

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

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BOB MAZUR
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

BOB GRAHAM; LOU FREY, JR.;]
TALBOT "SANDY" D'ALEMBERTE;]
JOAN RUFFIER; BOARD OF]
GOVERNORS OF THE STATE]
UNIVERSITY SYSTEM OF FLORIDA,]
a Florida public corporation; BRUCE W.]
HAUPTLI; JAMES P. JONES; HOWARD]
B. ROCK; ERIC H. SHAW; MANOJ]
CHOPRA and FREDERICK R. STROBEL,]

Plaintiffs,]

vs.]

Case No.: 2007-CA-1818

KEN PRUITT, President of the Florida]
Senate; and MARCO RUBIO, Speaker of]
the Florida House of Representatives, on]
behalf of the Florida Legislature,]

Defendants.]

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

This Complaint has been amended once as a matter of course prior to the service of the responsive pleading pursuant to Florida Rule of Civil Procedure 1.190(a). Plaintiffs, Bob Graham; Lou Frey, Jr.; Talbot "Sandy" D'Alemberte; Joan Ruffier; Board of Governors of the State University System of Florida, a Florida public corporation; Bruce W. Hauptli; James P. Jones; Howard B. Rock; Eric H. Shaw; Manoj Chopra and Frederick R. Strobel, bring this action for declaratory relief against Defendants, Ken Pruitt, President of the Florida Senate; and Marco Rubio, Speaker of the Florida House of Representatives, on behalf of the Florida Legislature (hereinafter "Legislature") and allege:

PURPOSE

1. This action seeks a declaratory judgment holding section 1001.705, Florida Statutes, as well as other statutes discussed below, as void and unconstitutional in their entirety. Section 1001.705 reads as follows:

1001.705 Responsibility for the State University System under s. 7, Art. IX of the State Constitution; legislative finding and intent. —

(1) LEGISLATIVE FINDINGS.—

(a) *Definitions.*—For purposes of this act, the term:

1. “Board of Governors” as it relates to the State University System and as used in s. 7, Art. IX of the State Constitution and Title XLVIII and other sections of the Florida Statutes is the Board of Governors of the State University System which belongs to and is part of the executive branch of state government.

2. “Institutions of higher learning” as used in the State Constitution and the Florida Statutes includes publicly funded state universities.

3. “Public officer” as used in the Florida Statutes includes members of the Board of Governors.

4. “State university” or “state universities” as used in the State Constitution and the Florida Statutes are agencies of the state which belong to and are part of the executive branch of state government. This definition of state universities as state agencies is only for the purposes of the delineation of constitutional lines of authority. Statutory exemptions for state universities from statutory provisions relating to state agencies that are in effect on the effective date of this act remain in effect and are not repealed by virtue of this definition of state universities.

(b) *Constitutional duties of the Board of Governors of the State University System.*—In accordance with s. 7, Art. IX of the State Constitution, the Board of Governors of the State University System has the duty to operate, regulate, control, and be fully responsible for the management of the whole publicly funded State University System and the board, or the board’s designee, has responsibility for:

1. Defining the distinctive mission of each constituent university.

2. Defining the articulation of each constituent university in conjunction with the Legislature’s authority over the public schools and community colleges.

3. Ensuring the well-planned coordination and operation of the State University System.

4. Avoiding wasteful duplication of facilities or programs within the State University System.

5. Accounting for expenditure of funds appropriated by the Legislature for the State University System as provided by law.

6. Submitting a budget request for legislative appropriations for the institutions under the supervision of the board as provided by law.

7. Adopting strategic plans for the State University System and each constituent university.

8. Approving, reviewing, and terminating degree programs of the State University System.

9. Governing admissions to the state universities.
10. Serving as the public employer to all public employees of state universities for collective bargaining purposes.
11. Establishing a personnel system for all state university employees; however, the Department of Management Services shall retain authority over state university employees for programs established in ss. 110.123, 110.1232, 110.1234, 110.1238, and 110.161, and in chapters 121, 122, and 238.
12. Complying with, and enforcing for institutions under the board's jurisdiction, all applicable local, state, and federal laws.

(c) *Constitutional duties of the Legislature.*—In accordance with s. 3, Art. II of the State Constitution, which establishes the separation of powers of three branches of government; s. 1, Art. III of the State Constitution, which vests the legislative power of the state in the Legislature; s. 8, Art III of the State Constitution, which provides the exclusive executive veto power of the Governor and the exclusive veto override power of the Legislature; s. 19, Art. III of the State Constitution, which requires the Legislature to enact state planning and budget processes and requirements for budget requests by general law; s. 1, Art. VII of the State Constitution, which requires that the authority to expend state funds be by general law enacted by the Legislature; and s. 1, Art. IX of the State Constitution, which requires the Legislature to make adequate provision by law for the “establishment, maintenance, and operation of institutions of higher learning,” the Legislature has the following responsibilities:

1. Making provision by law for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.
2. Appropriating all state funds through the General Appropriations Act or other law.
3. Establishing tuition and fees.
4. Establishing policies relating to merit and need-based student financial aid.
5. Establishing policies relating to expenditure of, accountability for, and management of funds appropriated by the Legislature or revenues authorized by the Legislature. This includes, but is not limited to, policies relating to: budgeting; deposit of funds; investments; accounting; purchasing, procurement, and contracting; insurance; audits; maintenance and construction of facilities; property; bond financing; leasing; and information reporting.
6. Maintaining the actuarial and fiscal soundness of centrally administered state systems by requiring state universities to continue to participate in programs such as the Florida Retirement System, the state group health insurance programs, the state telecommunications and data network (SUNCOM), and the state casualty insurance program.

7. Establishing and regulating the use of state powers and protections, including, but not limited to, eminent domain, certified law enforcement, and sovereign immunity.

8. Establishing policies relating to the health, safety, and welfare of students, employees, and the public while present on the campuses of institutions of higher learning.

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to reenact laws relating to the Board of Governors of the State University System, the university boards of trustees, the State Board of Education, and the postsecondary education system in accordance with the findings of this act.

History.—s. 1, ch. 2005-285.

2. The statute violates article IX, section 7, of the Florida Constitution, which reads as follows:

ARTICLE IX EDUCATION

SECTION 7. State University System.--

(a) PURPOSES. In order to achieve excellence through teaching students, advancing research and providing public service for the benefit of Florida's citizens, their communities and economies, the people hereby establish a system of governance for the state university system of Florida.

(b) STATE UNIVERSITY SYSTEM. There shall be a single state university system comprised of all public universities. A board of trustees shall administer each public university and a board of governors shall govern the state university system.

