

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

**LISA NIX GREEN, BRENT A. GREEN,
BLAKE GREEN, ELDRIDGE M.
FRANKLIN, EASON L. FRANKLIN and
KIMBERLY H. FRANKLIN, individually
and as next friend of JOHN STEPHEN
FRANKLIN, and on behalf of a class of
persons who purchased an Alabama
Prepaid Affordable College Tuition
Contract prior to May 9, 2001 which
guaranteed payment of undergraduate
Instate Tuition and Mandatory Fees on
behalf of Qualified Beneficiaries to the
Alabama Public Postsecondary Institution
and on behalf of those Qualified
Beneficiaries of an Alabama Prepaid
Affordable College Tuition Contract which
was purchased prior to May 9, 2001;
BRIAN A. McVEIGH, individually and as
next friend of SARAH K. McVEIGH,
ALLEN R. HUDSON, individually and as
next friend of EMMA L. HATHAWAY,
NINA McGINNIS, individually and as next
friend of STEVIE A. GRAVES, and on
behalf of a class of persons who purchased
an Alabama Prepaid Affordable College
Tuition Contract after May 9, 2001 which
guaranteed payment of undergraduate
Instate Tuition and Mandatory Fees on
behalf of Qualified Beneficiaries to the
Alabama Public Postsecondary Institution
and on behalf of those Qualified
Beneficiaries of an Alabama Prepaid
Affordable College Tuition Contract which
was purchased after May 9, 2001**

Plaintiffs,

VS

CASE NO: CV-

**KAY IVEY, Chairman of the Board of the
Alabama Prepaid Affordable College
Tuition Program (PACT); RICKY
JONES, Vice-Chairman of PACT; JIM
FOLSOM, a member of the Board of**

3. Eldridge M. Franklin is an adult resident citizen of the State of Alabama. In 1994 he prepaid the college tuition for his son Eason L. Franklin by purchasing and paying for a PACT contract under the law as it existed at that time. He brings this action individually and on behalf of a class identified hereinafter as Class A.
4. Eason L. Franklin is now over the age of 19 years, and is presently enrolled as a student at Jefferson State Community College, a public institution of the State of Alabama. He brings this action as a beneficiary of the PACT contract purchased by his father Eldridge M. Franklin. He brings this action individually and on behalf of a class identified hereinafter as Class A.
5. Kimberly H. Franklin is an adult resident citizen of the State of Alabama. In the year 2000, she prepaid the college tuition of her minor son John Stephen Franklin by purchasing and paying for a PACT contract under the law as it existed at that time. She brings this action individually and as next friend of her minor son John Stephen Franklin. She brings this action individually and on behalf of a class identified hereinafter as Class A.
6. Brian A. McVeigh is an adult resident citizen of the State of Alabama. On or about October 16, 2002, he purchased and paid for a PACT contract designating his minor daughter Sarah K. McVeigh as the beneficiary thereof. He brings this action individually and as next friend of Sarah K. McVeigh. He brings this action individually and on behalf of a class identified hereinafter as Class B.
7. Allen R. Hudson is an adult citizen of the State of Alabama. On or about December 26, 2008, he purchased a PACT contract for Emma L. Hathaway, a minor. He brings this action individually and as next friend of Emma L.

Hathaway. He brings this action individually and on behalf of a class identified hereinafter as Class B.

8. Nina McGinnis is an adult citizen of the State of Alabama. On or about October 29, 2008, she purchased a PACT contract for Stevie A. Graves, a minor. She brings this action individually and as next friend of Stevie A. Graves. She brings this action individually and on behalf of a class identified hereinafter as Class B.
9. Defendant Kay Ivey, Chairman of the Board of the Alabama Prepaid Affordable College Tuition Program (hereinafter "PACT"), is over the age of 19 and a resident of the State of Alabama, and is sued in that official capacity.
10. Defendant Ricky Jones, Vice-Chairman of the Board of PACT, is over the age of 19 and a resident of the State of Alabama, and is sued in that official capacity.
11. Jim Folsom, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
12. Dr. Freida Hill, Chancellor of Alabama's two-year college system and member of the PACT Board, and is sued in those capacities.
13. Dr. Gregory Fitch, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
14. Dr. Glenda Curry, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
15. Willie Huff, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
16. Tom Broughton, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.

