

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

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

Plaintiffs,

v.

FLORIDA BOARD OF GOVERNORS,

Defendant.

Case Number: 2008 CA 018

08 APR -4 PM 3:25
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

FILED

COPY

PLAINTIFFS' SECOND AMENDED COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs sue Defendant, and allege the following:

1. This is an action for declaratory relief to declare unconstitutional and unenforceable section 1011.90(6), Florida Statutes (2007), included in the "Act Relating to Travel to Terrorist States" (Travel Ban), which prohibits the use of state and non-state funds made available to state universities for activities related to or involving travel to a terrorist state.

JURISDICTION AND VENUE

2. Plaintiffs' claims arise under the Florida Constitution and the laws of Florida. This court has jurisdiction pursuant to Article V, Section 20(c)(3) of the Florida Constitution. Declaratory relief is authorized by section 86.011, Florida Statutes (2007).

3. Venue properly lies in this Court because Defendant maintains its principal places of business in Tallahassee, Leon County, Florida.

PARTIES

4. Plaintiff United Faculty of Florida (UFF) is an employee organization as defined in Section 447.203(11), Florida Statutes (2007), and is the certified bargaining agent for the faculty and other professional employees at all eleven state universities in Florida. In its official capacity, the UFF represents the interests of faculty members adversely affected by the Travel Ban. At the time the statute was enacted, the UFF was party to collective bargaining agreements with the respective boards of trustees for the Florida State University (2004-2007), the University of South Florida (2004-2007), and the Florida International University (2005-2008), which contained provisions protecting academic freedom that are unconstitutionally impaired by the challenged legislation.

5. Plaintiff Jose Gomariz is a tenured professor in the Department of Modern Languages and Linguistics at Florida State University. Since 2000, he has been at work on a manuscript about the African Diaspora in Cuba and the Caribbean, which requires consulting library collections found only in Havana, Cuba. Plaintiff Gomariz also had travel arrangements to visit Cuba while on research leave from the university during the Spring of 2008. However, due to the enactment of the Travel Ban, Plaintiff Gomariz is unable to continue his travel to Cuba using university funding, as he has some fifteen times in the past, in order to fulfill his research responsibilities.

6. Plaintiff Laurence G. Branch, Ph.D. is a professor of health policy and management at the College of Public Health, University of South Florida. Since 1991, he has traveled to Cuba dozens of times to address specific issues about public health in Cuba. Based on his research there, Plaintiff Branch has written numerous articles on Cuba's healthcare system, and is currently co-authoring a book titled: *Primary Health Care in Cuba: The Other*

Revolution. Additionally, Plaintiff Branch has been a member of the Board of Directors for the Center for the Study of the Third Age, in Havana, Cuba, since 1993. The enactment of the Travel Ban prevents Plaintiff Branch from meeting the demands of his scholarly research and other professional responsibilities.

7. Plaintiff Erik Camayd-Freixas is an associate professor of Spanish & Director of Translation and Interpretation Program at Florida International University. His research entails studying the historical reconstruction of a prison compound in Cuba that operated from 1926 to 1967 and is now a museum. During the summer of 2006, Plaintiff Camayd-Freixas was awarded a competitive grant from the Cuban Research Institute for five weeks of travel in Cuba to conduct research. However, distribution of the grant funds has been halted due to the Travel Ban.

8. Defendant Florida Board of Governors is the primary enforcing agency for section 1011.90(6), of the Travel Ban, and as such, is responsible for overseeing and establishing the policy for the state university system.

BACKGROUND FACTS

9. On May 30, 2006, then-Governor Jeb Bush signed into law Senate Bill 2434 titled "Act Relating to Travel to Terrorist States" (the Travel Ban), which became effective July 1, 2006. See Ch. 2006-54, ss. 1-3, Laws of Fla. (codified at various places in sections 112.061(3)(e), 1011.81(2), and 1011.90(6), Florida Statutes). A true and accurate copy of the Travel Ban, as signed by Governor Bush, is attached hereto as Exhibit A.