(c) LOCAL BOARDS OF TRUSTEES. Each local constituent university shall be administered by a board of trustees consisting of thirteen members dedicated to the purposes of the state university system. The board of governors shall establish the powers and duties of the boards of trustees. Each board of trustees shall consist of six citizen members appointed by the governor and five citizen members appointed by the board of governors. The appointed members shall be confirmed by the senate and serve staggered terms of five years as provided by law. The chair of the faculty senate, or the equivalent, and the president of the student body of the university shall also be members.

(d) STATEWIDE BOARD OF GOVERNORS. The board of governors shall be a body corporate consisting of seventeen members. The board shall operate, regulate, control, and be fully responsible for the management of the whole university system. These responsibilities shall include, but not be limited to, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs. 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. The governor shall appoint

to the board fourteen citizens dedicated to the purposes of the state university system. The appointed members shall be confirmed by the senate and serve staggered terms of seven years as provided by law. The commissioner of education, the chair of the advisory council of faculty senates, or the equivalent, and the president of the Florida student association, or the equivalent, shall also be members of the board.

History.--Proposed by Initiative Petition filed with the Secretary of State August 6, 2002; adopted 2002.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to the declaratory judgment act, §§ 86.011, 86.021, and 86.061, Florida Statutes (2007), and the Court's general jurisdiction.

4. Venue is proper in this Court pursuant to § 47.011, Florida Statutes (2007), because Leon County is where the cause of action accrued.

CAUSE OF ACTION

5. Pursuant to the Florida Declaratory Judgment Act, plaintiffs seek a declaration of rights concerning the validity of various statutes relating to the governance of the state university system. As will be more fully set forth below these statutes are contrary to fundamental and basic constitutional principles and are unconstitutional. For purposes of complying with the "real controversy" element of a proper declaratory judgment action, this complaint will, at this point, utilize just the tuition controversy in order to state a cause of action and as an example of the other controversies to be mentioned later.

Real Controversy

6. A real controversy exists concerning whether the Board of Governors of the State University System of Florida or the Legislature of Florida has the authority to set tuition and fees in Florida's state universities.

7. To begin with, subsection (1)(c)3 of section 1001.705 states that the Legislature has the responsibility for establishing tuition and fees for the state universities of Florida.

8. To the contrary, in the case styled *Floridians for Constitutional Integrity, Inc. vs. State Board of Education*, No. 04-CA-3040 (Fla. 2nd Cir. Ct. March 17, 2006), this Court entered its order approving the agreement between the plaintiffs in that suit and the Board of Governors to the effect that the Board of Governors has authority to set tuition and fees for the state universities of Florida.

9. The provision of the statute and this Court's subsequent order are directly opposite, illustrating the prevailing doubt whether the Board of Governors or the

Legislature of Florida has the authority to set tuition and fees for Florida's state universities.

Bona Fide Practical Need

10. The University of Florida and Florida State University have been listed among the 75 public "flagship" universities in the 50 states. A USA Today survey (attached as **Exhibit A**) of the 2006 first-year, full-time freshmen college tuition and fees among these flagship universities showed that the University of Florida, at \$3,206, and Florida State University, at \$3,307, had the lowest tuition and fees of all 75 public flagship universities in the country.

11. The median amount (half higher, half lower) charged for tuition and fees among the 75 universities is \$5,838 per year. This means that freshman tuition and fees at the University of Florida are \$2,632 per student below the median amount and at Florida State University, \$2,531 per student below the median amount. The fee discrepancy is greater at graduate levels than at the freshman level.

12. The fall 2006 enrollment at the University of Florida was 50,912 students. The fall 2006 enrollment at Florida State University was 40,474 students. Using only the smaller fee discrepancy at the freshman level, and assuming that the University of Florida would receive just the median fee amount (half of the flagship universities would still receive more), the university of Florida's capacity to provide education for its students would be enhanced by \$134,000,384 per year. Using the same calculation, Florida State University would receive \$102,439,694 more per year in order to enhance its academic programs.

13. Florida now has 11 state universities. Using the same calculation for the enrollments of the other nine universities would demonstrate a total shortfall from the median tuition and fee amounts for the State University System as a whole to be approximately \$750,000,000.

14. In spite of the passage of article IX, section 7, Florida Constitution, the Legislature has continued to set fees and tuition at state universities. This means that the Legislature has been setting tuition and fees for Florida's universities since 1905 --- over 100 years. Florida's substantial tuition shortfall as compared to the universities in the rest of the country is due entirely to the actions of the Legislature.

15. The tuition and fees shortfall presently faced by Florida's state universities brings about a bona fide practical need for tuition and fee setting by an appointed citizen board with an exclusive fiduciary duty to the university system, similar to the country's most successful governance systems found in other states with constitutionally autonomous governing boards. Whether Florida should have such a board is no longer the subject of debate. In 2002, by a vote of more than 60%, the voters adopted Amendment 11, sponsored by initiative, which created article IX, section 7, Florida Constitution (hereinafter "Amendment").

16. The Amendment established an independent statewide Board of Governors for the governance of the State University System. As will be demonstrated in paragraphs 65 through 71 below, the people made the same general grant of authority in the Florida Constitution to the Board of Governors as had previously been made in the Florida Constitution to the school district governing boards and the Fish and Wildlife Conservation Commission. This grant of authority is also the same grant that has been made by the people of other states to their constitutionally established university governing boards. As demonstrated below, the grant by the people to Florida's Board of Governors carries with it the authority to set tuition and fees for the State University System.

Plaintiffs Have an Actual, Present and Adverse Interest

17. The Plaintiffs have an adverse interest that will sharpen the presentation of issues upon which the Court will depend for consideration of this constitutional question. The Plaintiffs, and their respective interests, are as follows:

18. BOB GRAHAM is a taxpayer and citizen of the State of Florida. He is a former governor and U. S. Senator for Florida. He led the formation and organization of Education Excellence for Florida, the entity that sponsored and drafted the 2002 Initiative Amendment adopted by the voters of Florida that now comprises Article IX, section 7 of the Florida Constitution. He chairs the nonprofit Florida corporation responsible for the Bob Graham Center for Public Service at the University of Florida. The purpose of the Center is to achieve practical solutions to public problems by mobilizing the intellectual resources of faculty and students, and focusing on problem areas of state and national concern. The quality and productivity of the academic programs designed to resolve public concerns are directly impacted by the extent of the resources coming from tuition and fees available to the University for attracting top flight teaching and research. His efforts at the Center are dependent upon the capacity of the University of Florida to effectively support the Center's efforts in public problem solving.

