IN THE FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO.: 1D2024-2386
L.T. CASE NO.: 2023-CA-2860

ATLANTIC COAST CONFERENCE,

Appellant,

v.

FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES,

Appellee.

INITIAL BRIEF

JAMES P. COONEY, III
SARAH MOTLEY STONE
PATRICK GRAYSON SPAUGH
WOMBLE BOND DICKINSON (US) LLP
301 S. College St., Suite 3500 Charlotte, NC 28202
Telephone: 704-331-4900
Jim.Cooney@wbd-us.com
Sarah.Stone@wbd-us.com
Patrick.Spaugh@wbd-us.com

ALAN LAWSON (FBN 709591)
PAUL C. HUCK, JR. (FBN 968358)
JESSICA SLATTEN (FBN 27038)
RAYMOND F. TREADWELL (FBN 93834)
ROBERT E. MINCHIN III (FBN 1033022)
LAWSON HUCK GONZALEZ, PLLC
215 South Monroe Street, Suite 320
Tallahassee, FL 32301
Telephone: 850-825-4334
alan@lawsonhuckgonzalez.com
paul@lawsonhuckgonzalez.com
jessica@lawsonhuckgonzalez.com
ray@lawsonhuckgonzalez.com
bob@lawsonhuckgonzalez.com

Counsel for Atlantic Coast Conference

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other

INTRODUCTION

This contract case arises from a dispute over the parties' respective rights, duties, and obligations under North Carolina contracts governed by North Carolina law. All contracts were entered through a university's voluntary membership in the Atlantic Coast Conference ("ACC" or "Conference"), a North Carolina unincorporated nonprofit association governed by North Carolina law.[1] All claims arise from alleged activities that occurred—if at all—in North Carolina. Yet the Florida State University Board of Trustees ("FSU") insists that this case is at home in Florida. It is not. None of FSU's allegations subject the Conference to the long-arm jurisdiction of Florida courts. The ACC does not operate a business or business venture in Florida. It has no office or agency

[1] The ACC is the most successful intercollegiate athletic conference in the United States by many measures. In the two years prior to this action, the ACC led all conferences with twenty NCAA championships. *See* App'x at 374. In the thirty years prior to this action, the ACC won more NCAA Men's March Madness championships than any other conference, and the ACC places second among all conferences in College Football Playoff national championships. *See id.* Academically, the Conference has led all NCAA Football Bowl Subdivision conferences with the best average *U.S. News and World Report* ranking for the past seventeen years. *See id.*

in Florida. And FSU's alleged harms in its nine-count complaint for a declaratory judgment *about North Carolina contracts* do not arise out of any activity that is alleged to have occurred in Florida or that the Conference is obligated to perform in this state. Subjecting the ACC to personal jurisdiction in Florida also would violate due process. For these reasons, and because there are no other bases on which the ACC is subject to the long-arm statute, Florida courts lack personal jurisdiction over the Conference in this case.

The trial court, however, found that FSU's Second Amended Complaint ("SAC") sufficiently pleaded specific jurisdiction under the long-arm statute. To close the loop between FSU's pleadings and Florida law, the trial court ignored fatal deficiencies in the SAC—even finding facts FSU never alleged. It also misconstrued the facts presented in the affidavits the parties submitted on the question of personal jurisdiction and propounded a novel standard under which long-arm jurisdiction attaches when a Florida court has a unique interest in a case. Because FSU has not sufficiently pleaded specific jurisdiction—and cannot amend its complaint for a *third* time to do so—this Court should reverse and remand for dismissal.

STATEMENT OF THE CASE AND FACTS

The ACC is a North Carolina unincorporated nonprofit association comprising eighteen member institutions that participate in athletic competitions sponsored by the Conference, three of which—the University of California Berkeley, Stanford University, and Southern Methodist University—have joined since this litigation began. *See* App'x at 366, 375. Its headquarters and principal place of business is in Charlotte, Mecklenburg County, North Carolina. *See id.* at 367. Since its inception in 1953, the Conference has continuously maintained its headquarters and principal place of business in North Carolina. *See id.* The ACC is governed by a Constitution supplemented by a set of Bylaws, both of which are North Carolina contracts. *See id.* at 279, 316. The ACC Constitution governs the process by which a member may withdraw or resign from the Conference. *See id.* at 282. Among other provisions, the ACC Constitution imposes a notice requirement and a withdrawal payment on members that leave the Conference. *See id.*

FSU voluntarily ratified the ACC Constitution on July 1, 1991, and its athletic programs have competed as full members of the

Conference for more than thirty years. *See id.* at 368, 606. During this time, FSU's President has actively governed as a member of the ACC's Board of Directors, and its leaders and coaches have continuously and systematically played an active role in the North Carolina–based administration of ACC affairs. *See id.* at 368–69. FSU frequently travels to North Carolina to participate in athletic competitions against other ACC members—four of which are based in North Carolina—and ACC-sponsored and administered championship events. *See id.* at 371.

One of the ACC's primary roles as an intercollegiate athletic conference is to negotiate collective media agreements on behalf of its members. To this end, the ACC has partnered with ESPN to broadcast its members' athletic competitions. *See id.* at 370–71. To ensure the stability and predictability necessary to secure the best possible agreement, all ACC members irrevocably transferred their long-term media rights to the Conference for bundling and sale to ESPN and made a corresponding contractual promise to take no action that would "affect the validity and enforcement of the Rights granted to the Conference under this Agreement." *Id.* at 296. The Grant of Rights was signed first by all members, including

FSU, with the last act of formation being signature by ACC Commissioner John D. Swofford in Greensboro, North Carolina, on April 22, 2013. *See id.* at 298, 607. FSU and the other ACC members later entered an Amended Grant of Rights Agreement, which likewise was finalized when Mr. Swofford signed it in Greensboro, North Carolina. *See id.*

FSU has reaped substantial benefits from the Grant of Rights and its resultant media agreements to the tune of hundreds of millions of dollars. *See id.* Nevertheless, as the landscape of college athletics shifted, members of FSU's Board of Trustees began to express dissatisfaction with the amount of money flowing to FSU under the ACC's agreements with ESPN, in contrast with revenue FSU speculates it would receive if it abandoned its contractual promise to the ACC and its fellow Conference members, breached its North Carolina contract, succeeded in using Florida's courts to abrogate its long-term "irrevocable" contractual commitments in the eighteen-party Grant of Rights, withdrew from the ACC, and joined another conference. *See id.*

Late last year, FSU's dissatisfaction culminated in a falsely declared "emergency" meeting of its Board of Trustees where it

would vote to authorize a lawsuit against the ACC that would violate its express promise in the Grant of Rights by seeking to have it declared invalid and unenforceable.[2] *Id.* When the meeting was announced and FSU's intentions were made clear, the ACC acted to protect itself and its other members by suing FSU in the North

[2] FSU's plan was not to file a notice of withdrawal and abide by its obligations under the agreements it signed. Instead, FSU planned to file a declaratory judgment lawsuit seeking to invalidate its promises and secretly secured support for it in advance of the Board of Trustees meeting held on December 22, 2023, after the university had shut down for the Christmas holidays. The only rational explanation for this deceptive charade is that FSU hoped to catch the ACC off guard so it could deprive the nonbreaching party of its choice of forum for the litigation. This practice is disfavored under Florida law, *see Deluca v. Hislop*, 868 So. 2d 1254, 1258 (Fla. 4th DCA 2004) (characterizing a "preemptive filing of a declaratory judgment action" by the damaging party as "at best, a defensive maneuver" and holding that the "presumption given to a plaintiff's choice of a forum carries little weight" where the damaging party "chooses a forum with a minimal connection to the cause of action"); North Carolina law, *see Coca-Cola Bottling Co. Consol. v. Durham Coca-Cola Bottling Co.*, 541 S.E.2d 157, 164 (N.C. App. 2000) (holding that the damaged party should not be "deprived of its right to choose the forum and time of suit" by a declaratory judgment action filed by the damaging party "as a strategic means of obtaining a more preferable forum"); and federal law, *see BASF Corp. v. Symington*, 50 F.3d 555, 558 (8th Cir. 1995) (holding that courts should ensure that a declaratory judgment action is "not motivated by forum-shopping" by the damaging party and condemning declaratory judgment suits "aimed solely at wresting the choice of forum" from the damaged party), and generally is not sanctioned or rewarded by any court.

