student body, the new student body president was asked to serve on the committee to fulfill that requirement. However, the former student body president was allowed to continue serving on the committee, thereby increasing the number of committee members to 16.

Testimonial evidence supports that Chair Brad Levine sent a text message to BOG Chair Brian Lamb on April 20, 2023, regarding FAU's student body president changing. Both Chair Brad Levine and Chair Lamb referenced the text message during their interviews. Chair Brad Levine said he received an acknowledgement to the message and that Chair Lamb approved the action. However, Chair Lamb noted in his interview that he does not like to exchange text messages related to the search committee and thus did not respond to Chair Brad Levine's text message. Chair Lamb also did not recall any subsequent communications with Chair Brad Levine in follow-up to that text message. Chair Brad Levine was asked for documentation related to Chair Lamb's approval; however, he stated his text messages auto-delete after 30 days and he did not have a copy of the response. Chair Brad Levine was adamant that he received approval and stated he would not have done it without it.

Chair Lamb noted he received another text message from Chair Brad Levine in May 2023 about removing a faculty member who was serving on the committee and replacing that individual with a member of the BOT. Chair Lamb said he called Chair Brad Levine about that text message and spoke with him about the change and requested it be put in an email. Chair Lamb subsequently received an email from Chair Brad Levine and responded in writing that he supported this change.

**Conclusion:** As a result of Chair Brad Levine's decision to retain the former and new student body president, the number of committee members exceeded the BOG regulation's allowable number of committee members. No documentary evidence was found to support that Chair Brad Levine received approval to exceed the number of allowable committee members.

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<sup>37</sup> Board of Governors Regulation 1.002(1)(a).

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## **Other Matters Observed**

### **Committee Member Communications Outside of Official Meetings**

Committees with a decision-making function in screening applicants by deciding which of the applicants to reject for further consideration are subject to Florida's Sunshine Law.<sup>38</sup> The Government-in-the-Sunshine-Manual states, "The law is equally applicable to elected and appointed boards, and applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action."<sup>39</sup>

Section 1004.098, F.S., provides a public meeting exemption for the purpose of identifying or vetting applicants for president of a state university. It does not allow committee members to engage in private discussions about business that would foreseeably come before the committee for action. The law also requires that a complete recording be made of any portion of a meeting that is closed pursuant to the exemption.

At the inaugural meeting of the Presidential Search Committee on January 26, 2023, Mr. Kian gave a presentation related to Florida's Sunshine Law. The presentation provided with an overview of the law to include the requirement that "Committee Members may not communicate with one another about any matter likely to come before the Committee for action."

A few days after the search was officially launched,<sup>40</sup> Chair Brad Levine asked AGB Search to change the application deadline for best consideration from June 6, 2023, to May 16, 2023. On April 30, 2023, committee member Dr. Dunn, who also served on the FAU BOT as the faculty senate president, sent the BOT members concerns from the faculty related to the change of the application deadline. On May 2, 2023, due to an exchange of emails between BOT members in response to the concerns shared by Dr. Dunn, Mr. Kian sent an email to the BOT reminding members of the requirements of "Florida's Open Meetings Act" regarding communications among board members, to include communications through email. His reminder noted, "... expressions of Trustee opinion or proposals for any action that the Board take related to the Presidential search can only be made in a properly noticed public meeting of the Board."

During the Presidential Search Committee's shade meeting on May 19, 2023, Dr. Dunn asked Mr. Kian whether it would be appropriate for search committee members to have "side bar conversations" with each other to discuss candidates. Mr. Kian responded that "as a technical legal matter" they could have one-on-one conversations because any portion of meetings where members discuss candidates is exempt from Florida's

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<sup>38</sup> Government-in-the-Sunshine-Manual, (2023 Edition), p. 3.

<sup>39</sup> Government-in-the-Sunshine-Manual, (2023 Edition), p. 1.

<sup>40</sup> The search was officially launched, and the position advertisement was posted on April 26, 2023 with the June 5<sup>th</sup> application deadline for best consideration.

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Sunshine Laws; however, “as best practice” they should not. Dr. Dunn agreed they should follow best practices.

Email records revealed that two Presidential Search Committee members, Dr. Dunn and Mr. Steve Schmidt had exchanged emails beginning on Thursday, June 29, 2023, to set up a phone call for June 30, 2023, at 8:00 AM. Within a few days of this email exchange, Dr. Dunn sent Mr. S. Schmidt an email that contained an analysis related to the qualifications of one of the semi-finalist candidates that would be discussed and considered for formal action at the committee’s upcoming meeting on July 5, 2023.

During their interviews, neither Dr. Dunn nor Mr. S. Schmidt recalled having a telephone conversation at the time indicated by the email records. Both Dr. Dunn and Mr. S. Schmidt recalled the email containing the analysis regarding one of the semi-finalists. Testimony from both individuals confirmed the analysis consisted of Dr. Dunn’s own personal notes regarding the semi-finalist.

