No. 20-1500

IN THE

SUPREME COURT OF THE UNITED STATES

MACHIAVELLI FARRAKHAN SIBERIUS

Plaintiff - Petitioner,

v.

AMERICAN PUBLIC UNIVERSITY SYSTEM, INC.; PRESSLEY RIDGE;

WEST VIRGINIA DEPARTMENT OF EDUCATION, et al.

Defendants - Respondents,

ORIGINAL

FILED
FEB 25 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

On Petition for Writ of Certiorari to the

United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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April 2, 2021

Machiavelli Farrakhan Siberius,
Pro Se

QUESTIONS PRESENTED

1. The United States Court of Appeals for the Fourth Circuit has entered a decision in conflict with the decision of another United States court of appeals on the same important matter, such as *Schumann v. Collier Anesthesia*, P.A., Case No: 2:12-cv-347-FtM-29CM (M.D. Fla. Oct. 27, 2016) and disagreed with a historical case of the Fourth Circuit, *Reich v. Shiloh True Light Church of Christ*, 895 F.Supp. 799, 819 (W.D.N.C. 1995). "At what point does a student become an 'employee' for an employer, due to the various types of abuses and exploitation of a free labor system, in an education program?"

2. The District Judge had considered a federal question in a way that conflicts with other federal district decisions, like *Winfield v. Babylon Beauty Sch. of Smithtown Inc.*, 89 F. Supp. 3d 556 (E.D.N.Y. 2015) and *Marshall v. Baptist Hospital, Inc.*, 473 F. Supp. 465 (M.D. Tenn. 1979), and further conflicts with the "FLSA" 29 U.S. Code § 213(a)(1), 29 CFR § 541.303(c), 29 CFR § 541.602(1); and this conflict transitions to state laws, such as California Education Code, Section 44462, and W.Va. Code §18A-3-2, and this further moves into a parallel to modern violations of the Thirteenth Amendment by not defining "an employer employee relationship between the plaintiff and either Pressley Ridge or the WVDE." Should student-teachers and teacher candidates be denied payment under all circumstances, denied employee status at a school, due to student status at a separate school or university?

3. Was the Fourteenth Amendment "Due Process Clause," "Equal Protection Clause," and Article 1, Section 10, Clause 1 of the U.S. Constitution breached by the defendants, in the fashion that Mr. Siberius was terminated from a student-teaching position at Pressley Ridge at White Oak, for reporting child abuse, in accordance with state laws, contracts, freedom of speech, and scope of duty as a student-teacher?

4. In accordance with Fed.Rule Civ.Proc. 25(d) and Fed.Rule App.Proc. 43 and *Robinson v. Integrative Detention Health Services*, No. 3:12-CV-20, (M.D. Ga. Mar. 28, 2014), *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961): can a corporation headquartered in Pittsburgh, Pennsylvania be responsible for acting "under color of law" in the State of West Virginia?

5. A state agency waived its Eleventh Amendment "immunity" by voluntarily appearing in federal court. In *Hafer v. Melo et al.*, 502 U.S. 21, 112 S. Ct. 358 (1991) the Court held that state officials "acting in their official capacities" are outside the class of "persons" subject to liability under § 1983 was reversed, and in *Biggs v. Meadows*, 66 F.3d 56 (4th Cir. 1995) that specifies the importance of the substance of a complaint rather than the named individuals, to sue individuals in official capacity and individual capacity, leaving the Courts to decide. See *Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985). To what extent has the Courts erred in applying *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989), given other rulings, and the specific context of the plaintiff's circumstance for civil action?

6. Can a school board be sued under 42 U.S.C. § 1983?

PARTIES TO THE PROCEEDING

AND RELATED CASES

1) **Machiavelli Farrakhan Siberius, plaintiff and petitioner;**

2) **Machiavelli Farrakhan Siberius, I, plaintiff and petitioner;**

3) American Public University System, Inc., defendant and respondent;

4) Pressley Ridge, defendant and respondent;

5) **West Virginia Department of Education, defendant and respondent;**

6) **American Military University & American Public University Systems, defendant and respondent.**

Related cases to this proceeding are:

- *Machiavelli Farrakhan Siberius v. American Military University & American Public University Systems, Pressley Ridge, and West Virginia Department of Education*. No. 18-C-153, Circuit Court of Wood County, West Virginia. Order staying proceeding pending appeal, entered Jan. 09, 2020.
- *Machiavelli Farrakhan Siberius v. American Public University System, Inc., Pressley Ridge, and West Virginia Department of Education*. No. 2:18-cv-01125, U.S. District Court for the Southern District of West Virginia, at Charleston. Judgement entered Sept. 13, 2019.
- *Machiavelli Farrakhan Siberius, I, v. American Public University System, Inc., Pressley Ridge, and West Virginia Department of Education*. No. 19-7400, U.S. Court of Appeals for the Fourth Circuit. Judgement affirmed May 06, 2020.
- *Machiavelli Farrakhan Siberius, I, v. American Public University System, Inc., Pressley Ridge, and West Virginia Department of Education*. No. 19-7400, U.S. Court

of Appeals for the Fourth Circuit. A rehearing and rehearing *en banc* denied Sept. 29, 2020.

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PETITION FOR A WRIT OF CERTIORARI

Machiavelli Farrakhan Siberius, I, respectfully petitions the Court for a writ of certiorari to review the judgement of the United States District Court for the Southern District of West Virginia, at Charleston. The *Memorandum Opinion and Order* was affirmed by the United States Court of Appeals for the Fourth Circuit.

OPINION AND ORDER BELOW

The Fourth Circuit's opinion, 19-7400 (4th Cir. 2020), is unpublished and is provided in Appendix C. The *Memorandum Opinion and Order* (2:18-cv-01125), appear in the Appendix to the petition at Appendices A.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit had denied the instant petition for rehearing and rehearing *en banc* on September 29, 2020. Mr. Siberius invokes this Court's jurisdiction under 29 U.S Code § 213(a)(1) and 42 U.S. Code § 1983, having timely filed this petition for writ of certiorari, in accordance with the COVID-19 Order List 589 U.S. deadline, of 150 days from the lower court judgment and deniance.

On June 5th, 2018, the petitioner, Machiavelli Farrakhan Siberius had filed a complaint with the Circuit Court of Wood County, West Virginia. In motions filed on July 5th, 2018, the defendant, American Public University System, Inc., with the consent of the other defendants, Pressley Ridge and the West Virginia Department of Education, had removed the plaintiff's civil action from state court into the federal district court pursuant to 28 U.S.C. §§ 1441 and 1446 [See ECF Nos. 1,2,3,4,5, and 6]. This Court has jurisdiction over the federal question in the plaintiff's FLSA claim pursuant to 28 U.S.C. § 1331. American Public University System, Inc. had requested that this Court exercise supplemental jurisdiction over the Plaintiff's state law claims under 28 U.S.C § 1367(a).

In *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 690–691, 98 S. Ct. 2018, 2035–36, 56 L. Ed. 2d 611, 635 (1978). (holding that municipalities and local governments are considered "persons"

under Section 1983 when an official government policy or custom caused a constitutional violation). Syl. Pt. 4(b), "Similarly, extending absolute immunity to school boards would be inconsistent with several instances in which Congress has refused to immunize school boards from federal jurisdiction under § 1983." Pp. 436 U.S. 696-699. In *Board of Curators, Univ. of Mo. v. Horowitz*, 435 U. S. 78, 91-92 (1978), we assumed, without deciding, that federal courts can review an academic decision of a public educational institution under a substantive due process standard. *Id.* at 91-92.

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE

United States Constitution, Article 1, Section 10, Clause 1

"No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

First Amendment of the United States Constitution

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances."

Thirteenth Amendment, Section 1 of the United States Constitution

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Fourteenth Amendment, Section 1 of the United States Constitution

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

29 CFR § 541.303(c)

"(c) The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the State to refer to different kinds of certificates. However, private schools and public schools are not uniform in

requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system."

29 CFR § 541.602(1)

"(1) Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work."

20 U.S. Code § 1011a (a)(1) & (c)(3) (As amended 2008)

(a) Protection of rights

"(1) It is the sense of Congress that no student attending an institution of higher education on a full- or part-time basis should, on the basis of participation in protected speech or protected association, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under any education program, activity, or division of the institution directly or indirectly receiving financial assistance under this chapter, whether or not such program, activity, or division is sponsored or officially sanctioned by the institution."

(3) Protected speech

"The term "protected speech" means speech that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments."

29 U.S. Code § 213(a)(1) (As amended 2018)

"(a) Minimum wage and maximum hour requirements. The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and 207 of this title shall not apply with respect to—"

"(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or"

42 U.S. Code § 1983 (As amended 1996)

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

W.Va. Code 18A-3-2 (As amended 2017)

"qualifications; certification of aliens."

"Any professional educator, as defined in article one of this chapter, who is employed within the public school system of the state shall hold a valid teaching certificate licensing him or her to teach in the specializations and grade levels as shown on the certificate for the period of his or her employment. If a teacher is employed in good faith on the anticipation that he or she is eligible for a certificate and it is later determined that the teacher was not eligible, the state Superintendent of Schools may authorize payment by the county board of education to the teacher for a time not exceeding three school months or the date of notification of his or her ineligibility, whichever shall occur first. All certificates shall expire on June 30 of the last year of their validity irrespective of the date of issuance."

STATEMENT OF THE CASE

A. Relevant Case History to FLSA & 1983.

Machiavelli Farrakhan Siberius, proceeding Pro se, appeals the Ruling and Order from the September 13th, 2019, in the *Memorandum Opinion and Order* that denied a "Claim for Relief" for the Fair Labor Standards Act ("FLSA"), 29 U.S. Code § 213(a)(1) and 29 CFR § 541.303 and 29 CFR § 541.602. The District Judge's decision was affirmed by a Panel of Circuit Judges on May 6, 2020. The thrust of Judge Joseph R. Goodwin's argument is that Mr. Siberius was a student and not an employee at Pressley Ridge. He used the following cases to reinforce the Court's decision, for students not to get paid, especially teacher candidates under any circumstances: Lisa Kerr v. Gene Brett Kune, et al., No. 15-1473; Lane v. Carolina Beauty Sys., Inc., No. 6:90-cv-00108, 1992 WL 228868, *4 (M.D.N.C. July 2, 1992). Walling v. Portland Terminal Co., 330 U.S. 148, 152, 67 S. Ct. 639, 641, 91 L. Ed. 809 (1947).