Carolina Business Court.[3] *See id.* at 245. Specifically, the ACC sought a declaration of its rights under the Grant of Rights. *See id.* Twenty-nine minutes after being served with the ACC's complaint in the North Carolina action, FSU filed suit in Leon County Circuit Court seeking a declaratory judgment as to the validity of the Grant of Rights and the ACC Constitution—both North Carolina multiparty contracts entered by all Conference members. *See id.* at 9. The ACC subsequently amended its complaint to add claims related to the ACC Constitution. *See id.* at 410–16.

After filing amended complaints, each party moved to dismiss the other's action. In North Carolina, FSU asserted among other things that it had not waived its sovereign immunity such that it was subject to being sued in that state. *See id.* at 540. Pointedly, FSU did not contest that it was subject to personal jurisdiction in North Carolina as a result of its activities there; rather, it simply claimed that as a sovereign it could be sued outside Florida only

[3] Despite its cloak-and-dagger plot to ambush the ACC, FSU had the chutzpah to argue that it was the Conference—not FSU—that engaged in improper forum-shopping by filing suit *as the party damaged by FSU's breach*. This false assertion was accepted by the trial court and is the subject of extensive argument in the ACC's pending Petition for Writ of Certiorari before this Court.

through an act of the legislature granting permission to do so. *See id.* at 570. Based on statute and precedent, the North Carolina court denied FSU's motion, finding that jurisdiction attached to FSU in that action because it effectively consented to suit in North Carolina under federal law by joining the ACC, by continuing as a member with the full knowledge that it could be sued by the Conference for claims of the Conference, by actively participating in the ACC's management, by entering the North Carolina–based contracts, by engaging in substantial commercial activities in North Carolina, and by availing itself of the rights and benefits of membership in an unincorporated nonprofit association under North Carolina law. *See id.* at 561–71. FSU has appealed that decision, and the matter is stayed pending resolution by the North Carolina Supreme Court.[4]

In the Florida case, the ACC argued that the trial court lacked subject-matter jurisdiction over some of FSU's declaratory claims because they were not ripe and that FSU had failed to plead "a

[4] Under North Carolina law, an appeal based on jurisdiction over a party affects a substantial right and not only is immediately appealable but also stays all proceedings in the trial court.

legally cognizable theory for establishing that [the trial c]ourt has personal jurisdiction over the ACC." *Id.* at 609. In its First Amended Complaint ("FAC"), FSU had made a cursory jurisdictional pleading, alleging only that "[b]ecause the ACC is a citizen of every jurisdiction in which its members are citizens, and two ACC members are Florida citizens, the [trial c]ourt has personal jurisdiction over it." *Id.* at 50. In so arguing, FSU confused federal diversity jurisdiction under 28 U.S.C. section 1332 with whether an entity is "at home" for personal jurisdiction purposes under the Due Process Clause and Florida's long-arm statute. After briefing and a hearing, the trial court summarily rejected the ACC's ripeness arguments as to subject-matter jurisdiction but dismissed FSU's FAC "on the ground that the allegations about personal jurisdiction should be pleaded with more specificity and directness." *Id.* at 747.

In its nine-count SAC, FSU devoted significantly more energy to its jurisdictional pleading, spending more than 3,000 words—in lieu of the fifty-five in its FAC—on jurisdiction. *See id.* at 110–21. FSU reraised its allegation that the trial court has general personal jurisdiction over the ACC—again, based on factors relevant only to federal diversity jurisdiction—but added that the trial court should

exercise specific personal jurisdiction over the Conference under Florida's long-arm statute, section 48.193, Florida Statutes. *See id.* at 110–11. Specifically, FSU alleged that the Conference is subject to subsection 48.193(1)(a)1 because it "operates, conducts, engages in, and carries on business in Florida" by (1) "market[ing] and collect[ing] millions of dollars for" FSU's and Miami's media rights; (2) "operating its own branded television network (the 'ACC Network') in Florida"; (3) "host[ing] its annual spring conference meeting in Amelia Island, Florida"; and (4) partnering with "five ACC Bowl games played in Florida each year." *See id.* at 111–13. FSU also alleged that the ACC is subject to subsections 48.193(1)(a)2 ("tortious act within this state"), (1)(a)6 ("causing injury to persons or property within the state arising out of an act or omission by the defendant outside the state"), and (1)(a)7 ("[b]reaching a contract in this state by failing to perform acts required by the contract to be performed in this state"). *Id.* at 114–15.

Despite FSU's best effort, the SAC still failed to allege facts sufficient to bring the ACC within the provisions of the long-arm statute. The ACC thus moved to dismiss the SAC on jurisdictional grounds, reraising its argument that the trial court lacked subject-

matter jurisdiction over some of FSU's declaratory judgment claims. *See id.* at 749, 763. In support of its jurisdictional arguments, the ACC included the affidavit of Benjamin Tario, the Conference's Deputy Commissioner and Chief Financial Officer. *See id.* at 786 ("Tario Affidavit").[5]

In its response brief, FSU argued for the first time that—in addition to the "business or business venture" allegation pleaded in the SAC—the Conference is subject to subsection 48.193(1)(a)1 because it has an "office or agency" in the state owing to the production and broadcast facilities the university built, owns, and operates on its campus. *Id.* at 805–06. FSU's response included the affidavits of Kirby Kander, FSU's Director of Seminole Productions, *see id.* at 820 ("Kander Affidavit"); Cindy Hartmann, FSU's Deputy Director of Athletics for Administration, *see id.* at 855

[5] The Tario Affidavit explained the ACC's operational structure, the relationship between the Conference and its members, the relationship between the Conference and the independent bowl games it partners with, the relationship between the Conference and ESPN, and the relationship between ESPN and the ACC Network, a cable channel created, owned, and operated by ESPN to showcase the athletic competitions of ACC members. *See* App'x at 786–96.

("Hartmann Affidavit"), and John Londot, one of FSU's attorneys, *see id.* at 1019 ("Londot Affidavit").[6]

After briefing and a hearing, the trial court rendered its Order Denying ACC's Motion to Dismiss the Second Amended Complaint and Lifting Discovery Stay ("Order"). *See id.* at 1. Summarily rejecting—once again—the ACC's arguments regarding subject-matter jurisdiction, the trial court determined that FSU satisfied personal jurisdiction this time around by "alleg[ing] sufficient statutory references as well as sufficient facts to bring this case within the ambit of subsections 48.193(1)(a)1, (1)(a)2, (1)(a)6, and (1)(a)7, Florida Statutes." *Id.* at 3.

As to subsection (1)(a)1, the trial court found "that the ACC is in the business or a business venture of exercising [FSU's and

---

[6] The Kander Affidavit explained FSU's broadcast operations and the requirements imposed by ESPN and the Conference. *See* App'x at 820–28. The Hartmann Affidavit presented details about the ACC's involvement in scheduling and officiating FSU's home intraconference competitions, FSU's athletic facilities, FSU's broadcasts, the ACC's partnerships with five bowl games, the ACC's meeting schedule, and the ACC's merchandise licensing agreement with Fanatics, an online retailer based in Jacksonville, Florida. *See id.* at 855–61. The Londot Affidavit provided some quotes from the ACC's case in North Carolina and supplied some excerpts and screenshots from the websites of the ACC and Fanatics. *See id.* at 1019–25.

Miami's] home game media rights, and the ACC uses those media rights as a source of programming for the ACC Network and licensing to ESPN." *Id.* The trial court further determined that "the ACC exercise[s] significant control over the conduct, broadcast, and distribution of their home games in Florida, along with bowl games in Florida," and engages in "the selling of related merchandise." *Id.* The trial court found that the Tario Affidavit "admits that the ACC, FSU, and Miami conduct and produce sports events originating from the home games of FSU and Miami, and the ACC authorizes broadcasts through ESPN and the ACC Network, among others." *Id.* at 4. The trial court further determined that FSU "met its burden under susbsection [sic] 48.193(1)(a)1 by alleging [the Conference] has an office or agency in this state." *Id.*

As to the remaining provisions of the long-arm statute, the trial court summarily found "that the FSU Board has made sufficient factual allegations establishing long-arm jurisdiction under [s]ubsections 48.193(1)(a)2, (1)(a)6, and (1)(a)7, which the ACC has insufficiently rebutted by way of affidavit." *Id.*

Because the trial court "[did] not find the ACC is a citizen or resident of Florida, the findings of specific jurisdiction require[d it]

to determine whether federal constitutional due process [was] satisfied." *Id.* "With respect to whether the exercise of personal jurisdiction comports with traditional notions of fair play," said the trial court, the SAC met the federal due process requirements "through the ACC being engaged in a business with both Miami and FSU in the state of Florida and with the selling of certain FSU sports apparel. Further, Florida has a unique interest in this case, given the issues of sovereign immunity that this case presents." *Id.* at 5–7.

