

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Civil Action No. _____

06-21513
CIV-JORDAN

**Faculty Senate of Florida International University,
Lisandro Perez, Carmen Diana Deere, Houman A.
Sadri, José Alvarez, Noel Smith, Juan A. Martinez,
Brett Jestrow, and Vanessa Harper,**

Plaintiffs,

v.

**John Winn, in his official capacity as Commissioner
of the Florida Department of Education; F. Philip
Handy, in his official capacity as Chairman of the
Florida Board of Education; Donna Callaway,
T. Williard Fair, Roberto Martinez, Phoebe Raulerson,
Kathleen Shanahan and Linda Taylor, in their official
capacities as Members of the Florida Board of
Education; and Tom Gallagher, in his official capacity
as Chief Financial Officer of the State of Florida,**

Defendants.

KLEIN

FILED
JUL 16 2006
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI

COMPLAINT

I. Nature of Claims

1. On May 30, 2006, Florida Governor Bush signed into Florida state law S.B. 2434, an “Act Relating to Travel to Terrorist States” (“the Travel Act”). The Travel Act amends existing state statutes to prohibit the state’s public colleges and universities from using state, federal or even private funds for travel to, or for activities related to travel to, any nation designated as a “state

sponsor of terror” by the United States Department of State. The Travel Act also prohibits private universities in Florida from using state funds for activities related to or involving travel to the listed countries and prohibits reimbursing state officers and employees for activities involving or related to travel to such countries.

2. Plaintiffs are professors and educational researchers, and an organization representing them, whose work is dependent upon travel to and research in various nations on the State Department’s list. Plaintiff’s work will be materially, substantially, and adversely affected by the Travel Act’s restrictions.

3. The Supremacy Clause of the U.S. Constitution provides that where state law conflicts with federal law, the state law is preempted. The Travel Act conflicts with federal law regulating travel, relations and commerce with the listed countries. Indeed, the Travel Act unconstitutionally impinges on the federal government’s exclusive authority to regulate in the field of foreign affairs and commerce. The Travel Act also impinges on plaintiffs’ First Amendment rights.

4. This is an action for declaratory and injunctive relief to enjoin enforcement of the Travel Act by state officials and to declare the Travel Act unconstitutional and unenforceable. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983, and relief is sought pursuant to that section, 42 U.S.C. § 1988, and 28 U.S.C. §§ 2201 and 2202.

II. Jurisdiction

5. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and injunctive relief is available pursuant to Fed. R. Civ. P. 65. Plaintiffs’ claims arise under the Constitution and laws of the United States.

III. Venue

6. Venue is proper in this court under 28 U.S.C. § 1391(b), which provides that “[a] civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought ... in (1) a judicial district where any defendant resides, if all defendants reside in the same State, [or] (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.”

7. Venue lies in this judicial district because all defendants reside in this state and at least one defendant resides in this district and because a substantial part of the events giving rise to plaintiffs’ claims occur in this district.

IV. Parties

8. Plaintiff FACULTY SENATE OF FLORIDA INTERNATIONAL UNIVERSITY is the Florida International University (“FIU”) faculty’s representative governing body, located in Miami, Florida. The Faculty Senate makes academic policy recommendations to the university’s Provost and Vice-President for Academic Affairs.

9. Plaintiff LISANDRO PEREZ is a professor in the Department of Sociology and Anthropology at Florida International University in Miami, Florida. He is also the founder and former director of FIU’s Cuban Research Institute.

10. Plaintiff CARMEN DIANA DEERE is the Director of the Center for Latin American Studies and a Professor of Food and Resource Economics and Latin American Studies at the University of Florida in Gainesville, Florida.

11. Plaintiff HOUMAN A. SADRI is an Associate Professor in the Department of Political Science at the University of Central Florida in Orlando, Florida.

12. Plaintiff JOSÉ ALVAREZ is an Adjunct and Emeritus Professor of Food and Resource Economics at the University of Florida Everglades Research and Education Center in Belle Glade, Florida.

