

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR 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.

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

Defendants.

CASE NO. 2007 CA 1818

FILED
CIRCUIT CIVIL DIV
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BOB HARRIS
CLERK CIRCUIT COURT
LEON COUNTY FLORIDA

**ORDER ON DEFENDANTS' MOTIONS TO DISMISS SECOND AMENDED COMPLAINT
AND ALTERNATIVE MOTIONS TO STRIKE AND FOR MORE
DEFINITE STATEMENT**

Plaintiffs, BOB GRAHAM, LOU FREY, JR., TALBOT "SANDY" D'ALEMBERTE, JOAN RUFFIER, BRUCE W. HAUPTLI, JAMES P. JONES, HOWARD B. ROCK, ERIC H. SHAW, MANOJ CHOPRA and FREDERICK R. STROBEL (herein referred to collectively as the "Individual Plaintiffs" and BOARD OF GOVERNORS of the STATE UNIVERSITY SYSTEM OF FLORIDA (herein referred to as "Board of Governors")) have filed a Second Amended Complaint for Declaratory Judgment. The stated purpose of the action is as follows:

This is an action for declaratory relief to determine the rights, privileges and powers granted to the Board of Governors in Article IX, section 7, of the Florida Constitution with respect to the operation, regulation, control and management of the

state university system in light of the continued assertion by the Legislature to the contrary through the enactment of laws that appear to intrude upon the constitutional authority granted by the voters to the Board of Governors.

In response to the Second Amended Complaint Defendants KEN PRUITT and MARCO RUBIO filed motions to dismiss and alternative motions to strike and/or for more definite statement. This Court received arguments from counsel at a hearing held on November 14, 2007.

INDIVIDUAL PLAINTIFFS

Defendants challenge the standing of all Individual Plaintiffs to initiate and maintain this action. The Court agrees that the allegations contained in the Second Amended Complaint fail to demonstrate that the Individual Plaintiffs have standing. The Individual Plaintiffs have failed to show they will suffer a special injury different from that of the general public. *Rickman v. Whitehurst*, 74 So. 205, 207 (Fla. 1917). Furthermore, the allegations of the Second Amended Complaint are also insufficient to bring the Individual Plaintiffs into the narrow exception to the “Rickman Rule” because this Court cannot identify a specific appropriation or expenditure being challenged by the Individual Plaintiffs. See *Department of Administration v. Horne*, 269 So.2d 659 (Fla. 1972); *Williams v. Howard*, 329 So.2d 277 (Fla. 1976).

It is therefore **ORDERED and ADJUDGED** that the Second Amended Complaint is hereby dismissed as to all Individual Plaintiffs without prejudice to any of said Plaintiffs to have a final chance to file an amended complaint *which specifically and separately addresses each Individual Plaintiff's “special injury” resulting from a specific statutory enactment or identifies a challenge to a specific appropriation or unlawful expenditure of public funds; each and all such challenges shall be set forth in separate counts by Plaintiff, by challenged enactment or appropriation, and containing only allegations of ultimate fact.* Legal argument and case quotations shall not be set forth in the amended complaint, if one is filed.

The Court cannot say as a matter of law whether any of the Individual Plaintiffs will be able to allege a “special injury” or sufficient facts as a citizen and taxpayer to challenge a specific appropriation or unlawful expenditure of public funds. However, it is clear to this Court that, as currently alleged, the “shotgun approach” of including all Individual Plaintiffs as to all challenged enactments is wholly insufficient and fails to comply with the clear requirements of Rule 1.110(b), Fla.R.Civ.P., which provides:

(b) **Claims for Relief.** A pleading which sets forth a claim for relief . . . must state a cause of action and shall contain . . .
. . . (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief . . .

BOARD OF GOVERNORS

Defendants have also challenged the standing of the Board of Governors to initiate and maintain this action. Defendants argue that the Board of Governors, as a state agency, falls within the general rule stated in *Department of Education v. Lewis*:

State officers and agencies must presume legislation affecting their duties to be valid, and do not have standing to initiate litigation for the purpose of determining otherwise.

416 So.2d 455, 458 (Fla. 1982).

The Board of Governors contends that it has standing to challenge unconstitutional proviso language contained in Chapter 2007-72, Laws of Florida, as set forth in paragraphs 16 and 17 of the Second Amended Complaint, and that it has standing and the right to challenge unconstitutional intrusions into their governing authority. The Board of Governors relies heavily on the “self-executing” constitutional provisions language contained in *NAACP, Inc. v. Florida Board of Regents*, 876 So.2d 636, 639-640 (Fla. 1st DCA 2004). This Court, however, does not agree that said

holding abrogates the clear pronouncement in *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982), or the exceptions to the general rule set forth in the opinion. *Id.* at 458-59. The Board of Governors has not been named as a defendant or respondent, nor is it the Comptroller or the Attorney General.

It appears that the only way this Court could find that the Board of Governors has standing to initiate and maintain this action is to find that the Second Amended Complaint sufficiently alleges that the actions of the legislature in enacting the challenged laws is preventing the Board of Governors from performing its constitutional duties. See *Graham v. Swift*, 480 So.2d 124, 125 (Fla. 3rd DCA 1985). Again, the shotgun approach and numerous legal arguments, as opposed to allegations of ultimate fact, contained in the Second Amended Complaint prevent this Court from making a finding that there is any specific allegation that a particular enactment prevents the Board of Governors from performing any specific constitutional duty or exercising any specific constitutional power.

By the same token, this Court cannot find as a matter of law that the Board of Governors is unable to make the necessary allegations if given a final chance to file an amended complaint.

It is therefore **ORDERED and ADJUDGED** that Defendants' motions to dismiss as to Plaintiff Board of Governors are also granted without prejudice to the Board of Governors having a final chance to file an amended complaint alleging *with specificity, ultimate facts as to how each challenged enactment, set forth in a separate count as to each, prevents the Board of Governors from performing its constitutional duties or exercising its constitutional powers. Furthermore, the amended complaint, if filed, shall contain specific allegations of ultimate fact as to how each challenge constitutes a present controversy*, showing there is a "bona fide, actual, present practical

need for the declaration.” *Santa Rosa County v. Admin. Comm’n., Div. of Admin. Hearings*, 661 So.2d 1190, 1192 (Fla. 1995) (quoting *Martinez v. Scanlan*, 582 So.2d 1167, 1170 (Fla. 1991) (quoting *May v. Holley*, 59 So.2d 636, 639 (Fla. 1952)).

SUMMARY OF RULING

Defendants’ motions to dismiss Second Amended Complaint are GRANTED as to all Plaintiffs with leave to amend one final time. Any amended complaint shall be served within thirty (30) days of the date of this order.

DONE and ORDERED in Tallahassee, Leon County, Florida, this 3rd day of January, 2008.



CHARLES A. FRANCIS
Chief Judge

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