The trial court's Order (1) misapprehended the parties' affidavits in support of their arguments as to personal jurisdiction; (2) erroneously determined that the ACC conducts a business or business venture in Florida; (3) incorrectly found that the ACC has an office or agency in the state notwithstanding FSU's failure to plead that statutory provision in its SAC; and (4) wrongly created a new category for specific jurisdiction—i.e., whether Florida has a "unique interest" in the subject matter of the lawsuit.

SUMMARY OF THE ARGUMENT

This case cannot proceed because the trial court lacks subject-matter jurisdiction over some of FSU's declaratory judgment

claims and personal jurisdiction over the Conference. As for subject-matter jurisdiction, FSU's claims concerning its obligation to make a withdrawal payment upon withdrawing from the ACC are not ripe for adjudication. Instead, those claims amount to requests for an impermissible advisory opinion by the trial court because they are based on a hypothetical scenario where FSU may withdraw from the Conference at an unspecified future date—a withdrawal FSU admitted has not occurred and may never occur. As for personal jurisdiction, the trial court's findings that the ACC is subject to jurisdiction under Florida's long-arm statute have no basis in fact or law, there are no alternative bases for the trial court to establish personal jurisdiction over the Conference, and subjecting the ACC to jurisdiction under Florida's long-arm statute would violate due process. Accordingly, the trial court's Order must be reversed with instructions to dismiss this case with prejudice.

STANDARD OF REVIEW

"[S]ubject matter jurisdiction may be raised at any time, including on appeal." *Tejeda v. City of Hialeah/Sedgwick Claims Mgmt. Servs., Inc.*, 332 So. 3d 13, 14 (Fla. 1st DCA 2021). "A court's subject matter jurisdiction, or its power to hear a

controversy, is generally tested by the good-faith allegations in the complaint . . . ." *Seven Hills, Inc. v. Bentley*, 848 So. 2d 345, 350 (Fla. 1st DCA 2003). This Court reviews issues of subject-matter jurisdiction de novo. *See id.*

As for personal jurisdiction, this Court has jurisdiction over the trial court's interlocutory Order under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(i). This Court reviews de novo the trial court's determination of whether jurisdictional allegations are legally sufficient. *See Intego Software, LLC v. Concept Dev., Inc.*, 198 So. 3d 887, 891–92 (Fla. 1st DCA 2016).

ARGUMENT

The trial court lacks subject-matter jurisdiction over FSU's claims for declaratory relief concerning FSU's obligation to make a withdrawal payment should it choose to withdraw from the Conference at some unspecified time in the future because those claims are not ripe. The trial court lacks personal jurisdiction over the Conference because FSU's allegations do not bring it within the ambit of Florida's long-arm statute, there are no other bases to subject the ACC to personal jurisdiction in Florida, and exercising personal jurisdiction over the ACC would violate due process.

I. FSU's declaratory judgment claims are not ripe.

The trial court lacks subject-matter jurisdiction over FSU's requests for declaratory relief regarding the withdrawal provisions of the ACC Constitution because those claims are unripe. FSU's SAC thus fails to plead a cognizable claim for declaratory relief.

For more than seventy years, Florida law has required that before a claim for declaratory relief can proceed,

> it should be clearly made to appear that there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts, that some immunity, power, privilege or right of the complaining party is dependent upon some facts or the law applicable to the facts . . . and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

May v. Holley, 59 So. 2d 636, 639 (Fla. 1952); *see also S. Riverwalk Invs., LLC v. City of Fort Lauderdale*, 934 So. 2d 620, 622 (Fla. 4th DCA 2006) (quoting *May*). "Florida courts will not render, in the form of a declaratory judgment, what amounts to an advisory opinion at the instance of parties who show merely the possibility of legal injury on the basis of a hypothetical state of facts which have

not arisen and are only contingent, uncertain, and rest in the future." *Santa Rosa County v. Admin. Comm'n Div. of Admin. Hearings*, 661 So. 2d 1190, 1193 (Fla. 1995) (cleaned up); *cf. Guttenberg v. Smith & Wesson Corp.*, 357 So. 3d 690, 697 (Fla. 4th DCA 2023) (affirming dismissal of a complaint that sought a declaration "on whether . . . *potential* tort claims, *if filed*, would constitute a violation of the statute and subject [the plaintiffs] to liability" as improperly seeking an advisory opinion); *Breakers of Fort Walton Beach Condos., Inc. v. Atl. Beach Mgmt., Inc.*, 552 So. 2d 274, 276 (Fla. 1st DCA 1989) ("[A]sking the court to determine whether [the plaintiff] has 'proven circumstances' [allowing the plaintiff to] *safely* terminate the contract under its express terms, or in the alternative, to determine whether the contract is unfair and unreasonable so that [the plaintiff] may *safely* terminate the contract [under a statute]" is "merely seeking an *advisory opinion* by the trial court" such that there is "no cause of action." (footnote omitted)).

FSU's declaratory judgment claims as to the ACC Constitution's withdrawal provisions boil down to requests for exactly the sort of advisory opinion forbidden by these seven

decades' worth of precedent. Indeed, in its FAC, FSU claimed that it sought only "guidance from the Court" to enable its Board of Trustees to determine, at some unspecified points in the future, "whether" it should withdraw from the Conference. App'x at 49.

In the SAC, FSU still seeks a nonjusticiable advisory opinion about the construction of contract provisions that are only hypothetically implicated by the present state of facts that FSU has pleaded. Nowhere in its SAC, which weighs in at nearly fifty pages, does FSU allege an actual or intended withdrawal[7] or explain the existence of any uncertainty preventing its withdrawal. Nor does it allege that its actions or decision-making has been restricted or constrained by the withdrawal provisions of the ACC Constitution. Accordingly, there is no "bona fide, actual, present practical need for the declaration"; the declaration does not "deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts"; and FSU has no "immunity, power, privilege or right" that "is dependent upon some facts or the law applicable to the facts." *May*, 59 So. 2d at 639. FSU asks the trial court to

[7] FSU has pointedly and repeatedly claimed that, notwithstanding this lawsuit, it has *not* withdrawn from the Conference.

"render, in the form of a declaratory judgment, what amounts to an advisory opinion" upon "show[ing] merely the possibility of legal injury on the basis of a hypothetical" departure from the Conference. *Santa Rosa County*, 661 So. 2d at 1193. Florida courts are powerless to offer such an opinion.

Put simply, because FSU has not alleged why the withdrawal provisions matter to a real state of facts, FSU's SAC fails to plead a cognizable claim for declaratory relief. Accordingly, the trial court lacks subject-matter jurisdiction over FSU's declaratory judgment claims regarding the withdrawal provisions of the ACC Constitution.

II. FSU's allegations fail to bring the ACC within the ambit of the long-arm statute.

"A plaintiff bears the burden of pleading a basis for jurisdiction under the Florida long-arm statute, section 48.193." *White v. Discovery Commc'ns, LLC*, 365 So. 3d 379, 382 (Fla. 1st DCA 2023) (citing *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989)). "Tracking the language of section 48.193 without pleading supporting facts is enough to meet this initial burden." *Id.* However, "Florida's long-arm statute is to be strictly construed, in order to guarantee compliance with due process

requirements." *LaFreniere v. Craig-Myers*, 264 So. 3d 232, 237 (Fla. 1st DCA 2018) (quotation marks omitted).