13. Plaintiff NOEL SMITH is the Curator of Latin American and Caribbean Art for the Institute for Research in Art at the University of South Florida in Tampa, Florida.

14. Plaintiff JUAN A. MARTINEZ is a Professor of Art History in the Department of Art and Art History at Florida International University in Miami, Florida.

15. Plaintiff BRETT JESTROW is a graduate student studying Cuban flora at Florida International University in Miami, Florida.

16. Plaintiff VANESSA HARPER is a graduate student studying Interdisciplinary Ecology in the School of Natural Resources and Environment at the University of Florida in Gainesville, Florida.

17. Defendant JOHN WINN is Commissioner of the Florida Department of Education.

18. Defendant F. PHILIP HANDY is Chairman of the Florida Board of Education.

19. Defendants DONNA CALLAWAY, T. WILLIARD FAIR, ROBERTO MARTINEZ, PHOEBE RAULERSON, KATHLEEN SHANAHAN and LINDA TAYLOR are Members of the Florida Board of Education.

20. Defendant TOM GALLAGHER is Chief Financial Officer for the State of Florida.

V. Facts

21. The Faculty Senate of Florida International University makes policy recommendations on academic matters including the school's curriculum, grading standards, degree requirements, admission standards and various other issues of academic concern. As the elected representative

body of FIU's faculty, the Faculty Senate represents the interests of faculty members adversely affected by the Travel Act.

22. Professor Lisandro Perez served as the director of the Cuban Research Institute (CRI) from 1991-2003. He and his successor have raised nearly one million dollars from private sources to support CRI's programs in Cuba. The most significant grants have come from the Ford Foundation, the Rockefeller Foundation, the MacArthur Foundation and the Christopher Reynolds Foundation. Although CRI has never used state funds for travel to Cuba, CRI's private grant funds are administered from university accounts and are therefore restricted by the Travel Act, which prevents the Cuban Research Institute from sponsoring travel to and research in Cuba. Professor Perez is planning to travel to Cuba in December 2006 to present a paper and conduct research. Professor Perez is unable to finance the trip himself; therefore, enforcement of the Travel Act would substantially hinder Professor Perez's academic research.

23. Professor Carmen Diana Deere has been researching Cuban agriculture for over 20 years. From 1991-1996, she conducted field research in Cuba under a MacArthur Foundation research grant administered by her university. Professor Deere is currently developing a book project that would require her to update her previous field research, and she has made travel arrangements to visit Cuba in June, partially funded by a small grant to the University of Florida from The Christopher Reynolds Foundation (again administered by her university) in order to explore this possibility. To conduct her research, Professor Deere plans to develop grant proposals for external funding which would be channeled through the University of Florida. Enforcement of the Travel Act would directly impede her professional research.

24. Professor Houman A. Sadri frequently travels to Iran among other Middle Eastern

countries as part of his academic research. He has published a number of scholarly articles based largely on his field work in Iran, and he is currently finishing a book that concentrates on Iran. He has recently applied for federal funding from the International Research & Exchange Board's Policy-Connect Collaborative Research Grants to travel to Iran. Enforcement of the Travel Act would prevent him from using these federal funds to travel to Iran and would substantially hinder Professor Sadri's ongoing research.

25. Professor José Alvarez made his first academic trip to Cuba to conduct agricultural research in 1987. He has traveled to Cuba on several other occasions and has maintained a close relationship with researchers at the University of Havana since 1993. In 1999, he received an award from the USDA for "outstanding service to United States and Florida agriculture" in recognition of his research on the economic challenges and opportunities that would result from a resumption of trade with Cuba. Professor Alvarez has received four grants from the MacArthur Foundation and the Reynolds Foundation. Approximately \$22,000 of these private grant funds remain in a University of Florida account to fund future travel to Cuba for continued agricultural research. Enforcement of the Travel Act would preclude use of those funds and substantially affect Professor Alvarez' ability to continue with his research.

