

**IN THE SUPREME COURT
STATE OF FLORIDA**

ANTHONY ROJAS,

Petitioner,

Case No.: SC23-126

Lower Tribunal No(s):
1D21-3430

v.

UNIVERSITY OF FLORIDA BOARD
OF TRUSTEES,

Respondent.

_____ /

**RESPONDENT UNIVERSITY OF FLORIDA BOARD OF TRUSTEES
RESPONSE BRIEF ON JURISDICTION**

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TABLE OF CONTENTS

	Page
TABLE OF CITATIONS	iii
STATEMENT OF THE ISSUE	1
STATEMENT OF THE CASE AND FACTS	1
ARGUMENT	2
CONCLUSION	3
CERTIFICATE OF SERVICE	5
CERTIFICATE OF COMPLIANCE	6

TABLE OF CITATIONS

Page(s)

State Cases

<i>Dist. Bd. of Trs. of Miami Dade Coll. v. Verdini</i> , 339 So. 3d 413 (Fla. 3d DCA 2022)	3
<i>Univ. of Fla. Bd. of Trs. v. Rojas</i> , 1D21-3430 (Fla. 1st DCA Nov. 22, 2022)	2, 3
<i>Univ. of S. Fla. Bd. of Trs. v. Moore</i> , 347 So. 3d 545 (Fla. 2d DCA 2022)	3

STATEMENT OF THE ISSUE

The issue in this appeal is whether sovereign immunity applies to bar a breach of contract claim brought by a student against a state university relating to university services impacted by COVID-19.

STATEMENT OF THE CASE AND FACTS

Petitioner filed a putative class action against Respondent, the University of Florida Board of Trustees (the “University”), for breach of contract and unjust enrichment based on the University’s response to COVID-19 during the spring and summer of 2020. Petitioner alleged the University did not provide certain on-campus services nor a refund of associated fees paid by Petitioner. Based on its sovereign immunity, the University moved to dismiss the claims. The trial court granted dismissal of the unjust enrichment claim, but the court denied dismissal of the breach of contract claim.

Based upon its review of the allegations and documents attached to Petitioner’s complaint, the First District Court of Appeal reversed the order denying the University’s motion to dismiss. The First District held the University did not enter into an express contract obligating it to provide services in the form that Petitioner demands, and the court held that Petitioner’s claim was barred by

the University's sovereign immunity. Judge Makar wrote a dissent finding the allegations and documents preliminarily sufficient to establish a contract for the purposes of denying the motion to dismiss.

In recognition of similar lawsuits against state universities and colleges throughout Florida, the First District certified a question of great public importance to this Court.

ARGUMENT

The University prevailed in, and agrees with, the First District's decision. But the University also respects the First District's certification of a question of great public importance in this case. Accordingly, the University concurs in Petitioner's request for this Court's review.

The First District certified this case as presenting a question of great public importance:

Whether sovereign immunity bars a breach of contract claim against a state university based on the university's failure to provide its students with access to on-campus services and facilities?

Univ. of Fla. Bd. of Trs. v. Rojas, 1D21-3430, at 2 (Fla. 1st DCA Nov. 22, 2022). The First District noted that Florida universities and

colleges across the state are defending lawsuits like this one. *Id.* The First District cited two cases in which other District Courts have ruled on the same issue: *Univ. of S. Fla. Bd. of Trs. v. Moore*, 347 So. 3d 545 (Fla. 2d DCA 2022) and *Dist. Bd. of Trs. of Miami Dade Coll. v. Verdini*, 339 So. 3d 413 (Fla. 3d DCA 2022). *Id.*

Petitioner argues for this Court's review also to address an express and direct conflict between the District Courts on the same question of law regarding a breach of contract claim. The Second District in *Moore* affirmed the trial court's denial of a motion to dismiss based on the defense of sovereign immunity regarding the contract at issue. However, in *Rojas*, the First District held that the complaint did not overcome the University's sovereign immunity.

The University fully agrees with the First District's holding. Likewise, the University recognizes the need for this Court's review considering the certified question. On that basis, the University concurs in Petitioner's request for review.

CONCLUSION

The University agrees with the First District's opinion on the merits and concurs that this Court's review is proper on the certification of a question of great public importance.

Dated this 24th day of March, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission through the Florida courts e-filing portal to all counsel or parties of record listed below, on this 24th day of March, 2023.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY this brief complies with the type size and style requirements of Rule 9.045, Florida Rules of Appellate Procedure and has been prepared in Bookman Old Style, 14 Point Font. This brief complies with the type volume limitations set forth in Rules 9.210(a)(2)(A), 9.210(a)(2)(E), and 9.210(f), Florida Rules of Appellate Procedure. This brief contains 525 words, excluding the parts of the brief exempt by Rules 9.045(e) and 9.210(a)(2)(E).

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