"A defendant wishing to contest the allegations of the complaint concerning jurisdiction or to raise a contention of minimum contacts must file affidavits in support of his position. The burden is then placed upon the plaintiff to prove by affidavit the basis upon which jurisdiction may be obtained." *Venetian Salami*, 554 So. 2d at 502 (citation omitted). To determine whether a defendant's activities subject it to the long-arm statute, such activities "must be considered collectively and show a general course of business activity in the State for pecuniary benefit." *Dinsmore v. Martin Blumenthal Assocs.*, 314 So. 2d 561, 564 (Fla. 1975). Relevant factors "include: (1) the presence and operation of an office in Florida; (2) the possession and maintenance of a license to do business in Florida; (3) the number of Florida clients served; and (4) the percentage of overall revenue gleaned from Florida clients." *Stonepeak Partners, LP v. Tall Tower Cap., LLC*, 231 So. 3d 548, 555 (Fla. 2d DCA 2017) (quoting *RMS Titanic, Inc. v. Kingsmen Creatives, Ltd.*, 579 F. App'x 779, 783 (11th Cir. 2014)) (cleaned up).

FSU failed to meet its initial burden even under the low bar set by *Venetian Salami*, and the ACC submitted affidavits showing that its de minimis activities in Florida do not bring it within the ambit of Florida's long-arm statute. The trial court's Order is due to be reversed.

A. The ACC does not operate a business or business venture in Florida.

Subsection 48.193(1)(a)1 provides for specific personal jurisdiction over a defendant "for any cause of action arising from . . . [o]perating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state." In its SAC, FSU invoked only the "business or business venture" provision, not the "office or agency" provision, alleging that "the ACC operates, conducts, engages in, and carries on business in Florida" in four ways: (1) marketing and collecting tens to hundreds of millions of dollars for its two Florida members' media rights to broadcast their controlled games, including through production facilities located at both campuses; (2) defining its Florida activities as a "joint venture" and operating the ACC Network as a joint venture with ESPN; (3) hosting its annual spring

meeting in Amelia Island, Florida; and (4) partnering with five annual football bowl games in Florida. *See* App'x at 111–13. These allegations do not subject the ACC to Florida's long-arm jurisdiction because they fail to plead the required statutory connection between any cause of action in this lawsuit and the ACC's alleged business activities in this state. At any rate, the Tario Affidavit provided by the Conference establishes that the ACC is not operating a business or business venture in Florida.

1. FSU's allegations fail to show the statutory connection required to establish long-arm jurisdiction.

FSU's allegations fail at step one of *Venetian Salami*, which requires that the complaint "alleges sufficient jurisdictional facts to bring the action within the ambit of the [long-arm] statute." 554 So. 2d at 502. To establish specific jurisdiction based on a "cause of action arising from" operating a business or business venture in Florida, § 48.193(1)(a), Fla. Stat., a plaintiff must show "a causal connection between the defendant's activities in Florida and the plaintiff's cause of action, a requirement known as 'connexity,'" *Stonepeak*, 231 So. 3d at 552 (quoting *Canale v. Rubin*, 20 So. 3d 463, 466 (Fla. 2d DCA 2009)). In other words, a plaintiff seeking to

hale an out-of-state defendant into Florida court must connect "the cause of action" to the defendant's "*action* that falls under the long-arm statute." *Schumacher Grp. of Del., Inc. v. Dictan*, 327 So. 3d 404, 409 (Fla. 3d DCA 2021) (quotation marks omitted).

The SAC does not do this. Contrary to the text of subsection 48.193(1)(a)1, FSU never identifies which—if any—of its nine counts against the ACC in this case purportedly arise from the Conference's alleged acts of operating, conducting, engaging in, or carrying on a business or business venture in Florida. Six of FSU's counts ask the trial court to interpret the provisions of contracts that were executed in North Carolina and are governed by North Carolina law. *See* App'x at 145–46, 148–54. Only two are based on "actions" of any sort that potentially could "fall[] under the long-arm statute."[8] *Dictan*, 327 So. 3d at 409. Count III alleges that the ACC "materially breached its constitution and bylaws" by (1) initiating a lawsuit against FSU, (2) amending its agreement with ESPN,

[8] The remaining count asks the trial court to issue a declaration that FSU is not subject to the personal jurisdiction of North Carolina courts because it is a Florida sovereign entity. *See* App'x at 147–48. Although irrelevant to the matter at hand, this count is fatally deficient because one state's court cannot issue a binding order determining the jurisdiction of another state's court.

(3) extending an option with ESPN, (4) misrepresenting the scope of the Grant of Rights, (5) expanding the Conference, (6) failing to exploit FSU's media rights and diluting them instead, (7) failing to achieve responsible fiscal management and further fiscal stability, (8) treating FSU as though it had withdrawn from the Conference, (9) maintaining its lawsuit against FSU, (10) failing to give FSU meeting agendas, (11) failing to give FSU draft meeting minutes, and (12) voting in favor of a College Football Playoff model that FSU does not like. App'x at 146–47. Count VII alleges that the Conference "breached its fiduciary duties to FSU" by (1) failing to negotiate competitive media rights agreements and terms, (2) diluting FSU's media rights, and (3) suing FSU. *Id.* at 151–52. FSU does not allege that any of these actions occurred or arose out of the ACC's business activities in Florida. Nor does FSU tie any of them to the four ways it alleges the ACC operates a business in Florida—i.e., marketing games and collecting money from ESPN, operating the ACC Network, meeting at Amelia Island, or partnering with bowl games. *See id.* at 111–13. On the flipside, FSU does not allege that the ACC breached any of the duties naturally arising from those four alleged jurisdictional hooks.

Despite FSU's failure to explain how any of its causes of action "arises from" the ACC's alleged business activity in Florida, the trial court found FSU's allegations sufficient to bring this case within the ambit of Florida's long-arm statute. *See id.* at 2. Specifically, the trial court found that FSU sufficiently alleged "that the ACC is in the business or a business venture of exercising [FSU's] and [Miami's] home game media rights"; that "the ACC uses those media rights as a source of programming for the ACC Network and licensing to ESPN"; that "the ACC exercise[s] significant control over the conduct, broadcast, and distribution of their home games in Florida, along with bowl games in Florida"; and that "the ACC receives substantial revenue from that operation" and "with the selling of related merchandise." *Id.* at 3–4. But the trial court did not explain any connection between that activity and any of FSU's claims. Nor could it.

As for the ACC's activities concerning "home game media rights," FSU transferred those rights under the Grant of Rights. *See id.* at 787. The ACC then bundled FSU's rights with those of its other members and then sold them to ESPN. *See id.* FSU does not allege that anything the ACC did with those rights after receiving

them from FSU—i.e., the bundling, negotiation, and execution of media agreements with ESPN—occurred in Florida as opposed to the Conference's headquarters in North Carolina. Obviously, any cause of action pertaining to the ACC's alleged insufficient performance of any obligation to FSU under those agreements arising from the ACC's business activity in North Carolina would not subject the Conference to Florida's long-arm statute.

As for the supposed "significant control over the conduct, broadcast, and distribution of their home games in Florida, along with bowl games in Florida" and any "selling of related merchandise,"[9] FSU has not alleged that the ACC was somehow deficient in performing those activities or otherwise brought any cause of action arising from them.

FSU's failure to allege the required statutory connection between its causes of action and the ACC's alleged business activity in Florida is only underscored by its own citations to legal authority. FSU cited three cases in support of the proposition that

[9] As discussed below in the context of whether the ACC even has any business activity in Florida, the Conference exercises no such "significant control" and the merchandise at issue is not sold by the ACC.

"[t]he alleged operations far exceed the type of operations by which other entities have been found to be operating a business venture in Florida under section 48.193(1)(a)1." *Id.* at 113–14. Two are factually inapposite,[10] and—as the Conference pointed out in its motion to dismiss the SAC—the other is not a "business or business venture" case at all.[11]

---

[10] In *Kapila v. RJPT, Ltd.*, jurisdiction attached to a Texas firm that invested in a Florida company because the dispute arose out of the investment agreements between the parties, which were Florida contracts. *See* 357 So. 3d 241 (Fla. 2d DCA 2023). Here, FSU's alleged causes of action arise from the provisions of North Carolina contracts governed by North Carolina law and FSU's decision to join and manage a North Carolina association in North Carolina.