17. Daniel Hughes, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
18. Russell Bufkin, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
19. Fictitious Defendants A through Z are those persons, firms, corporations, individuals or entities who are presently unknown to the Plaintiff who acted with the named Defendants as set out herein.

CLASS ACTION ALLEGATIONS

20. The Plaintiffs bring this action, individually and as a class action, and under Rule 23 ARCP.
21. There are, within the case, two distinct classes. They will, hereinafter be described, separately as "Class A" and "Class B".
22. "Class A" is defined as: All persons who, prior to May 9, 2001, purchased a PACT contract, as well as the designated beneficiaries of those contracts, who are still eligible to utilize the benefits under those contracts.
23. "Class B" is defined as: All persons who, on or after May 9, 2001, purchased a PACT contract, as well as the beneficiaries of those contracts, who are still eligible to utilize the benefits under those contracts.
24. As to each class, separately and severally, it is alleged that:
 - A. Plaintiffs seek to be appointed as representatives of the Class.
 - B. The claims of the respective Plaintiffs are typical of the claims of the Class.
 - C. The exact size of the Class is not known at this time but Plaintiffs estimate that there are thousands of persons who meet the definition of the Class.

D. The members of the Class are sufficiently numerous in that joinder of all members is impractical.

E. Common questions of law exist.

F. The interest of the Class will be fairly and adequately protected. The interest of the Class representative is consistent with those of the members of the Class.

G. The Class is represented by experienced and able counsel knowledgeable with respect to Class Actions, and who have represented Plaintiff Classes on numerous occasions.

H. Certification of a Class is appropriate under the provisions of Rule 23(b)(1), A.R.Civ.P. as the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the parties opposing the Class, or adjudication with respect to individual members of the Class would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

I. Certification of the Class is also appropriate under the provisions of Rule 23(b)(2), A.R.Civ.P., in that the Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief of corresponding declaratory relief with regard to the Class as a whole.

25. Plaintiffs Lisa Green, Blake Green, Brent Green, Eldridge M. Franklin, Eason L. Franklin, and Kimberly H. Franklin, individually and as next friend of John

- Stephen Franklin, seek to be designated as the representatives of "Class A" with J. Doyle Fuller, Susan G. Copeland and Jacob A. Fuller as class counsel.
26. Plaintiffs Brian A. McVeigh, individually and as next friend of Sarah K. McVeigh, Allen R. Hudson, individually and as next friend of Emma L. Hathaway and Nina McGinnis, individually and as next friend of Steve A. Graves, seek to be designated as the representatives of "Class B" with Andrew P. Campbell and Donald Stewart as class counsel.

FACTUAL ALLEGATIONS

27. In 1989, the Alabama Legislature passed Act No. 89-862 which established the Wallace-Folsom Prepaid College Tuition Trust Fund to assist individuals in paying costs and expenses of attending colleges and universities through the PACT Program. (said Act was originally codified as § 16-33c-1 Code of Ala. 1975)
28. The PACT Program, Act # 89-862, was created as an agency and instrumentality of the State of Alabama, for the express purpose "to establish an educational trust fund through which many of the costs associated with attending a state college or university may be paid in advance for the full term of undergraduate enrollment." (see Act # 89-862, Sec. 1). The Act further provides for the PACT Board to enter into contracts for the prepayment of tuition for a qualified beneficiary "to attend any state college or university to which the qualified beneficiary is admitted, without further tuition costs or mandatory fees." (emphasis added)
29. On April 19, 1990, Act # 90-570 became the law of this State. This Act amended the provisions of Act # 89-862 (then codified as § 16-33c-1 et seq. Code of Ala.

