

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

**WILLIAM A. LINK, et al.,**

*Plaintiffs,*

**v.**

**Case No.: 4:21cv271-MW/MAF**

**JACOB OLIVA, et al.,**

*Defendants.*

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**DEFENDANTS' MOTION FOR LEAVE TO TAKE ADDITIONAL  
FACT DEPOSITIONS**

Defendants, through undersigned counsel and pursuant to Federal Rule of Civil Procedure 30(a)(2), respectfully move this Court for leave to take four additional fact depositions.

From the outset, Defendants have heralded the legitimate state interest in ensuring that its public institutions of higher education remain protective of free expression and the open exchange of ideas. House Bill 233 was enacted to further that interest. One method by which HB 233 seeks to achieve this goal is by conducting annual surveys to assess students' and faculty members' perceptions of their ability to express themselves freely on their college and university campuses.

For their part, Plaintiffs intend to offer expert testimony alleging that concerns about the state of free expression on college and university campuses are manufactured. *See, e.g.*, Ex. A, Kamola and Wilson Expert Discl., at 3, 13 (“HB 233 is predicated on a concern that Florida’s colleges and universities are hostile to free speech and lack of ‘intellectual freedom and viewpoint diversity’, [but that] [i]n reality, no such crisis exists.”). Plaintiffs made the same argument at the preliminary injunction stage. *See* ECF No. 75 at 22–23 (dismissing evidence of free speech concerns on campuses as “junk science” and “fodder” for “far-right activists”).

Defendants are entitled to discovery aimed at testing the basis—or lack thereof—of Plaintiffs’ allegations regarding perceptions surrounding the state of free expression on campuses, including by obtaining testimony regarding Plaintiff UFF’s *own assessments on the same issue*. Specifically, Defendants request leave to take pointed corporate representative depositions of four local UFF chapters concerning surveys they administered to faculty aimed at precisely this question.

For example, results from a 2021 survey administered to faculty UFF’s UNF Chapter showed that faculty perceive the University as supporting faculty free speech less than other community members. *See* <http://unf-uff.org/wp-content/uploads/2022/01/2021-UFF-FA-Survey-Report.pdf>. Similarly, in a recent survey administered by UFF’s UF Chapter, “[m]ore than 67% said they somewhat or strongly disagreed that they could ‘openly express a dissenting opinion about the

administration’s policies without fear of reprisal.” Divya Kumar, *UF faculty survey shows a desire to leave, low confidence in leadership*, Tampa Bay Times, August 8, 2022. Likewise, 30% of Faculty who responded to a Survey administered by UFF’s FIU Chapter in 2021 indicated that they sometimes censor themselves in their department for fear of retaliation. See <https://www.uff-fiu.net/wordpress/wp-content/uploads/2021/02/UFF-FIU-Survey-Report.pdf>, at 8. At Florida Polytechnic University, “[s]ixty-five percent disagreed and 16 percent agreed with the statement ‘I am able to openly express a dissenting opinion about the administration’s policies without fear of reprisal.’” John Chambliss, *Faculty survey shows low morale, lack of direction at Florida Poly*, The Ledger, May 24, 2018.

The relevance of UFF chapters’ faculty surveys on these issues is beyond credible dispute. Both parties raise the state of free expression on college and university campuses in this litigation: Plaintiffs and their experts insist that free speech concerns and interests in viewpoint diversity are manufactured, and thus addressing those concerns is an illegitimate state interest; by contrast, Defendants maintain that the preservation of free speech on campus is of critical significance, and that surveying student and faculty perceptions of their ability to engage in free expression—including whether Faculty feel free to express their viewpoints on campus—is one of several important tools to further that interest. From either

perspective, depositions aimed at probing UFF chapters' own inquiry into faculty perception of free expression on their campuses are highly relevant.