The petitioner was pursuing a teaching degree and a license in the State of West Virginia. The APUS, Inc., universities were hosting and servicing the Post-Baccalaureate Teacher Preparation Certification program; this was designed for secondary (5-Adult) teacher candidates

who wish to seek initial certification in secondary education in specific subject areas. The broadness and diversity of labels used in a teacher program have meanings and legal founding that is beyond the traditional student seeking credit, so to disregard "teacher candidates" as knowledge seekers is out of context of the relationship they have with schools and students.

In the Amended Complaint, "the plaintiff Machiavelli Siberius [had] filed a civil action due to circumstances that surround his status and titles, as a student, student teacher, teacher candidate, teacher, and intern as designated by the defendants at various times in the history of their association and relationship" (p. 4, lines 19-22). Siberius was not a student at Pressley Ridge, a K-12 school that issues diplomas to wards of the state and juvenile delinquents. The plaintiff/appellant was not a *Student Worker* receiving payments, reduced tuition, or boarding. In addition, the appellant was not engaged in the activity of "Observation of Teacher(s)," as noted on a timecard, due to that particular activity being completed months prior to the incident, at a rate of 125 hours. [Informal Brief, 19-7400, pp. 1-2].

> The Student Teaching Handbook continues with "Student teaching places heavy responsibility and time demands on candidates, far beyond what is normally experienced in a regular semester course. Part-time employment often interferes with successful performance. Student teaching responsibilities at school or on campus are never waived or modified to accommodate the demands of outside employment. Therefore, part-time employment during student teaching is strongly discouraged. Teacher Candidates who must work are advised to limit their hours and to keep the Site Teacher and University Supervisor fully informed of the arrangements" (p. 12).[1] Therefore, if the plaintiff is employed at any other profession, then the activity is said to interfere with the career of teaching, interfere with the site placement employee position, and interfere with the teacher candidacy position. The student teacher is requested to quit their job, to fulfill their role as a teacher at a placement site (Amended Complaint, p. 23).

As said in the Amended Complaint: "The plaintiff was among the first people to arrive, or arrived at the approximate scheduled time 7:30 AM, to start working at the facility, Pressley Ridge at White Oak. He attended the school in person, every scheduled session on the school day

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[1] United States Supreme Court, *Clackamas Gastroenterology Associates, P.C. v. Wells* (No. 01-1435; 2003): We are persuaded by the EEOC's focus on the common-law touchstone of control, see *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140 (1944), and specifically by its submission that each of the following six factors: "Whether and, if so, to what extent the organization supervises the individual's work"

calendar, and never missed a day, attending from March 7, 2016 to June 3, 2016; this can be illustrated through evidence of the "2015 School Calendar 2016" and the "Field Experience Hours Log." The work days were 7.5 hours long, often times 5 days a week, stretching a span of about 3 months, which eventually totaled 430.5 hours of scheduled work at Pressley Ridge."

The [Petitioner] will append: furthermore, the teacher candidates are not trained to instruct a class at the placement school. The directives derived from authorities and supervisors at the placement school are nothing beyond regular directives towards a teacher, expected to obey orders and school policies. The teacher observation studies and course work is done prior to the Culminating Clinical Experience. The student teaching handbook addresses teacher candidates within the context of being employees while at the Site School. [Informal Brief, 19-7400, pp. 9-10]. In addition, the student teaching handbook emphasizes under the heading, Suggested Activities for the First Week(s), "Learn rules for teachers and follow them; learn rules for students and enforce them" (Field Experience Handbook, 26).

In [Informal Brief, 19-7400, pp. 5-6] the District Judge had applied *Lisa Kerr v. Gene Brett Kune*, et al., No. 15-1473,[2] as a status quo example to support a ruling to dismiss a "FLSA" case 29 U.S. Code § 213(a)(1) for another teacher candidate, the Appellant, Machiavelli Siberius. In a response to an amended plea from the defendants, the appellant noted Kerr as a bad model for this particular case: "The *Kerr* case was about a student-teacher that had encountered numerous problems in the teacher program at Marshall University and filed a court case. Firstly, Kerr does not raise the W.Va. Code §18A-3-2. Teacher Certification under statute, which is wages for three months of work argument if student-teacher fails the course in the teacher certification program after student-teaching.

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2. The *Lisa Kerr v. Gene Brett Kune*, et al., No. 15-1473 is a 4th District Court case was not dismissed on grounds that Lisa Kerr was a student, as Judge Joseph R. Goodwin has explicitly explained and implied. Actually, the civil action "FLSA" count was dismissed on grounds that the Teacher Candidate was suing the Site Supervisor/Supervising Teacher instead of suing the Site Placement School. The school Kerr actually worked at is the employer, which was located in Boone County School District.

Also, Lisa Kerr does not raise the argument for exemptions under FLSA being "$455 per week is the least amount of a salary 29 CFR § 541.602 permitted to be paid to professional employees and teachers under the minimum wage exemption" (e.g. 2019 exemptions $684). In addition, Lisa Kerr had tried to sue the Site Teacher, Gene Brett Kuhn. The Site Teacher is not an employer; the secondary school that Kerr had worked for was the employer, but she had not listed the school in the lawsuit. As stated in the complaint, Footnote 19: "If Kuhn were an "employer" under FLSA, he would be liable for any unpaid wages." Furthermore, Kerr had resigned from the student-teaching position, and she never was fired.

Machiavelli Siberius was in fact fired, which this does change the dynamic of the relationship between West Virginia Department of Education, Pressley Ridge, and the plaintiff/appellant. The power to fire the student-teacher, who follows all the laws, policies, and Dept. Education legislative regulations, this illustrates that the defendants were acting as an employer. And therefore, the school not only hosting a candidate from a teacher program with a set expiration date, but retaining an employee. The WVDE Form 24 and Teaching Programs Site Supervisor Agreement had been dated March 7th, 2016 to June 26th, 2016. The termination as noted in the Amended Complaint, "the plaintiff was terminated from the teaching position that he held at Pressley Ridge, for disclosing information to the police about a student being abused" (p. 34). [Informal Brief 5-7].

On June 9th, 2016, the university was starting to demand 14 to 16 weeks of student teaching and particularly after the termination of the plaintiff had transpired, as noted in an email from the School of Education, which is a department within the university. The decision to enforce 14 to 16 weeks of student teaching experience was also considered after a Verification of Degree Plan (Dated: December 16, 2015), to which was sent to the plaintiff and used as a basis for negotiations with a county board and possibly a state agency. Dr. Spencer, the Faculty Director at APUS, had rendered a decision in a university appeal that the plaintiff had not completed enough field experience hours to receive a passing grade and teacher certification (Dated: January 27,

2017 by the university appeals department). The decision of Dr. Spencer was affirmed by Provost, Dr. Vernon Smith, on May 23, 2017.

The defendants West Virginia Department of Education and Pressley Ridge had violated the plaintiff's First Amendment right, "Freedom of Speech," by terminating the student-teacher/teacher candidate for disclosing information to the police. In W.Va. §49-2-803 and W.Va. §49-6-109 and W.Va. §18A-3-1(g)(2)(B)(ii): "Requirements for federal and state accountability, including the mandatory reporting of child abuse;" W.Va. §49-6-109 and W.Va. §49-2-803, specifies that reporting directly to the police is an appropriate action, to take in the instance of child abuse. "Pressley Ridge and WVDE violated the plaintiff's rights from the Fourteenth Amendment forbids any State to "deprive any person of life, liberty, or property, without due process of law," or to "deny to any person within its jurisdiction the equal protection of the laws" (pp. 52-53). "Subsequently, Pressley Ridge and West Virginia Department of Education had denied the plaintiff equal protection under state law. In addition, he was denied a due process in the wrongful discharge from employer. In the process, the plaintiff was deprived of property through conversion and tort interference" (Amended Complaint, pp. 103-104).

Machiavelli Farrakhan Siberius respectfully [sought] panel rehearing and rehearing *en banc*, pursuant to Federal Rule of Appellate Procedure 35(b), of the Affirmed decision by unpublished per curiam opinion issued in this appeal on May 6, 2020. The plaintiff, appellant pro se,..believe[d] the panel decisions conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue in-part, respectively, in the Eleventh Circuit, Sixth Circuit, Fourth Circuit, and Second Circuit. The panel AGEE, DIAZ, and THACKER, Circuit Judges affirmation is contrary to edicts found in the following cases: *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199 (11th Cir. 2015); *Marshall v. Baptist Hospital, Inc.*, 473 F. Supp. 465 (M.D. Tenn. 1979); *Reich v. Shiloh True Light Church of Christ*, 895 F.Supp. 799, 819 (W.D.N.C. 1995); *Winfield v. Babylon Beauty Sch. of Smithtown Inc.*, 89 F. Supp. 3d 556 (E.D.N.Y.

2015); *Glatt et al. v. Fox Searchlight Pictures*, Inc. et al. 13-4478-cv; 13-4481-cv (2nd Cir. 2016). [Rehearing, 19-7400, p. 1].

ARGUMENT

I. FAIR LABOR STANDARDS ACT

A. Using Students as Employees and Students Transitioning into Employee Status.

Lisa Kerr's "FLSA" claim was dismissed on the grounds that Kerr had sued the Site Teacher, Gene Kuhn, instead of the field placement school used for clinical experience. The District Judge, Joseph Goodwin argued that being a student was grounds and reasoning enough for dismissing a student-teacher's "FLSA" claim in the *Siberius*, et al. 19-7400 case. The maxim and legal contraption used by the District Judge: "The fact that Kerr did not ultimately receive course credit does not convert her truncated educational experience into unpaid labor" [ECF No. 48]. The plaintiff is talking about abusing an internship program, to the extent that the university guidelines of the program and state laws are being broken, to the extent that students become part of a free labor system, due to students being fired and failed on false grounds.