19. LOU FREY, JR. is a taxpayer and citizen of the State of Florida. He has served as a member of the United States House of Representatives for the citizens of Central Florida and is listed in the 2007 edition of *Best Lawyers in America*. He is the founder of the Lou Frey Institute of Politics and Government located at the University of Central Florida. The mission of the Institute is to serve as a nonpartisan foundation engaging in civic education for college and high school students, members of the Central Florida community, and the general public. The Institute is dependent upon the quality and productivity of the academic programs at the University of Central Florida, and those programs are impacted by the extent of the resources available to the university for attracting top flight teaching and research. A significant portion of these resources come from tuition and fees. His efforts at the Institute are dependent upon the capacity of the University of Central Florida to effectively support the Institute's efforts in civic education.

20. TALBOT "SANDY" D'ALEMBERTE is a taxpayer and citizen of the State of Florida. He is the President Emeritus of Florida State University and an active member of the university's teaching faculty. He is a former dean of the Florida State University College of Law, President of the American Bar Association, President of the American Judicature Society, chair of the Florida Constitution Revision Commission, chair of the Florida Commission on Ethics, and previously represented Dade County in the Florida House of Representatives. He is an acknowledged authority on the Florida Constitution and is personally committed to the improvement of the State University System of Florida.

21. JOAN RUFFIER is a taxpayer and citizen of the State of Florida. She is a former chair of the Board of Regents, and former chair of Education Excellence for Florida, the entity that sponsored and drafted the 2002 initiative amendment adopted by the voters of Florida and now comprising Article IX, section 7 of the Florida Constitution. Mrs. Ruffier has a special interest in the governance of the State University System and in the proper implementation of constitutional university governance in Florida.

22. BOARD OF GOVERNORS OF THE STATE UNIVERSITY SYSTEM OF FLORIDA, is a Florida public corporation chartered by the people of Florida in 2002 with the adoption of article IX, section 7 of the Florida Constitution, sponsored by initiative, which established the Board of Governors as a body corporate and gave the Board the authority to operate, regulate, control and be fully responsible for the management of the whole state university system.

23. BRUCE W. HAUPTLI, Ph.D., is a taxpayer and citizen of the State of Florida. He is a professor of philosophy at Florida International University whose personal livelihood is impacted by the extent of the resources coming from tuition and fees available to the University for compensating its professors for teaching, research, and service. Dr. Hauptli has chaired the Department of Philosophy at FIU and been a major contributor in the form of service to his university. He is presently serving as the chair of the faculty senate, member of the FIU Board of Trustees, and a member of the Advisory Council of Faculty Senates for the State University System of Florida.

24. JAMES P. JONES, Ph.D., is a taxpayer and citizen of the State of Florida. He has been designated as a Distinguished Teaching Professor of History, Florida State University, whose personal livelihood is impacted by the extent of the resources coming from tuition and fees available to the University for compensating its professors for teaching, research, and service. Dr. Jones has chaired the Department of History at FSU, and has been recognized with seven awards for excellence in teaching from the University since 1962. He is an acknowledged authority on the American Civil War having written and published a number of scholarly and popular books and articles on the subject.

25. HOWARD B. ROCK, Ph.D., is a taxpayer and citizen of the State of Florida. He is a Professor of History at Florida International University whose personal

livelihood is impacted by the extent of the resources coming from tuition and fees available to the University for compensating its professors for teaching, research and service. Dr. Rock has served as the chair of the faculty senate, is a former member of the Board of Governors of the State University System of Florida, and a former member of the Board of Trustees for Florida International University.

26. ERIC H. SHAW, Ph.D., is a taxpayer and citizen of the State of Florida. He is a Professor of Marketing at Florida Atlantic University whose personal livelihood is impacted by the extent of the resources coming from tuition and fees available to the University for compensating its professors for teaching, research and service. Dr. Shaw chairs the FAU Marketing Department and has been a recipient of the Distinguished Teacher of the Year from the College of Business and Public Administration at FAU. He is the President of the University Faculty Senate at FAU and a member of the university's Board of Trustees.

27. MANOJ CHOPRA, Ph.D., is a taxpayer and citizen of the State of Florida. He is a Professor in the Department of Civil and Environmental Engineering at the University of Central Florida whose personal livelihood is impacted by the extent of the resources coming from tuition and fees available to the University for compensating its professors for teaching, research and service. Dr. Chopra has been the assistant chair of the Department of Civil and Environmental Engineering at UCF, and is currently the chair of the Faculty Senate at UCF and a member of the Board of Trustees for the University of Central Florida.

28. FREDERICK R. STROBEL, Ph.D., is a taxpayer and citizen of the State of Florida. He is the Selby Professor of Economics at New College of Florida whose personal livelihood is impacted by the extent of the resources coming from tuition and fees available to the college for compensating its professors for teaching, research and service. Dr. Strobel previously served as Senior Business Economist at the Federal Reserve Bank of Atlanta. He is presently Chair of the Faculty at New College and is the author of two books and numerous articles for scholarly journals and the popular press.

Plaintiffs Have Not Filed this Action to Seek Advice Nor has the Action Been Filed Out of Curiosity

29. This action has been filed for the serious and vital purpose of properly identifying the entity having the authority to set tuition and fees for the State University System of Florida and to clarify the scope of the Board's constitutional authority. The decision on this issue has multi-million dollar consequences to the university system, its workers, supporters, administrators, faculty, students and their families, and for the State at large.

30. This action has not been filed to obtain advice or to participate in any kind of frivolity. The purpose is to correctly assign the responsibility for the full governance of Florida's public universities to the Board of Governors as mandated by the electorate of Florida.

ARTICLE IX, SECTION 7, FLORIDA
CONSTITUTION REPLACED THE STATUTORY
SCHEME OF UNIVERSITY GOVERNANCE
WITH AN ESTABLISHED CONSTITUTIONAL SCHEME

31. In their state constitution, the people of the State of Florida created the Legislature and gave the Legislature all the lawmaking power of the state which is not vested elsewhere in the constitution. Until 2002, the power to govern universities was not vested elsewhere in the constitution. Up to that time, universities had been governed according to legislatively created statutory systems. Consequently, Florida's presently existing body of law with respect to its universities pertains to governance systems that no longer exist.