1975) to some extent. For instance, Act # 90-570 constitutes the PACT Trust Fund as an "agency and instrumentality of the State of Alabama." Additionally the 1990 Act provides that the assets of the PACT trust are "public funds of the state." The express, stated purpose and intent of the act is to provide a method by which students "pay in advance the tuition costs."

30. The PACT statutes were again amended in 1997 by Act No. 97-547 and finally amended in a substantial way by Act No. 2001-427 (the 2001 Act) effective May 9, 2001.

31. Act #2001-427 effected a complete change in the nature of the PACT program. For instance, under the law as now amended, the purchasers of PACT contracts are no longer deemed to be paying tuition in advance, but are deemed to be entering into PACT contracts "for the future payment of tuition and mandatory fees." The provision of prior law providing that the funds in the PACT Trust Fund are "public funds of the State" has been deleted and instead, the law now says that the amounts "on deposit in the PACT Trust Fund shall not constitute property of the State, and the State may have no claim or interest in them." After the effect date of Act 2001-427, the law now says that the PACT contracts are not "debts or obligations of the state."

32. Despite the provisions of law and of the various PACT contracts, the Defendants in this case have disavowed any legal or moral obligation on their part to perform thereunder.

33. In March of 2009, the PACT Program publicly announced that it no longer has the funds "to meet its obligations" under the contracts executed by the PACT

Program. The Defendants as members of the PACT Board contend that the Plaintiffs have purchased only an annuity or other arrangement whereby their college tuition is dependent upon the availability of funds in the PACT program to pay said tuition.

34. Indeed, not all of the tuition and fees covered by PACT contracts are being paid by the Defendants

JURISDICTION AND VENUE

35. Jurisdiction and venue of this case are proper in Montgomery County, Alabama.

CLAIMS OF CLASS A

COUNT I – DECLARATORY JUDGMENT

36. Plaintiff realleges all allegations in the preceding paragraphs as if set out in full herein.

37. A. A justiciable controversy exists between the parties to this action. That controversy exists in the following:

1. The Defendant Kay Ivey, as Chairman of the PACT Board maintains a website at www.treasury.alabama.gov/pact . This website purports to provide participants in the PACT program up to date and accurate information about PACT. Included on that website is the following which allegedly gives participants their present options with regard to their contracts:

Options for PACT Purchasers

Many PACT purchasers have inquired about options for their PACT investment.

Following is information that may assist you in making the best decision given your personal circumstances.

1. Stay in the program.

- The program needs a cash infusion in order to pay tuition benefits for participants over the life of the program. The most recent actuarial report states that monies are available for tuition payments until August 2014.

- Legislation will be introduced in the next legislative session to identify a source to provide monies to PACT. The regular session begins January 2010. There is no assurance that legislation will be passed.

- You may want to consider complementing your PACT investment with the Higher Education 529 Fund, or similar program. Withdrawals from these programs may be used for books, tuition, room and board, and similar college expenses. Visit www.alabama529.com or call 1-866-529-2228 for additional information.

2. Rollover your PACT monies to another product that will allow you to continue saving for education with tax advantages, such as the Higher Education 529 Fund.

- Click here to receive a form or information on rolling over your account to the Higher Education 529 Fund.

- You will avoid federal taxes and penalties if the money is rolled over into the Higher Education 529 Fund, or similar product. Click here for tax information in the Disclosure Statement on your PACT Plan.

3. Cancel and receive the redemption value of your funds.

- Interest refunded is taxed as ordinary income plus a 10% federal tax penalty will be incurred. Consult a tax advisor.

- The PACT Program rules define your "redemption value" as the sum of PACT contract payments made, less any administrative fees and benefits paid, plus 1% interest, as of the date of cancellation. There is a \$75 cancellation fee.