26. Noel Smith has conducted research projects focusing on Cuban art for the University of South Florida's Institute for Research in Art. Several of her projects have required travel by the University's faculty to Cuba as well as travel by Cuban artists to the University of South Florida. Ms. Smith has traveled to Cuba several times for academic research, including trips to view and participate in art exhibitions. Enforcement of the Travel Act would substantially affect Ms. Smith's ability to continue her professional activities.

27. Professor Juan A. Martinez has traveled to Cuba regularly since 1989 to research Cuban art from the years 1900-1959. He has relied on private research grants to fund his educational travel to Cuba, and enforcement of the Travel Act would effectively end his ability to continue this research and materially interfere with his academic career.

28. Brett Jestrow traveled to Cuba to conduct botanical research, and is currently planning a second trip to continue research for his dissertation on the systematic relationships and evolutionary history of the Cuban species of *Leucocroton*. His first trip was funded by Florida International University's Cuban Research Institute and he has also received federal funds from the EPA for his studies. Travel to Cuba is essential for Mr. Jestrow's dissertation because 27 of the 28 known species of *Leucocroton* are endemic to Cuba. Enforcement of the Travel Act would prevent Mr. Jestrow from traveling to Cuba and completing the necessary research for his thesis.

29. Vanessa A. Harper has traveled to Cuba twice to conduct research on the economic, political, and ecological factors that affect the small-scale agriculture of western Cuba. Her research is of potential significance to the state of Florida and other tropical agricultural economies. Her most recent trip was funded by a grant from the Tinker Foundation administered by the Center for Latin American Studies at the University of Florida. The Travel Act prohibits such privately-funded financial support. Ms. Harper plans to pursue a doctorate degree, and her dissertation would require continued field research in Cuba. Enforcement of the Travel Act would substantially impair Ms. Harper's ability to continue her academic studies.

30. Defendants John Winn, Philip Handy, Donna Callaway, T. Williard Fair, Roberto Martinez, Phoebe Raulerson, Kathleen Shanahan, Linda Taylor and Tom Gallagher, who are all sued in their official capacities only, are responsible for enforcement of the Travel Act.

31. The Travel Act amends Sections 1011.81, 1011.90 and 112.061, Florida Statutes. A true and accurate copy of the Travel Act as signed by Florida Governor Bush on May 30, 2006 is attached hereto as Exhibit A.

32. The Travel Act prohibits state colleges and universities from using any funds (state or non-state) for activities related to or involving travel to a “terrorist state,” which is “defined as any state, country, or nation designated by the United States Department of State as a state sponsor of terrorism.” The Travel Act disallows travel expenses of public officers or employees for any activities in connection with travel to a “terrorist state.” The Travel Act further provides that no state funds made available to private colleges or universities in the State of Florida may be used for travel related activities to a “terrorist state.”

33. The Travel Act broadly defines travel-related activities as activities which “implement, organize, direct, coordinate, administer, or support the implementation, organization, direction, coordination, or administration of, activities related to or involving travel to a terrorist state.” The Travel Act prohibits use of any funds made available to state colleges or universities for any travel related activities -- even activities that do not actually involve travel -- such as organizing or administering events that relate to travel to or from one of these foreign countries. Examples of such prohibited activities include organizing a conference involving scholars from a listed country, renewing federal licenses that authorize travel to a listed country or assisting students from a listed country in returning to their homes.

34. Although the Travel Act’s restrictions may have been intended by the Florida legislature to relate only to travel, the amendment to Section 1011.90, subsection 6, Florida Statutes, could readily be interpreted by Defendants to prohibit any activities related to a listed state, including

research, lectures or other activities relating to these countries that are unrelated to travel.

35. The Travel Act's prohibitions on state colleges and universities apply equally to funding provided directly by the State of Florida and to funding received from non-state sources, including private foundation funds and federal grants.

36. The United States Department of State currently lists six foreign nations as "state sponsors of terrorism:" Cuba, Iran, Libya, North Korea, Sudan and Syria. The Travel Act's restrictions apply equally to each of these countries.