The broadness and diversity of labels used in a teacher program have meanings and legal founding that is beyond the traditional student seeking credit, so to disregard "teacher candidates" as knowledge seekers is out of context of the relationship they have with schools and students. Machiavelli Siberius was in a Post-Baccalaureate Teacher Preparation Program, with degree obtaining and full license capabilities from the program; hence while, he used a temporary teacher work permit at Pressley Ridge, a State ran school. Often times referred to as "his status and titles, as a student, student teacher, teacher candidate, teacher, and intern as designated by the defendants at various times in the history of their association and relationship" (Amended Complaint, p. 4). In *Schumann v. Collier Anesthesia, P.A.*, Case No: 2:12-cv-347-FtM-29CM (M.D. Fla. Oct. 27, 2016): "Longer-term, intensive modern internships that are required to obtain academic degrees and professional certification and licensure in a field are just too different from

the short training class offered by the railroad in *Portland Terminal* for the purpose of creating its own labor pool." *Id.* at 1211.

Solis v. Laurelbrook Sanitarium and School, 642 F.3d 518 (6th Cir. 2011) More importantly, as noted above, determining employee status by reference to labels used by the parties is inappropriate. Powell, 339 U.S. at 528-530, 70 S.Ct. at 772. And concluding that students are not employees simply because they are students at a vocational school is precisely the type of labeling courts must resist. Such an approach bypasses any real consideration of the economic realities of the relationship and is antithetical to settled jurisprudence calling for consideration of the totality of the circumstances of each case. Indeed, courts have in the past determined that students in vocational training programs were nevertheless employees under the FLSA. See, e.g., *Reich v. Shiloh True Light Church of Christ*, 895 F.Supp. 799, 819 (W.D.N.C. 1995) (holding that children enrolled in church-run vocational training program were employees), aff'd per curiam, 85 F.3d 616 (4th Cir. 1996) (unpublished table decision); Baptist Hosp., 473 F.Supp. at 477 (holding that X-ray technicians-in-training enrolled in two-year, accredited college program were employees); see also id. at 468 n. *Id.* at 524

Reich v. Shiloh True Light Church of Christ, "The Court finds as a fact that the attribution to church policy to not pay the minors under 16 is an attempt to label them students rather than employees" (#76). "The minors under 16 were not paid because, even though they produced work, the Defendants claim they were students." *Id.* at #80 Tr 160-161. *Winfield v. Babylon Beauty Sch. of Smithtown Inc.*, 89 F. Supp. 3d 556 (E.D.N.Y. 2015) "First, while it may be that unlicensed cosmetologists are not permitted to charge a fee for practicing cosmetology, the Defendants point to no legal authority precluding students who are ostensibly supervised by licensed cosmetologists from receiving a fee for their work. Indeed, under the Defendants' interpretation, the Beauty Schools themselves could not charge fees for cosmetology services because students performing those services are not licensed. The Court finds such an interpretation of the NYGBL is overly broad, unsupported by legal authority, and would lead to absurd results. Accordingly, the Court

does not find that New York law prohibits students from charging a fee for cosmetology services." *Id.* at 572.

Schumann v. Collier Anesthesia, P.A., 803 F.3d 1199 (11th Cir. 2015) quoting *Glatt*, 791 F.3d at 384. Under the Second Circuit's approach, "[n]o one factor is dispositive and every factor need not point in the same direction for the court to conclude that the intern is not an employee...." *Id.* Rather, courts must engage in a "weighing and balancing [of] all of the circumstances," including, where appropriate, other considerations not expressed in the seven factors. *Id.* The Second Circuit has described this approach as "flexible" and "faithful to *Portland Terminal*," reasoning that "[n]othing in the Supreme Court's decision suggests that any particular fact was essential to its conclusion or that the facts on which it relied would have the same relevance in every workplace." *Id.* at 384–385.

In *Reich v. Shiloh True Light Church of Christ*, "we agree with the Court below that on the undisputed facts the plaintiffs were employees of defendants within the meaning of the Fair Labor Standards Act, which defines "employ" as including "suffer or permit to work." Sec. 3(g), 29 U.S.C.A. Sec. 203(g). The determinative factor is not the source of their compensation, but the fact that they render services which are necessary to the proper running of the defendant's station, that they are hired or selected by defendants and permitted by them to render these services, that they are subject to the general supervision and control of defendants in rendering the services and that the defendants have the power to discharge them." *Id.* at 817. *Schumann v. Collier Anesthesia, P.A.*, "The overarching question on summary judgment is whether, after consideration of the seven *Glatt* factors and others relevant to the specific case, the court is convinced there exists no genuine issue of material fact bearing on whether the internship i) provided students with a sound education and ii) exploited the students' free labor." *Id.* at 42-43.

Winfield v. Babylon Beauty Sch. of Smithtown Inc., "In the corporate context, courts look to whether the individual: (1) "had the power to hire and fire the employees"; (2) "supervised and controlled employee work schedules or conditions of employment"; (3) "determined the rate and

method of payment"; and (4) "maintained employment records." *Irizarry*, 722 F.3d at 105 (2d Cir.2013) (quoting Carter v. Dutchess Community College, 735 F.2d 8, 12 (2d Cir.1984). at 568). In *Siberius v. American Public University*, et al. (19-7400), the "Informal Brief" and "Amended Complaint" had thoroughly addressed these issues.

B. The Good Faith Reliance and Abuses of Internship Programs.

Machiavelli Siberius being wrongfully discharged from the placement site of field experience is an abuse and exploitation of the student-teacher and training program for teachers. The plaintiff was terminated from Pressley Ridge for reporting child abuse to law-enforcement. The particular illegality is specified in the university's policy handbook for the teacher program and state laws that pertain to teacher candidates in West Virginia; accordingly, a clause of mandatory reporting of child abuse in respect to the laws, university policy/contract, occupational duty, and professional guidelines for student-teachers. "The plaintiff was wrongfully discharged from the facility as West Virginia Code §55-7E-2 affirms, for exercising a protocol described in W.Va. Code §49-6A-2 and the right under W.Va. §49-2-803. This further adheres to other procedures involving law-enforcement and schools such as interagency cooperation under §49-6-109." Legislative Rule §126-162-3 to respond to instances of abuse and violence is imprinted inside the Student Teaching Handbook that a Defendant provided.

Marshall v. Baptist Hospital, Inc., 473 F. Supp. 465 (M.D. Tenn. 1979). Good faith under 29 U.S.C. § 259 requires that an employer react to an administrative pronouncement as a reasonably prudent person would react under similar circumstances. *Kam Koon Wan v. E. E. Black, Ltd.*, 188 F.2d 558, 562 (9th Cir.), cert. denied, 342 U.S. 826, 72 S. Ct. 49, 96 L. Ed. 625 (1951). Thus, any factors that would put an employer on notice that the ruling was not authoritative, or was qualified or incomplete would put the employer on notice that his reliance was not made in good faith. *Burke v. Mesta Machine Co.*, 79 F. Supp. 588, 611 (W.D.Pa.1948). *Id.* at 478. *Schumann v. Collier Anesthesia, P.A.*, Case No: 2:12-cv-347-FtM-29CM (M.D. Fla. Oct. 27, 2016): "This case, however, concerns a universal clinical-placement requirement necessary to obtain a generally

applicable advanced academic degree and professional certification and licensure in the field." *Id.* at 1203.

Schumann continued, "In applying the factors to ascertain the primary beneficiary of an internship relationship, we caution that the proper resolution of a case may not necessarily be an all-or-nothing determination. That is, we can envision a scenario where a portion of the student's efforts constitute a bona fide internship that primarily benefits the student, but the employer also takes unfair advantage of the student's need to complete the internship by making continuation of the internship implicitly or explicitly contingent on the student's performance of tasks or his working of hours well beyond the bounds of what could fairly be expected to be a part of the internship." *Id.* at 1214-1215. Notably, a school could obtain free labor from student-teachers by wrongfully discharging interns, not finishing essential program documents for them, therefore, requiring the student to repeat a course, and contribute to a free labor system for school districts. This includes the university extending teaching hours for Machiavelli Siberius, beyond the State law requirements and the "Verification of Degree Plan."

Taking unfair advantage of students and interns should wholly include making them perform illegal acts that are contingent upon them passing a college course or continuing an internship for a program. Therefore, the host of a student and intern has a responsibility to abide by certain guidelines, so as not to create a free labor system by abusing the internship program or students, and sabotaging career goals. And therefore, these abuses should include capricious, illegal, and arbitrary activity that are not within the scope of the central profession or teaching program. The responsible guidelines to be followed by the hosting employer of students, to avoid abuse to a student from a free labor system, should include filling out the document named in *Schumann* and other educational programs: "the clinical courses...summative semester evaluations completed by the clinical instructor or coordinator." *Id.* at 1204. Furthermore, the Amended Complaint [ECF No. 29] specifies certain duties of the site placement school had not followed that is contingent to hosting a teacher candidate, to include the defendants never

followed-up with a 3-way conference call, used the Exit Evaluation form, and other duties neglected that would contribute to a free labor system rather than a teacher program, at no fault of the student-teacher. In *Schumann*, "We think that the best way to do this is to focus on the benefits to the student while still considering whether the manner in which the employer implements the internship program takes unfair advantage of or is otherwise abusive towards the student." *Id* at 1211.

Marshall v. Baptist Hospital, Inc., 473 F. Supp. 465 (M.D. Tenn. 1979). "Technical conformity with the criteria listed in the 10b14 enforcement policy is not the equivalent of good faith conformity, and where a hospital abuses a training program to the extent evident in this case, the element of good faith required by 29 U.S.C. § 259 is lacking." *Id.* at 479. "Simply stated, the hospital exploited the training program, turning it to its own advantage. That its advantage might in turn be to the advantage of the public does not justify violating the interests served by the FLSA, which are also designed to promote the public good." *Id.* at 477. There is a number of ways the student can be abused "unfairly taken advantage of or otherwise abused," which should be taken into consideration in the totality of circumstances. *Schumann v. Collier Anesthesia, P.A* "Nevertheless, we recognize the potential for some employers to maximize their benefits at the unfair expense and abuse of student interns. And that is a problem." *Id.* at 1211.

