

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

WENDY RUIZ; NOEL SAUCEDO;)
CAROLINE ROA; KASSANDRA)
ROMERO; and JANETH AMERICA)
PEREZ, on behalf of themselves and)
all others similarly situated,) Civil Case No. 1:11-

class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). These requirements are genera

With respect to establishing size, “a plaintiff need not show the precise number of members in the class.” *Evans v. U.S. Pipe & Foundry Co.*, 696 F.2d 925, 930 (11th Cir. 1983). “Estimates as to the size of the proposed class are sufficient for a class action to proceed.” *Wright v. Circuit City Stores, Inc.*, 201 F.R.D. 526, 537-38 (N.D. Ala. 2001). “When the exact number of class members cannot be ascertained

about class size from United States Census Bureau Population Reports, K O J U H Q ¶ V 1 X U V H U
E.I. Du Pont de Nemours & Co 1994 U.S. Dist. LEXIS 17918, at *112 (S.D. Fla. June 9,
1994) (finding numerosity based, among other things, statistical evidence) Pottinger v.
Miami

Chicago Bd. of Educ., 551 F.Supp. 1107, 1109 (N.D.Ill. 1982) (in case involving exclusion of student with disabilities from public school, court considered class to include students who in the future would require placement in numerosity determination). See also Ex. 3, Decl. of N. Saucedo (affirming knowledge of Florida resident United States citizen family members who DWWHQG)ORULGD SXEOLF KLJK VFKRROV DQG ZLOO EH XQ when applying for college). Ex. 9, Decl. of A. Dinis (childre Q ¶ V ULJKW who, in the WRUQH course of her practice, consults with high school guidance and bilingual counselors and has received several inquiries about Florida graduating high school students who will be classified as out-of- VW DWH GXH who are even though they are citizens and Florida residents).

Although Rule 23 does not require Plaintiffs to show the precise number of class members, the foregoing evidence demonstrates that the proposed ~~plaintiff~~ class consists of far more than the forty members WKDW DUH JHQHUDOO \ ³DGHTXDWH. WR PH See Cox 784 F.2d at 1553.

Moreover, it is plain from this evidence that the class is not only numerous, but also that joinder would be impracticable. Practicability of joinder depends on many factors, including, IRU H [DP SOH « HDVH RI LGHQWLI \ LQJ > FODVV PHPEHUV ¶ @ facility of making service on them if joined and their geographic dispersion. H ZLV Y \$ 5 6 1 DW ¶ Servs, 2011 U.S. Dist. LEXIS 100139, at *7 (M.D. Ala. Sept. 6, 2011) (quoting Kilgo v. Bowman Transp., Inc., 789 F. 2d 859, 878 (11th Cir. 1986)). In assessing impracticability, ³ FRXUWV VKRXO G W D P H D W R P H S O onto account the objectives of judicial e FRQRP \ DQG DFFHV V Bradley K. Hodson, 50 F.R.D. 422, 426 (M.D. Ala. 1993) (quoting 1 Newberg on Class Actions, 2d ed. §3.03 at 142 (1985)). More than forty class

member typically raises a presumption that joinder is impracticable. Cox, 784 F.2d at 1553 (citations omitted)

Several factors support a finding of impracticability here. First, challenged regulations apply to potential class members throughout the State of Florida in all three federal judicial districts, making joinder highly impracticable. See e.g., Exh. 9 (Decl. of A. Dinis

FKLOGUHQ ¶ V ULJKWV DWWRUQH\ HVWLPDWLQJ WKHUH DUH

LGHQWLILHG' who would be dissuaded from completing
their college applications or terminate the registration process
since they learn they will be required
WR SURYH WKHLU SDUHQW. Others still are willing to come
forward over fear of repercussions to their families. Ex. 9,

and federal law. The resolution of the claims in this case will involve legal theories and facts common to all class members.