Drafting the Amendment

32. The drafters of the Amendment researched the more distinguished academic institutions and the best governance structures in the country, as well as the cause and effect relationship between the two. The most positive and consistent relationship was found to be in the states of Michigan, Minnesota and California. Each of the three states possessed a very similar form of constitutional governance, which was credited with being a major factor for its academic achievement.¹

33. Equally important to an adopting state such as Florida was the fact that each state's governance structure was supported by over 100 years of court decisions clarifying and resolving most of the issues that could arise in an adopting state. While the constitutional provisions of the three states are worded differently, the case law interpreting each of the provisions is remarkably similar. Indeed, the court opinions of the three states cite to each other for authority. Thus, the body of law interpreting the constitutional structure adopted by Florida was very consistent.

34. The governance structure of each of the three states has two major elements: 1) a public corporation as the system's operating entity, and 2) a governing

¹ The Supreme Court of Michigan has reviewed the early history of university governance in that state. The court refers to the time "the legislature had the entire control and management of the university and the university fund," finding that "[t]he university was not a success under this supervision by the legislature." *Sterling v. Regents of the University of Michigan*, 68 N.W. 253, 255 (Mich. 1896). The members of the constitutional convention sought to, among other things, place the university "beyond mere political influence." *Id.* Among reports submitted to the convention, "[n]o more forcible argument could well be made than is found in the report for placing the entire control of the university in the hands of a permanent board." *Id.* at 256. The convention created the Board of Regents with a "oneness of purpose and singleness of aim." *Id.* The court references Michigan's Superintendent of Public Instruction, for the conclusion that: "[t]he result has proved their wisdom, for the university, which was before practically a failure, under the guidance of this constitutional body, known as the 'Board of Regents,' has grown to be one of the most successful, the most complete, and the best-known institutions of learning in the world." *Id.* Notably, the stated conclusion was then based upon experience of 46 years. Now more than 110 years later, the conclusion is the same.

board that has been given total and exclusive authority to manage its universities. The Amendment's drafters adopted both major elements for the provision that now makes up article IX, section 7, of the Florida Constitution.

Florida's Public Corporation

35. The Amendment adopted by the people of Florida states that the "board of governors shall be a body corporate."² The public corporation is the "highest form of juristic person known to the law, a constitutional corporation of independent authority, which within the scope of its functions, is co-ordinate with and equal to that of the Legislature."³ Since the corporation is created in the constitution, it becomes "paramount law, the right to amend or repeal which exists only in the people themselves."⁴ The public corporation is chartered by the constitution⁵ with, in Florida's case, the Board of Governors comprising both the members of the corporation as well as the board authorized to manage the corporation's business.⁶

Scope of Authority granted to Florida's Board of Governors

36. The cases show that delineating the scope of authority is critical: "[The board] is a body corporate, created by our Constitution and endowed by it with the power to govern the institution which it controls, free from interference by either Legislature or the courts so long as it stays within the scope of its constitutional powers."⁷ The delineation of the scope of authority in the constitution then becomes the direct and basic expression of the sovereign will, the mandate of a sovereign people to its servants and representatives.⁸

37. The extent of the authority granted by the people of Michigan, Minnesota and California to their respective boards experienced court challenges. The court decisions of the three states interpreted their respective constitutional provisions in unmistakable terms: the boards had been conferred "exclusive control;"⁹ the "power to govern; that is, the power to control. As applied to corporations, it is the power of management"¹⁰; authority for "regulation;"¹¹ "entire control and management;"¹² "full powers of organization and government;"¹³ the "power . . . to operate, control, and administer . . . [was] virtually exclusive,"¹⁴ and the like.

² Art. IX, § 7(d), Fla. Const. (2002).

³ *Board of Regents of University of Michigan v. Auditor General*, 132 N.W. 1037, 1040 (Mich. 1911).

⁴ *State, ex rel, University of Minnesota, v. Chase*, 220 N.W. 951, 954 (Minn. 1928).

⁵ *In Re Royer's Estate*, 56 P. 461, 463 (Cal. 1899).

⁶ *State, ex rel, Sholes v. University of Minnesota*, 54 N.W.2d 122, 125 (Minn. 1952).

⁷ *State, ex rel, Sholes v. University of Minnesota*, 54 N.W.2d 122, 126 (Minn. 1952).

⁸ 16 AM. JUR. 2D *Constitutional Law* § 58 (1998) (citations omitted).

⁹ *Sterling v. Regents of the University of Michigan*, 68 N.W. 253, 256 (Mich. 1896).

¹⁰ *State University of Minnesota v. Chase*, 220 N.W. 951, 953 (Minn. 1928)(internal citation omitted).

¹¹ *Federated Publications, Inc. v. Board of Trustees of Michigan State University*, 594 N.W.2d 491, 497 (Mich. 1999).

¹² *Winberg v. University of Minnesota*, 499 N.W.2d 799, 801 (Minn. 1993).

¹³ *Wall v. Board of Regents of University of California*, 102 P.2d 533 (Cal. 1940).

¹⁴ *Regents of University of California v. City of Santa Monica*, 77 Cal.App.3d 130, 135 (Cal. 1978).

38. In order to explicitly delineate the scope of authority, the Amendment's drafters adopted the unmistakably clear language of the court decisions of Michigan, Minnesota and California. The result is a total, exclusive and self executing¹⁵ grant of power to the Board of Governors, which "shall operate, regulate, control, and be fully responsible for the management of the whole university system."¹⁶

Separation of Powers

39. A constitution is designed to separate the powers of government and define the extent of those powers.¹⁷ Once the people chartered the Board of Governors and defined its scope of authority, that grant of power was exclusive to the Board of Governors, and amounted to a denial of the same power to the other officers and departments of government.¹⁸ A direct power conferred upon one necessarily removed its existence in the other.¹⁹ Thus, the "authority over the university system [was] transferred by article IX, section 7, to the Board of Governors,"²⁰ denying that authority to the other officers and departments of Florida government.²¹

Executive Powers

40. By adopting Florida's university governance amendment, the people assigned "the whole executive power"²² over university affairs to the Board of Governors. Executive powers now residing with the Board of Governors consist of the general rule-making²³ and policy-making powers,²⁴ power over personnel policies,²⁵ and the full power to act with respect to the organization and governance of universities.²⁶

41. The Board of Governors, while virtually autonomous in its management of universities,²⁷ is not a separate branch of government.²⁸ It has no executive authority outside the scope of its grant. Moreover, the board is shaped by the Governor's office, which selects most of its membership.²⁹ Board terms are staggered and longer than a Governor's term.³⁰ Thus, board members will be the product of more than one chief

¹⁵ *NAACP, Inc. v. Florida Board of Regents*, 874 So. 2d 636, 639 (Fla. 1st DCA 2004).

