

Off Campus Bookstore Appeal Unsuccessful

Several years ago the Off Campus Bookstore requested the names and addresses of applicants for admission to UAHuntsville who had been accepted but who had not yet registered for classes. The names and addresses of applicants' parents were also requested. The request was made under the Alabama "Open Records Act," and it was sought to allow the Off Campus Bookstore to solicit business from the prospective students and their parents.

The University refused to provide this information, believing that these individuals needed to first be given their rights, under the federal Family Educational Records and Privacy Act (FERPA), to inform the University that they did not wish this information to be disclosed. This right (sometimes referred to as an "opt out" right) is exercised by a student, if he/she wishes to do so, at the time of registration each semester. The University also felt that the information was confidential and that disclosure was not in the best interest of the public, two exceptions to the rule of mandatory disclosure under the Open Records Act. One of the University's concerns was that providing this information to this particular vendor would require it to provide the same information to other vendors (apartment complexes, restaurants, insurance companies, etc.), and that students and parents are often displeased when subjected to what may be viewed as intrusive, commercial solicitation.

The Off Campus Bookstore brought suit in Madison County Circuit Court against the University in July 2007, seeking an injunction requiring the production of name and address information from prospective students and their parents each summer. In May 2008, President David Williams was added as a party defendant after the University argued that it was immune to suit under Article I, § 14 of the Alabama Constitution. In June 2008, the Circuit Court granted the University's motion for summary judgment, based on its FERPA and Open Records Act arguments and dismissed the case. The Off Campus Bookstore appealed this ruling to the Alabama Supreme Court.

Late last month the Alabama Supreme Court issued an opinion favorable to the University, but on a different theory. The Supreme Court held that, since Off Campus originally sued only the University, which is absolutely immune to suit under Alabama law, the trial court had no jurisdiction over the case. This is so, the Court held, even though Off Campus later amended its complaint to add President Williams as a party defendant. Since the trial court had no jurisdiction under the original complaint, adding a party who was at least initially suable (the University President) did not operate to create jurisdiction. In this instance, therefore, the trial court had no authority to enter a summary judgment in the University's favor. The appeal and the entire case were, under the Court's order, accordingly dismissed.

The Office of Counsel had actually raised this defense at the trial court level, but, of course, was content to have the case dismissed "on the merits" instead. The Supreme Court's decision represents another positive development in the case for the University. The Off Campus Bookstore may or may not decide to re-file the case directly against a University official.