37. The Travel Act's complete prohibition on travel and travel-related activities to these countries exceeds and greatly differs from the existing sanctions that Congress and the President have implemented with respect to the listed countries. The current federal provisions impose restrictions on the export certain items and technology and restrict certain types of federal aid to these countries. However, with the exception of Cuba, the federal government does not restrict travel to (or funding for travel to) the listed countries, and federal law affirmatively supports academic exchange and research in them. The University of Florida, Florida International University and the University of South Florida all hold institutional licenses issued by the federal government that specifically authorize travel to Cuba for educational and research purposes.

38. The federal government has enacted a complex web of laws and regulations governing foreign policy and commercial relations with each of the listed countries. For example, the Travel Act's complete ban on travel directly conflicts with the federal government's complex licensing scheme regulating travel to Cuba and interferes with the United States' foreign affairs and growing commercial relationship with Cuba – which exceeded \$500 million in federally-licensed U.S. agricultural exports in 2005. In particular, while the Florida Act prohibits academics at

Florida's colleges and universities from travel to Cuba, the federal government encourages and funds certain types of travel to Cuba. Florida's attempt to enforce a separate foreign policy with the listed countries is at odds with and threatens to disrupt the United States' foreign policy.

39. The Travel Act is to become effective July 1, 2006. The Travel Act will prohibit plaintiffs from continuing their ongoing and federally-licensed professional or academic research and will cause immediate and substantial harm to plaintiffs.

40. Plaintiffs have no adequate remedy at law because the denial of plaintiffs' constitutional rights cannot be remedied through legal relief.

VI. First Claim for Relief

(Violation of the Supremacy Clause)

41. Paragraphs 1-40 are restated and incorporated herein.

42. Article VI, clause 2, of the U.S. Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; . . . any Thing in the Constitution or laws of any State to the Contrary notwithstanding.

43. The Travel Act interferes with federal laws relating to foreign relations, travel and commerce with the listed countries, and regulates in a field occupied exclusively by federal law.

44. The Travel Act is preempted by federal law, and is therefore unconstitutional and unenforceable.

VII. Second Claim for Relief

(Violation of the Foreign Affairs Power)

45. Paragraphs 1-44 are restated and incorporated herein.

46. The provisions of Article I, section 8, clauses 1, 3, 4, 10, and 11; section 9, clause 8;

Article II, section 2, clauses 1, 2, 3; Article I, section 10, clauses 1, 2, and 3 of the U.S. Constitution provide that the federal government has the exclusive power over foreign affairs. Power over foreign affairs is not shared by the states.

47. The Travel Act is an attempt by Florida to conduct foreign policy at the state government level by imposing its own set of restrictions travel with designated countries and by interfering with the federal government's conduct of foreign affairs.

48. The Travel Act thus intrudes upon the federal government's exclusive foreign affairs power and is therefore unconstitutional and unenforceable.

VIII. Third Claim for Relief

(Violation of the Foreign Commerce Clause)

49. Paragraphs 1-48 are restated and incorporated herein.

50. Article I, section 8, clause 1 of the U.S. Constitution grants Congress the power "to regulate Commerce with foreign Nations."

51. The Travel Act prohibits the use of federal, state or private funds for travel and travel-related activities thereby burdening travel, research and academic exchange with certain listed countries.

52. The Travel Act discriminates against and burdens foreign commerce by imposing restrictions on commerce with certain foreign nations, impeding the federal government's ability to "speak with one voice when regulating commercial relations with foreign governments."

53. The Travel Act thus violates the Foreign Commerce Clause of the U.S. Constitution and is unenforceable.

IX. Fourth Claim for Relief

(Violation of First and Fourteenth Amendments)

54. Paragraphs 1-53 are restated and incorporated herein.

55. The First Amendment to the U.S. Constitution provides that “Congress shall make no law . . . abridging the freedom of speech.” The First Amendment applies to state and local government officials under the Due Process Clause of the Fourteenth Amendment.

56. By prohibiting a broad range of activities related to travel to certain foreign countries, the Travel Act violates the First and Fourteenth Amendments by materially interfering with the right of academic freedom, public expression and free speech by students and university employees. The Act further constitutes impermissible discrimination by singling out specific areas of study and restricting activities that are essential to conduct research and publish in those areas while continuing to fund study and research in other areas.