¹⁶ Art. IX, § 7(d), Fla. Const. (2002).

¹⁷ *State, ex rel, University of Minnesota v. Chase*, 220 N.W. 951, 956 (Minn. 1928).

¹⁸ *Id.*

¹⁹ *Sterling v. Regents of the University of Michigan*, 68 N.W. 253, 257 (Mich. 1896).

²⁰ *NAACP, Inc. v. Florida Board of Regents*, 874 So.2d 636, 640 (Fla. 1st DCA 2004).

²¹ *State, ex rel, University of Minnesota, v. Chase*, 220 N.W. 951, 956 (Minn. 1928).

²² *Id.* at 954.

²³ *NAACP, Inc. v. Florida Board of Regents*, 874 So. 2d 636, 640 (Fla. 1st DCA 2004).

²⁴ *Campbell v. Regents of University of California*, 106 P.3d 976, 982 (Cal. 2005).

²⁵ *Board of Regents of Higher Education v. Judge*, 543 P.2d 1323, 1335 (Mont. 1975).

²⁶ *Wall v. Board of Regents of University of California*, 102 P.2d 533 (Cal. 1940).

²⁷ *Campbell v. Regents of University of California*, 106 P.3d 976, 982 (Cal. 2005).

²⁸ *Federated Publications, Inc. v. Board of Trustees of Michigan State University*, 594 N.W.2d 491, 498 (Mich. 1999).

²⁹ Art. IX, § 7(d), Fla. Const. (2002).

³⁰ *Id.*

executive and will have ample time to acquire competence with respect to their “oneness of purpose and singleness of aim”³¹ --- the best interests of the university system.

Legislative Powers

42. The Board of Governors is “somewhat analogous to . . . the governing board of the ordinary corporation,”³² where the authority of the directors in the conduct of the business of a corporation must be regarded as absolute when they act within the scope of authority provided by law.³³ In the instance of the Board of Governors, the scope of authority is provided by article IX, section 7, of the Florida Constitution.

43. The only Florida court to evaluate article IX, section 7, has found, based on the “explicit language and the intent of the framers and voters,”³⁴ that the electorate made a “broad grant of authority”³⁵ that was “transferred”³⁶ from the Legislature to the Board of Governors “subject only to the Legislature’s authority to appropriate funds, to confirm the Board’s appointed members, and to set members’ staggered terms.”³⁷

44. The fiscal interface between the Legislature and the Board of Governors occurs in two areas: a) the extent to which the Legislature can properly attach conditions to the funds it appropriates to universities, and b) drawing the line between state revenues generated by the Legislature’s power to tax and thereafter expend pursuant to the power of appropriations, as opposed to institutional funds generated by the Board’s power to contract and to manage the system.

Conditions Attached to Appropriated Funds

45. “[S]ome but not all conditions can be imposed upon an appropriation to a constitutional college or university [T]he Legislature may not interfere with the management and control of those institutions [T]he Legislature within those limitations may appropriate state funds for a special purpose and if the university accepts the appropriation, it must use the funds for that purpose.”³⁸

46. The line between conditions the Legislature can validly attach to appropriations and those it cannot has not been distinctly drawn.³⁹ Conditions requiring universities to provide annual reports and follow prescribed business and accounting procedures have generally been found to be valid.⁴⁰ (The Florida amendment specifically

³¹ *Sterling v. Regents of the University of Michigan*, 68 N.W. 253, 255 (Mich. 1896).

³² *State, ex rel, Sholes v. University of Minnesota*, 54 N.W.2d 122, 127 (Minn. 1952).

³³ *Id.*

³⁴ *NAACP, Inc. v. Florida Board of Regents*, 874 So. 2d 636, 639 (Fla. 1st DCA 2004).

³⁵ *Id.*

³⁶ *Id.* at 640.

³⁷ *Id.*

³⁸ *Regents of the University of Michigan v. State*, 235 N.W.2d 1, 6 (Mich. 1975).

³⁹ *Regents of University of Michigan v. State*, 208 N.W.2d 871, 877, quoting from 55 Mich.L.Rev.729-30 (1957).

⁴⁰ *Id.*

provides for such accounting, stating that the Board of Governors “shall account” for the expenditure of its appropriated funds “as provided by law.”⁴¹

47. On the other side of the line, legislative direction to the governing board of the university requiring the removal of a college to another city was unconstitutional as an invasion of the Board’s authority to manage the university.⁴² A legislative requirement that the university pay prevailing wages in the community also violated the constitutional provision establishing the independence of the university.⁴³ Salary determination is a part of the autonomy of the university,⁴⁴ including the power to set the amount of presidential salaries.⁴⁵ However, the governing board may not compel the Legislature to appropriate money to pay for the salaries that the board may have authorized.⁴⁶

Institutional Funds

48. The corporate power to contract, manage and control universities carries with it the authority to generate and spend institutional funds. The key is to determine what constitutes state revenues distributed pursuant to the power of appropriation and what constitutes institutional funds that are within the Board of Governors’ power to manage. The basic distinction is between public funds involuntarily exacted through taxation and mandatory fees, as against private funds voluntarily paid to universities pursuant to contract.⁴⁷

49. In constitutional systems across the country, voluntary payments subject to the management of governing boards include research grants,⁴⁸ tuition and student fees,⁴⁹ endowments for the university,⁵⁰ management of university investments,⁵¹ private monies and contracts,⁵² and collection of on-campus parking fines.⁵³ Self liquidating projects are not subject to legislative control, however the university may be required by the Legislature to report progress of the project.⁵⁴

⁴¹ Art. IX, § 7(d), Fla. Const. (2002).

⁴² *Sterling v. Regents of the University of Michigan*, 68 N.W. 253, 257-58 (Mich. 1896).

⁴³ *San Francisco Labor Council v. Regents of University of California*, 608 P.2d 277, 278 (Cal. 1980).

⁴⁴ *Id.* at 280.

⁴⁵ *Board of Regents of Higher Education v. Judge*, 543 P.2d 1323, 1335 (Mont. 1975).

⁴⁶ *California State Employees Association v. Flournoy*, 32 Cal.App.3d 219, 233 (Cal. 1973).

⁴⁷ *Board of Regents of Higher Education v. Judge*, 543 P.2d 1323, 1334 (Mont. 1975).