In *Sutton v. Smith*, a Michigan partnership that sponsored a Florida golfer was subject to the long-arm statute because the parties had entered a joint business venture "that contemplated and in fact involved significant performance in Florida"—including performance of the activity governed by the provision in dispute. 603 So. 2d 693, 698 (Fla. 1st DCA 1992). No such provisions exist in the North Carolina contracts at issue here. Although the ACC distributes to FSU its portion of Conference revenue—based in part on media rights—FSU has alleged no cause of action arising from any failure by the ACC to distribute such revenue shares or otherwise perform any acts that contractually are required to be performed in Florida. To the contrary, FSU has accepted those payments—for more than a decade—without challenge.

[11] *Golant v. German Shepherd Dog Club of America*, 26 So. 3d 60 (Fla. 4th DCA 2010), turned on the "office or agency" provision of subsection 48.193(1)(a)1—which FSU did not invoke in its SAC—and not the "business or business venture" provision.

Florida law does not ask the ACC to guess what "cause of action" FSU contends supposedly arises from the Conference's alleged acts in Florida; Florida law requires FSU to plead it. *See Highland Stucco & Lime Prods., Inc. v. Onorato*, 259 So. 3d 944, 948 (Fla. 3d DCA 2018) ("Specific jurisdiction . . . is established by pleading specific facts that demonstrate that the defendant's conduct fits within one or more subsections of section 48.193."). Because the SAC fails to do so, FSU has not brought the Conference within the ambit of the long-arm statute.

2. The ACC's alleged Florida activities do not constitute a business or business venture in Florida.

Even if FSU had sufficiently connected its alleged causes of action to the ACC's alleged business activity in Florida—which it did not—the trial court lacks specific personal jurisdiction over the Conference because the ACC's de minimis business activity in Florida does not bring it within the ambit of the long-arm statute. The affidavit provided by the Conference makes clear that all four *Stonepeak* factors militate against finding that the ACC is operating, conducting, engaging in, or carrying on a business or business venture in Florida. *See supra* p. 21. To wit:

- The ACC has no office in Florida.[12] *See* App'x at 788 (explaining that the Conference owns or leases no real estate in Florida, has no bank accounts in Florida, has no telephone number in Florida, has no mailing address in Florida, has no post office box in Florida, and has no employees in Florida other than the Supervisor of Football Officials who maintains no office in Florida and whose job responsibilities are not focused in Florida).
- The ACC has no license to do business in Florida. *See id.* (explaining that the Conference is not registered to do business in Florida, has no license to do business in Florida, has no agent for service of process in Florida, and does not file a tax return in Florida).
- The ACC has no Florida clients. *See id.* at 790 (explaining that the Conference does not regularly solicit sales or the sale of any products into or from Florida and does not regularly market products for sale in Florida).

[12] FSU argued for the first time in its response to the ACC's motion to dismiss that the Conference is subject to the "office or agency" provision of the long-arm statute. The ACC addresses this issue in detail below.

- The ACC gleans no revenue from Florida clients. *See id.*

FSU failed to show in its affidavits that the ACC operates a business in Florida under any of the *Stonepeak* factors. Instead, it attempted to cobble together random facts in the hope that, taken together, they would create a foggy apparition that vaguely resembles a business or business venture in this state.

Specifically, as to the presence of an office, FSU's affidavits establish only that FSU uses *its own* on-campus production facilities to "produce[] and broadcast[] content for the ACC Network and ESPN," *id.* at 821—i.e., cable channels and digital platforms created, launched, and distributed by ESPN, not the ACC, *see id.* at 790. FSU does not allege that the ACC has a single employee who works at FSU's production facility, and the ACC's affidavit establishes that it does not. *See id.* at 788. Rather, FSU itself has admitted that this facility was built by FSU, *see id.* at 820, 822; is owned by FSU, *see id.*; is operated by FSU, *see id.* at 821; and is staffed entirely by employees and students of FSU, *see id.* at 822–23. It is not an office of the Conference.

As to whether the ACC has any clients within the state, FSU seems to imply that online retailer Fanatics' license to sell

merchandise under the banner of the "ACC Official Online Shop" means that the Conference sells merchandise to Florida residents. *Id.* at 1023–25. The Londot Affidavit states that Mr. Londot visited the ACC website; clicked a series of links that led him to Fanatics' ACC Official Online Shop, which displayed a Jacksonville address; purchased an item from the shop, which was delivered to him in Florida; and subsequently received marketing emails. *See id.* But the affidavit does nothing to advance the ball on whether Fanatics' license to use ACC branding subjects the Conference to long-arm jurisdiction under subsection 48.193(1)(a)1. Indeed, the affidavit itself makes clear that Mr. Londot ordered merchandise from Fanatics and that the subsequent marketing communications he received were sent by an entity with a "fanaticsretailgroup.com" email address, rather than an email affiliated with the Conference. *See id.* Accordingly, the affidavit establishes only that Fanatics—and not the Conference—has clients in Florida who shop at and receive marketing materials from Fanatics' ACC Official Online Shop. But even if the affidavit established that Fanatics' Florida clients could somehow be attributed to the Conference, the affidavit fails to identify "the number of Florida clients served" by Fanatics'

ACC Official Online Shop or "the percentage of overall revenue gleaned from Florida clients." *Stonepeak*, 231 So. 3d at 555.

As a matter of public policy, FSU does not seem to have thoroughly contemplated the implications of its theory that the Conference is subject to Florida's long-arm jurisdiction through Fanatics' ACC Official Online Shop. The homepage of FSU's website contains a link labeled "FSU Bookstore." *See* Florida State University, https://www.fsu.edu (last visited Sept. 30, 2024).[13] That link leads to the homepage of the FSU Bookstore, which contains a paragraph stating: "Show off your FSU pride with a wide selection of gifts, accessories, and apparel, including exclusive FSU Nike and lululemon collections. . . . Visit **shopfsu.com** to explore more!" App'x at 1421; FSU Bookstore, https://bookstore.fsu.edu

[13] This paragraph and the next paragraph contain citations to websites—including screenshots presented in the Appendix to this brief—that are not in the trial court record. The Conference requests that this Court take judicial notice of these public websites. *See* § 90.202, Fla. Stat. ("A court may take judicial notice of . . . [f]acts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned."); *Oken v. Williams*, 23 So. 3d 140, 149 n.2 (Fla. 1st DCA 2009) ("Many Florida appellate courts have taken judicial notice of internet materials that cannot be reasonably questioned to support their arguments . . . .") (collecting cases), *quashed on other grounds*, 62 So. 3d 1129 (Fla. 2011).

(last visited Sept. 30, 2024). The "shopfsu.com" link leads to the FSU Store, with a banner reading "FSU Store | Official Retailer of Florida State University." App'x at 1422; FSU Bookstore – Florida State Apparel, Merchandise & Gear, https://www.bkstr.com/floridastatestore/home (last visited Sept. 30, 2024). The bottom of that webpage reveals that the FSU Store is owned and operated by "Follett Higher Education Group" and provides a link to that entity's "Corporate Information." App'x at 1423; FSU Bookstore – Florida State Apparel, Merchandise & Gear, https://www.bkstr.com/floridastatestore/home (last visited Sept. 30, 2024). Clicking on the "Corporate Information" link reveals that Follett Higher Education Group is located in Illinois. *See* App'x at 1424; Homepage – Follett, https://follett.com (last visited Sept. 30, 2024). By FSU's own reasoning, FSU subjected itself to long-arm personal jurisdiction in Illinois by virtue of licensing Follett Higher Education Group to market and sell branded FSU merchandise—including, presumably, to Illinois residents. This Court should not endorse a theory that would subject a sovereign Florida entity to the long-arm jurisdiction of foreign courts based on such a tenuous connection.

Moreover, a quick review of the Fanatics website shows that it licenses merchandise from every major football, basketball, baseball, hockey, soccer, golf, and intercollegiate league in the United States, as well as international soccer clubs and auto racing teams. *See* App'x at 1425; Sports Apparel, Jerseys, Hats, Sports Fan Gear & Collectibles, https://www.fanatics.com (last visited Sept. 30, 2024). Under FSU's theory, all such leagues would be subject to long-arm jurisdiction in Florida because of Fanatics' offices and shipping facilities in Jacksonville, as would each of their constituent members. Again, this Court should not endorse a theory that would bring every one of these schools and teams within the reach of Florida's long-arm statute based on Fanatics' license to sell their branded merchandise.

