

IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA

FLORIDA CARRY, INC.,  
a Florida non-profit corporation,

Plaintiff,

v.

UNIVERSITY OF FLORIDA,  
a state university; and  
BERNIE MACHEN, an individual,

Defendants.

Case No: 2014-CA-000104

Division: J

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**MOTION OF BERNIE MACHEN TO DISMISS**

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Defendant Bernie Machen, moves to dismiss the First Amended Complaint for lack of jurisdiction over the person and failure to state a cause of action.

The First Amended Complaint names Dr. Machen individually, but all claims against him are in his official capacity as President of the University of Florida. The First Amended Complaint states in paragraph 4:

Defendant Bernie Machen (Machen) is president of UF, and as such is the chief administrative officer of UF, responsible for the operation and administration of UF and is ultimately responsible for all rules and regulations of UF, and is a public employee.

All subsequent references to Dr. Machen allege conduct in his official capacity. See ¶¶ 48, 52, 67, 68, 70, 87, 90, 93.

Florida is protected by sovereign immunity from suit unless immunity is expressly waived, and the immunity includes individual state officers if the suit is in effect a suit against the state. *Hampton v. State Board of Education*, 105 So. 323 (1925). While the Legislature has

waived its sovereign immunity in certain circumstances, it has expressly prohibited the filing of a lawsuit against a state agent in a position such as Dr. Machen's under the circumstances alleged in the First Amended Complaint. Section 768.28 provides:

No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. . . . The exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in her or his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

§ 768.28(9)(a). Section 768.28 expressly defines “state agencies or subdivisions” to include “the independent establishments of the state, including state university boards of trustees.” § 768.28(2).

There is no allegation in the First Amended Complaint that Dr. Machen acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property with respect to any of the conduct he is alleged to have engaged in. Moreover, there is no allegation that Dr. Machen actually engaged in any of the alleged conduct other than by virtue of the fact that he is purportedly “responsible for all rules and regulations of UF.”<sup>1</sup>

For the foregoing reasons, Dr. Machen is immune both from liability and from suit for the conduct alleged in the First Amended Complaint. In addition, the First Amended Complaint

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<sup>1</sup> The University and Dr. Machen deny the accuracy of the statement, but it is not necessary for the Court to address the issue for purposes of this motion.

fails to state a cause of action against Dr. Machen for the reasons set forth in the Motion for Summary Judgment filed by the University and Dr. Machen simultaneously herewith.

**S/ BARRY RICHARD**  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed this 2nd day of April, 2014 via the Florida ePortal, which will cause the document to be served upon:

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**S/ BARRY RICHARD**

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