

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
IN AND FOR LEON COUNTY, FLORIDA

UNITED FACULTY OF FLORIDA; JOSE  
GOMARIZ; LAURENCE G. BRANCH;  
and ERIK CAMAYD-FREIXAS,

Plaintiffs,

v.

CASE NO. 2008-CA-18

FLORIDA BOARD OF GOVERNORS,

Defendants.

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**ANSWER OF INTERVENOR-DEFENDANT STATE OF FLORIDA  
TO THE SECOND AMENDED COMPLAINT**

Intervenor-Defendant, the State of Florida, answers Plaintiffs' Second Amended Complaint for Declaratory Relief and each paragraph thereof as follows:

1. Admitted for purposes of jurisdiction only. Both the Second Amended Complaint and section 1011.90(6), Florida Statutes, speak for themselves.

**JURISDICTION AND VENUE**

2. Plaintiffs' Second Amended Complaint and section 86.011, Florida Statutes (2007), speak for themselves. Paragraph 2 is admitted for purposes of jurisdiction only.

3. Admitted.

4. Admitted that the UFF is an employee organization; otherwise without knowledge and therefore denied.

5. Admitted that Plaintiff Jose Gomariz is a professor at Florida State University; otherwise without knowledge and therefore denied.

6. Admitted that Plaintiff Laurence G. Branch is a professor at the University of South Florida; otherwise without knowledge and therefore denied.

7. Admitted that Plaintiff Erik Camayd-Freixas is a professor at Florida International University; otherwise without knowledge and therefore denied.

8. Admitted that the Board of Governors is the primary enforcing agency of section 1011.90(6), with responsibilities established by article IX, section 7, of the Florida Constitution. Plaintiffs' characterizations and any remaining conclusions or allegations are denied.

All allegations not specifically admitted herein are denied.

### **BACKGROUND FACTS**

9. Admitted.

10. Section 1011.90(6), Florida Statutes, speaks for itself. Any remaining conclusions or allegations are denied.

11. Admitted that some funds for state university faculty travel flow through state university-administered accounts. Without knowledge of the extent to which funds for university faculty travel all flow or are required to flow through state university-administered accounts and therefore denied.

12. Senate Bill 2434, chapter 2006-54, ss. 1-3, Laws of Florida, speaks for itself. Any remaining conclusions and allegations are denied.

13. Admitted.

14. Admitted that the Florida Constitution established the Florida Board of Governors on the effective date. The constitutional provision speaks for itself; any remaining conclusions or allegations are denied.

All allegations not specifically admitted herein are denied.

### **FIRST CAUSE OF ACTION**

15. Intervenor-Defendant realleges and incorporates herein by reference its responses to

paragraphs 1-14.

16. Article IX, section 7, of the Florida Constitution speaks for itself. Any remaining conclusions and allegations are denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

All allegations not specifically admitted herein are denied.

### **SECOND CAUSE OF ACTION**

21. Intervenor-Defendant realleges and incorporates herein by reference its responses to paragraphs 1-14.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

All allegations not specifically admitted herein are denied.

### **THIRD CAUSE OF ACTION**

26. Intervenor-Defendant realleges and incorporates herein by reference its responses to paragraphs 1-14.

27. These two constitutional provisions speak for themselves.

28. Denied.

29. Without knowledge of Professor Camayd-Freixas' activities or responsibilities and therefore denied. Any remaining allegations are denied.

30. Without knowledge of this UFF agreement and therefore denied. Any remaining conclusions and allegations are denied.

31. Without knowledge of this UFF agreement and therefore denied. Any remaining conclusions and allegations are denied.

32. Without knowledge of this UFF agreement and therefore denied. Any remaining conclusions and allegations are denied.

33. Denied.

34. Denied.

35. Denied

All allegations not specifically admitted herein are denied.

#### **FOURTH CAUSE OF ACTION**

36. Intervenor-Defendant realleges and incorporates herein by reference its responses to paragraphs 1-14.

37. This constitutional provision speaks for itself. Any remaining allegations are denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

All allegations not specifically admitted herein are denied.

#### **PRAYER FOR RELIEF**

42 - 44. Plaintiffs' are not entitled to any relief pursuant to Counts 1 through 4 of the Second Amended Complaint.

## DEFENSES

45. UFF lacks standing to bring this action. UFF has no standing to assert the rights or interests of the plaintiff faculty members or any faculty members insofar as such faculty members may be affected by the Travel Act. Further, paragraph 4 of the Second Amended Complaint fails to show that UFF's collective bargaining agreements are presently in effect. Even if any such agreement is presently in effect, the complaint fails to otherwise show that UFF has any right or interest affected by the Travel Act, or has incurred any concrete, distinct and actual injury sufficient to confer standing.

46. The allegations of the complaint fail to establish that UFF is entitled to a declaratory judgment. A plaintiff seeking a declaratory judgment must demonstrate a bona fide, actual present need for the declaration; an actual, present, adverse and antagonistic interest; and a right or privilege dependent upon resolution of the controversy. UFF shows no such entitlement. The declaratory judgment act does not entitle parties to advisory opinions.

47. Plaintiffs Gomariz, Branch, Camayd-Freixas lack standing to bring this action. None of these plaintiffs clearly allege an injury – that but for the Travel Act university-administered funds would be available at this time for travel to a terrorist state. For the same reason, these plaintiffs are not entitled to a declaratory judgment. They allege no present controversy that would be resolved by a declaration of the court.

48. Count II fails to state a cause of action for facial unconstitutionality. The allegations of Count II are manifestly insufficient to show the questioned language of the Travel Act could not be given a constitutional construction.

49. Count III fails to state a cause of action for impairment of any contract under article I, section 10 of the Florida Constitution. The Travel Act does not unconstitutionally affect

any of UFF's collective bargaining agreements identified in the complaint. Count III also fails to establish that plaintiff Camayd-Freixas is a party to any legally binding contract or that the "contract" (i.e., grant), purportedly described in Count III is unconstitutionally impaired. To the extent that money in the so-called "previously awarded grant" is under university control, it may be refunded to the donor. If such money is not under university control, it is not affected by the Travel Act.

50. Count III also fails to state any basis for facially invalidating the Travel Act. If the Travel Act unconstitutionally impairs an existing contract, the appropriate relief would be to declare the Act unconstitutional as applied to that contract, and not to declare the Act facially invalid.


51. Count IV fails to state a cause of action for violation of plaintiffs' "academic freedom." The phrase "academic freedom" does not constitute a recognized and defined constitutional right under the Florida Constitution or the First Amendment to the United States Constitution. Plaintiffs have no constitutional right to have their research subsidized.

52. The remedy Plaintiffs seek, a declaration that invalidates section 1101.90(6) on its face, and in its entirety, is inappropriate in light of their general allegations that involve only funds originating from state or state university sources – "university funding" (§ 5) and vague allusions to "a competitive grant from the Cuban Research Institute" of Florida International University (§ 7) – and no concrete allegation of an issue related to a university's administration of funds from private, federal, or other non-state sources.

53. Funds administered by state universities, including those that may be used to support research and related travel, that are subject to appropriation by the legislature may not be used for purposes not authorized by law.

Respectfully submitted,

**BILL McCOLLUM**  
**ATTORNEY GENERAL**

  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing has been furnished by U.S. Mail this 7th day

of May, 2008 to:

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