2. Also on the Treasurer's website are statements that disclose enormous losses in the PACT Trust Fund as well as conclusions such as this made by Callan & Associates, the Boards investment advisor at the Boards August 19, 2009 meeting:

"In our judgment, the Plan can only be expected to return to fully funded status in the future under certain circumstances, namely (1) reduce the level of promised benefits to all current contract holders, and/or (2) receive supplemental funds from the State of Alabama."

3. The website discloses that as a result of the losses in the Trust Fund, and the uncertainty as to the Fund's ability to pay tuition, nearly 2,000 participants have cancelled their contracts and received a refund, which is subject to penalties.

4. The Plaintiffs contend that, by law, they have prepaid the college tuition and may attend any public college or university "without further tuition costs". Thus, they have no need to be concerned about the financial well being of the PACT Trust.

5. The Defendants, on the other hand, contend that the ability of the beneficiaries of PACT contracts to attend college or university is dependent upon the PACT board's and the Trust's ability to pay tuition as it comes due.

6. If the Defendants are correct in their interpretation of the PACT laws and contracts, then the Plaintiffs would seriously consider cancelling their contracts and getting a refund of their money, and avoid the risk. If the Plaintiffs are correct and cancel their contract, they would sustain an enormous loss. If the Defendants are correct, then cancelling the contract is a good thing.

However, the Plaintiffs have a substantial problem here. According to financial data of the PACT Board, once the PACT Board pays tuition at current levels for all eligible students in January, 2010, there will not be enough money in the PACT Trust to pay refunds to all PACT participants.

7. The Plaintiffs, and the Defendants for that matter, are in need of this Court's judgment construing the statutes and the PACT contracts in this case.

B. There exists a further justiciable controversy in this case in the following:

1. The PACT statutes (§16-33C-1 et seq.) as they existed at the time the Plaintiffs entered into their PACT contracts authorized the PACT Board (or its agents) to enter into the following contract:

Section 7. (a) The board, or its authorized officer, agent or employee, is hereby authorized to contract with a purchaser for the lump sum or installment prepayment of tuition costs by the purchaser for a qualified beneficiary to attend any state college or university to which the qualified beneficiary is admitted, without further tuition costs or mandatory fees.

2. Attached hereto are the contracts which the Plaintiffs entered into with the Board. These contracts, contrary to statute, do not provide that the beneficiaries may "attend any state college or university to which the qualified beneficiary is admitted, without further tuition costs or mandatory fees" as required by statute. To the contrary the contracts provide variably that:

1990 Contract (Green):

SECTION III – CONTRACT BENEFITS

The PACT Program guarantees payment of undergraduate Instate Tuition and Mandatory Fees on behalf of the Qualified Beneficiary to the Alabama Public Postsecondary Institution in which the Qualified Beneficiary matriculates as follows:

(A) Payment of Instate Tuition of not more than one hundred thirty-five (135) semester hours or the academic equivalent units on a quarter system or other academic term basis OR payment of Instate Tuition until the award of a baccalaureate degree to the Qualified Beneficiary, whichever comes first; and

(B) Payment of Mandatory fees for not more than eight (8) registrations on a semester system, twelve (12) registrations on a quarter system, or the comparable number of registrations on an academic equivalent basis for terms that are not semester or quarters.

1994 Contract (Franklin):

SECTION III – CONTRACT BENEFITS

The PACT Program guarantees payment of undergraduate Instate Tuition and Mandatory Fees on behalf of the Qualified Beneficiary to the Alabama Public Postsecondary Institution in which the Qualified Beneficiary matriculates as follows:

(A) Payment of Instate Tuition of not more than one hundred thirty-five (135) semester hours or the academic equivalent units on a quarter system or other academic term basis OR payment of Instate Tuition until the award of a baccalaureate degree to the Qualified Beneficiary, whichever comes first; and

(B) Payment of Mandatory fees for not more than eight (8) registrations on a semester system, twelve (12) registrations on a quarter system, or the comparable number of registrations on an academic equivalent basis for terms that are not semester or quarters.

