

**IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA**

STUDENTS FOR ONLINE VOTING,  
THOMAS F. JARDON (President), and  
SAM A. MIORELLI (Executive Director),

Appellants,

vs.

CASE NO.: 1D08-1358

STUDENT GOVERNMENT OF THE  
STUDENT BODY OF THE UNIVERSITY  
OF FLORIDA, SUPREME COURT OF THE  
STUDENT BODY OF THE UNIVERSITY  
OF FLORIDA, and BERNARD MACHEN,  
AS PRESIDENT OF THE  
UNIVERSITY OF FLORIDA AND AGENT  
OF THE UNIVERSITY OF FLORIDA BOARD  
OF TRUSTEES,

Appellees.

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**APPELLEES' MOTION TO DISMISS**

Pursuant to Florida Rule of Appellate Procedure 9.300, Appellees, by and through undersigned counsel, move this Court to enter an order dismissing the above-captioned appeal for lack of subject matter jurisdiction. In support thereof, Appellees show the following:

1. The above-captioned matter is an appeal of an alleged final agency action of the University of Florida (the “University”). This action arose out of Appellants’ disappointment and discontent with an internal decision made by a mock student court at the University.<sup>1</sup>

2. Appeals to this Court from agency actions require both that there be some final agency action and that there be a showing of adverse effect on the legal interest of the party seeking judicial review. *See* § 120.68, Fla. Stat. (2008); *Ford v. Agency for Persons with Disabilities*, 932 So.2d 294, 296 (Fla. 4th DCA 2005) (“‘Final agency action’ within the meaning of the statute is ‘that which brings the administrative adjudicative process to a close.’”); *Bureau of Community Medical Facilities v. Samson*, 341 So.2d 1071, 1073 (Fla. 1st DCA 1977) (“[A] party cannot invoke judicial review as a matter of right until final agency action has occurred . . .”).

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<sup>1</sup> By correctly characterizing the Student Government court as a mock court, the University does not diminish the extraordinary experience that leadership of and participation in Student Government affords to students. The accomplishments of student participants in Student Government are great and this experience has been a proven training ground for leadership and government service after graduation. However, Student Government is a learning laboratory, not real government, and the student court does not act as a real court.

3. Where either prerequisite is missing--there is either no final agency action or no showing of an adverse effect on a legally protected interest of the party seeking judicial review--this Court has no jurisdiction. *See Legal Envtl. Assistance Found., Inc. v. Clark*, 668 So.2d 982 (Fla. 1996); *Envtl. Confederation of Southwest Florida, Inc. v. IMC Phosphates, Inc.*, 857 So.2d 207 (Fla. 1st DCA 2003).

4. In the instant appeal, there has been no final agency action for the Court to review and no showing of an adverse effect on any legal interests of Appellants. In the alternative, even if the Court were to conclude that final agency action was taken, Appellants still have made no showing (and no allegation) of any adverse effect on any legal interest relating to that alleged action.

5. As part of its co-curricular educational program, the University of Florida has a Student Government that mocks real-world government and is a learning experience. *See* § 1004.26, Fla. Stat. (2008); *see also* Univ. of Fla. Reg. 6C1-4.002. Student Government is not a state agency, nor does it have the authority to take final agency action on behalf of the University. *See id.* The final authority for taking action on behalf of the University in co-curricular educational matters, including Student Government, rests with the Vice President for Student Affairs. (*See* Appellants' Brief at 6.)

6. Student Government is created as part of the educational experience for students at the University. It is a learning laboratory through which students set up mock governmental branches, draft mock laws to govern within the Student Government realm, and debate issues that arise under this educational umbrella. *See Alabama Student Party v. Student Gov't Ass'n of Univ. of Alabama*, 867 F.2d 1344, 1347 (11th Cir. 1989) (affirming that the purpose of a student government organization is to support the educational mission of the University and that universities shall be given great deference in matters relating to their educational mission).

7. Appellants are members of an informal student group at the University of Florida called "Students for Online Voting." (*See* App. 7 to Appellants' Brief.) Prior to the February 2008 student election, Appellants participated in the Student Government process for initiating amendments to the student body constitution, and as their final step in the process petitioned the mock student court to place an online voting referendum on the 2008 student election ballot.<sup>2</sup> (*See id.*)

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<sup>2</sup> While the referendum concerned the method of voting in Student Government elections (i.e., on-line voting), the subject matter of the referendum is irrelevant to the determination of this motion. It is the fact that there has been no final agency action and, even if there were, there is no real-world legal interest at issue in this case, that should determine the outcome of this motion.

8. As set forth in the process, Appellants' petition was reviewed by the student mock court, which decided that the petition did not conform to its student mock constitution and laws.<sup>3</sup> (*See id.*) Therefore, the student mock court did not approve this initiative for placement on the ballot.

9. Disappointed with the decision of the student mock court (but having no legal rights affected), Appellants approached the University's Vice President for Student Affairs and asked her to intervene in the Student Government process.

10. The Vice President, exercising her educational discretion on how to provide the best learning experience for all students involved, responded to the concerns raised by Appellants by: (1) causing a student committee to be formed to explore security and privacy protections that might resolve concerns about online voting, and (2) encouraging the Student Government to review its student mock court's processes and procedures. (App. 6-1.)

11. Rather than allow this committee and review process to unfold, and rather than waiting to see what the Vice President may do as a result of these processes, Appellants instead filed a Petition for Extraordinary Writ of Mandamus and for

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<sup>3</sup> It is irrelevant that the Student Government laws and constitution mock real laws. That is part of the learning experience and does not change the learning laboratory context of the internal Student Government process.

Prohibition in the lower court the very day the response from the Vice President was delivered (App. 7-1), followed shortly by a separate Petition to this Court. Accordingly, there was a cloud of litigation over the process and they left no opportunity for the Vice President to take final agency action.

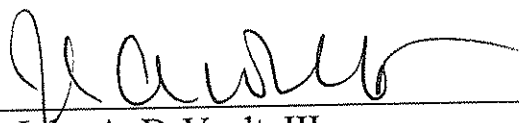
12. Alternatively, even if there were a final action taken by the Vice President in the form of creating a committee and recommending a review process, which the Appellants do not allege and the University does not acknowledge, Appellants have failed to show (nor could they show) that they have any legal interest that has been adversely affected by such action. For the Vice President's action falls squarely within the educational discretion of a university to determine how best to provide students with learning opportunities. *See Alabama Student Party*, 867 So.2d at 1345-1347.

13. Because there was no final agency action within the meaning of section 120.68, Florida Statutes, and because Appellants have made no showing that their legal interests have been adversely affected as a result of the University's response to their concerns, Appellants have not satisfied the requirements of section 120.68 and this Court does not have jurisdiction to hear their appeal.

14. In the alternative, even if the Court were to conclude that the Vice President's decision to create a committee and undergo a review process was the final agency action in the underlying matter, there is still no showing of any adverse effect on Appellants' legal interest. And, there can be no such showing because this type of action falls squarely within the authority of the University to exercise its discretion in furthering its educational mission.

**WHEREFORE** Appellees respectfully request that this Court enter an order dismissing this appeal and for such further relief as this Court deems appropriate.

BEDELL, DITTMAR, DeVAULT, PILLANS & COXE  
Professional Association

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via electronic mail and Federal Express this 27<sup>th</sup> day of March, 2009 to:

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