Notwithstanding the ACC's showing that the Conference does not operate a business in Florida that would bring it within the ambit of the long-arm statute, and FSU's failure to show otherwise, the trial court found that FSU sufficiently alleged "that the ACC is in [a] business or a business venture" in Florida. App'x at 3. The trial court entirely sidestepped the relevant factors under Florida law and determined that the Conference operates a business in the

four specific ways listed *supra* p. 26. *See id.* at 3–4. Aside from the sale of merchandise—which, as discussed *supra* pp. 31–33, was sold by a third party—these activities are wholly unconnected to the *Stonepeak* factors. But even if Florida law recognized these activities as sufficient to subject the ACC to Florida's long-arm jurisdiction, the trial court's determination that the ACC conducts business in Florida is erroneous because its findings misapprehend the facts presented in the SAC and the parties' affidavits.

First, the SAC and the affidavits do not sufficiently establish that the ACC "exercis[es]" FSU's media rights or "uses those media rights as a source of programming for the ACC Network and licensing to ESPN" *in the state of Florida*. *Id.* at 3. Rather, once all Conference members—including FSU—granted their media rights to the Conference in exchange for the added value and stability that resulted from the collective Grant of Rights, the ACC took all actions in the process of bundling, negotiating, and executing agreements with ESPN at its headquarters in North Carolina. And ESPN—not the ACC—makes its programming decisions from its headquarters in Connecticut.

The trial court focused on the fact that the bundled broadcast rights FSU granted in the North Carolina contract to its North Carolina–based Conference pertained to FSU's "home games," which are mainly played in Tallahassee. But even if it were the ACC—and not ESPN—that exercises those rights, the physical location where the grantor of intangible intellectual property rights, through its efforts and with its resources, generates media content cannot legally or logically be attributed to the grantee of those rights under the long-arm statute. This is because the grantee's actions and efforts are only in marketing intangible rights that have no physical existence—and therefore no physical location.

Second, neither the SAC nor the affidavits show that the Conference "exercises significant control over the conduct, broadcast, and distribution of their home games in Florida, along with bowl games in Florida." *Id.* As an initial matter, the SAC lacks any allegations regarding the ACC's "control" over any aspect of FSU's home games. The SAC alleges only that (1) the ACC partnered with ESPN to launch the ACC Network, *id.* at 111; (2) the ACC has partnered with five independently owned and operated bowl games in Florida, *id.* at 113; and (3) FSU has built and

operates production facilities to provide content for the ACC Network and ESPN, *id.* at 118–21. And in FSU's affidavits, the only references to any activity controlled by the Conference are to the ACC's scheduling of games (which is done in North Carolina), *id.* at 858; provision of officials to referee athletic events (which is coordinated from North Carolina), *id.*; oversight and enforcement of rules governing athletic competition (from North Carolina), *id.* at 856; and infrastructure for replay review by Conference officials (located in North Carolina), *id.* at 827.[14]

But even if FSU had alleged any of the other means of "control" to which the affidavits allude, to the extent any of this occurs in Florida, the ACC's "control" touches only a tiny fraction of the myriad activities FSU undertakes in putting on an athletic event, such as building and maintaining its facilities, training its athletes, marketing and promoting events, securing sponsors, selling tickets, leasing luxury boxes, selling concessions,

[14] At the hearing on the ACC's motion to dismiss, the trial court read a long list of conduct requirements from the ACC's policies and procedures for championship events under the misapprehension that that the guidelines were for home athletic events on member campuses. *See* App'x at 1219–20, 1242–46.

coordinating parking, calling plays, conducting the marching band, maintaining security, and managing its overall athletic program. It is, in other words, not "significant," and it certainly does not qualify as "a general course of business activity in the State for pecuniary benefit." *Dinsmore*, 314 So. 2d at 564.

Otherwise, portions of FSU's affidavits conflate the ACC with its members, asserting that the ACC somehow "avail[ed]" itself of FSU's athletic facilities by virtue of FSU playing against teams from other universities in the ACC on its home courts and fields. App'x at 857–58. The remainder of the affidavits repeatedly conflate the ACC with ESPN by exhaustively listing the requirements ESPN places on broadcasts produced by FSU. These allegations are a red herring. The ACC Network is one of the many channels owned and operated by ESPN. FSU apparently stakes its jurisdictional argument on an inference that the letters "ACC" in ESPN's "ACC Network" sufficiently connect the Conference to ESPN's business practices such that ESPN's control and distribution of FSU broadcasts can be attributed to the ACC. There is no basis for this sort of "joint venture once removed" in Florida law. The ACC is an independent entity whose own activities—and not those of its

members and media partners—must be considered when determining long-arm jurisdiction.

As for the trial court's finding that "Mr. Tario admits that the ACC, FSU, and Miami conduct and produce sports events originating from the home games of FSU and Miami," *id.* at 2, nothing in the Tario Affidavit admits anything of the sort. Indeed, this admission is nowhere to be found in the affidavit, and the trial court failed to cite any page or paragraph where such an admission occurred. If anything, the Tario Affidavit disavows that the ACC shares in the business side of FSU's athletic program, *see id.* at 788, stating only that the ACC sold the home-game broadcast rights granted by FSU to ESPN, *see id.* at 787.

Third, as for the sale of merchandise, as discussed *supra* pp. 31–33, the affidavits show only that Fanatics—not the Conference—sells and markets FSU-branded merchandise to Florida consumers.

B. The ACC has no office or agency in Florida.

The trial court found that FSU "met its burden under susbsection [sic] 48.193(1)(a)1 by alleging [the Conference] has an office or agency in this state." App'x at 4. But this finding was in error because the face of the SAC itself reveals that FSU made no

such allegation at all. Although FSU quoted the full language of subsection 48.193(1)(a)1, in the very next sentence, FSU's *actual allegation* stated only "that the ACC operates, conducts, engages in, and carries on business in Florida." *Id.* at 111. In "[t]racking the language of section 48.193," *White*, 365 So. 3d at 382, FSU thus made crystal clear that its long-arm jurisdictional pleading was based solely on the "business or business venture" provision of subsection 48.193(1)(a)1 and not the "office or agency" provision. Nowhere in the SAC did FSU allege or even imply that the ACC has an office or agency in Florida. Instead, it set out to show only that the ACC operates a business or business venture in the four ways listed *supra* pp. 22–23. *See* App'x at 111–13.

In its motion to dismiss the SAC, the ACC pointed out to the trial court that "FSU [did] not invoke" "the 'office or agency' language of section 48.193(1)(a)1" but rather relied only on the "business venture" provision. *Id.* at 758. Armed with—and apparently alarmed by—this notice, FSU argued for the first time in its response brief that—in addition to the "business or business venture" allegation pleaded in the SAC—the Conference is subject to subsection 48.193(1)(a)1 because it has an "office or agency" in the

state. *Id.* at 805–06. This is so, FSU asserted, based on the production and broadcast facilities the university—not the ACC—built, owns, and operates on its campus. *See id.*

A plaintiff that fails to plead a basis for personal jurisdiction in its operative pleading may not amend its jurisdictional pleading in response to a motion to dismiss. *See Parisi v. Kingston*, 314 So. 3d 656, 663–64 (Fla. 3d DCA 2021). Nevertheless, the trial court found that FSU alleged that the Conference has an office or agency in Florida based on a reading of *Golant v. German Shepherd Dog Club of America, Inc.*, 26 So. 3d 60 (Fla. 3d DCA 2010). *See id.* at 4. Notably, FSU did cite *Golant* in the SAC—but not in the "office or agency" context. Instead, it included the case in a string citation supporting the proposition that "[t]he alleged operations far exceed the type of operations by which other entities have been found to be *operating a business venture* in Florida under section 48.193(1)(a)1"—i.e., the only basis for long-arm jurisdiction that FSU pleaded. *Id.* at 113 (emphasis added).[15]

[15] At any rate, *Golant* is inapposite to this case because the defendant in that case did not "have a physical office anywhere." 26 So. 2d at 61. Accordingly, the court held that, "[g]iven that the [defendant] maintains no physical office and that [the defendant's]

Moreover, as with the "business or business venture" provision, FSU did not show the necessary connection between the ACC's supposed office or agency and its causes of action. In other words, FSU alleged no cause of action arising out of any activity that occurred at FSU's production facility or any non-performance by the ACC of any obligation or duty pertaining to that facility.