2000 Contract (Franklin):

SECTION III – CONTRACT BENEFITS

3.01 General. The PACT program provides payment of undergraduate Instate Tuition and Mandatory Fees on behalf of the Qualified Beneficiary to the Alabama Public Postsecondary Institution in which the Qualified Beneficiary matriculates as follows:

(A) Payment of Instate Tuition of not more than one hundred thirty-five (135) semester hours or the academic equivalent units on a quarter system or other academic term basis OR payment of Instate Tuition until the award of a baccalaureate degree to the Qualified Beneficiary, whichever comes first; and

(B) Payment of Mandatory fees for not more than eight (8) registrations on a semester system, twelve (12) registrations on a quarter system, OR the completion of 135 semester hours or the academic equivalent units on a quarter system or other academic term basis OR until award of a baccalaureate degree to the qualified Beneficiary, whichever ever comes first.

3.02 Program Restriction. Only one PACT contract can be purchased for a Qualified Beneficiary.

3. The Defendants contend that the rights of the participants in the PACT program are defined and dependent upon the contract. However, there is a direct and substantial conflict between the contracts and the organic law. Any contract provision which contravenes the statute must give way to the statute and be interpreted in light of the statute.

4. Put another way, the statute says that when the Plaintiffs paid their money to the PACT Board, they prepaid their child's college tuition at any state university and college to which they may be admitted and those children may attend these institutions without paying any "further tuition or mandatory fees." On the other hand, the contract says that the Plaintiffs only paid for an agreement for the PACT Board to pay the tuition in the future. Thus, there is a present, viable, justiciable and RIPE controversy between the parties. In simple terms, that controversy is "what did the Plaintiffs get when they paid their money to the Board.?"

C. There is a further controversy among the parties.

1. At the time that the Plaintiffs paid their hard earned money to the PACT Board the law provided that they were paying "in advance the tuition costs of attending state colleges and universities."

"Tuition" was defined by law to be:

The quarter, semester or term charges imposed by a state college or university and all mandatory fees required as a condition of enrollment by all students.

2. For those of the Plaintiffs' children who are presently enrolled in state colleges and universities, those students are in fact being required to pay

“mandatory fees” which all students are required to pay within that specific college. These fees are in fact and in law included within the fees which were prepaid by their parents and, to the extent the Plaintiffs rights are dependent upon payments by the PACT Board, are in fact not being paid by that Board.

3. Thus there exists a controversy between the parties as to what payment, if any, are due to the colleges and universities in this case and whether the PACT is, in fact, paying all that it is required to pay. In like manner, the colleges and universities are requiring as a conditions of enrollment fees from these students that have in law and fact already been paid.

D. There is also a present and viable controversy among the parties as to the legal impact of the 2001 Amendment of the PACT Statute.

As noted earlier the PACT Statutes (§16-33C-1 et seq) were amended in 2001 (by Act # 2001-427) to completely change the nature of the PACT program.

For instance, prior to the effective date of Act # 2001-427 the law says that upon “purchase” of a PACT contract the “tuition” has been paid in advance and the designated beneficiary may attend any state college or university “without further tuition costs.”

Under the law, as amended in 2001, the participants now purchase what is in effect an annuity, i.e. an agreement to pay the tuition in the future. (This is commonly called a Sec. 529 plan).

The Defendants in this case are treating all participants the same. This has the effect of applying post 2001 law to vested rights which predate 2001. To do so violates the Plaintiffs’ rights to due process and equal protection under the U.S.

Constitution Amend. 5 & 14, as well as under the contracts clause of the U.S. Constitution, Art. I §10.

Such conduct also violates Sections 13, 22 and 95 of the Alabama Constitution of 1901.

E. There exists another viable, justiciable controversy that is ripe for decision:

1. As noted above, the Defendants have informed the Plaintiffs and other PACT participants that one of their options is to cancel their PACT contract and receive a refund. However, the Defendants have also informed the Plaintiffs and others that a cancellation of the contracts carry certain penalties, not the least of which is a 10% federal tax penalty.

