20-6611

No. 19-____

In the Supreme Court of the United States

JOHN MULLANEY,

Petitioner,

v.

UNIVERSITY OF ST. THOMAS & STATE OF MINNESOTA, BY AND THROUGH ITS COMMISSIONER OF HIGHER EDUCATION DENNIS OLSEN,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Minnesota

PETITION FOR WRIT OF CERTIORARI

John, Paul Mullaney
Pro Se COUNSEL FOR PETITIONER
EGO LAW FIRM
P.O. BOX 330, 40 7th
Street S. #212
MPLS., MN 55402
(763) 645-7582
JOHNPAULMULLANEY@HOTMAIL.COM

September 29, 2020

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTION PRESENTED

Petitioner was in the civil process of recovering withheld property through replevin, that the University of St. Thomas Mn claimed was not in procession and rescinding academic *sanctions* for the property being removed. The Court ruled the Property was in procession and be returned. However, the sanctions were not rescinded, since Discovery for evidence by the court was refused Discovery was sought to learn the process and rationale for the academic sanctions, nongermane contrived expulsion. Discovery Rule 29 or FERPA behooves granting access to the student Petitioner's "written directive not complied with" and sanctioned. The Minnesota Supreme Court concurred with the Court of Appeals, citing lack of Petitioner's material fact are "mere averments", despite being briefed by the Petitioner's that substantiating evidence of the academic sanctions is the student's competing and heightened deterrent for access and amend conferred, in part, by 20 U.S.C. § 1232g (FERPA). The Material fact that sanctions exist suggests there is alleged evidence without refute. Refutable evidence concedes access to investigate and amend. through the due process of discovery.

THE QUESTION PRESENTED IS

Is the intent of FERPA to protect the privacy of student and faculty as a preliminary subsociety, not use 20 U.S.C. § 1232g(a)(4)(B)(i&ii) in a punitive manner to exclude discloser of evidence on student as a means towards censorship?

If college hearings rises to the level of *capricious* by the courts for review, should Discovery Rule 29 and those evident material facts be relevant towards Due Process in the Fifth Amendment to the United States Constitution?

LIST OF PROCEEDINGS

CIVIL PROCEEDINGS IN MULLANEY V. ST. THOMAS

Minnesota Supreme

Court No. *A19-0964*

John, Paul Mullaney, Petitioner, v. *University of St. Thomas, by and through its Commissioner of Higher Education, Betsy Talbot*, Respondent.

Decision Date: *June 22, 2020*

Minnesota Appeals

Court No. A 19-0964

John, Paul Mullaney, Petitioner, v. *University of St. Thomas*

Decision Date: *June 17, 2019*

Minnesota Fourth Judicial District Court, Hennepin County

Cause No. *27-CV-18-16185*

John, Paul Mullaney, Petitioner, v. *University of St. Thomas,*

Decision Date: *June 1, 2019*

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

CONSTITUTIONAL PROVISIONS

Page

TABLE OF AUTHORITIES—Continued

STATUTES

JUDICIAL RULES

REGULATIONS

EXSECUTIVE ORDER

PETITION FOR A WRIT OF CERTIORARI

Petitioner John, Paul Mullaney respectfully petitions for a writ of certiorari to review the judgment of the Minnesota Supreme Court.

OPINIONS BELOW

The Minnesota Supreme Court gave decision on June 22, 2020 for which Mullaney sought for review and reversal of the Appellate Court unpublished judgment on June 17, 2019 John Mullaney v. University of St. Thomas A19-0964 The district court ruling and summary judgment was issued June 1, 2019 John Mullaney v. University of St. Thomas 27-CV-18-16185 .

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) which provides that "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question." The Due Process of Rule 26 Discovery is at issue in this action. A call to the supervisory power. Nevertheless, while a federal review would not change the material facts, it would bring clarity to—whether an educational institution required court oversight for an arbitrary decision related a student can block a court from ordering the release of that student's private information excluded under University enforcement and/or sole possession punitive records (not notes)—has been raised since the lawsuit's inception.

The question was first raised by the Petitioner in its complaint to FERPA, which The United States Department of Education's (Department) Family Policy Compliance Office (FPCO) reviews, investigates, and processes complaints of alleged violations. FPCO response was that the records were not accessible. The matter was again addressed in district court in John Mullaney v. University of St. Thomas regarding discovery of evidence relevant to material fact. Addition material facts ignored in the summary judgement under "Reason for...Wit" "I Call of Supervisory Power".

On the Minnesota Appeals Court, denied the appeal on the basis "It is not clear from the record whether the sanctions that Mullaney takes issue with are related to the locker incident." The U.S supreme court Certiorari confirms the sanction "9. Failure to comply with the directive of a University official" is related to not receiving an email directive. The Appeal Court denied on June 17, 2019.