⁴⁸ *Id.*

⁴⁹ *Knowalski v. Board of Trustees of Macomb County Community College*, 240 N.W.2d 272 (Mich. 1976);

Schmidt v. Regents of University of Michigan, 233 N.W.2d 855, 856 (Mich. 1975); *Regents of the University of Michigan v. State*, 208 N.W.2d 871, 882 (Mich. 1973).

⁵⁰ *Wall v. Board of Regents of University of California*, 102 P.2d 533 (Cal. 1940).

⁵¹ *Regents of University of Michigan v. State*, 419 N.W.2d 773, 779 (Mich. 1988).

⁵² *Board of Regents of Higher Education v. Judge*, 543 P.2d 1323, 1334 (Mont. 1975).

⁵³ *Student Government Association of Louisiana State University and Agricultural and Mechanical College, Main Campus, Baton Rouge v. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College*, 264 So. 2d 916, 919 (La. 1972).

⁵⁴ *Regents of the University of Michigan v. State*, 235 N.W.2d 1, 8 (Mich. 1975).

Balance of Power

50. The Florida Amendment sees to it that the power to raise institutional funds does not go unchecked. The Amendment is structured so there is a balance of power between the Board of Governors and the Legislature. The Board of Governors possesses the power to establish tuition and fees while the amendment specifically provides that the Legislature retains the power to appropriate state funds to the university system. In the states that have previously enjoyed constitutional governance for universities, these two powers have been the ingredients for successful negotiations between equals based upon mutual respect, leading to a more stable funding source for their universities. See e.g., California's "Higher Education Compact" attached as **Exhibit C**.

Policy; Police Power; Rule-Making

51. The constitutional board's control in the areas of policy, police power and rule-making is the same as in the other areas: the board controls the portion of those areas that is within "the university's sphere of educational authority"⁵⁵ but has no control over the portion of those areas that is in the general public domain. For example, the Michigan Supreme Court restated the clearly established public policy of the state strictly prohibiting racial and religious discrimination in the exercise of civil rights.⁵⁶ However, a legislative enactment prohibiting investment of university funds in organizations operating in South Africa was held to be an invasion of the scope of authority of the university, since there was no clearly declared state-wide public policy prohibiting investment in South Africa.⁵⁷

52. The California courts have acknowledged that the university governing board has "virtual autonomy in self governance" and "general rule-making or policy-making power in regard to . . . the organization and government of the University,"⁵⁸ but point out that the Legislature may regulate board action in three areas: the board a) cannot compel appropriations for university salaries, b) must comply with statutes expressing the state's general police power, such as workers' compensation laws, and c) must comply with legislation regulating matters of statewide concern not involving internal university affairs.⁵⁹ The California courts have determined that "policies established by the Regents as matters of internal regulation may enjoy a status equivalent to that of state statutes."⁶⁰

Judicial Powers

53. The effect of a university governing board's scope of authority is the same in its interface with the judicial branch as it is with the legislative branch. For example,

⁵⁵ *Federated Publications, Inc. v. Board of Trustees of Michigan State University*, 594 N.W.2d 491, 497 (Mich. 1999).

⁵⁶ *Regents of University of Michigan v. State*, 419 N.W.2d 773, 779 (Mich. 1988).

⁵⁷ *Id.*

⁵⁸ *Goldberg vs. Regents of University of California*, 248 Cal.App.2d 867, 874 (Cal. 1967).

⁵⁹ *San Francisco Labor Council v. Regents of University of California*, 26 Cal.3d 785, 789 (Cal. 1980).

⁶⁰ *Regents of University of California v. City of Santa Monica*, 77 Cal.App.3d 130, 135 (Cal. 1978).

the university governing board possesses “adjudicatory powers derived from the Constitution as to the problems and purposes of its personnel.”⁶¹ The governing board has been deemed to have quasi-judicial powers within the scope of its authority.⁶² The public corporation’s relationship with the judicial branch has been compared to the relationship of a private corporation: “it is an elementary principle of law that a court has no power or right to intermeddle with internal affairs of a corporation, in the absence of fraudulent conduct on the part of those who have been lawfully entrusted with the management and conduct of its affairs.”⁶³

The Practice of Setting Tuition

54. Setting tuition is inherent in the scope of authority granted constitutional university governance systems and is a routine practice for such boards of governance. See **Exhibit B** (Board of Regents of the University of Michigan Bylaws enacted pursuant to Michigan Constitution authorizing Board of Regents to “determine the level of full program student fees.”); **Exhibit C** (California’s “Higher Education Compact” and “Agreement between Governor Schwarzenegger, the University of California, and the California State University” setting forth the standards to be utilized by the Board of Regents in exercising their fee-setting powers and by the governor in proposing his university budget in order to cooperatively provide long term funding stability for California’s universities.); **Exhibit D** (The University of Minnesota’s Charter providing in section 12 that the university is authorized to establish charges for tuition.)

Summary

55. At its core, Florida’s new university governance is a very simple concept: the corporate board manages and controls the business of the corporation as authorized by its charter. The board is guaranteed freedom from interference by either the Legislature or the courts while operating within its scope of authority. When it deals with state-wide matters outside its scope of authority, the corporation and its people are subject to the same state-wide laws that apply to the general public.

⁶¹ *Ishimatsu v. Regents of University of California*, 266 Cal.App.2d 854, 864 (Cal. 1968).

⁶² *Vergos v. McNeal*, 146 Cal.App.4th 1387, 1396 (Cal. 2007).

⁶³ *Wall v. Board of Regents of University of California*, 38 Cal.App.2d 698, 699 (Cal. 1940), quoting *Consolidated Cement Corp. v. Pratt*, 47 F.2d 90, 93 (10th Cir. 1931).

COUNT I
CHAPTER 2007-217, LAWS OF FLORIDA,
UNCONSTITUTIONALLY ENCROACHES UPON THE
BOARD OF GOVERNORS' AUTHORITY TO "OPERATE,
REGULATE, CONTROL" AND "MANAGE" THE UNIVERSITY SYSTEM

56. Paragraphs 1 through 55 and paragraph 63 are hereby realleged as fully as if they were set forth herein.

57. Florida's First District Court of Appeal, in *NAACP, Inc. vs. Florida Board of Regents*, 876 So.2d 636, analyzed article IX, section 7, Florida Constitution and stated that the Florida electorate had transferred a "broad grant of authority," to the Board of Governors subject only to the Legislature's authority to:

- a. Appropriate funds,
- b. Confirm the Board's appointed members, and
- c. Set members' staggered terms.