Glatt et al. v. Fox Searchlight Pictures, Inc. et al. (13-4478-cv; 13-4481-cv) "Under the primary beneficiary test we have set forth, courts must consider individual aspects of the intern's experience" *Id.* at 22. When properly designed, unpaid internship programs can greatly benefit interns. For this reason, internships are widely supported by educators and by employers looking to hire well- trained recent graduates. However, employers can also exploit unpaid interns by using their free labor without providing them with an appreciable benefit in education or experience. Recognizing this concern, all parties agree that there are circumstances in which someone who is labeled an unpaid intern is actually an employee entitled to compensation under the FLSA. *Id.* at 11.

C. The Defendant Not Record Keeping for a Student in the Workplace.

According to Joseph Garvey's signed *Affidavit*, Pressley Ridge did not maintain any records of the hours worked at the secondary school, by the plaintiff, Machiavelli Siberius. Similarly, in *Reich v. Shiloh True Light Church of Christ*, "Defendants in this action and have been and are employed in violation of the Fair Labor Standards Act, and the SVTP has employed oppressive child labor, failed to pay the minimum wage, failed to keep required records in violation of the FLSA." *Id.* at 819. (See Winfield v. Babylon Beauty Sch. of Smithtown Inc., 89 F. Supp.)

According to the U.S. Department of Labor 29 CFR §516.30(a) "With respect to persons employed as learners, apprentices, messengers or full-time students employed outside of their school hours in any retail or service establishment in agriculture, or in institutions of higher education, or handicapped workers employed at special minimum hourly rates under Special Certificates pursuant to section 14 of the Act, employers shall maintain and preserve records containing the same information and data required with respect to other employees employed in the same occupations." *Marshall v. Baptist Hospital, Inc.*, Nevertheless, it has engaged in the course of conduct set forth in these findings. The defendant never sought advice from the Department of Labor and as a matter of fact attempted to conceal the facts surrounding its relationship with the trainees by refusing the Compliance Officer access to its records and other information that he was entitled to inspect under section 11(a) of the Act, 29 U.S.C. § 211(a). *Id.* at 481; performing such clerical functions as filing and preparing records of procedures performed. *Id.* at 472

"A similar policy [should] be followed where the students perform such tasks less frequently but for a full day, with an arrangement to perform their academic work for such days at other times. For example, the students may perform full-day cafeteria service four times per year. In such cases, the time devoted to cafeteria work in the aggregate would be less than if the student worked an hour per day. However, if there are other indicia of employment, or the students normally devote more than an hour each day or equivalent to such work, the circumstances of the

arrangement should be reviewed carefully" [FLSA Coverage: Employment Relationship, Statutory Exclusions, Geographical Limits, Chapter10b Section 03(f)].

D. The District Judge's Faulty Misplacement of Displacement for Unlicensed Teachers.

As noted in the Amended Complaint, essentially "Candidates can already be employed at a school, receiving payments from the employer, maintaining both teacher candidacy and a teaching position, because the duties are exactly the same! The amount of time dedicated to the classroom, the level of responsibility, and the job position['s] duties at the employer are the same as for a teacher candidate as for a full-time paid employee that is a teacher at the facility; this is a reason that a paid teacher would not need to vacate their position at a school, because they are capable of fulfilling the duties of both roles simultaneously. In fact, the thing that does change are the job titles, like terms such as Intern, Student Teacher, Teacher Candidate, which are used to designate legal boundaries of the position that mean the individual is not fully licensed to teach in the state." There shall not be displacement if a teacher program permits a teacher seeking certification to keep their paid position, keeping a salary while performing the exact same duties as a teacher candidate. Hence therefore, the teacher does not have teacher certification, yet are permitted to teach for a salary, due to the lack of highly qualified teachers in the area. The main difference for a teacher program is that a Site Supervisor steps into the classroom, to write a critique of the teacher's performance and suggests alternative ideas to teaching. (Informal Brief, pp. 4-5) According to the Student Teaching Handbook, "Candidates already employed as full-time K-12 teachers must also obtain approval from the Coordinator of Field Placement to maintain their current employment while student teaching" (p. 12).

In According to W.Va. Code §18A-3-2, Teacher certification; required; expiration; "Any professional educator, as defined in article one of this chapter, who is employed within the public school system of the state shall hold a valid teaching certificate licensing him or her to teach in the specializations and grade levels as shown on the certificate for the period of his or her employment. If a teacher is employed in good faith on the anticipation that he or she is eligible for

a certificate and it is later determined that the teacher was not eligible, the state Superintendent of Schools may authorize payment by the county board of education to the teacher for a time not exceeding three school months or the date of notification of his or her ineligibility, whichever shall occur first. All certificates shall expire on June 30 of the last year of their validity irrespective of the date of issuance." The appellant wants to note that this particular code would counteract part six of the FLSA criterion for "trainees or students are not employees within the meaning of the Act:" (U.S. Department of Labor, Wage and Hour Division: *FLSA2006-12* [Opinion Letter]). There is a clear expectation of money for teacher candidates that fail or obtain certification. See *Winfield v. Babylon Beauty Sch. of Smithtown Inc.*, 89 F. Supp. 3d 556 (E.D.N.Y. 2015)

As said in, 29 CFR § 541.303(c) further emphasizes that certificates are not required for payments as a teacher: "(c) The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the State to refer to different kinds of certificates. However, private schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system."

Reich v. Shiloh True Light Church of Christ, there is a "little bit of difference" between the work activities on the job site between minors under and over 16 years, in that the ones under 16 are not as experienced as the ones over 16, according to Little...The Court finds as a fact that the attribution to church policy to not pay the minors under 16 is an attempt to label them students rather than employees (#75-76 Tr. 150-151). See *Lehigh Valley Coal Co. v. Yensavage*, 218 F. 547, 552–53 (2d Cir. 1914) (finding that a miner working for another miner was an employee, not an

independent contractor, of the coal company). See *Burruss*, 38 N.M. at 258, 31 P.2d at 265; see also *Larson*, supra, § 44.35(a). Our opinions also suggest other factors such as (1) the right to delegate the work or to hire and fire assistants." *Harger v. Structural Services, Inc.* 916 P.2d 1324 (1996) 121 N.M. 657. The student-teachers and teacher candidates undergo all the hardships as a fully licensed teacher, and are indistinguishable at times from one.

E. An Infringement Upon the Thirteenth Amendment to the U.S. Constitution.

The mannerism that the West Virginia Department of Education and American Public University System, Inc. ran the teacher program in the integrated political, corporate, and illegal colluding scheme of economics—to fail 'student-teachers' on false grounds—so they perform more work for county and state board schools, free of charge.[1] The student-teachers are pursuing a property right and property "interest" in occupation, that is not obtainable through a fraudulently rigged and defective teacher program; this gives way to a free labor system. This is a sophisticated modern slavery, to make people work for free in exchange for a 'false promise' that one day they will be paid or obtain a college degree.[2] Machiavelli Siberius had performed the same exact duties, encountered the same exact risks, as a licensed professional teacher.

In addition, in *Siberius v. American Public Univers.*, the way the police reacted by not intervening, and the fashion that the defendants tried to get the plaintiff to not report a crime to the police; and nor did anyone with "knowledge and power" intervene as a property right and property "interests" were damaged by the defendants; this is reminiscent of a broken Confederacy and Ku Klux Klan ultimatum for the territory. While slavery is no longer in effect according to the

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[1] California Education Code, Section 44462. Salary payments for supervision of interns may be made out of district funds and may be met by reducing proportionately the salaries paid interns. Under this authorization no more than eight interns may be supervised by one staff member and the normal district salary paid each intern may be reduced by as much as, but no more than, one-eighth to pay the salary of the supervisor. In no event may an intern be paid less than the minimum salary required to be paid by the state to a regularly certificated teacher. (Enacted by Stats. 1976, Ch. 1010.)

[2] North Carolina General Statutes § 115C-269.30.(c) Salary and Benefits.--Teacher assistants shall continue to receive their salary and benefits while interning in the same local school administrative unit where they are employed as a teacher assistant.

United States Constitution, the territory is still projecting indifference toward a person, treating him as a second-class citizen, and not letting him utilize law-enforcement agencies for the purpose of safety for property, to execute contracts, or execute duties of an occupation.

II. 42 U.S. Code § 1983

A. Corporation's Official and A Corporation Can Act "Under Color of State Law," In A State Separate from Its Headquarters. A Corporation Can Be the Citizen of Several States.

In [ECF No. 48 at 9] *Memorandum and Opinion* by District Judge, Joseph R. Goodwin: "As alleged in the Amended Complaint, Pressley Ridge is a private corporation that provides residential treatment, educational, and foster care services, headquartered in Pittsburgh, Pennsylvania. Thus, it was not acting under color of state law."

In [ECF No. 29 at 13], the physical address that plaintiff, Machiavelli F. Siberius, was working and student-teaching on a permit, is listed in the defendant's profile in the complaint: Pressley Ridge at White Oak, 2172 Volcano Road, Walker, WV 26180. All promises, professional relationships and associations, or quasi-contracts, and incident of tort and civil action happened in Wood County, West Virginia. In addition, explained in [ECF No. 29 at 14-16], the citizenship of the Defendants according to 28 U.S.C. § 1369(c)(2) "a corporation is deemed to be a citizen of any State, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business."

In 28 U.S.C. § 1332(c)(1) "A corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business..."

> 28 U.S.C. § 1391(d) "Residency of Corporations in States With Multiple Districts.—For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal

jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts..." (g) Multiparty, Multiforum Litigation.— "A civil action in which jurisdiction of the district court is based upon section 1369 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place."

In [ECF No. 29 at 78], "Jacob Green, the Superintendent of OIEP [Office of Institutional Education Programs at WVDE] had assured the plaintiff that he could complete the requirements for the teacher program by student teaching at Pressley Ridge at White Oak. The entire field experience was to be completed at the school, so the plaintiff could become a fully licensed teacher (March 1, 2016). Lisa Hoskins, the Principal at Pressley Ridge had first affirmed the decision (February 23, 2016) and reaffirmed the decision (March 4, 2016), to permit the plaintiff to work as a student teacher, to complete licensing and program requirements for teaching."