2. The penalties and tax consequences referred to by the Defendants, as noted above, are applicable only if the PACT program, as defined by law at the time the Plaintiffs purchased their contracts qualified as a §529 plan (26 U.S.C. §529). Section 529 plans are plans by which individuals pay into a program which then provides for payment of tuition and other expenses in the future. Hence, the early withdrawal penalties do not apply to programs or contracts not covered by §529.

3. The Plaintiffs, or some of them, are contemplating cancelling their contracts. If these contracts are what the Defendants say they are, then the Plaintiffs, or any other contract owner, would be subject to the penalties above noted.

4. If however, the Plaintiffs, and others similarly situated, who purchased their contracts before May 9, 2001, were, as we contend, paying their child's tuition in advance, then any cancellation of those contracts would not be subject to the tax penalties.

5. The Plaintiffs are therefore in need of this Courts judgment declaring the nature, rights and obligations of the parties under this PACT contract as well as construing the nature of those contracts in order to make an informed decision.

F. There is even a further controversy among the parties:

1. By virtue of the statutory scheme in existence prior to May 9, 2001, when the member of Class A purchased their PACT contracts, the beneficiaries of those contracts acquired certain legal rights. By the same token, the Defendants, as members of the PACT Board, incurred certain legal obligations.

2. The Defendants, as the PACT Board, have publically, and in writing, avowed that neither they, nor anyone else, have any legal or moral obligation under the PACT contracts.

3. The Plaintiffs, and their class, are therefore in need of this court's judgment declaring whether the Defendants have any "legal or moral" obligations under the PACT contracts and if so, precisely what those obligations are.

COUNT II – 42 U.S.C. SEC 1983

38. The allegations of paragraphs 1 through 37 are incorporated herein as if fully set forth below.

39. The action of Defendants set out herein are under color of state law, custom and usage and deprive Plaintiff and members of the Plaintiff's class of rights secured

to them by the Constitution and laws of the United States. Defendants are therefore liable to Plaintiff pursuant to 42 U.S.C. Sec. 1983. The Plaintiffs and those they seek to represent, in good faith reliance upon the statutes and laws of this State paid money to the PACT Board as prepayment, in advance, of certain costs of a college education. The Defendants, acting under color of state law have publically declared that the "contracts" purchased by members of this class, were in fact, not "contracts" for payment in advance of college tuition and fees, but rather some other arrangement that makes the benefits owed dependent upon the availability of funds within the PACT Trust Fund.

Such an interpretation of the relationship between the Plaintiffs and their class, on the one hand, and the Defendants on the other hand, amounts to a violation of the Plaintiffs' rights under the following provisions of the U.S. and Alabama Constitutions:

- A. The Due Process Clause of the 5th and 14th Amendments to the U.S. Constitution.
- B. The "Contracts Clause of the U.S. Constitution (Article 1 §10) and of the Alabama Constitution (Article IV § 22, 95)
- C. The Equal Protection Clause of the 4th Amendment to the U.S. Constitution.
- D. The "Takings Clause" of the U.S. Constitution (Amend V) and of the Alabama Constitution (Article I §23).

Defendants are therefore liable to the Plaintiffs and their class under 42 USC §1983.

CLAIMS OF CLASS B

COUNT III – DECLARATORY JUDGMENT

40. The Plaintiffs as members of Class B adopt all previous allegations of this complaint.
41. All members of Class B, whether PACT contract purchasers or beneficiaries of those contracts purchased the same on or after May 9, 2001. As such, their rights under those contracts are controlled by the provisions of Act # 2001-427.
42. There exists a viable, present and justiciable controversy between the Plaintiffs and their class on the one hand, and the Defendants on the other. This controversy is such that the parties are in need of this court's judgment declaring the rights, duties and obligations of the parties under those contracts and under Act # 2001-427.
43. In its most simple form the controversy is this: Under Act # 2001-427, the Alabama Legislature authorized the PACT Board to enter into contracts for the future payment of tuition. The very nature of which requires mutuality of obligation. Thus, if a PACT contract purchaser pays the amount required by the PACT Board for the contract, he has performed. This performance, by the very nature of a contract, invokes obligations on the other party. In fact, the PACT board did, by its contract, assume the legal obligation to pay that tuition in the future.