C. FSU has failed to sufficiently allege jurisdiction under the other provisions of the long-arm statute.

The trial court found that, in addition to establishing long-arm jurisdiction under subsection 48.193(1)(a)1, "the FSU Board has made sufficient factual allegations establishing long-arm jurisdiction under [s]ubsections 48.193(1)(a)2, (1)(a)6, and (1)(a)7, which the ACC has insufficiently rebutted by way of affidavit."

---

business is conducted largely, if not exclusively, from the homes of its [b]oard members," the plaintiff's "home was a *de facto* office of the [defendant]." *Id.* at 63. Here, in sharp contrast, the ACC indisputably maintains a physical office. And it is in North Carolina, not Florida. Moreover, as discussed *supra* p. 31, the ACC has no personnel at FSU's facility—unlike the *Golant* board member, who lived in her home. FSU has—of course—not alleged that ACC business "is conducted largely, if not exclusively, from" FSU's production facility. *Id.* It thus cannot be said that FSU's production facility is "a *de facto* office of the" Conference. *Id.*

App'x at 4. The trial court did not elaborate on how FSU did so. And this Court should find in its de novo review that it did not.

As to subsection 48.193(1)(a)2, FSU claimed that the trial court has jurisdiction over the ACC because the Conference "commit[ed] a tortious act within this state." *Id.* at 114. But the only act that FSU claimed occurred "within this state" is service of the ACC's North Carolina complaint against FSU. *See id.* at 151–52. Service of process in Florida cannot be a tort because—as a matter of law—the ACC's complaint had to be served on FSU in Florida. Indeed, FSU stipulated that service was proper.

As to subsection 48.193(1)(a)6, FSU selectively quoted from the statute to allege that the ACC is "'causing injury to persons or property within the state arising out of an act or omission by the [ACC] outside the state' while the [ACC] 'engaged in solicitation or service activities in this state,' or while [the ACC's] 'products' and services are used or consumed in Florida." *Id.* at 114. FSU then attempted to connect this jurisdictional allegation to the so-called causes of action it alleged in Count III (claiming that the ACC breached its Constitution and Bylaws); Count V (claiming that the withdrawal payment is an unenforceable restraint of trade); and

Count VII (claiming breach of fiduciary duties). But the ACC has established through the Tario Affidavit that the Conference "does not regularly solicit sales or the sale of any products into or from the State of Florida" and "does not regularly market products for sale in the State of Florida." *Id.* at 790 (further explaining that the ACC's promotion of "the academic and athletic efforts of the ACC and its members" are "noncommercial announcements that do not seek to sell any product or service" and that any "production stipend" the ACC receives from ESPN when any member produces a game or other program for ESPN's distribution is passed through to the member).

As to subsection 48.193(a)(1)7, FSU accused the ACC of "breaching a contract in this state by failing to perform acts required by the contract to be performed in this state." *Id.* at 115. In Count III, FSU set forth a dozen alleged breaches of the ACC's Constitution and Bylaws. *See id.* at 146–47. But none of them accused the ACC of failing to perform any acts it contractually is required to perform in Florida. Likewise, although FSU's jurisdictional allegation referenced "performance due and payments owed FSU in Florida," *id.*, none of the breaches alleged in Count III

connected to that jurisdictional claim. And "service of an unauthorized lawsuit in Tallahassee, Florida" cannot possibly be an act that the ACC contractually was required to perform in Florida because FSU's entire point is that the ACC was not supposed to take that action at all.

D. Exercising long-arm jurisdiction over the ACC would violate due process.

Because FSU's jurisdictional allegations are insufficient to bring the action within the ambit of Florida's long-arm statute, the trial court had no need to move past step one of *Venetian Salami.* But it is also true that the ACC has insufficient "minimum contacts" under step two such that exercising jurisdiction over the ACC would violate due process. As established by the Tario Affidavit, the ACC conducts only a de minimis amount of its business in Florida. Indeed, in its seventy-plus-year existence, the ACC always has operated under North Carolina law, and the North Carolina contracts FSU has asked the trial court to construe have existed for years. The ACC thus would have no reason to anticipate that if questions ever arose about the proper construction of those contracts it would be Florida's courts—not North Carolina's—that

would provide the answers. Moreover, none of FSU's so-called causes of action arises out of actions taken by the ACC in Florida such that the ACC could reasonably anticipate being haled into court here for having purposely availed itself of the benefits of Florida law. Permitting FSU to maintain this suit against the ACC thus would violate due process.

Nevertheless, the trial court found two bases for determining that *Venetian Salami*'s due-process requirements were met: (1) "through the ACC being engaged in a business with both Miami and FSU in the state of Florida and with the selling of certain FSU sports apparel," and (2) Florida's "unique interest in this case, given the issues of sovereign immunity that this case presents." App'x at 5–6. The first of these bases fails for the reasons discussed above. As for the second, the forum state's interest, even if believed to be unique, has *never* been held to be a basis for exercising personal jurisdiction.

The trial court cited no authority—because there is none—for the creation of this "unique interest" standard as a means for determining personal jurisdiction. At any rate, the issue for personal jurisdiction is whether a party has sufficient contacts

giving rise to the dispute for the exercise of jurisdiction under Florida law and the U.S. Constitution. But here the trial court ruled that the forum state's interest is sufficient for personal jurisdiction, effectively dispensing with any statutory and constitutional requirements.

This new "standard" not only would effectively eliminate these longstanding requirements but also would be repugnant to public policy. If the ACC is subject to jurisdiction in Florida because of what the trial court termed Florida's "unique interest" in this matter, Florida residents also would surely be subject to jurisdiction across the country on a similar basis. For example, suppose a journalist for the *Tallahassee Democrat* makes disparaging comments about the University of North Carolina that the university considers to be defamatory. Under North Carolina law, the journalist would not be subject to personal jurisdiction in that state under the minimum-contacts test required by federal due process unless the journalist had "manifest[ed] an intent to target and focus on North Carolina readers." *Dailey v. Popma*, 662 S.E.2d 12, 18 (N.C. 2008). Following the standard propounded by the trial court in this case, a North Carolina trial court may consider instead

that the Florida journalist is subject to that state's jurisdiction based not on federal due-process constraints but rather on North Carolina's "unique interest" in defending the good name of one of its flagship institutions of higher education. If allowed to stand, the trial court's standard would end personal jurisdiction protections as they have existed for more than a century.

E. There are no other bases for personal jurisdiction over the Conference.

The trial court properly found that the ACC is not a citizen or resident of Florida. *See* App'x at 4. And although the trial court declined to rule[16] on the issue of general personal jurisdiction, this Court should find in its de novo review that FSU has failed to establish that the ACC is subject to the trial court's general jurisdiction.

[16] Under Florida law, "the 'tipsy coachman' doctrine allows an appellate court to affirm a trial court that reaches the right result, but for the wrong reasons so long as there is any basis which would support the judgment in the record." *Robertson v. State*, 829 So. 2d 901, 906 (Fla. 2002) (cleaned up).

1. Federal diversity principles are irrelevant to personal jurisdiction.

The ACC is not a Florida citizen or resident. The ACC is a North Carolina unincorporated nonprofit association. Despite conceding this point in its operative complaint, *see* App'x at 108, FSU led its jurisdictional charge with the claim that the ACC is a Florida "citizen/resident" because two of its members—FSU and Miami—are in Florida, *id.* at 110–11. This conclusory assertion appears to rely on federal diversity of citizenship principles, which are irrelevant to establishing personal jurisdiction under state law and thus cannot be used to show that the ACC is "at home" in Florida.