10. Pursuant to section 1011.90(6), Florida Statutes, the Travel Ban prohibits Florida's state universities from using state and non-state funds "to implement, organize, direct,

coordinate, or administer, or to support the implementation, organization, direction, coordination, or administration of, activities related to or involving travel to a terrorist state.” The Travel Ban’s prohibition applies equally to state funds made available to a state university and non-state funds made available to a state university, such as private foundation funds and federal grants that are channeled through the institutions to individual researchers.

11. State, federal, and private funds earmarked for university faculty travel flow through accounts administered by the individual state universities.

12. The Travel Ban defines a “terrorist state” as “any state, country, or nation designated by the United States Department of State as a state sponsor of terrorism.”

13. The United States Department of State currently defines five foreign countries as state sponsors of terror: Cuba, Iran, North Korea, Sudan, and Syria.

14. The Board of Governors, established by the Florida Constitution, effective January 7, 2003, is the centralized, governing authority for the state university system of Florida, and responsible for adopting policies to implement the duties conferred upon it by the constitution. As a result of the Board of Governors’ creation, the Legislature was divested of its power to regulate and control the State University System beyond its exclusive power to appropriate state funds.

FIRST CAUSE OF ACTION
Violation of Article IX, § 7, Florida Constitution
Separation of Powers

15. The allegations in Paragraphs 1-14 are realleged and incorporated herein by reference.

16. Article IX, Section 7, of the Florida Constitution, provides in pertinent part that the statewide Board of Governors shall “operate, regulate, control, and be fully responsible for

the management of the whole university system. . . . The board's management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and the board shall account for such expenditures as provided by law."

17. The Legislature's authority under Article IX, Section 7 does not extend to the use of non-appropriated federal and private funds received, or generated, by state universities.

18. The Travel Ban exceeds the Legislature's limited authority under Article IX, Section 7, by directing the expenditure of a university's private institutional funds, and thereby abridges and usurps the Board of Governor's exclusive constitutional authority to operate and control the whole university system.

19. The statewide policy established by the Travel Ban effectively undermines the constitutional authority granted to the statewide Board of Governors, and constitutes an unlawful attempt by the Legislature to prescribe to the Board of Governors what policy it should follow with respect to the use of non-appropriated funds within the university system.

20. Because it violates the principle of separation of powers under the Florida Constitution, section 1011.90(6) of the Travel Ban is facially unconstitutional and should not be enforced.

SECOND CAUSE OF ACTION
Violation of Article I, § 9, Florida Constitution
Due Process (vagueness)

21. The allegations in Paragraphs 1-14 are realleged and incorporated herein by reference.

22. By prohibiting a state university from using any of its funds for activities related to or involving travel to a terrorist state, without defining the phrase "activities related to or involving travel to a terrorist state," the Travel Ban has the effect of prohibiting the use of such

funds for any travel-related activities to a prohibited country, including those that do not actually involve travel.

23. The Travel Ban could easily be interpreted to preclude any activity that indirectly relates to travel to a prohibited country, such as research, lecturing, organizing or administering events related to travel to or from one of the prohibited countries, preparation of travel-related reports, or other travel-related activities involving these countries.

24. The Travel Ban also violates the due process rights of Plaintiffs because it lacks uniformity in application and effect.

25. Because the Travel Ban requires an exercise in guesswork and speculation and fails to provide explicit standards for those who are required to apply the law, it is unconstitutionally vague on its face and should not be enforced.

THIRD CAUSE OF ACTION
Violation of Article I, § 10, Florida Constitution
Impairment of Contract Rights

26. The allegations in Paragraphs 1-14 are realleged and incorporated herein by reference.

27. Article I, Section 10 of the Florida Constitution provides “[n]o ... law impairing the obligation of contracts shall be passed.” In addition, the United States Constitution, Article I, § 10, provides that “[n]o State shall . . . pass any . . . law impairing the obligation of contracts.”

28. Any law that unreasonably and unnecessarily impairs the obligations of a contract, such as the Travel Ban, may be stricken as unconstitutional.

29. As principal investigator for a previously awarded grant, which constitutes a legally-binding contract, Plaintiff Camayd-Freixas is responsible for conducting research and

other educational activity, carrying out the scientific investigation, and reporting the results in accordance with his professional responsibilities.

