

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**HOUSTON DALE NUTT, JR.**

**PLAINTIFF**

**V.**

**Civil Action No. 3:17-CV-130-NBB-RP**

**THE UNIVERSITY OF MISSISSIPPI, ET AL.**

**DEFENDANTS**

**BRIEF IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER  
JURISDICTION BY DEFENDANTS UNIVERSITY OF MISSISSIPPI AND  
MISSISSIPPI BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING**

This Court plainly lacks subject matter jurisdiction over this action. Houston Nutt’s Complaint makes claims solely under Mississippi law.<sup>1</sup> Nutt makes no federal law claim and instead tries to invoke this Court’s judicial authority based on complete diversity of citizenship.<sup>2</sup> He claims Texas as his home and alleges that the University of Mississippi and the IHL Board are citizens of Mississippi.<sup>3</sup> Over 100 years ago, the United States Supreme Court concluded that “[a] State is not a citizen” for diversity jurisdiction purposes.<sup>4</sup> The same rule applies to the University and the IHL Board as arms of the State. Complete diversity of citizenship therefore does not exist between Nutt and Defendants. For that reason, this Court lacks the authority to adjudicate this action. Even if that authority existed, the Eleventh Amendment to the United States Constitution bars Nutt’s claims against the University and the IHL Board. This Court should summarily dismiss this action.

---

<sup>1</sup> *Id.*, ¶¶ 55-58.

<sup>2</sup> *Id.*, ¶ 6. Nutt erroneously references 28 U.S.C. § 1332(b) instead of § 1332(a)(1).

<sup>3</sup> *Id.*, ¶¶ 1, 2 and 4.

<sup>4</sup> *Postal Tel. Cable Co. v. Alabama*, 155 U.S. 482, 487 (1894).

## STANDARD – SUBJECT MATTER JURISDICTION

“Federal courts are courts of limited jurisdiction,” possessing “only that power authorized by Constitution and statute.”<sup>5</sup> Rule 12(b)(1) of the Federal Rules of Civil Procedure provides a process to determine a federal court’s authority to resolve a particular dispute. When the constitutional or statutory power to adjudicate does not exist, a federal court should dismiss the action.<sup>6</sup> Similarly, an assertion of Eleventh Amendment immunity challenges the court’s subject matter jurisdiction under Rule 12(b)(1).<sup>7</sup> The party asserting jurisdiction has the burden to establish jurisdiction.<sup>8</sup>

## ARGUMENT

### **I. The University and the IHL Board are not “citizens” of any state. Diversity of citizenship does not exist.**

Nutt asserts subject matter jurisdiction based on “complete diversity of citizenship between the Plaintiff and the Defendants . . . .”<sup>9</sup> Nutt (a citizen of Texas) has sued the Foundation (a citizen of Mississippi) and two public entities -- the University and the IHL Board. The University and the IHL Board are arms of the State of Mississippi, and complete diversity of citizenship does not exist. This Court lacks judicial authority over and should dismiss this action.

Federal courts have original jurisdiction over disputes if the matter in controversy exceeds \$75,000 and is between citizens of different States.<sup>10</sup> Jurisdiction based on diversity of

---

<sup>5</sup> *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994)).

<sup>6</sup> *Home Builders Ass’n, Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5<sup>th</sup> Cir. 1998).

<sup>7</sup> *Smith v. Leflore Cnty.*, 4:14cv127, 2015 U.S. Dist. LEXIS 128533 at \*3, 2015 WL 5655830 (N.D. Miss. September 24, 2015).

<sup>8</sup> *Ramming v. U.S.*, 281 F.3d 158, 161 (5<sup>th</sup> Cir. 2001).

<sup>9</sup> Complaint, ¶ 6.

<sup>10</sup> 28 U.S.C. § 1332(a)(1).

citizenship requires complete diversity between all plaintiffs and all defendants.<sup>11</sup> However, “[i]t is well established that a state is not a ‘citizen’ for purposes of diversity jurisdiction.”<sup>12</sup> The same rule applies if the party is a state agency operating as an alter ego of the state.<sup>13</sup> To determine alter ego status, courts employ the same analysis used to determine Eleventh Amendment immunity.<sup>14</sup> If a party is a state’s alter ego, diversity jurisdiction does not exist.

Like other Mississippi public universities, the University of Mississippi is an “arm of the State of Mississippi” immune from suit under the Eleventh Amendment.<sup>15</sup> The same is true for the IHL Board.<sup>16</sup> For this reason, the University and the IHL Board are alter egos of the State and not “citizens” for diversity jurisdiction purposes.

Nutt alleged diversity jurisdiction as the lone basis for filing his action in this Court. Diversity of citizenship does not exist, and this Court lacks judicial authority over this dispute. This Court should dismiss this action.

## **II. The Eleventh Amendment to the U.S. Constitution bars Nutt’s claims against the University and the IHL Board.**

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the

---

<sup>11</sup> *Strawbridge v. Curtis*, 7 U.S. (3 Cranch) 267 (1806).