44. However, the PACT board has disavowed any "legal and moral" obligation under the PACT contracts. This amounts to a repudiation of its contractual obligations. This controversy is present, viable, and ripe for decision. The parties are in need of this court's judgment construing the rights, obligations and duties of the parties.

COUNT IV – 42 U.S.C. SEC 1983

45. The allegations of paragraphs 1 through 44 are incorporated herein as if fully set forth below.

46. The action of Defendants set out herein are under color of state law, custom and usage and deprive Plaintiff and members of the Plaintiff's class of rights secured to them by the Constitution and laws of the United States. Defendants are therefore liable to Plaintiff pursuant to 42 U.S.C. Sec. 1983. The Plaintiffs and those they seek to represent, in good faith reliance upon the statutes and laws of this State paid money to the PACT Board as prepayment, in advance, of certain costs of a college education. The Defendants, acting under color of state law have publically declared that the "contracts" purchased by members of this class, were in fact, not "contracts" for payment in advance of college tuition and fees, but rather some other arrangement that makes the benefits owed dependent upon the availability of funds within the PACT Trust Fund.

Such an interpretation of the relationship between the Plaintiffs and their class, on the one hand, and the Defendants on the other hand, amounts to a violation of the Plaintiffs' rights under the following provisions of the U.S. and Alabama Constitutions:

- E. The Due Process Clause of the 5th and 14th Amendments to the U.S. Constitution.
- F. The "Contracts Clause of the U.S. Constitution (Article 1 §10) and of the Alabama Constitution (Article IV § 22, 95)
- G. The Equal Protection Clause of the 4th Amendment to the U.S. Constitution.
- H. The "Takings Clause" of the U.S. Constitution (Amend V) and of the Alabama Constitution (Article I §23).

Defendants are therefore liable to the Plaintiffs and their class under 42 USC §1983.

PRAYER FOR RELIEF

WHEREFORE, the premises considered, the Plaintiffs pray of this Court the following:

A. As to Class A:

1. That this Court certify this as a Class Action under Rule 23 ARCP, and
2. Enter its Order declaring that the tuition and fees covered by the contracts of Class A, have been paid in full, in advance, and that the beneficiaries of those contracts may attend any public college or university in this state without further tuition costs or mandatory fees, and
3. Enter a judgment declaring that the rights of Class A have not been altered by any subsequent acts of the Alabama Legislature or the PACT Board.
4. Enter a judgment in favor of Class A and against the Defendants for all sums in tuition and fees which members of the class have been required to pay that in fact was covered by their contracts.

5. Awarding to the class and its counsel such attorney's fees and costs as are appropriate in this case, and

6. Such other and different relief to which the class may be entitled under the premises.

B. As to Class B

1. That this Court certify this case as a class action under Rule 23 ARCP, and
2. Enter an order declaring the rights, duties, and obligations of the parties under applicable statutes and contracts, and
3. Award to the class and its counsel such attorneys fees and costs as may be appropriate and,
4. Award to the class such other and different relief to which it may be entitled under the premises.

Respectfully submitted this the 6th day of January, 2010.

/s/ J. Doyle Fuller
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PLEASE SERVE THE DEFENDANTS AS FOLLOWS VIA CERTIFIED MAIL:

Honorable Kay Ivey, Chairman
State Treasurer
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Montgomery, AL 36130

Mr. Ricky Jones
% State Treasurer
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Honorable Jim Folsom, Jr.
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