30. The UFF is a party to a collective bargaining agreement with the Board of Trustees of the Florida State University (FSU), in effect at the time the Travel Ban was enacted, which provides in Article 5, Section 5.2, Subsection (a)(3), pertaining to academic freedom, that faculty members have the freedom to “[f]reely engage in scholarly and creative activity and publish the results.”

31. The UFF is a party to a collective bargaining agreement with the Board of Trustees of the University of South Florida (USF), in effect at the time the Travel Ban was enacted, which provides in Article 5, Section 5.2, pertaining to academic freedom, that:

Academic freedom is the freedom of an employee to present and discuss all relevant matters in the classroom, to select instructional materials and determine grades, to pursue all avenues of scholarship, research and creative expression, to speak freely on all matters of University governance, and to speak, write or act as an individual, all without institutional discipline or restraint.

32. The UFF is a party to a collective bargaining agreement with the Board of Trustees of the Florida International University (FIU), in effect at the time the Travel Ban was enacted, that provides in Article 5, Section 5.2, pertaining to academic freedom, that:

Academic freedom is the freedom of an employee to present and discuss all relevant matters in the classroom, to select instructional materials and determine grades, to pursue all avenues of scholarship, research and creative expression, to speak freely on all matters of University governance, and to speak, write or act as an individual, all without institutional discipline or restraint. Nothing in this Article will be understood to grant any right to be included on the agenda of any University meeting, except as otherwise provided in this Agreement or by law or University rule.

33. The Travel Ban violates Article I, Section 10, of the Florida Constitution because it detrimentally impacts Plaintiff Camayd-Freixas' contractual obligations under a research grant awarded prior to July 1, 2006.

34. The Travel Ban violates Article I, Section 10, of the Florida Constitution because it detrimentally impacts the contractual rights of the UFF under its collective bargaining agreements with FSU, USF, and FIU.

35. The Travel Ban unreasonably intrudes into Plaintiffs' contractual rights to a degree greater than is necessary to achieve the stated governmental purpose by unilaterally and materially altering the terms of their existing agreements. Moreover, there is no compelling governmental interest behind the enactment of the Travel Ban that justifies such a unilateral modification.

FOURTH CAUSE OF ACTION
Violation of Article I, § 4, Florida Constitution
First Amendment (academic freedom)

36. The allegations in Paragraphs 1-14 are realleged and incorporated herein by reference.

37. Article I, Section 4, of the Florida Constitution, states "[e]very person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press."

38. By restricting the use of private and federal research grant funds awarded to universities to allow for travel to any of the prohibited countries, the Travel Ban stands in the way of Plaintiffs' ongoing and professional pursuit of academic research.

39. The Travel Ban, at minimum, abridges the freedom of Plaintiffs to pursue all avenues of scholarship, research, and creative expression, including but not limited to, investigating and analyzing issues, presenting research findings to colleagues and students, and publishing research findings.

40. The Travel Ban unreasonably interferes with Plaintiffs' rights to engage in educational programs that include a study abroad or field work component in any of the designated countries.

41. As such, the Travel Ban is violative of Article I, Section 4 as a restraint upon Plaintiffs' academic freedom and should be stricken as unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

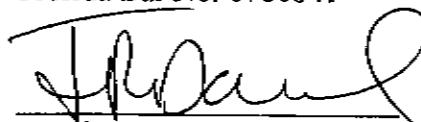
42. Declare section 1011.90(6), Florida Statutes, facially unconstitutional and unenforceable under the Florida Constitution;

43. Award to Plaintiffs the costs incurred in bringing this action; and,

44. Grant such other relief as this Court deems appropriate.

Respectfully submitted,

MEYER AND BROOKS, P.A.
2544 Blair Stone Pines Drive
Post Office Box 1547
Tallahassee, Florida 32302
(850) 878-5212
THOMAS W. BROOKS
Florida Bar No. 0191034
JANEIA R. DANIELS
Florida Bar No. 0706841



JANEIA R. DANIELS
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished on
this 4th day of April, 2008, by U.S. Mail to:

Vikki R. Shirley, Esq.
Florida Board of Governors
325 W. Gaines Street, Ste. #1614
Tallahassee, FL 32399-6533
850-245-9685—fax

Attorney General of Florida
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-0400



ATTORNEY