The plaintiff, Machiavelli Siberius had served more than 12 weeks and over 430 hours at Pressley Ridge at White Oak, as a student-teacher, as permitted by the West Virginia Department of Education, and approved by their OIEP school system for wards of the state and wards of the court. As stated in *Amended Complaint*, [ECF No. 29 at 40] "Pressley Ridge and the West Virginia Department of Education's employees Tracy Lott and Lisa Hoskins notified the Plaintiff, Machiavelli Farrakhan Siberius that he was being terminated for 'reporting an incident to the police.' The plaintiff under contract by American Public University System, Inc., and under West Virginia Legislative Rule as a student teacher with a permit, and as a resident of West Virginia and citizen that abides by West Virginia Code, in good faith had reported the incident that had transpired at Pressley Ridge to the Wood County Sherriff's Department...There are strict guidelines for reacting to the crime as one employed in a teacher position, which deems reporting this act as absolutely necessary in licensing/certification guidelines."

The principal acknowledged that the termination would be followed up with a written document, as requested by the plaintiff; this request was never fulfilled. In addition, Lisa Hoskins had claimed that there was going to be a meeting between a Dean of APUS and herself. No

verification has been received by the plaintiff of this meeting taking place. Dr. Kathleen Tate of APUS had contacted the plaintiff to verify a termination and order him not to contact Pressley Ridge, "Hello, Adam, and Dr. Butler. Please note that Adam[3] is not allowed to return to the campus at Pressley Ridge White Oak. Adam, please do not return to or contact the campus at this time" (Dated: 6/6/2016). The plaintiff was wrongfully discharged from Pressley Ridge, which was done the following workday from reporting a staff member to police, [ECF No. 29 at 33].

The Pressley Ridge at White Oak facility has since shutdown, and Headquarters is being sought as responsible for a civil action. See Fed.Rule Civ.Proc. 25(d) and Fed.Rule App.Proc. 43.

MEMORANDUM OF LAW

When a governmental entity contracts with a private company (i.e., jail medical contractor), the entity may still be liable for the company's unconstitutional policies. See *Robinson v. Integrative Detention Health Services*, No. 3:12-CV-20, (M.D. Ga. Mar. 28, 2014). When a county delegates final policymaking authority to a private entity regarding inmate medical care, "the county itself remains liable for any constitutional deprivations caused by the policies or customs of the [private entity]." *Id.* at 26.

> In *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961). Supreme Court, Syl. Pt. 2, "In view of all the circumstances of this case, including the facts that the restaurant was physically and financially an integral part of a public building, built and maintained with public funds, devoted to a public parking service, and owned and operated by an agency of the State for public purposes, the State was a joint participant in the operation of the restaurant, and its refusal to serve appellant violated the Equal Protection Clause of the Fourteenth Amendment." Pp. 365 U.S. 721-726. Supreme Court, Syl. Pt. 3, "When a State leases public property in the manner and for the purpose shown to have been the case here, the proscriptions of..." Page 365 U.S. 716. "The Fourteenth Amendment must be complied with by the lessee as certainly as though they were binding covenants written into the agreement itself." P. 365 U.S. 726.

The symbiotic relationship of State and private entity described in *Adickes v. S.H. Kress & Co*, 398 U.S. 144, 150-152 (2nd Cir., 1970); Syl. Pt. 1: "a private party involved in such a conspiracy, even though not an official of the State, can be liable under § 1983. Private persons, jointly

[3] The plaintiff/petitioner was formally known as Adam Dotson.

engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents," *United States v. Price*, 383 U.S. 787, 794 (1966).

In *Paige v. Coyner*, No. 09-3287, (6th Cir., 2010), (explaining that the "under color of state law" requirement for § 1983 is the same as the "state action" requirement of the Fourteenth Amendment). The Supreme Court in *Blum* described the residents' suit as one that "seeks to hold state officials liable for the actions of private parties" and ultimately concluded that the state-action requirement was not satisfied. *Blum*, 457 U.S. at 1003, 102 S.Ct. 2777. It used three tests to determine whether the actions of the nursing homes should be attributed to the state. First, where "there is a sufficiently close nexus between the State and the challenged action of the regulated entity[,]...the action of the latter may be fairly treated as that of the State itself." *Id.* at 1004, 102 S.Ct. 2777 (citation omitted). The nexus test assures that "constitutional standards are invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains." *Id* at 278-279. Second, "a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." *Id.* This is the so-called state-compulsion test. Finally, state action will likely be present if "the private entity has exercised powers that are traditionally the exclusive prerogative of the State." *Id.* at 1005, 102 S.Ct. 2777 (citation and internal quotation marks omitted). *Id.* at 279.

> According to West Virginia Code § 18B-1-4, "All of the policies and affairs of the state colleges and universities shall be determined, controlled, supervised and managed by the West Virginia board of regents, who shall exercise and perform all such powers, duties and authorities: Provided, That the standards for education of teachers and teacher preparation programs at the state colleges and universities shall continue to be under the general direction and control of the West Virginia Board of Education, and the West Virginia Board of Education shall have sole authority to continue, as authorized by section six, article two, chapter eighteen of this code, to enter into agreements with county boards of education for the use of the public schools to give prospective teachers teaching experience."

In *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972), Supreme Court, Syl. Pt. 2, "The operation of Pennsylvania's regulatory scheme enforced by the state liquor board, except as noted below, does not sufficiently implicate the State in appellant's discriminatory guest practices so as to make those practices "state action" within the purview of the Equal Protection Clause, and there is no suggestion in the record that the State's regulation of the sale of liquor is intended overtly or covertly to encourage discrimination." *Burton v. Wilmington Parking Authority*, 365 U.S. 715, distinguished. Pp. 407 U.S. 171-177. Supreme Court, Syl. Pt. 3, "Pennsylvania liquor board's regulation requiring that "every club licensee shall adhere to all the provisions of its constitution and bylaws" in effect placed state sanctions behind the discriminatory guest practices that were enacted after the District Court's..." Page 407 U.S. 164. "...decision, and enforcement of that regulation should be enjoined to the extent that it requires appellant to adhere to those practices." Pp. 407 U.S. 177-179.

West v. Atkins, 487 U.S. 42 (1988). Held: A physician who is under contract with the State to provide medical services to inmates at a state prison hospital on a part-time basis acts "under color of state law," within the meaning of § 1983, when he treats an inmate. Pp. 487 U.S. 48-57. (c) Respondent's conduct in treating petitioner is fairly attributable to the State. The State has an obligation, under the Eighth Amendment. Page 487 U.S. 43 and state law, to provide adequate medical care to those whom it has incarcerated. *Estelle*, supra, at 429 U.S. 104; *Spicer v. Williamson*, 191 N.C. 487, 490, 132 S.E. 291, 293. "The State has delegated that function to physicians such as respondent, and defers to their professional judgment. This analysis is not altered by the fact that respondent was paid by contract, and was not on the state payroll, nor by the fact that respondent was not required to work exclusively for the prison. It is the physician's function within the state system, not the precise terms of his employment, that is determinative." Pp. 487 U.S. 54-57.

B. A "Person" Can Be A Municipality Under Section 1983, A School Board Can Be Sued Under Section 1983, and Various Capacities Sued Under 42 U.S.C. Section 1983.

In [ECF No. 48], the District Judge's argument for a dismissal of 42 U.S.C. § 1983 included: "Likewise, the WVDE, an agency of the State of West Virginia, is not a person with respect to section 1983...In *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989), the Supreme Court held that, neither a State, nor its officials acting in their official capacities, are "persons" under

section 1983" (p. 9). Yet in *Siberius*, the plaintiff's party believes there is numerous cases and specific details about the civil action that counters the District Judge's beliefs about claims under 42 U.S.C. § 1983.

In [ECF No. 39 at 1-2], and Exhibits AA-AF, shows that the West Virginia Department of Education and the West Virginia Board of Education are the same employer, organization, and state entity. The defendant had argued that there was no connection between the two names beyond the policymaking powers that were integrated into a section of government, all the while, denying responsibility for teacher programs. The response in [ECF No. 41] had given numerous examples that the WVDE and WVBE are the same entity to be sued, not immune in many instances, and the names are used interchangeably. This can be further observed in West Virginia Code § 18B-1-4, that the Department of Education is being sued for the same thing the Board is supposed to be controlling, supervising and managing. The next case shows the proximity and responsibility of the Department of Education to a teacher taking a college course for teacher certification:

> Opinion Issued July 12, 1993 *Carol J. White vs. Department of Education* (CC-93-82) "Claimant represents self. Larry M. Bonham, Assistant Attorney General, for respondent. PER CURIAM: This claim was submitted for decision based upon the allegations in the Notice of Claim and the respondent's Answer. Claimant seeks reimbursement of $293.00 for a course taken to renew her teaching certificate for fiscal year 1991-92. The invoice for the course was not processed for payment in the proper fiscal year; therefore, the claimant has not been paid. The respondent admits the validity and amount of the claim and states that there were sufficient funds expired in the appropriate fiscal year with which the claim could have been paid. In view of the foregoing, the Court makes an award in the amount of $293.00. Award of $293.00" (W.Va. Code § 14-2-25).

Office of Institutional Education Programs has changed its name to Office of Diversion and Transition Programs; W.Va. Code §18-5-5 "It shall succeed and be subrogated to all the rights of former magisterial and independent district boards and may institute and maintain any and all actions, suits and proceedings now pending or which might have been brought and prosecuted in the name of any former board for the recovery of any money or property, or damage to any

property due to or vested in the former board, and shall also be liable in its corporate capacity for all claims legally existing against the board of which it is a successor."

The defendants named in the suit had been a contentious point throughout the case history of *Siberius v. American Public University, et al.*, SD W.Va., Charleston, 19-7400 (2:18-cv-01125). Also, further joint tortfeasors, state entities, official capacities, and personal capacity suit, to be sued was left to the District Court. Lisa Hoskins, the principal of Pressley Ridge at White Oak, and simultaneously an employee at the West Virginia Department of Education is listed throughout the complaint as a defendant subordinate to a claim in the civil action, and the indemnifications against the state entity that claimed corporate and employee power in the State of West Virginia.

MEMORANDUM OF LAW

In *Carver v. Sheriff of Lasalle County, Illinois*, 324 F.3d 947 (7th Cir. 2003). But in the future counties must be named as parties and are entitled to remain in the suit, so that they may veto improvident settlements proposed (at their expense) by the independently elected officers, per curiam, *Id.* at 948, 507. In *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 690–691, 98 S. Ct. 2018, 2035–36, 56 L. Ed. 2d 611, 635 (1978). (holding that municipalities and local governments are considered "persons" under Section 1983 when an official government policy or custom caused a constitutional violation). Syl. Pt. 4(b), "Similarly, extending absolute immunity to school boards would be inconsistent with several instances in which Congress has refused to immunize school boards from federal jurisdiction under § 1983." Pp. 436 U.S. 696-699.