The Minnesota Supreme Court affirmed the Court of Appeals decision on June 22, 2020.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant federal and Minnesota state statutory provisions at issue of the Rule 26. General Provisions Governing Discovery; Duty of Disclosure, and 20 U.S. Code § 1232g(1)(A) & (a)(4)(B)(i,ii). Family Educational Rights and Privacy Act. The following provisions of United States constitution is implicated.

Fifth Amendment to the United States Constitution containing a Due Process Clause. Due Process deals with the administration of Justice and thus the Due Process Clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government outside the sanctions of law.

STATEMENT OF THE CASE

The case involves accessing refutable evidence related to academic disciplinary sanctions of an eligible student and amendment of such sanctions. The dispute involved the University of St. Thomas in Minnesota. Petitioner John, Paul Mullaney was sanctions by the University of St. Thomas for student mis-conduct allegations. Related to not removing his property from storage, which the University claims had to be in part destroyed. The allegations were that Mullaney did not follow a directive to remove property. The Universities guideline which alleged mis-conduct was "9. Failure to comply with the directives of a University official." Mullaney sought relevant evidence on the ambiguous directive that was never given as refutable. Sought to be disclosed beyond the University of St. Thomas's evidence asserted. In the end of September 2017, the University did not disclose the sought refutable evidence and upon Mullaney enforced sanction.

The University referenced webpage to appeal the decision, which was down. The hard copy form at the Dean's Office within the required timeline to appeal was not made available.

With Mullaney's academic review of the decision depleted he file a civil complaint on September 27, 2018 after suspecting the University was in possession of his property and for the sanction's retraction. During the trial Mullaney's property from the University, although previously denied in possession of, was in part returned. The University claimed that email directives to remove property went out to all students. However, the email directive to Mullaney was never received. Kubista

Evidence suggested interference. Mullaney established a letter sent to the security commander related to student affairs of a subordinate officer Joe Kubista for reprimanding behavior related to libel and stalking. Joe and the security department had interaction an administrator Brian Swanson at the law school who got involved with Mullaney's registration of a course to interfere. The interference of registration for course being retroactively denied after storage effected Mullaney's removal of property, University claiming all registered students received

email directives to remove property, which Mullaney's registration was interfered and prevented. It was also Joe Kubista and Brian Swanson that were both present, instead of maintenance, for Mullaney's property removal and in part destruction. According to a previous undisclosed University report Joe Kubista and Brian Swanson both identified the property to Mullaney prior its destruction. Was Mullaney not owe a directive at that time? Even if not, Mullaney was sanctioned. "*Chronopolous v. Univ. of Minnesota,* 520 N.W.2d 437, 441 (Minn. Ct. App. 1994), (Minn. Oct. 27, 1994), so a court reviewing the merits of an academic decision looks only to see if the decision was arbitrary or capricious. *Board of Curators,* 435 U.S. at 91-92. Mullaney was "arbitrarily or capriciously" sanctioned for not following a directive to remove property that was never given.

The University however refused to disclose the civil discovery for Mullaney being carbon copied on the email directive. Undermining the sanctions. Referencing these material facts and interference and inconsistencies of course registration protocol between Mullaney and similar students as accepted several times with enforceable interest, then stored property, however than retro denial were discovered in trial, however a summary judgement made on May 5, 2019 before the motioned email disclosure resulting in the sanctions not retracted. "The court finds that because Plaintiff was not authorized to use the School of Law lockers and because Plaintiff did not have an enforceable interest in the items when they were discarded, Defendant is entitled to judgment as a matter of law." The University circumvented registration by interference and therefore the email directive to remove property, which suggests entrapment. Court did not rule how a student could be sanctioned for not following a directive; never given.

Mullaney appealed the District Court's decision on June 28, 2019. The opinion of the Appeals Court on April 13, 2020 was that "It is not clear from the record whether the sanctions that Mullaney takes issue with are related to the locker incident. But in his complaint, Mullaney requested that the district court "dismiss" these sanctions as a *remedy* to his claim for conversion. He did not raise a separate legal claim based on the sanctions.". The appeals court failed to recognize that academic sanctions inhibit academic progress as a separate issue. This decision was appealed to the Mn Supreme Court. The supreme

court of Mn on June 30, 2020 conferred with the decision of the Appeal's court and denied the petitioner. Mullaney seeks to Petition for certiorari with the U.S. supreme court.

In the scenario where U.S. supreme court delegates this complaint to be resolve with FERPA. Mullaney filed a complaint with FERPA (attached in the appendix). The United States Department of Education's (Department) Family Policy Compliance Office (FPCO) reviews, investigates, and processes complaints of alleged violations of the Family Educational Rights and Privacy Act (FERPA); 20 U.S.C. 1232(g), (h) and 34 CFR part 99. FERPA is a Federal law which affords parents certain rights with regard to their children's education records. The term "education records" is defined under FERPA, with certain exclusions, as those records that are directly related to a student and which are maintained by an educational agency (e.g., a school district) or institution (e.g., a school or postsecondary institution), or by a party acting for the agency or institution, to which funds have been made available under any program administered by the Secretary of Education.