During her interview, Dr. Dunn explained she considered sending her analysis broadly; however, there was one committee member that stood out to her as wanting to represent the local community [S. Schmidt] and she thought he might find some of the things she put in her analysis interesting. Dr. Dunn indicated she was aware of Florida’s Sunshine Law requirements and did not seek legal counsel regarding sending her analysis to Mr. S. Schmidt. She expressed her belief that by using her FAU email account to send the analysis, she was creating a record of the exchange as required by section 1004.098, F.S.

During his interview, Mr. S. Schmidt acknowledged receipt of the analysis from Dr. Dunn. He shared that he subsequently asked her if the analysis was her own or that of a third-party, but that was the extent of any discussion he had with her about the analysis. He confirmed there was no recording of their subsequent conversation, to his knowledge. He confirmed he did not communicate with Mr. Kian regarding the email he received from Dr. Dunn or their subsequent conversation.

During the July 5, 2023, Presidential Search Committee meeting, committee members debated the semi-finalists and voted on which ones should move forward as finalists for the FAU presidency. The information shared by Dr. Dunn with Mr. S. Schmidt was directly related to one of the semi-finalists that was debated and voted on by the committee at that meeting.

According to the Government-In-The-Sunshine Manual, while it is not a “direct violation” of the Sunshine Law for members to circulate their own written position papers on the same subject as long as the board members avoid any discussion or debate among themselves except at an open public meeting, this practice is “strongly discourage[d].”<sup>41</sup>

**Conclusion:** Email records reflect that a telephone call between two Presidential Search Committee members, Dr. Dunn and Mr. S. Schmidt, was scheduled for June 30,

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<sup>41</sup> Government-in-the-Sunshine-Manual, (2023 Edition), p. 24

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2023. While both individuals did not recall having the scheduled telephone conversation, on July 2, 2023, Dr. Dunn sent Mr. S. Schmidt an email that contained an analysis related to the qualifications of one of the semi-finalists that would be discussed and considered for formal action at the committee's upcoming meeting on July 5, 2023.

Absent proof of a telephone call discussing business that would foreseeably come before the Presidential Search Committee for vote, Dr. Dunn sent her personal analysis of a candidate to another committee member which is a practice strongly discouraged by the Florida Attorney General. Her actions were also contrary to the best practice advice provided by Mr. Kian.

### Security of Confidential Information

The executed contract between AGB Search and FAU states AGB Search will “handle search-related administrative services, such as a secure web site hosted by AGB Search, to which only members of the Search Committee and AGB Search staff will have access.” It also states, “Every search is provided a unique login and password so that only authorized Search Committee members, search consultants and key AGB Search personnel may have access to confidential search documents. If necessary, passwords can be changed to mitigate any potential breach of confidentiality.”

AGB Search established a ShareFile site for the Presidential Search Committee members to review application materials and background information for candidates. On May 16, 2023, FAU staff distributed an email that provided login instructions. This email included a shared username and password. Committee members were instructed not to reset the password and to contact AGB Search with any problems accessing the site.

During the investigative review, OIGC staff tested the AGB Search ShareFile site using the credentials provided to the Presidential Search Committee. OIGC staff was able to access the site and confirmed it contained confidential candidate materials, committee materials, and confidential due-diligence reports.

Florida law protects the identity of applicants that apply for the position of presidency at a state university and who are not selected as a finalist. Placing applicant information in a shared account increases the risk of unauthorized access and limits the ability to trace who has accessed the information.

The National Institute of Standards and Technology, whose mission is to promote American innovation and industrial competitiveness, recommends organizations consider the increased risk due to the lack of accountability before permitting the use of shared or group accounts.<sup>42</sup>

**Conclusion:** AGB Search's establishment and use of a shared account for AGB Search and the Presidential Search Committee members was in accordance with the contract

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<sup>42</sup> [https://csrc.nist.gov/CSRC/media/Projects/risk-management/800-53%20Downloads/800-53r5/SP\\_800-53\\_v5\\_1-derived-OSCAL.pdf](https://csrc.nist.gov/CSRC/media/Projects/risk-management/800-53%20Downloads/800-53r5/SP_800-53_v5_1-derived-OSCAL.pdf)

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with FAU. However, the use of a shared account by multiple users increases the risk that individuals not authorized to view confidential information are able to do so and is a deficient information management technology practice.

#### Availability of Candidate Background Information

AGB Search was contractually obligated to perform due diligence checks on the semi-finalists selected by the Presidential Search Committee. As previously noted, AGB Search contracts with a third-party, Mintz Group, to assist with the due diligence checks. Upon completion of the due diligence, AGB Search timely uploaded the reports to the ShareFile site for each of the semi-finalists.

The Presidential Search Committee conducted semi-finalist interviews on June 14, 2023, and June 29, 2023. Committee members did not consistently receive notification of the availability of due diligence reports on the semi-finalists in advance of their interviews.