Hafer v. Melo et al., 502 U.S. 21, 112 S. Ct. 358 (1991). "After petitioner Hafer, the newly elected auditor general of Pennsylvania, discharged respondents from their jobs in her office, they sued her for, inter alia, monetary damages under 42 U.S.C. § 1983. The District Court dismissed the latter claims under *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71, in which the Court held that state officials "acting in their official capacities" are outside the class of "persons" subject to liability under § 1983. In reversing this ruling, the Court of Appeals found that respondents

sought damages from Hafer in her personal capacity and held that, because she acted under color of state law, respondents could maintain a § 1983 individual-capacity suit against her." Syllabus, *Id.*

Biggs v. Meadows, 66 F.3d 56 (4th Cir. 1995) ERVIN, Chief Judge:

> "In this case, we address whether a plaintiff filing a complaint under 42 U.S.C. §(s) 1983 must plead expressly that state officials are being sued in their individual, rather than official, capacities. Adopting the view accepted by most other circuits, we hold that a litigant need not explicitly draw such a distinction. Instead, a court must look to the substance of the complaint, the relief sought, and the course of proceedings to determine the nature of a plaintiff's claims. Because the district court erroneously applied a presumption that defendants are sued only in their official capacities unless a complaint specifically states that a personal capacity suit is intended, we reverse the judgment of the district court dismissing this action and remand the case for further proceedings." *Id.* at 58.

> "One factor indicating that suit has been filed in such a manner might be the plaintiff's failure to allege that the defendant acted in accordance with a governmental policy or custom, or the lack of indicia of such a policy or custom on the face of the complaint. See *Hill v. Shelander*, 924 F.2d 1370, 1374 (7th Cir. 1991) (finding a personal capacity claim where "the unconstitutional conduct alleged involves [the defendant's] individual actions and nowhere alludes to an official policy or custom that would shield him from individual culpability"); see also *Conner*, 847 F.2d at 394 n. 8. Another indication that suit has been brought against a state actor personally may be a plaintiff's request for compensatory or punitive damages, since such relief is unavailable in official capacity suits. *Biggs v. Meadows*, *Id.* at 61. See, e.g., *Shabazz v. Coughlin*, 852 F.2d 697, 700 (2d Cir. 1988); *Pride v. Does*, 997 F.2d 712, 715 (10th Cir. 1993); *Price*, 928 F.2d at 828; *Gregory*, 843 F.2d at 119-20; *Hill*, 924 F.2d at 1374.

In *Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985): "As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. *Brandon*, 469 U.S., at 471-472. It is not a suit against the official personally, for the real party in interest is the entity. Thus, while an award of damages against an official in his personal capacity can be executed only against the official's personal assets, a plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself." In *Kentucky v. Graham*, 473 U.S. 159 (1985), the Court sought to eliminate lingering confusion about the distinction between personal- and official-capacity suits. We emphasized that official-capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Id.*, at 165 Hafer seeks to

overcome the distinction between official- and personal-capacity suits by arguing that 1983 liability turns not on the capacity in which state officials are sued, but on the capacity in which they acted when injuring the plaintiff. [502 U.S. 21, 28].

> *Hafer v. Melo et al.*, 502 U.S. 21, 112 S. Ct. 358 (1991). "Moreover, § 1983's authorization of suits to redress deprivations of civil rights by persons acting "under color of" state law means that Hafer may be liable for discharging respondents precisely because of her authority as auditor general. Her assertion that acts that are both within the official's authority and necessary to the performance of governmental functions (including the employment decisions at issue) should be considered acts of the State that cannot give rise to a personal-capacity action is unpersuasive. That contention ignores this Court's holding that § 1983 was enacted to enforce provisions of the Fourteenth Amendment against those who carry a badge of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it." *Scheuer v. Rhodes*, 416 U.S. 232, 243; [502 U.S. 21, 22].
>
> "Furthermore, Hafer's theory would absolutely immunize state officials from personal liability under § 1983 solely by virtue of the "official" nature of their acts, in contravention of this Court's immunity decisions. See, e. g., *Scheuer*, supra. pp.27-29. "While Hafer's power to hire and fire derived from her position as Auditor General, it said, a suit for damages based on the exercise of this authority could be brought against Hafer in her personal capacity," [502 U.S. 21, 24-25]. Indeed, when an official sued in this capacity in federal court dies or leaves office, her successor automatically assumes her role in the litigation. See Fed.Rule Civ.Proc. 25(d)(1); Fed.Rule App.Proc. 43(c)(1); this Court's Rule 35.3. Because the real party in interest in an official-capacity suit is the governmental entity, and not the named official, "the entity's 'policy or custom' must have played a part in the violation of federal law." *Graham*, supra, at 166 (quoting *Monell*, supra, at 694). For the same reason, the only immunities available to the defendant in an official-capacity action are those that the governmental entity possesses. 473 U.S., at 167. See *Hafer v. Melo et al.*, 502 U.S. 21, 26.

C. The Waiver of Eleventh Amendment Immunity.

Holding to [ECF Nos. 1,2,3,4,5, and 6]: In documents filed July 5, 2018, the defendant, American Public University System, Inc. with the consent of the other defendants had removed the plaintiff's civil action from state court into the federal district court pursuant to 28 U.S.C. §§ 1441 and 1446. The State of West Virginia had waived its Eleventh Amendment immunity, giving federal jurisdiction over the case. In light of the foregoing, this Court has federal question jurisdiction over the plaintiff's FLSA claim pursuant to 28 U.S.C. § 1331.

The Supreme Court's recent decision in *Will v. Michigan Department of State Police*, ___ U.S. ___, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989) (state officials sued in official capacity for damages

are absolutely immune from liability under the Eleventh Amendment), however, makes it unnecessary for us to reach the merits of plaintiffs' claim. *Wells v. Brown*, 891 F.2d 591 (6th Cir. 1989) *Id.* at 592. In *Siberius*, Case No. 2:18-cv-01125, the defendant's voluntary appearance in federal court and use of the removal tool, the West Virginia Department of Education had waived its Eleventh Amendment immunity. This should be harshly noted as a counterexample or staple of difference to other court cases, like *Will v. Michigan Dept.*, that was removed by plaintiff or directly filed by the plaintiff in federal court.

D. The Defendants Acted "Under Color of Law."

Sandra ADICKES, Petitioner, v. S. H. KRESS & COMPANY. 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). In other legal usage, the word 'color,' as in 'color of authority,' 'color of law,' 'color of office,' 'color of title,' and 'colorable,' suggests a kind of holding out and means 'appearance, semblance, or simulacrum,' but not necessarily the reality. *Id.* at 123. *Paige v. Coyner*, 2010 U.S. App. LEXIS 15239, 27 (6th Cir. 2010) ("[A] policy or custom does not have to be written law; it can be created 'by those whose edicts or acts may fairly be said to represent official policy.'") (quoting *Monell v. Dept. of Social Servs.*, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037–38, 56 L. Ed. 2d 611, 638 (1978)).

> *Bryant v. Chicago Board of Education*, 01-C-7895 (N.D. Ill. Apr. 19, 2002), "There are three ways in which a municipality's policy can violate § 1983: (1) if it has an express policy that, when enforced, causes constitutional deprivation; (2) if there is a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute custom or usage with the force of law; (3) if a person with final policymaking authority causes a constitutional injury." *Id.*

In *Limes-Miller v. City of Chicago*, 773 F. Supp. 1130 (N.D. Ill. 1991) Limes-Miller does not dispute that official prohibition. Instead she alleges that the complained-of actions were the result of an informal policy or custom "the existence of an entrenched practice with the effective force of a formal policy" (*Gray v. Dane County*, 854 F.2d 179, 183 (7th Cir.1988)). As *Jones v. City of Chicago*, 787 F.2d 200, 204 (7th Cir.1986) put it: The word "custom" generally implies a habitual practice or a course of action that characteristically is repeated under like circumstances. That practice must

be "persistent and widespread" to impute constructive knowledge to City policymakers (id., quoting *Monell*, 436 U.S. at 691, 98 S.Ct. at 2036). *Id.* at 1136.

Bd. of the Cnty. Comm'rs v. Brown, 520 U.S. 397, (1997) (noting that policymakers' awareness of a pattern of unconstitutional conduct by employees, along with a failure to address the problem, may demonstrate conscious disregard for a need to train, which would give rise to municipal liability); See *City of Canton v. Harris*, 489 U.S. 378, (1989). According to *Oviatt by and Through Waugh v. Pearce*, 954 F.2d 1470 (9th Cir. 1992): "There is also no question that the decision not to take any action to alleviate the problem of detecting missed arraignments constitutes a policy for purposes of § 1983 municipal liability." *Id.* at 1477. In accordance with *Hunter v. County of Sacramento*, 652 F.3d 1225 (9th Cir. 2011), (1) The routine failure to follow a general policy can itself constitute an actionable custom. (4) Failure to properly investigate, like failure to discipline employees involved in incidents of excessive force, is evidence of and supports a finding that not only was it accepted, but was customary. (11) Failure to properly investigate, like failure to discipline employees involved in incidents of excessive force, is evidence of and supports a finding excessive force was not only accepted but was customary. *Id.* at 1229.

> *Monroe v. Pape*, 365 U.S. 167 (1961). Syl Pt. 2, (b) One of the purposes of this legislation was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance, or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth Amendment might be denied by state agencies. Pp. 365 U.S. 174-180. (c) The federal remedy is supplementary to the state remedy, and the state remedy need not be sought and refused before the federal remedy is invoked. P. 365 U.S. 183. (d) Misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law is action taken "under color of" state law within the meaning of § 1979. *United States v. Classic*, 313 U.S. 299; *Screws v. United States*, 325 U.S. 91. Pp. 365 U.S. 183-187.