<sup>12</sup> *Tradigain, Inc. v. Miss. St. Port Auth.*, 701 F.2d 1131, 1132 (5<sup>th</sup> Cir. 1983) (citing *Moor v. Alameda Cnty.*, 411 U.S. 693, 717 (1973)); *Hood v. AstraZeneca Pharm., LP*, 744 F.Supp.2d 590, 597 (N.D. Miss. 2010) (citing *Stone v. South Carolina*, 117 U.S. 430, 433 (1886)) (“[A] state cannot in the nature of things, be a citizen of any state.”).

<sup>13</sup> *Tradigain*, 701 F.2d at 1132.

<sup>14</sup> *Id.*; see also *Univ. of South Al. v. American Tobacco Co.*, 168 F.3d 405, 411-12 (11<sup>th</sup> Cir. 1999) (finding University of South Alabama not “citizen” for diversity jurisdiction purposes); *Abdulla v. Univ. of Ark. Little Rock*, 930 F.Supp.2d 138, 140-41 (D.D.C. 2013) (holding that, because Eleventh Amendment immunity applied, University of Arkansas also not “citizen” for diversity jurisdiction purposes).

<sup>15</sup> *Kermode v. Univ. of Miss. Med. Ctr.*, 496 Fed. Appx. 483, 488 (5<sup>th</sup> Cir. 2010); *Wigginton v. University of Mississippi*, 3:15cv93, 2016 WL 5745694 at \*3 (N.D. Miss. Sept. 30, 2016).

<sup>16</sup> *Jagnandan v. Giles*, 538 F.2d 1166, 1173-76 (5<sup>th</sup> Cir. 1976); *Yul Chu v. Miss. St. Univ.*, 901 F.Supp.2d 761, 772 (N.D. Miss. 2012).

United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.<sup>17</sup>

“It is axiomatic that ‘absent waiver by the State or valid congressional override, the Eleventh Amendment bars a damages action against a State in federal court.’”<sup>18</sup> This far-reaching immunity bars all actions against a state and its departments, whether the relief sought is injunctive, declaratory or monetary.<sup>19</sup> As already discussed, the University and the IHL Board are arms of the state. For that reason, they are immune from suit under the Eleventh Amendment.<sup>20</sup> Congress has not abrogated this immunity for common law claims for breach of contract or breach of the duty of good faith and fair dealing. The Mississippi legislature has specifically preserved Eleventh Amendment immunity when it made a limited waiver of sovereign immunity under the Mississippi Tort Claims Act.<sup>21</sup>

This Court lacks jurisdiction over the claims against the University and the IHL Board.

### CONCLUSION

Nutt has attempted to create jurisdiction where none exists by misrepresenting the citizenship of the University of Mississippi and the IHL Board. As a court of limited jurisdiction, this Court should dismiss this action in its entirety. Alternatively, this Court should dismiss the claims against the University and the IHL Board based on their Eleventh Amendment immunity.

---

<sup>17</sup> U.S. Const. amend. XI.

<sup>18</sup> *Wigginton*, 2016 WL 5745694 at \*3 (citing *Kentucky v. Graham*, 473 U.S. 159, 169 (1985)).

<sup>19</sup> *Carpenter v. Miss. Valley St. Univ.*, 807 F.Supp.2d 570, 580 (N.D. Miss. 2011) (citing *Pennhurst St. Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100-01 (1984)).

<sup>20</sup> Arkansas’s public universities have the same immunity, as do public universities across the country. *Emrit v. Univ. of Ark.*, 5:16cv5326, 2017 U.S. Dist. LEXIS 19800 at \*\* 3-4 (W.D. Ark. Feb. 13, 2017); *InfoMath, Inc. v. Univ. of Ark.*, 633 F.Supp.2d 674, 677-78 n. 13 (E.D. Ark. 2007).

<sup>21</sup> Miss. Code Ann. § 11-46-5(4) (“Nothing contained in this chapter shall be construed to waive the immunity of the state from suit in federal court guaranteed by the Eleventh Amendment to the Constitution of the United States.”); see also *Smith*, 2015 U.S. Dist. LEXIS 128533 at \*\*4-5.

THIS, the 27<sup>th</sup> day of July, 2017.

Respectfully submitted,

**UNIVERSITY OF MISSISSIPPI AND MISSISSIPPI BOARD OF  
TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING**

/s/ J. Cal Mayo, Jr.

J. Cal Mayo, Jr. (MB No. 8492)  
Paul B. Watkins, Jr. (MB No. 102348)  
Mayo Mallette PLLC  
Post Office Box 1456  
Oxford, Mississippi 38655  
Tel: (662) 236-0055  
cmayo@mayomallette.com  
pwatkins@mayomallette.com

/s/ Paul H. Stephenson, III

Paul H. Stephenson, III  
Watkins & Eager PLLC (MB No. 7864)  
Post Office Box 650  
Jackson, Mississippi 39205  
Tel: (601) 965-1900  
pstephenson@watkinseager.com

ATTORNEYS FOR THESE DEFENDANTS

**CERTIFICATE OF SERVICE**

I, J. Cal Mayo, Jr., one of the attorneys for Defendants University of Mississippi and Mississippi Board of Trustees of State Institutions of Higher Learning, do certify that I have electronically filed this document in the ECF system with the Clerk of the Court which sent notification of the filing to all attorneys of record.

THIS, the 27<sup>th</sup> day of July, 2017.

/s/J. Cal Mayo, Jr.  
J. CAL MAYO, JR.