58. In the face of the terms of the 2002 Amendment and the 2004 *NAACP* opinion, the Legislature in 2007 passed chapter 2007-217, §§75 through 83, Laws of Florida, which far exceeded the separation of powers between the Board of Governors and the Legislature enunciated in article IX, section 7 of the Florida Constitution, and also far exceeded the limitations laid down by the First District Court of Appeal in the *NAACP* case. In sections 75 and 76 of the enactment, the Legislature gave specific directives ("shall exercise," "shall be responsible for," "shall adopt," "shall develop," "shall ensure," "shall approve," "may establish," "shall account," "shall prepare," "shall establish," "is authorized," "shall maintain," "shall administer," "may ... sell," "may secure," "may negotiate," "may not exceed," "may authorize," "has responsibility for," "shall implement," "is prohibited from,") to the Board of Governors with respect to:

- a. Support, promotion and enhancement of a "K-20 education system,"
- b. Policy decisions,
- c. Education programs,
- d. Measurement of performance regarding state policy, budgeting, and education standards,
- e. Adoption of rules pursuant to chapter 120,
- f. Guidelines and procedures relating to data and technology,
- g. Guidelines relating to divisions of sponsored research,
- h. Administration and promotion of research programs,
- i. Conditions for direct-support organizations,
- j. Conditions for university health services-support organizations,
- k. Guidelines for supervising faculty practice plans,
- j. Ensuring student access to general education courses,
- l. Approval of baccalaureate degree programs with specified requirements,
- m. Written antihazing policy,
- n. Uniform code of conduct with penalties specified,
- o. Accounting for expenditures of local, federal and other funds,
- p. Submission of legislative budget requests for inclusion in K-20,

- q. Provision for fiscal policy guidelines,
- r. Securing comprehensive general liability insurance,
- s. Development of a strategic plan,
- t. Development of an accountability plan,
- u. Maintenance of an effective information system,
- v. Establishment of a personnel program,
- w. Development of guidelines for acquisition of real and personal property,
- x. Development of guidelines for boards of trustees concerning buildings, grounds, property and equipment,
- y. Administration of a program for maintenance and construction of facilities,
- z. Ensuring compliance with statutes for procurement concerning construction contracts,
- aa. Conveyance of real property and related improvements,
- bb. Securing appraisals and surveys,
- cc. Option contracts before an appraisal is obtained,
- dd. Limitation on purchases in excess of 10%,
- ee. Creation of campus master plan,
- ff. Creation of campus development agreement,
- gg. Rent or lease of parking facilities and their funding,
- hh. Compliance with state and federal laws,
- ii. A plan for working on a regular basis with the State Board of Education,
- jj. Prohibition from assessing a fee on state universities,

In sections 78, 79, and 80 of chapter 2007-217, Laws of Florida, the Legislature imposed essentially the same requirements on the university Boards of Trustees. These requirements appear in the legislative enactment in spite of the language in article IX, section 7 of the Florida Constitution that “The board of governors shall establish the powers and duties of the boards of trustees.”

59. In sections 81 and 83 of chapter 2007-217, Laws of Florida, the Legislature seeks to exercise control over university academic programs. This provision is contrary to article IX, section 7, subsection (d), Florida Constitution setting forth the general powers of the Board of Governors as well as the Board’s specific responsibility with respect to university programs.

60. In section 82 of chapter 2007-217, Laws of Florida, the Legislature seeks to exercise control over admission policies to state universities. This provision is contrary to article IX, section 7, subsection (d), Florida Constitution providing the Board of Governors with general powers that include control of university admissions.

61. After eliminating the unconstitutional portions of chapter 2007-217, §§ 75 through 83, Laws of Florida, the remaining portions of those sections are incapable of accomplishing their purpose, which is to describe all of the powers for governing universities in Florida and how those powers should be separated between the Board of Governors of Florida and the Legislature of Florida. Consequently, the remainder of the enactments are incomplete, incoherent, and unconstitutional as well.

62. The Legislature has encroached upon the Board of Governors' constitutional authority as a body corporate to operate, regulate, control, and be fully responsible for the management of the whole university system. Such encroachments include chapter 2007-217 and also include, but are not limited to: sections 1004.38, 1004.381, 1004.382, 1004.383, 1004.53, 1004.59, 1004.60, 1004.64, 1009.25, 1009.28, 1009.285, 1011.43, 1011.47, and 1012.97, Florida Statutes.

WHEREFORE, Plaintiffs request the entry of a declaratory judgment adjudicating those sections of chapter 2007-217, Laws of Florida pertaining to the State University System, and sections 1004.38, 1004.381, 1004.382, 1004.383, 1004.53, 1004.59, 1004.60, 1004.64, 1009.25, 1009.28, 1009.285, 1011.43, 1011.47, and 1012.97, Florida Statutes, to be void and unconstitutional in their entirety.

COUNT II

SECTION 1001.705 IS AN UNCONSTITUTIONAL EXERCISE BY THE LEGISLATURE IN THAT IT SEEKS TO USURP THE EXCLUSIVE PURVIEW OF THE COURTS TO DETERMINE THE CONSTITUTIONALITY OF A STATUTE

63. The judiciary has the exclusive power to interpret the constitution and to determine the separation of powers among nonjudicial agencies.⁶⁴

64. Section 1001.705 of the Florida Statutes is little more than a judicial determination as to how article IX, section 7, Florida Constitution should be interpreted. The statute analyzes the language of the Florida Constitution and enters its "findings" with respect to the "constitutional duties" of both the Florida Board of Governors and the Florida Legislature. In so doing, the Legislature has taken upon itself the judicial responsibility for separating the constitutional powers granted by the people to the Florida Board of Governors as distinguished from those granted to the Florida Legislature.

WHEREFORE, Plaintiffs request the entry of a declaratory judgment adjudicating section 1001.705, Florida Statutes, to be void and unconstitutional in its entirety.

⁶⁴ 16 AM. JUR. 2D *Constitutional Law* § 11 (1998).

COUNT III
SECTION 1001.705 UNCONSTITUTIONALLY
ENCROACHES UPON THE BOARD OF GOVERNORS' AUTHORITY TO
"OPERATE, REGULATE, CONTROL" AND "MANAGE" THE UNIVERSITY SYSTEM

65. Paragraphs 1 through 55 and paragraph 63 are hereby realleged as fully as if they were set forth herein.

66. Florida's First District Court of Appeal, in *NAACP, Inc. vs. Florida Board of Regents*, 876 So.2d 636, analyzed article IX, section 7, Florida Constitution and stated that the Florida electorate had transferred a "broad grant of authority," to the Board of Governors subject only to the Legislature's authority to:

- a. Appropriate funds,
- b. Confirm the Board's appointed members, and
- c. Set members' staggered terms.

