

IN THE MATTER OF
THE
INSTITUTE FOR CREATION RESEARCH GRADUATE SCHOOL

before the
TEXAS HIGHER EDUCATION COORDINATING BOARD

SECOND SUPPLEMENT TO ICRGS's
PETITION FOR CONTESTED CASE STATUS

Submitted February 4th, A.D. 2009

By:
INSTITUTE FOR CREATION RESEARCH
GRADUATE SCHOOL

The Institute for Creation Research Graduate School (“**ICRGS**”), petitioner herein (before the Texas Higher Education Coordinating Board), hereby qualifiedly **supplements** its “Petition for Contested Case Status” and that petition’s “First Supplement”, with this its **Second Supplement**, and accordingly hereby provides notice as required under the *Texas Religious Freedom Restoration Act of 1999* (“Texas RFRA”), as follows:

1. In ICRGS’s “First Supplement to ICRGS’s Petition for Contested Case Status”, **Footnote # 2** on **page 2** (with emphasis added), ICRGS notes:

Although **Tex. Civ. Prac. & Rems. Code § 110.006** contemplates **service of ICRGS’s pre-litigation “notice” via “certified mail, return receipt requested”**, ICRGS’s Petition was sent to THECB via FedEx (not certified mail). Thus, if necessary, **an additional re-mailing of relevant portions of the Petition (with cross-reference to the entirety of the Petition) should be timely provided, via certified mail, return receipt requested.** In the previous sentence the word “timely”, according to Tex. Civ. Prac. & Rems. Code § 110.007, would be within “one year” of April 24th of 2008, unless the “75th day” rule of § 110.007(b) would otherwise affect the timing for filing any such civil action under the Texas RFRA of 1999.

Thus, for technical compliance with the **“certified mail, return receipt requested”** prerequisite to a civil action under the Texas RFRA of 1999, an additional copy of said Petition, as well as its First Supplement and this Second Supplement, is being served on the THECB, via service by “certified mail, return receipt requested” (as more specifically shown below in the Certificate regarding Service).

2. Also, ICRGS continues to try to “exhaust its administrative remedies”, as indicated in an email (dated 2-2-AD2009) unto THECB’s attorneys, which illustrates additional efforts (on both sides), since the SOAH-conducted mediation, to resolve this controversy prior to litigation. However, due to the preemptive requirements of the applicable Statute of Limitations (i.e., Texas Civil Practice & Remedies Code §§ 110.006 and 110.007), this notice is nonetheless now provided, out of an “abundance of caution”.
3. Besides the administrative remedies available (via SOAH proceedings), there are some remedies available under the Texas RFRA that are not available via SOAH proceedings, so it would be futile to miss a Statute of Limitations (for seeking Texas RFRA relief) while waiting for the SOAH proceeding to fully proceed. For example, Texas RFRA remedies include

the availability of injunctive and declaratory relief, as well as a recovery for attorneys fees (against a state government agency):

(a) Any person, other than a government agency, who successfully asserts a claim or defense under this chapter is entitled to recover:

- (1) declaratory relief under Chapter 37;
- (2) injunctive relief to prevent the threatened violation or continued violation . . . and
- (4) reasonable attorney's fees, court costs, and other reasonable expenses incurred in bringing the action.

(Quoting Section 110.005, Tex. Civ. Prac. & Rems. Code.)

4. Accordingly, it would be improper for ICRGS to wait beyond one year to seek Texas RFRA-specific relief, since SOAH cannot provide Texas RFRA-specific relief anyway. For example, ICRGS could receive some statutory relief (under Texas RFRA) in the form of *declaratory relief* may be appropriate, e.g., against THECB board members and the Commissioner, acting in their official and/or individual capacities. *Accord, for illustrative purposes, see ICR Graduate School v. Honig*, 758 F.Supp. 1350, 1356, 66 Educ. Law Repr. 655 (S.D. Cal. 1991), *in conjunction with Tilton v. Marshall*, 925 S.W.3d 672, 678—679 (Tex. 1996) (no legal claim of “fraud” can be made, by the State of Texas government, if that claim depends upon the government evaluating the truth or legitimacy of a particular *religious opinion*).
5. With respect to ICRGS’s protest about interference with interstate commerce, ICRGS specifically relies upon the **U.S. Constitution’s “Contracts Clause”** as it applies to any impairment with any “obligation of contracts”. Specifically, said Contracts Clause is found in Article I, section 10 of the United States Constitution, a provision logically related to the Takings Clause of the U.S. Constitution’s 14th Amendment. In pertinent part, Article I, section 10 provides that “[n]o State shall ... pass any ... Law impairing the Obligation of Contracts.” U.S. Constttn. Art. I, §10, clause 1.) The constitutionality of a trial court’s interpretation of a statute, whether interpreted as an issue of *federal* or *state* constitutionality,

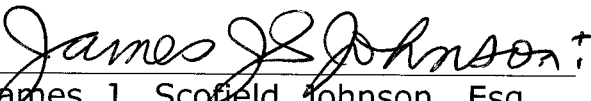
is a question of law. See **Griggs v. State**, 99 S.W.3d 718, 721 (Tex. App.-Houston [1st Dist.] 2003, pet. ref'd). Consequently, to the extent that Texas law (and/or agency regulation), if any, impairs any interstate contract ICRGS has with any of its graduate students, that Texas particular law (and/or THECB regulation), it does so unconstitutionally.