57. The Travel Act further violates the First and Fourteenth Amendments by restricting speech and research relating to Terrorist Countries that has nothing to do with travel.

58. The Travel Act thus violates the First and Fourteenth Amendments to the U.S. Constitution and is unenforceable.

WHEREFORE, Plaintiffs respectfully request that this court:

1. Assume jurisdiction over this case;
2. Enjoin defendants from enforcing the Travel Act;
3. Declare that the Travel Act violates the Constitution and Laws of the United States;
4. Award the Plaintiffs reasonable attorneys’ fees and costs pursuant to 42 U.S.C.

§1988; and

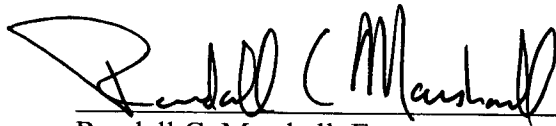
5. Award Plaintiffs such other relief as may be just and proper.

Respectfully submitted,

Cooperating Attorneys for the American Civil
Liberties Union Foundation of Florida, Inc.

(pending admission *pro hac vice*)

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Senate Bill No. 2434

An act relating to travel to terrorist states; amending s. 1011.81, F.S.; prohibiting the use of funds from the Community College Program Fund, or funds made available to community colleges from outside the fund, to implement, organize, direct, coordinate, or administer activities related to or involving travel to a terrorist state; defining "terrorist state"; amending s. 1011.90, F.S.; prohibiting the use of state or nonstate funds made available to state universities to implement, organize, direct, coordinate, or administer activities related to or involving travel to a terrorist state; defining "terrorist state"; amending s. 112.061, F.S.; providing that travel expenses of public officers or employees for the purpose of implementing, organizing, directing, coordinating, or administering activities related to, or involving, travel to a terrorist state shall not be allowed under any circumstances; defining "terrorist state"; prohibiting a private college or university in this state from using state funds for activities relating to, or involving, a terrorist state; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1011.81, Florida Statutes, is amended to read:

1011.81 Community College Program Fund.—

(1) There is established a Community College Program Fund. This fund shall comprise all appropriations made by the Legislature for the support of the current operating program and shall be apportioned and distributed to the community college districts of the state on the basis of procedures established by law and rules of the State Board of Education. The annual apportionment for each community college district shall be distributed monthly in payments as nearly equal as possible.

(2) None of the funds made available in the Community College Program Fund, or funds made available to community colleges outside the Community College Program Fund, may be used 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. For purposes of this section, "terrorist state" is defined as any state, country, or nation designated by the United States Department of State as a state sponsor of terrorism.

Section 2. Subsection (6) is added to section 1011.90, Florida Statutes, to read:

1011.90 State university funding.—

(6) None of the state or nonstate funds made available to state universities may be used 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.

For purposes of this section, "terrorist state" is defined as any state, country, or nation designated by the United States Department of State as a state sponsor of terrorism.

Section 3. Paragraphs (e), (f), and (g) of subsection (3) of section 112.061, Florida Statutes, are redesignated as paragraphs (f), (g), and (h), respectively, and a new paragraph (e) is added to that subsection to read:

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.—

(3) AUTHORITY TO INCUR TRAVEL EXPENSES.—

(e) Travel expenses of public officers or employees for the purpose of implementing, organizing, directing, coordinating, or administering, or supporting the implementation, organization, direction, coordination, or administration of, activities related to or involving travel to a terrorist state shall not be allowed under any circumstances. For purposes of this section, "terrorist state" is defined as any state, country, or nation designated by the United States Department of State as a state sponsor of terrorism.

Section 4. No state funds made available to a private college or university in this state may be used 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. For purposes of this section, "terrorist state" is defined as any state, country, or nation designated by the United States Department of State as a state sponsor of terrorism.

Section 5. This act shall take effect July 1, 2006.

Approved by the Governor May 30, 2006.

Filed in Office Secretary of State May 30, 2006.