Examining an Appeal Letter sent to APUS, Inc. [ECF No. 17; Exhibit 5], the plaintiff reaffirms herein. On June 6, 2016, the plaintiff was terminated from a student teaching position at Pressley Ridge. The grounds for the termination were for reporting a staff member to the Wood County Sheriff's Department. The reason that the staff member was reported by the teacher

candidate was for child abuse, child endangerment, and battery. A staff member, an employee, and agent of Pressley Ridge, named Kevin Croston, had forcefully tackled a female student by the name of Madison. She claimed to the plaintiff that she posed no imminent threat. The student's teeth had been damaged, requiring dental work for missing/chipped teeth. Pressley Ridge's administrators and staff members had not pressed charges against the suspect, Kevin Croston, who continued to work at the facility, working within the vicinity of the victim.

Noted in the amended complaint [ECF No. 29 at 32-33]: The police and sheriff's department did not have the opportunity to interview the victim. This facility had not permitted the student the privilege to disclose information to the police. The plaintiff, at the time, a Teacher Candidate, had reported the incident, due to the victim's parents not having access to the facility, and the phones were not reasonably accessible to students; notably, the student was a minor at the time of the incident. The victim, Madison, was not permitted to leave campus to reach safety or sanctuary from her attacker, or seek out help through the police department. The Sheriff's Office was not permitted to contact the victim pending the investigation, according to Officer Pickens. The suspect was contacted, but no arrest was made, due to the victim not being interviewed, or capable of pressing charges, due to a legal blockade the facility had set up.

As said in [ECF No. 29 at 41]: Also, the plaintiff does want to mention the Field Experience Handbook, which is supposed to guide the conduct of teacher candidates. Neither of the latter handbooks enumerated have ordered, commanded, nor directed, and had not used as a clear rule of thumb for the teacher candidate, the plaintiff, to report incidents of child abuse to the Site Teacher. Subsequently, he reported the incident to police. In fact, the plaintiff had a strong indication that knowledge about the incident was already known by the Principal, Site Teacher, and other staff members, yet either this was gross negligence or a complicit and colluding faculty that chose to conceal the incident.

Tracy Lott an employee of Pressley Ridge and an employee of the West Virginia Department of Education, acting on their behalf as an agent and servant had affirmed the reason

for termination via electronic communication: "Adam, I regret to inform you that due to circumstances beyond my control your student teaching as of today 6/6/2016. This is related to the situation involving reporting an incident to the police and it broke the chain of command for mandatory reporting. Mrs. Orr and myself were informed of this news this afternoon. I'm really sorry for this inconvenience. Any questions about this should be addressed to Lisa Hoskins. Good luck in your future indeavors!" The plaintiff had called into the school secretary, Sherry Matheny, requesting the day off due to sickness. However, the plaintiff had missed the 3:18 PM email that terminated him from the school. He returned 6/7/2016 at about 7:30 AM, which got him summoned to the principal's office, to discuss his firing due to contacting the police.

"The facility contained students that were Wards of the State and Wards of the Court. And sometimes these Wards had been forcefully removed from a home by the police that were arresting the parent(s) at the same time. While in custody of the state, wards should be afforded additional protection against all threats, due to parents being often times incapable of interacting with their kid or teenager. Instead of affording additional protection to wards, Pressley Ridge and the West Virginia Department of Education, try to silence a person(s) that speaks out against abuse taking place against a minor in the facility that is managed by them, by firing him from a teaching position, as done to the plaintiff. Moreover, the defendants try to stop a police investigation concerning the issue, according to Officer Pickens. This is a double standard and the oppressive use of power against the victim and plaintiff by Pressley Ridge and the West Virginia Department of Education." [pp. 32-35].

Accordingly [ECF No. 29 at 53-54], American Public University System, Inc., had an "Article of Agreement" and expressed or implied contract that stated the following: "Affirms that if a conflict shall arise during the student's practice teaching experience, that appropriate American Public University personnel will be contacted to resolve said problem in an amenable manner, with minimal trauma to students, the student teacher, and staff members." However, APUS breached of contract and deprived the plaintiff of property and property interests, like certification

through the teacher program, a fair Clinical Supervision grade and credentials, initial teacher and certification licensing capabilities, and pursuit of a teaching career. APUS took no immediate action to resolve pending problems from the 6/6/2016 and 6/7/2016 termination from student teaching position and wrongful discharge from Pressley Ridge.

Again, the Superintendent had not released any inquiry on the incident, nor was he used to negotiate or make final-policy making decisions concerning the teacher-candidate's firing. In addition, the Superintendent was not used in the negotiation or protocol of a firing or negotiation in liaison with American Public University, during the transpiring of the incident. The principal, Lisa Hoskins was the liaison used to negotiate and execute protocol, disclosing the decision to a Dean at APUS, Inc., to terminate Machiavelli Siberius from the Pressley Ridge facility in Wood County. In addition, the decision came with instructions to not return to the Pressley Ridge campus or contact Pressley Ridge via telecommunication.

The West Virginia Department of Education that issued student-teaching permit to teach in county and state schools had never inquired an investigation into the termination of the plaintiff, or abuse of the aforementioned victim. The company and university American Public University System, Inc., that hosted the teacher licensing program(s) had no formal meeting concerning about ascribed incident, yet prevented Machiavelli Siberius from conferring a degree with teacher licensing capabilities. The Defendant broke the Article of Agreement, and Handbooks, using the opportunity to disenfranchise the plaintiff. The Wood County Sherriff's Office was prevented from conducting an investigation at Pressley Ridge at White Oak, concerning the child abuse incident that the plaintiff reported. The West Virginia Attorney General Office had refused to appropriately respond to the incident, and even missed a deadline to respond to the complaint, nor serve as a liaison between parties listed.

Said in [ECF No. 29 at 52], The Appellant's pursuit of a teaching career is a property right to which Siberius was deprived of from the breach of contract, and in accordance with Syllabus Point Six, *Garrison v. Thomas Memorial Hosp.* W.Va. Supr. Court, Case. 90-C-2795. (1993). "An

individual's right to conduct a business or pursue an occupation is a property right. The type of injury alleged in an action for tortious interference with business relationship is damage to one's business or occupation. Therefore, the two-year statute of limitations governing actions for damage to property, set forth under W.Va. Code, § 55-2-12 [1959], applies to an action for tortious interference with business relationship" *Id.*

E. The First Amendment Right, "Freedom of Speech" Was Infringed Upon.

The defendants West Virginia Department of Education and Pressley Ridge had violated the plaintiff's First Amendment right, "Freedom of Speech," by terminating the student-teacher/teacher candidate for disclosing information to the police. In W.Va. §49-2-803 and W.Va. §49-6-109 and W.Va. §18A-3-1(g)(2)(B)(ii): "Requirements for federal and state accountability, including the mandatory reporting of child abuse;" W.Va. §49-6-109 and W.Va. §49-2-803, specifies that reporting directly to the police is an appropriate action, to take in the instance of child abuse.

In *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), Justia, Annotation, "Since First Amendment protections extend to students in public schools, educational authorities who want to censor speech will need to show that permitting the speech would significantly interfere with the discipline needed for the school to function." Syl Pt. 2, "First Amendment rights are available to teachers and students, subject to application in light of the special characteristics of the school environment." Pp. 506-507. Syl. Pt. 3, "A prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments." Pp. 507-514. See *Pickering v. Board of Education*, 391 U.S. 563 (1968); *Keyishian v. Board of Regents*, 385 U.S. 589, 385 U.S. 605-606 (1967). See 20 U.S. Code § 1011a.

Hall v. Marion School District. No. 2, 860 F. Supp. 278 (D.S.C. 1993). "For the reasons stated below, this court finds that the district's actions in transferring and terminating Hall from her teaching position violated her constitutional rights under the First Amendment of the United States Constitution." *Id.* at 281-282. Accordingly, the fact that the decision to transfer and

subsequently terminate Hall comprised a single incident does not preclude this decision from constituting "official policy" for § 1983 purposes. Instead, if the "particular course of action" taken was unconstitutional transferring and later discharging Hall because she exercised her First Amendment rights the district is liable "[i]f the decision to adopt that particular course of action [was] properly made by [the district's] authorized decisionmakers." *Id.* at 291. See *Pembaur v. City of Cincinnati,* 475 U.S. (1986). In *Nix v. Norman,* 879 F.2d 429 (8th Cir. 1989). "See *Sanders v. St. Louis,* 724 F.2d 665, 667 (8th Cir. 1983) (per curiam). "We find that, for the purposes of surviving a motion to dismiss, Nix has stated a section 1983 claim for which relief against Norman may be granted." *Id.*

F. The Fourteenth Amendment Due Process Clause Was Violated by Defendants.

The defendants West Virginia Department of Education and Pressley Ridge had violated the plaintiff's Fourteenth Amendment right(s), the "Due Process Clause" and "Equal Protection." The defendants did not let the plaintiff report an incident to the police, without retaliatory practice, and coercive manipulation; and subsequently, terminating the plaintiff from the teacher-candidate position at Pressley Ridge at White Oak. The plaintiff chose to raise an argument as an employee and student-teacher at the facility.

Citing [ECF No. 41], and completely reiterating the same type of argument here in: the due process rights violated by discharge from the West Virginia Department of Education and Pressley Ridge facility, which those dismissal procedures in W.Va. Code §18A-2-8, §18A-2-2, §18A-2-7 were not followed. "Noted on page 57, paragraph 122 of the *Amended Complaint*: "The wrongful discharge was malicious[,] violating the due process of the plaintiff by not giving him a fair hearing at the facility, Pressley Ridge at White Oak. He was terminated immediately by West Virginia Department of Education and Pressley Ridge with no review of evidence, nor policy, or rules as a procedure to answer properly for violations in an appropriate set timeframe." Examining the procedure for discharging employees by the WVBE through statute §18A-2-8:

> Suspension and dismissal of school personnel by board; appeal. "(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge." W.Va. Code §18A-2 8 "(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board." "(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of article two, chapter six-c of this code, except that dismissal for the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony may be reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges."

"Noted in the *Amended Complaint* page 84, paragraph 186, under IX Tortious Interference, XI Conversion (p. 94), there was no hearing on rules, or to answer for malignant charges or accusations brought forth as noted in the statute under part-c. The firing was done by the Principal of Pressley Ridge at White Oak, Lisa Hoskins. The plaintiff had requested a letter from her about the firing, as noted in an Appeal Letter to the university, yet the request was never completed by the agent of the defendants. Tracy Lott had sent the plaintiff a letter on behalf of Lisa Hoskins, and employers that acknowledged a termination, but there was no process for a hearing on the allegations" (ECF No. 41, pp. 12-13).

