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Clemson Lawsuit Wages On!

You won't believe what Clemson's counsel is arguing now.

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Clemson University is arguing to deny the authority of its Board of Trustees, literally. In an April 28 hearing of Troutman v. Clemson University, counsel for the school argued before U.S. Senior District Judge Matthew Perry, saying the entire case should be dismissed. Their reasoning? Clemson University is an arm of the state and is thus entitled to qualified immunity.

Qualified Immunity, a part of U.S. Federal law, protects state officials or agencies from legal ramifications after violating a person's federal and constitutional rights. This immunity is granted to officials whose actions, even if later found to be illegal, do not violate "clearly established law." However, certain questions have recently been raised as to whether Clemson University even qualifies for said immunity.

As The Observer has reported in the past, the university's president, James Barker; Provost Doris Helms, and Board of Trustees are being sued by former Executive Secretary Eugene Troutman for wrongful termination.

According to the lawsuit, Troutman was fired after questioning the administration about unnecessary tuition increases that resulted in an \$80 million cash slush fund. The suit also charges university officials with falsification of public statements, fraudulent business practices, and mismanagement of the university's financial affairs.

But in seeking (again) to have the case thrown out in court, Clemson lawyers are using as their defense, an argument that completely undermines not only the authority of the Board of Trustees, but also the will of Thomas Green Clemson.

According to that will, the board of trustees is the sole governing body of Clemson University and is not subject to control by the state of South Carolina. To ensure this, Clemson established provisions in his will that made the structure of the board as complex as it is unique.

The board consists of 13 members. Seven of those are "life trustees" and are expressly given the power to appoint a successor upon their death or resignation. The other six are appointed by the South Carolina State Legislature for set terms.

According to the official biography of Thomas Green Clemson that was published by the university

last July, there is another aspect of this governance structure that makes it not only unique, but relevant to the current lawsuit.

In a chapter entitled, "Clemson's Last Will and Testament," the university's General Counsel Clay Steadman, writes that there was a reason Clemson wanted the "life trustees" to hold a majority. "Item 2 clearly states that the board of trustees shall never increase to a number greater than thirteen, making it clear that the life trustees are always to be in the majority, thereby allowing the legislature to influence but not control the governance of the college," writes Steadman.

He goes on to say, "This particular provision renders Clemson University's current governance structure unique among public universities and created the first "public-private" governing body for a public university with the added distinction of ensuring that the "private" life trustees would always be in the majority."

Now however, the lawyers representing President Barker and the rest of the defendants in Troutman v. Clemson are saying that the University is governed by the state of South Carolina, and should thus be eligible for qualified immunity. Should their argument prove successful, the logical implications would mean that the Board of Trustees is in fact, subordinate to the state. When asked by The Observer, Steadman declined to comment on the case.

Troutman's counsel is also arguing that even though Clemson does receive money from the state, that decision is made by the Board. And even if accepting funds requires that the university complies with state regulations, that still does not subordinate the Board to state government.

Other news of Troutman v. Clemson involve university officials claiming that personal computer files Troutman kept during his tenure as Executive Secretary are actually property of the university, and thus should be turned over to Clemson's counsel. According to Troutman, said files contain no original official records, but instead of drafts of work papers, convenience copies, and other personal files.

Last winter, The Observer reported that in an effort to compromise, Troutman did turn over a disk containing copies of the files in question. But Clemson was not satisfied, and continued to allege that Troutman violated federal computer fraud and abuse by deleting certain personal files, and refusing to hand over others.

For now though, the lawsuit is currently on hold as both sides wait to hear a verdict from Judge Perry about Clemson's request to have the case thrown out.