Plaintiffs will not be prejudiced by the four requested depositions. Out of the approximately 29 UFF chapters, Defendants seek to depose only four,<sup>1</sup> and only on the limited topic of surveys administered to faculty members concerning issues of free expression, free speech, and viewpoint diversity on campus. Plaintiffs cannot make any serious claim that the testimony Defendants seek is privileged, because it regards voluntarily-disclosed information of which UFF's local chapters have made no secret. As noted above, these chapter are the subject of publicly-available news articles and their results are published on the local chapters' websites. Moreover, UFF disavows having a legal relationship with its chapters that would enable UFF to assert privileges on local chapters' behalf. *See* Ex. B, UFF Obj. to Req. for Prod., at 4.

To be sure, Defendants would rather obtain this discovery from UFF during its corporate representative deposition and through written discovery, rather than pursue the additional four chapter depositions that are the subject of this Motion. However, in response to discovery requests—including during the parties'

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<sup>1</sup> Corporate Representative of UFF University of Florida Chapter; Corporate Representative of UFF Florida International Chapter; Corporate Representative of UFF University of North Florida Chapter; Corporate Representative of UFF Florida Polytechnic University Chapter.

conferral—UFF has taken the facially untenable position that UFF’s local chapters’ documents are not within UFF’s possession, custody, or control. *See id.* Yet UFF’s own governance documents explicitly recognize UFF’s local chapters as “subordinate bodies of the United Faculty of Florida,” Ex. C, PL\_UFF\_000011, that must be “established by the UFF Senate,” Ex. C, PL\_UFF\_000004, while the chapters themselves refer to UFF as their “parent organization,” *see* “UFF-UNF: About Us,” <http://unf-uff.org/about-uff/>. In situations such as this, “[w]here the relationship between the entities is that of a parent and its wholly-owned subsidiary in possession of the discovery, ‘control’ under Rule 34 is presumed by virtue of the corporate structure, and no further analysis is required.” *Silver v. Tenet Health Care Corp.*, No. 09-80365-CIV, 2010 WL 11444064, at \*3 (S.D. Fla. Aug. 6, 2010) (citing *Platypus Wear, Inc. v. Clarke Modet & Co.*, 2007 WL 4557158, \*4–5 (S.D. Fla. Dec. 21, 2007)). In fact, UFF even produced a Collective Bargaining Agreement from a local chapter in discovery. *See* Ex. D, PL\_UFF\_001136. Nevertheless, UFF refuses to acknowledge the obvious, and insists that surveys administered by its own local chapters are not within its possession, custody, and control. Defendants therefore have no choice but to resort to seeking this indisputably relevant information from local UFF chapters that administered surveys to their faculty members.

Finally, timing should be of no concern, as more than three weeks remain in the discovery period to accommodate these brief and targeted depositions, which can occur by remote videoconference. To date, Defendants have been judicious concerning the depositions they have pursued. Unlike Plaintiffs, Defendants have not deposed or noticed the deposition of a single person who Plaintiffs did not disclose as an expert or identify on their Rule 26 disclosures. However, given the sheer number of Plaintiffs (seven), and the sheer number of expert witnesses (six) and fact witnesses (thirty-five, *excluding* named Plaintiffs and individuals associated with Defendants), ECF No. 134, that Plaintiffs have disclosed pursuant to Rule 26, Defendants must obtain leave of this Court to depose four additional fact witnesses that possess highly relevant—and plainly discoverable—information.

Defendants therefore respectfully request that the Court grant the State leave to take four additional fact depositions.

Respectfully submitted on August 30, 2022.

/s/ George T. Levesque

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(B)**

Pursuant to Local Rule 7.1(B) and Federal Rule of Civil Procedure 26(c), the undersigned certifies that counsel for Defendants conferred in good faith with counsel for Plaintiffs regarding the relief requested in this Motion, but were unable to reach resolution.

/s/ George T. Levesque

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(F)**

The undersigned certifies that this Motion contains approximately 1,120 words.

/s/ George T. Levesque  
George T. Levesque (FBN 555541)  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on August 30, 2022, the foregoing document has been served by the Court's CM/ECF system which will serve a copy via email on all counsel of record.

/s/ George T. Levesque  
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