Finally, courts have found that commonality is satisfied when, as here, plaintiffs request only declaratory and injunctive relief against a common discriminatory practice or policy. See *Baby Neal*, 43 F.3d at 57 (3d Cir. 1994) (commonly established where plaintiffs request declaratory and injunctive relief against a defendant engaging in a common course of conduct toward them, and there is therefore no need for individualized determinations of the propriety of L Q M X Q F W L A n d H e r s o n H O D e p a r t m e n t o f P u b l i c W e l f a r e F. Supp. 2d 456, 461-62 (E.D. 3 D 3 & R P P R Q D O L W \ L V H D V L O \ H V W D E O L V K H G L Q F D V H A. Wright, *Federal Practice and Procedure* §1763, 226 (8 ed. 2005) 3 > & @ O D V V V X L W V injunctive or declaratory relief by their very nature often present common questions satisfying Rule 23(a)(2)´

3. Typicality .

7 R H V W D E O L V K W \ S L F D O L W \ W K H U H S U H V H Q W D W L Y H S E H W Z H H Q W K H F O D V V U H S U H V H Q W D W L Y H ¶ V F O D L P V R U G H I Z K L F K X Q L W H K o m b e r g 7 4 O F 2 1 1 1 3 3 7 3 \$ V X I I L F L H Q W Q H [X V L V H V R U S U D F W L F H D Q G D U H E D V I I G R Q W K H V D P H O H J D O W K H R U

In this case, the claims of the representative plaintiffs are typical of the claims of the class because, as with the named Plaintiffs, the claims of all class members arise from ' H I H Q G D Q W V ¶ G L u F i d s . C o m p ¶ 1 3 6 , E x h 2 - 6 . All of the named Plaintiffs are United States citizens and residents of Florida. Compl. ¶¶ 4-12; Exh. 2-6. All of them have been F O D V V L I L H U G D I V G H Q R V Q ´ I R U W X b e c a u s e t h e y a r e U n i t e d S t a t e s c i t i z e n s a n d r e s i d e n t s o f F l o r i d a .

WKHLU SDUHQWV ¶ 11 FAB a result of the Equal Opportunity Regulations, the named Plaintiffs, as well as all other members of the proposed class, have suffered the same injury namely, the denial of residency status for tuition purposes. See Williams v. Mohawk Indus. 568

F.3d1350, 1357 (11th Cir. 2000) 3 § FODVV UHSUHVHQWDWLYH PXVW «

FODVV PHPEHUV LQ RUGHU WR EH W\SLFDO XQGHU 5XOH

Further, the same legal theories underlie the claims of all class members. Prado-Seiman ex rel. Prado v. Bush 221 F.3d1266, 1279 n. 14 (11th Cir. 2000) (quoting Appleyard v. Wallace

754 F.2d 955, 958 (11th Cir. 1985) 3 D VWURQJ VLPLODULW\ RI OHJDO W

W\SLFDOLW\ UHTXLUHPHQW GHVSLWH VXEVDQWLDO IDFW

alleged that a policy that denies Florida residents the same access to tuition as is provided to other Florida residents violates the equal protection and supremacy clauses of the United States

Constitution. Compl. ¶¶ 491, 535. Any class member who pursues an individual action would likely rely on the same constitutional theories as those of the named plaintiffs. The typicality requirement has therefore been met.

4. Adequacy of Representation

The representative plaintiffs will also fairly and adequately represent the class required by the final prong of Rule 23 Fed. R. Civ. P. 23(a)(4). To determine adequacy, courts

look to whether U WKHUH DUH DQ\ 3 VXEVDQWLDO FRQIOLFWV RI L

WKH FODVV DQG ZKHWKHU WKH UHSUHVHQWLYH W\LDV ZLOO

Co. v. Geneva Pharmaceuticals, Inc. 350 F.3d 1181, 1189 (11 Cir. 2003) (citing In re HealthSouth Corp. Securities Litigation 213 F.R.D. 447, 460 (N.D. Ala 2003). In other

words, the class representatives must show that their interests are not antagonistic to those of the

class, and WKDW WKHLU FRXQVHO LV ³TXDOLILHG H[SHULHQF
OLWLJL.WLRQ ´

The representative plaintiffs have no interests antagonistic to those of the class. They are seeking declaratory and injunctive relief which will provide the identical remedy for all members. They will suffer the same harms as all other members of the proposed class, denied equal access to affordable higher education. The legal theory is the same for the representative

: L O O L D P V Y 1 D W 2 3 7 F R D F. 685 Q 6 9 4 & R D. Ala. 2006) (citing Holmes v. Continental Can Co. 706 F.2d 1144, 1155 (11 Cir. 1983)).

1. Class Members Have Been Harmed in Essentially the Same Way.

2.

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CERTIFICATE OF SERVICE

I hereby certify that, on the 20th day of January, 2012, I electronically filed the foregoing along with all cited Exhibits, with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record as follows: Blaine H. Winship, Special Counsel, Office of the Attorney General of Florida, The Capitol, Suite 011, Tallahassee, Florida 32399, blaine.winship@myfloridallegal.com