67. In the face of the terms of the 2002 Amendment and the 2004 *NAACP* opinion, the Legislature in 2005 passed 1001.705, Florida Statutes. Subsections (b) and (c) which incorrectly include provisions stating that the constitutional duties of the Legislature are to:

- a. Establish, maintain and operate institutions of higher learning
- b. Establish tuition and fees
- c. Establish policies relating to merit and need-based student financial aid
- d. Establish policies relating to management of finances,
- e. Requiring university personnel to participate in retirement programs, health programs, state communications and data network, and the state casualty insurance program,
- f. Require the establishment of policies related to health, safety and welfare of students and employees while on university campuses.

68. After eliminating the unconstitutional portions of section 1001.705, the remaining portions of the enactment are incapable of accomplishing their purpose, which is to describe all of the powers for governing universities in Florida and how those powers should be separated between the Board of Governors of Florida and the Legislature of Florida. Consequently, the remainder of the enactment is incomplete, incoherent, and unconstitutional as well.

WHEREFORE, Plaintiffs request the entry of a declaratory judgment adjudicating section 1001.705 Florida Statutes to be void and unconstitutional in its entirety.

COUNT IV
A SPECIFIC EXAMPLE OF THE UNCONSTITUTIONALITY
OF SECTION 1001.705 IS THE LEGISLATURE'S CLAIM
TO THE AUTHORITY TO ESTABLISH TUITION AND
FEES FOR THE STATE UNIVERSITY SYSTEM

69. Paragraphs 1 through 55 are hereby realleged as fully as if they were set forth herein.

70. Paragraph 3 of section 1001.705(c) (2007) incorrectly claims that the Legislature has the responsibility for establishing tuition and fees. Similarly, sections 1009.24(3), 1011.41, 1011.4106, and 1011.91, Florida Statutes (2007) incorrectly claim involvement in establishing tuition and fees for universities.

Intent of Framers and Voters

71. The transfer of the power to set tuition from the Legislature to the Board of Governors was part of the public debate in advance of the vote on the proposed amendment to the Florida Constitution that has now become article IX, section 7. In a public letter in response to the chair of the Legislative Liaison Committee of Advisory Council of Faculty Senates (attached as **Exhibit E**), the drafters of the amendment that became article IX, section 7, stated the following:

Since tuition and fees are funds raised from private sources by universities, they do not come under the control of the Legislature whose power of appropriation will extend only to funds it generates for the public treasury. Universities will have the power to set tuition and establish fees. Tuition could vary by amount in each university. This power has proven to be an effective balance for the Legislature's power of appropriation. Universities can raise tuition in the face of an inadequate appropriation. In reverse, legislators can secure a lower tuition by providing an adequate appropriation. Since most Floridians have never experienced this equitable balance, they cannot fully appreciate the opportunity this could provide for the enhancement of the quality of university education in our state.

Exhibit E, item 6.

Scope of the Constitutional Grant Includes Fee-Setting Powers

72. In 1998, the electorate amended the Florida Constitution by adding article IV, section 9, to create the Fish and Wildlife Conservation Commission. The scope of authority assigned to the commission was to "exercise the regulatory and executive powers of the state" over wild animal, fresh water aquatic, and marine life. (Similar

authority was assigned to the Board of Governors, to “operate, regulate, control, and be fully responsible for the management of the whole university system.”) The wildlife amendment contained an exclusion to the scope of authority granted to the commission: its fee-setting power was specifically carved out of the commission powers and assigned to the Legislature. In contrast, the grant of authority to the Board of Governors was without qualification or exclusion, and does not assign the fee-setting power to the Legislature or any other agency of state government.

73. Article IX, section 7, Florida Constitution separates the powers of the Board of Governors from the powers of the Legislature. The Board of Governors’ scope of authority extends to the control of universities, while the Legislature’s authority continues to be its power of appropriation. In order to accurately measure the powers of the two, it is important to consider whether the constitution places any limits upon the powers of either.

74. Article IX, section 7, Florida Constitution defines the grant of power assigned to the Board of Governors with respect to the corporate governance of universities. The grant of power is unqualified.

75. Article VII, section 1, Florida Constitution defines the grant of power assigned to the Legislature with respect to the power of appropriations. In contrast to the grant given to the Board of Governors, the grant given to the Legislature contains an important limitation: Subsection (e) of section 1 describes the state revenues to be expended by the power of appropriations. With respect to school district governing boards created elsewhere in the constitution in article IX, the subsection makes it clear that state revenues do not include the “fees and charges for services” imposed by those constitutionally created boards of education --- and thus not subject to the power of appropriations.

76. In adopting the university governance amendment, the electorate made the same unqualified grant of authority to the Board of Governors as it had previously made to the school boards. The constitution states that school boards “shall operate, control and supervise” all free public schools, while the Board of Governors “shall operate, regulate, control and be fully responsible for the management of the whole university system.”

77. The constitutional grants of authority to the district education boards and the university board are essentially the same. Article IX, section 1, Florida Constitution places “fees, and charges for services imposed by” school district governing boards outside the definition of “state revenues.” If the constitutional definition of state revenues is to be applied equally, then the funds generated by the fees and charges for services imposed by both the boards of education for the school districts and the Board of Governors for universities are outside the definition of “state revenues.” The power of appropriations extends only to those funds defined as state revenues. The funds generated by the fees and charges for services imposed by universities pursuant to

contract are institutional funds within the constitutional power of Board of Governors to operate, manage and control.

Constitutionally Established University Boards of Governance are Granted the Authority to Set Tuition and Fees

78. Thus, the grants of authority in the Florida Constitution to the boards of education and the Fish and Wildlife Conservation Commission are consistent with the grants of authority from the people of the other states when they created their boards of governance for universities. Unless fee-setting powers are specifically assigned elsewhere (as in the case of the Fish and Wildlife Conservation Commission) the constitutional grants of authority to education governing boards include the power to generate institutional funds by charging for fees for services rendered by the institution in question. The prevailing constitutional law and the prevailing practice in the states having constitutionally established governance boards is to the effect that the authority to set tuition and fees is part of the management of university institutional funds.

WHEREFORE, Plaintiffs request the entry of a declaratory judgment adjudicating subsection (c)3 of section 1001.705, Florida Statutes (2007) and those portions of sections 1009.24(3), 1011.41, 1011.4106, and 1011.91, Florida Statutes (2007) incorrectly claiming involvement in establishing tuition and fees for universities, to be void and unconstitutional.



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