For the two semi-finalists interviewed on June 14, 2023, Chair Brad Levine was notified by AGB Search on June 13, 2023, that the due diligence reports were completed and available for committee members' review in the ShareFile site. Chair Brad Levine responded to the email that he would let the committee know the following day; however, the committee was not formally notified until Friday, June 16, 2023, two days after these semi-finalists' interviews. For the four semi-finalists interviewed on June 29, 2023, the committee was formally informed by an FAU representative that the due diligence reports had been uploaded to the ShareFile site on Monday, June 26, 2023, which allowed the committee time to review the information multiple days prior to the scheduled interviews.

During his interview, Chair Brad Levine said he believed the committee members were verbally informed during a meeting that due diligence would be conducted for the semi-finalists and the results would be made available to them in the portal before the scheduled interviews. When asked why the committee was formally notified on June 16, 2023, if they were already told the information would be in the portal, Chair Brad Levine replied, "We can never have too many communications."

A review of the meetings/meeting materials did not support that committee members were told that due diligence information would be made available to them prior to the semi-finalist interviews. Additionally, records revealed that a search committee member asked AGB Search when they would learn more information [about the candidates] obtained from reference checks and other information that was not included in the prepared applicant materials. AGB Search responded to the question advising it was not their standard practice to start gathering other due diligence information until the semi-finalists were selected and that they would share the information gathered during the semi-finalist interviews. This question and AGB Search's response was uploaded to the ShareFile site.

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**Conclusion:** While it could be argued that the Presidential Search Committee did have access to the due diligence reports for the first two semi-finalists prior to their interview, the protocol had been to notify the committee as items were available for review. The notification of the availability of due diligence reports differed from protocol for the two sets of semi-finalists that were interviewed.

**APPOINTMENT OF SEARCH COMMITTEE CHAIR**

Board of Governors Regulation 1.002(1)(a) states, “The Chair of the board of trustees will appoint a trustee member of the search committee to serve as chair of the committee.” FAU BOT Chair Brad Levine appointed himself to serve as the chair of the FAU Presidential Search Committee. The allowability of a university BOT chair to contemporaneously serve as the university’s presidential search committee chair is unclear in the regulation.

Nine of the universities within the State University System have conducted presidential searches within the last five years. OIGC staff reviewed the composition of the presidential search committees for those universities and observed that none of BOT chairs for those universities served as the chair of the respective search committees. It appears that the general interpretation and application of Board of Governors Regulation 1.002(1)(a), across the system, would be that the chair of the search committee is not the BOT chair, but the BOT chair is permitted to serve as a member of the search committee.

**EXTERNAL PRESSURE**

During the course of this investigative review, concerns were raised by FAU about the university being pressured to give favor to or advance a specific candidate. Chair Brad Levine opined there were some political dealings regarding the FAU presidential search and stated Board of Governors member Tim Cerio verbally told him, “It was very important to make sure [a specific candidate] moves forward.” When interviewed, Governor Cerio confirmed he has routine contact with Chair Brad Levine due to their longstanding friendship. He did recall that during one of their conversations they talked about the FAU presidential search and discussed an individual who had been highlighted by the media as being a potential candidate. Governor Cerio recalled telling Chair Brad Levine he thought the individual would make a good candidate; however, he did not, nor was he in a position to, instruct Chair Brad Levine that the individual must be moved forward. Governor Cerio denied being pressured by anyone to contact the university or advocate for anyone. He was unaware of any “political dealings” concerning the FAU presidential search.

**Conclusion:** There is insufficient evidence to support that the university was directed or pressured to advance or select any specific candidate.

## Recommendations

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We recommend the BOG require FAU to restart their search for their next president. The failure to comply with Florida Statutes and Board of Governors Regulation 1.002 raises questions regarding the competence of the search; therefore, the BOG should consider whether BOT Chair Brad Levine should be prohibited from serving as the chair of the university's next Presidential Search Committee given his involvement and oversight of the search process assessed by this investigative review.

We also recommend the BOG consider updating Board of Governors Regulation 1.002, Presidential Search and Selection, to provide more detailed direction to BOTs related to presidential searches to address the deficiencies identified during the FAU presidential search. We recommend consideration of the following updates:

- Clarify timing requirements related to due diligence efforts;
- Provide more direction to universities regarding how candidates should be narrowed and how finalists should be selected;
- Prohibit contracted search firms from asking or surveying candidates about non-job-related information;
- Prescribe a minimum time-period that presidential search committee members must be afforded to review candidate background information prior to narrowing the applicant pool and interviewing semi-finalists;
- Clarify whether a BOT chair can contemporaneously serve as the search committee chair;
- Encourage presidential search committees to consider and approve, as a body, the format and questions for candidate interviews; and
- Encourage presidential search committee members who are on the university BOT to attend candidate interviews in person.



**State University System of Florida Board of Governors  
Office of Inspector General and Director of Compliance**

**Approval**

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This report is intended for the officials to which it was distributed.

Respectfully submitted by:



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Julie Leftheris, CPA, CIG, CIA, CFE, CISA  
Inspector General and Director of Compliance

**Distribution and Investigative Team**

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