> In *Goss v. Lopez*, 419 U.S. 565 (1975), Justia, Annotation, "Due process provides a property right for students in their education, so a hearing is required before they are deprived of it." Syl. Pt. 1, "Students facing temporary suspension from a public school have property and liberty interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment." Pp. 419 U.S. 572-576. Syl. Pt. 2, "Due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his version. Generally, notice and hearing should precede the student's removal from school, since the hearing may almost immediately follow the misconduct, but if prior notice and hearing are not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice and hearing should follow as soon as practicable." Pp. 419 U.S. 577-584.

In *Larsen v. City of Beloit*, No. 97-1831, (7th Cir. 1997): The Larsens bear the burden of proving that a property interest entitled to the Fourteenth Amendment's procedural protection

exists. *Petru v. City of Berwyn*, 872 F.2d 1359, 1361 (7th Cir. 1989). The Supreme Court has pointed out that such property interests "may take many forms." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 576, 92 S.Ct. 2701, 2708, 33 L.Ed.2d 548. Examples of property interests the Court has found to give rise to a requirement of due process include welfare benefits under statutory and administrative standards defining eligibility for them, *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287. *Roth*, 408 U.S. at 577, 92 S.Ct. at 2709. In a companion case to *Roth*, the Court stressed that this formulation meant that "property" interests subject to procedural due process protection are not limited by a few rigid, technical forms. A person's interest in a benefit is a "property" interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing. *Id.*

Machiavelli Farrakhan Siberius, the plaintiff believes that the seat in the teacher program at APUS was a "property" interest, the certification and graduation through the APUS teacher program was a "property" interest, and the college course's grading and credentials in Clinical Supervision EDUC697 at APUS was a "property" interest. The initial teacher and certification for a fully licensed teacher is a "property" interest at [the] West Virginia Department of Education. Student Teaching at Pressley Ridge through a student teaching permit was a "property" interest. The plaintiff's pursuit of a teaching career is a property right. In syllabus point 6, *Garrison v. Thomas Memorial Hosp.* W.Va. Supr. Court, Case. 90-C-2795. (1993). "An individual's right to conduct a business or pursue an occupation is a property right. The type of injury alleged in an action for tortious interference with business relationship is damage to one's business or occupation" [ECF No. 29 at 51-52, 91].

See *Zinermon v. Burch*, 494 U.S. 113, 139, 110 S. Ct. 975, 990, 108 L. Ed. 2d 100, 122 (1990) (holding that plaintiff had made a sufficient due process claim when it was shown that a deprivation of his rights was foreseeable and pre-deprivation safeguards could have prevented the harm suffered). In *Siberius* [ECF No. 29] "The defendants referred to the school Pressley Ridge as

a level-3 security facility. The students and teachers had a number of conflicts, so the police getting involved was inevitable at times. There had been several police responses to Pressley Ridge, as Officer Brett Pickens has stated and the Plaintiff has observed. The minors that are students are wards of the court and wards of the state. A large number of students had been placed at the facility, due to some type of police intervention. Therefore, the plaintiff contacting and talking to the police about a conflict that happens at Pressley Ridge is a foreseeable event." Pp. 81-82.

Yarg v. Hardin, No. 93-2934, 37F.3D, 282 (7th Cir. 1994) "The crux of this case is whether Officer Hardin's failure to intervene deprived Yang of his liberty rights under the Due Process Clause of the Fourteenth Amendment and his rights under the Fourth Amendment to be free from unreasonable seizure." "...Under certain circumstances a state actor's failure to intervene renders him or her culpable under § 1983. See, e.g., *White v. Rochford*, 592 F.2d 381, 383 (7th Cir.1979) (police officers liable for exposing children to danger by leaving them unattended in a car parked on the highway after lawfully arresting their guardian); *Byrd v. Brishke*, 466 F.2d 6, 10 (7th Cir.1972)" *Id.* at 284-285. *Lamaster v. Ind. Dep't of Child Servs.*, 4:18-cv-00029-RLY-DML (S.D. Ind. Mar. 20, 2019) quoting *Windle v. City of Marion*, Ind., 321 F.3d 658, 662 (7th Cir. 2003) (finding no due process violation where police, who had knowledge of sexual relationship between student and teacher, failed to intervene and protect student, reasoning the police "did nothing to create a danger, nor did they do anything to make worse any danger [the student] already faced"). *Id.* at 6

G. Defendants Violated Equal Protection Clause; Abridging Privileges and Immunities.

Machiavelli Siberius was not able to relay a mandatory report of child abuse to a law enforcement agency with privileges and immunities as others of the state. The plaintiff was not afforded Equal Protection as a citizen of the State of West Virginia, or employee, and a student-teacher of a University, or equal protection as a student-teacher under a Board permit to teach at a school.

The Fourteenth Amendment declares that a state cannot make or enforce any law that abridges the privileges or immunities of any citizen. *Corfield v. Coryell*, 6 Fed. Cas. 546 (No. 3,230)(C.C.E.D.Pa., 1823), "The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states?" [Citizens should be] "equally protected by the laws of the state against the aggressions of others, whether citizens or strangers." *Id.* at 502-504. *Saenz v. Roe*, 526 U.S. 489 (1999), Syl. Pt. 1(c)(d), (c) "The right of newly arrived citizens to the same privileges and immunities enjoyed by other citizens of their new State–the third aspect of the right to travel–is at issue here. That right is protected by the new arrival's status as both a state citizen and a United States citizen, and it is plainly identified in the Fourteenth Amendment's Privileges or Immunities Clause, see *Slaughter-House* Cases, 16 Wall. 36, 80."

"That newly arrived citizens have both state and federal capacities adds special force to their claim that they have the same rights as others who share their citizenship." Pp. 12—14. (d) "Since the right to travel embraces a citizen's right to be treated equally in her new State of residence, a discriminatory classification is itself a penalty..." at *Id. Plyler v. Doe*, 457 U.S. 202 (1982), Syl. Pt. (a), "The illegal aliens who are plaintiffs in these cases challenging the statute may claim the benefit of the Equal Protection Clause, which provides that no State shall 'deny to any person within its jurisdiction the equal protection of the laws.'..." *Kotch v. Board of River Port Pilot Comm'rs*, 330 U.S. 552 (1947), held, "considering the entirely unique institution of pilotage in the light of its history in Louisiana and elsewhere, the pilotage law as so administered does not violate the equal protection clause of the Fourteenth Amendment." Pp. 330 U. S. 553-564.

H. U.S. Constitution, Article 1, Section 10, Clause 1 Was Violated by Defendants.

West Virginia Department of Education had violated the Constitution of the United States, article first, section tenth, due to the state entity interfering with a contract that the plaintiff was abiding too, and acting on behalf thereof. The plaintiff was terminated from Pressley Ridge for reporting child abuse to law-enforcement. The particular illegality is specified in the university's policy handbook for the teacher program and state laws that pertain to teacher candidates in West

Virginia; accordingly, a clause of mandatory reporting of child abuse in respect to the laws, university policy/contract, occupational duty, and professional guidelines for student-teachers...Legislative Rule §126-162-3, to respond to instances of abuse and violence as imprinted inside the *Field Experience Handbook* that American Public University System, Inc., provided.

There appears to be little doubt among these jurisdictions that the student-university relationship is contractual in nature and that the terms of the contract may be derived from a student handbook, catalog, or other statement of university policy. See, e.g. *Ross v. Creighton Univ.*, 957 F.2d 410 (7th Cir. 1992); *Doherty v. Southern College of Optometry*, 862 F.2d 570 (6th Cir. 1988); *Corso v. Creighton Univ.*, 731 F.2d 529 (8th Cir. 1984); *Mahavongsanan v. Hall*, 529 F.2d 448 (5th Cir. 1976); *Abbariao v. Hamline Univ. Sch. of Law*, 258 N.W.2d 108 (Minn. 1977); *Bleicher v. University of Cincinnati College of Med.*, 604 N.E.2d 783 (Ohio Ct. App. 1992); *University of Texas Health Science Ctr. at Houston v. Babb*, 646 S.W.2d 502 (Tex. Ct. App. 1982). See *University of Mississippi Medical Center v. Hughes*, 765 So.2d 528 (Miss. 2000): —Hughes contends that the University catalog constitutes a contract between the University and its students. *Id.*

"Alexander Hamilton as to their rights. In an opinion which was undoubtedly known to the Court when it decided *Fletcher v. Peck*, Hamilton characterized the repeal as contravening "the first principles of natural justice and social policy," especially so far as it was made "to the prejudice . . . of third persons . . . innocent of the alleged fraud or corruption; . . . moreover," he added, "the Constitution of the United States, article first, section tenth, declares that no State shall pass a law impairing the obligations of contract. This must be equivalent to saying no State shall pass a law revoking, invalidating, or altering a contract." See *Fletcher v. Peck.* 10 U.S. (6 Cr) 87 (1810); Wright, *The Contract Clause of the Constitution* (1938), Alexander Hamilton's *Pamphlet* 1796.

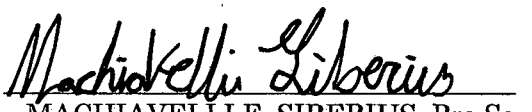
Allgeyer v. Louisiana, 165 U.S. 578 (1897), the liberty protected by the due process guaranteed of the Fourteenth Amendment, included the right to make contracts, free of state

interference. See *Trustees of Dartmouth Coll. v. Woodward,* 17 U.S. 4 Wheat. 518 518 (1819). In *Lochner v. New York,* 198 U.S. 45 (1905), state interference with freedom of contract was justified to protect the public health. However, Supreme Court determined that the right to freely contract is a fundamental right under the Fourteenth Amendment. The Fourteenth Amendment's "Due Process Clause" prohibits states from depriving any person of life, liberty, or property without due process of law.

CONCLUSION

For the foregoing reasons, Mr. Siberius respectfully requests that this Court grant the petition for writ of certiorari. Petitioner requests that the case be remanded to the trial court in accordance with the aforementioned arguments.

Respectfully submitted,



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