6. Likewise, ICRGS protests any impairment of its contractual obligations (with ICRGS students) under **Texas Constitution Article 1, §16** ("No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.") That constitutional ban, case law informs us, applies "only where parties have entered into a contract and thereafter a statute is passed that unlawfully impairs their contractual obligations." **Cessna Fin. Corp. v. Morrison**, 667 S.W.2d 580, 584 (Tex.App.-Houston [1st Dist.] 1984, no writ). Also, if any THECB regulations have so "impaired" any such pre-existing contracts, any such "impairing" regulations should likewise be deemed invalid. Consequently, to the extent that Texas law (and/or THECB regulation), if any, impairs any interstate contract ICRGS has with any of its graduate students, that Texas particular law (and/or agency regulation), it does so unconstitutionally.

7. The two above-noted *federal* and *state* constitutional protests are asserted *provisionally*, on the qualification that those protests only apply to any changes of law (legislative or quasi-legislative) that have occurred or will occur *after* the contracting of any student with ICRGS to undertake an educational program validly offered by ICRGS, i.e., so long as any such contract was formed at a time *prior* to it becoming "impaired" by a new Texas "law".

Respectfully submitted,

this 4th day of February, A.D. 2009, by:


James J. Scofield Johnson, Esq.

Texas Bar # 10741520

Special Counsel for the

INSTITUTE FOR CREATION RESEARCH GRADUATE SCHOOL

1806 Royal Lane, Dallas, Texas 75229

214-615-8314 telephone; 214-615-8299 FAX

CERTIFICATE REGARDING SERVICE

This 2nd Supplement will have been served upon the THECB, together with an extra copy of the above-denoted Petition and its First Supplement, via **certified mail**,¹ with **return receipt requested**, unto:

Texas Higher Education Coordinating Board
attn: **Commissioner of Higher Education Raymund Paredes**
1200 East Anderson Lane
Austin, Texas 78752 - 1743.

*Additional copy of the Second Supplement will also be provided, via FAX (c/o 512-427-6127), and/or via email (**william.franz@theqb.state.tx.us**) unto THECB's General Counsel, William M. Franz, Esq., --- as well as unto THECB's outside counsel, Neal W. Adams, Esq. via FAX (c/o 817-571-2947) and/or via email (**nwa@all-lawfirm.com**), -- on this the 4th day of February, A.D. 2009, to which service the below signature attests. (Both of said attorneys for THECB have already been provided with copies of the Petition and its First Supplement; and the Petition itself , including its Appendices A through Z (i.e., all 755 pages) is now posted on the THECB's website.)*


Texas Bar # 10741520

¹ Also, a copy of this Supplement is to be provided, contemporaneously, to the Texas Attorney General's Office, at the following address: **Hon. Greg Abbott**, in his official capacity as the Attorney General of Texas, c/o Office of the Attorney General, 300 W. 15th Street, Austin, Texas 78701.

7004 2510 0007 5818 5715

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Send To
 Texas Higher Educ'n Coord'g Board
 attn: Comm'r of Higher Ed. Raymund Paredes
 1200 East Anderson Lane
 AUSTIN, TX 78752-1743

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature X <i>M. Soldano</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____ 2/5/09</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: _____</p>
<p>1. Article Addressed to:</p> <p>TEXAS HIGHER EDUCATION COORDINATING BOARD attn: Comm'r of Higher Education Raymund Paredes 1200 East Anderson Lane, Austin, TX 78752 - 1743</p>	<p>3. Service Type <i>return receipt requested</i></p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Transfer from service label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>7004 2510 0007 5818 5715</p>	

JS 44
(Rev. 3/99)

3-09CV0693-B

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS **INSTITUTE FOR CREATION RESEARCH GRADUATE SCHOOL**, an unincorporated educational ministry unit of The Institute for Creation Research, Inc., a California not-for-profit corporation
 (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Dallas County, Texas
 (EXCEPT IN U.S. PLAINTIFF CASES)
 Dallas County, Texas 214.615-8314

DEFENDANTS Raymund A. Paredes; Lyn B. Phillips; Joe B. Hinton; Elaine Mendoza; Laurie Bricker; A.W. "Whit" Riter, III; Brenda Pejovich; & Robert Shepard; all in their individual & official capacities.
 COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT TRAVIS COUNTY TEXAS
 (IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
 James J. S. Johnson, Esq.
 Institute for Creation Research
 1806 Royal Lane, Dallas TX 75229

ATTORNEYS (IF KNOWN) William Franz at THECB; also Neal A. Adams & Jerry Bullard of Adams, Lynch & Loftin, P.C.

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

PTF	DEF		PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

RECEIVED APR 16 2009
 CLERK, U.S. DISTRICT COURT, NORTHERN DISTRICT OF TEXAS

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 810 Agriculture <input type="checkbox"/> 820 Other Food & Drug <input type="checkbox"/> 825 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 830 Liquor Laws <input type="checkbox"/> 840 R.R. & Truck <input type="checkbox"/> 850 Airline Regs. <input type="checkbox"/> 860 Occupational Safety/Health <input type="checkbox"/> 890 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Waiters <input checked="" type="checkbox"/> 446 Other Civil Rights	<input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (Specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)
 Complaint seeks injunctive relief under 42 U.S.C. § 1983, & related declaratory relief under 28 U.S.C. § 2201(a), etc.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ N/A (injunctive relief) CHECK YES only if demanded in complaint: JURY DEMAND: YES NO

VIII. RELATED CASE(S) (See instructions): IF ANY Texas S.O.A.H. JUDGE Wendy Harvel, ALJ DOCKET NUMBER SOAH #781-09-2910

DATE APRIL 16th, A.D. 2009 SIGNATURE OF ATTORNEY OF RECORD James J. S. Johnson Attorney for ICRGS (plaintiff)