Several cases expressly say so. *See, e.g.*, *Ticketmaster-In. v. Cavaliers Operating Co. LLC*, No. CV 07-4620 ABC (JCX), 2008 WL 11383269, at *7 n.6 (C.D. Cal. Jan. 11, 2008) ("[Plaintiff]'s frustration that [Defendant] could be considered a citizen of California for diversity purposes, yet not be subject to personal jurisdiction in California, is understandable, but the analysis is not the same. That one California resident is a member of an LLC . . . may defeat diversity, but in itself does not signify that the

[Defendant] LLC has sufficient contacts with California to be subject to jurisdiction here."); *Lurie v. 8182 Md. Assocs.*, 938 P.2d 676, 679 (Mont. 1997) (addressing the rule that diversity jurisdiction in a suit by or against an artificial entity depends on the citizenship of all members and concluding that this rule "is not controlling outside the context of determining federal diversity jurisdiction" and is insufficient to meet the state-law showing for general jurisdiction or to establish minimum contacts). And no court has ever held that citizenship for purposes of *personal* jurisdiction is the same as citizenship for federal *subject-matter* jurisdiction. *See State Farm Mut. Auto Ins. Co. v. McWhite*, No. 3:15-CV-4749-JFA, 2016 WL 1182436, at *3 (D.S.C. Mar. 28, 2016) ("Defendant confuses the Constitutional considerations affecting the exercise of *personal* jurisdiction with the related considerations of diversity citizenship affecting the exercise of *subject matter* jurisdiction."). Significantly, federal courts applying Florida law do not use federal diversity jurisdiction principles to decide whether personal jurisdiction exists under Florida's long-arm statute. *See Lacy v. BP, PLC*, No. 11-Civ-21855-COOKE, 2016 WL 6775208, at *3–4 (S.D. Fla. Nov. 16, 2016) (addressing diversity of citizenship for federal subject-matter

jurisdiction separately from the "two-part analysis" required by Florida law for "[d]etermining whether the Court can exercise personal jurisdiction over a nonresident defendant").

2. The trial court does not have general personal jurisdiction over the Conference.

General personal jurisdiction permits a nonresident defendant to be sued in Florida on any claim. But establishing general jurisdiction presents a "much higher threshold" than specific jurisdiction. *Trs. of Columbia Univ. in City of N.Y. v. Ocean World, S.A.*, 12 So. 3d 788, 792 (Fla. 4th DCA 2009). The plaintiff must show that the nonresident defendant is "engaged in substantial and not isolated activity" within Florida, which requires "continuous and systematic general business contact." *Woods v. Nova Cos. Belize Ltd.*, 739 So. 2d 617, 620 (Fla. 4th DCA 1999). Only in the "exceptional case" can an organization have such continuous and systematic contacts with a state other than where it was formed or has its principal place of business that it can be "fairly regarded as at home." *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.19 (2014).

FSU failed to make the necessary showing. In a single paragraph, FSU invoked the "substantial and not isolated activity"

standard for general jurisdiction under subsection 48.193(2). *See* App'x at 115. FSU then asked the trial court to conclude that all its attempts to allege *specific* personal jurisdiction combine to confer Florida with *general* personal jurisdiction over the ACC.

FSU thus conflated specific and general jurisdiction, which are two entirely different types of jurisdiction. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) ("In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to the adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." (quotation marks omitted)); *Canale v. Rubin*, 20 So. 3d 463, 466 (Fla. 2d DCA 2009) ("General jurisdiction requires far more wide-ranging contacts with the forum state than specific jurisdiction, and it is thus more difficult to establish."). Conflating them cannot survive constitutional scrutiny because the controlling due-process inquiry is different depending on which basis of jurisdiction is alleged: for general jurisdiction to exist, the nonresident defendant must be effectively "at home" in Florida, whereas cause-of-action specific jurisdiction requires that the defendant have minimum contacts with the state and that those contacts give rise to the claims at

issue. *See Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1132–35 (Fla. 3d DCA 2018) (explaining these different due-process standards and reversing the trial court for applying the wrong standard in evaluating whether the plaintiff's "general jurisdictional allegations are sufficient under the [long-arm] statute as informed by recent United States Supreme Court precedent").

FSU made no showing for general jurisdiction—i.e., that the ACC's alleged "substantial and not isolated activity" in Florida is "so 'continuous and systematic' as to render [the ACC] *essentially at home* in [Florida]." *Id.* at 1134 (emphasis added) (quoting *Daimler*, 571 U.S. at 112). FSU cannot clear this constitutional hurdle because, as discussed above, the Tario Affidavit establishes that the ACC is a North Carolina entity with only de minimis contacts in Florida.

By all measures, the ACC's activity in Florida falls far short of the substantial, continuous, and systematic activity that courts have determined to be necessary for the trial court to exercise general jurisdiction. In *Magwitch, LLC v. Pusser's West Indies Ltd.*, the court concluded that the trial court lacked general jurisdiction over a foreign company because its Florida sales generated only a

"de minimis percentage of [its] total sales"—even though the company had used a Florida fulfillment house to process and distribute all its internet orders for more than a decade, some of which were from Florida; had registered to do business in Florida; had designated a corporate representative in Florida; had a Florida call center; and had produced some product in Florida. 200 So. 3d 216, 219–21 (Fla. 2d DCA 2016). Those contacts were far more comprehensive than the ACC's contacts with Florida. In *Vos, B.V. v. Payen*, the court held that that a holding company which had "de minimis" business contacts with Florida but did not have assets, real property, or offices in Florida and whose Florida transactions amounted to 0.236% of its total sales was not subject to general jurisdiction in Florida. 15 So. 3d 734, 737 (Fla. 3d DCA 2009). The ACC's activities in Florida are, at most, similarly de minimis. Accordingly, general jurisdiction cannot attach to the Conference in Florida courts.

CONCLUSION

The trial court lacks subject-matter jurisdiction over FSU's declaratory judgment claims regarding the ACC Constitution's withdrawal provisions because those claims are not ripe. The trial

court also lacks personal jurisdiction over the Conference because the ACC's contacts in Florida neither bring it within the ambit of Florida's long-arm statute nor make it essentially at home in this state. Moreover, exercising jurisdiction over the ACC would violate due process. Accordingly, the Conference respectfully requests that this Court reverse the trial court's determination that it has jurisdiction over this matter and remand with instructions to dismiss the SAC with prejudice.

Dated: October 2, 2024

Respectfully submitted,

/s/ Alan Lawson

ALAN LAWSON
Florida Bar No.: 709591
PAUL C. HUCK, JR.
Florida Bar No. 968358
JESSICA SLATTEN
Florida Bar No.: 27038
RAYMOND F. TREADWELL
Florida Bar No.: 93834
ROBERT E. MINCHIN III
Florida Bar No.: 1033022
LAWSON HUCK GONZALEZ, PLLC
215 S. Monroe St., Suite 320
Tallahassee, FL 32301
Telephone: 850-825-4334
alan@lawsonhuckgonzalez.com
paul@lawsonhuckgonzalez.com
jessica@lawsonhuckgonzalez.com
ray@lawsonhuckgonzalez.com
bob@lawsonhuckgonzalez.com
michelle@lawsonhuckgonzalez.com

JAMES P. COONEY, III*
SARAH MOTLEY STONE*
PATRICK GRAYSON SPAUGH*
WOMBLE BOND DICKINSON (US) LLP
301 S. College St., Suite 3500
Charlotte, NC 28202
Telephone: 704-331-4900
Jim.Cooney@wbd-us.com
Sarah.Stone@wbd-us.com
Patrick.Spaugh@wbd-us.com

* *pro hac vice status pending*

leah@lawsonhuckgonzalez.com

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Florida Rules of Appellate Procedure 9.045(b), (e) and 9.210(a)(1)(B) because it was prepared using Bookman Old Style 14-point font and contains 11,588 words.

/s/ Alan Lawson
Attorney

CERTIFICATE OF SERVICE

I certify that on October 2, 2024, a true and correct copy of the foregoing was filed and served via the Florida Courts E-Filing Portal upon:

DAVID C. ASHBURN, ESQ.
PETER G. RUSH, ESQ.
JOHN K. LONDOT, ESQ.
GREENBERG TRAURIG, P.A.
101 East College Avenue
Tallahassee, FL 32302
Phone 850-222-6891
ashburnd@gtlaw.com
Peter.Rush@gtlaw.com
londotj@gtlaw.com

Attorneys for Florida State University Board of Trustees

/s/ Alan Lawson
Attorney