These rights include the right to inspect and review their children's education records, the right to seek to have their education records amended, the right to have some control over the disclosure of personally identifiable information contained in their education records, and, the right to file a written complaint with FPCO regarding an alleged violation of FERPA. Once a student reaches 18 years of age or begins attending a postsecondary institution, he or she becomes an "eligible student," and all of the parent's rights under FERPA transfer to the student.

FPCO investigates written complaints alleging a violation of FERPA by an educational agency or institution, a state educational agency (SEA) (if alleging denial to inspect and review education records maintained by the SEA), or a third party, if the complaint: 1) is filed by a parent or eligible student with FERPA rights over the education records which are the subject of the complaint, or his or her attorney or advocate; 2) is submitted to FPCO within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation; and, 3) contains specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred.

In summary Mullaney an "eligible student" who filed a complaint under (FERPA); 20 U.S.C. 1232(g), which affords the "right to inspect and review educational records, the rights to seek those records amended." The response to the complaint from FPCO was errored in continued dialog when they failed to recognize the refutable evidence of not being issued an email directive related to the student's sanctions for not following a directive as "Education Records". Refusing to further investigate.

REASONS FOR GRANTING THE WRIT

"Review on a writ of certiorari is not a matter of right, but of judicial discretion" and "will be granted only for compelling reasons." Sup. Ct. Rule 10. Under Sup. Ct. Rule 10(a), the United States Supreme Court will be inclined to exercise its discretionary review of a state's highest court if "a United States court of appeals has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power"

Under Sup. Ct. Rule 10(b), this Court will be inclined to exercise its discretionary review if "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals."

Under Sup. Ct. Rule 10(c), the United States Supreme Court will be inclined to exercise its discretionary review of a state's highest court if "a state court . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court.

As argued below, the Minnesota Supreme Court decision has far departed from the accepted and usual course of judicial proceedings regarding Rule 26. General Provisions Governing Discovery; Duty of Disclosure which conflicts with both FERPA and a relevant decision of this Court in *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002)..

I. THE MINNESOTA SUPREME COURT'S DECISION, HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER;.

Mr. Mullaney student and/or sole proprietor (Mr. Mullaney student/Co.) had become aware University enforcement department in retention of a disgruntled officer Joe Kubista reprimanded for libel and stalking (**Exhibit 1** p.42). Mr. Mullaney/Co. has been in communication with the representatives of the University of St. Thomas Law School admissions office or affiliates thereof (collectively, U.S.T. Law School) and other concerning the registration to audit law school course/s. As the University enforcement department and officer Joe Kubista apparently knew Mr. Mullaney/Co. had an agreement to audit law school course/s with the U.S.T. Law School. The conduct by the University enforcement department and officer Joe Kubista was damaging and interfering with Mr. Mullaney/Co. contract with U.S.T. Law School was tortious, including but not limited to tortious interference with contract. See Kallok v. Medtronic, Inc. 573 N.W.2d 356 (Minn. 1998) (holding the party who interferes or causes a breach of a contract may be liable for damages or injunctive relief); United Wild Rice, Inc. v. Nelson, 313 N.W. 2d 628, 633 (Minn. 1982) (recovering a cause of action for interference with prospective contractual relations). Mr. Mullaney/Co. had demanded University enforcement department and officer Joe Kubista cease and desist from further unlawful or otherwise actionable contract with U.S.T. Law School or any third party concerning the audit registration routine protocols of law school course/ s. However, Joe Kubista's University enforcement department was documented as communication with Brian Swanson of the U.S.T. Law School as a third party (**Exhibit 2** p.43) beyond the routine audit registration protocols of; 1.)registering through administrator advisor, 2.) obtain waiver of prerequisites from course professor (**Exhibit 3** p.46).

There were several mounting material facts **(Appendix, Exhibits 1-9)** of this interference:

1. Mullaney student/Co. follow two aforementioned routine audit registration protocols as other student acceptance into law school course/s **(Exhibit 4** p.51) and was accepted.
2. After Mullaney student/Co. acceptance and approval to attend/use class, library, and storage; where property was thereafter placed. Subsequently, an unorthodox retroactive withdrawal for the reasons of a contradicting narrative; required prerequisites **Exhibit 3** p.50 (which were waived).
3. **Exhibit 5:** The retroactive withdrawal was out of protocol clearly by third party intervention, after Mr. Mullaney/Co. tested a second course audit registration. A legitimate denial would have come from registration by advisor or professor. However, Mr. Mullaney/Co. was again confirmed accepted by both. But subsequently later; retroactively withdrawn. Similar reasons and same contradictions by a third party.
4. To prove acceptance without a clerical error Mr. Mullaney/Co. registered a third course audit and was accepted, then verified on security video acceptance. Thereafter notify suspected 3rd party interfering. To Brian Swanson's dismay 6/15/17 at 1:30pm, withdrawal came by email from Law School in 13 minutes. Exhibit 3 p.50
5. **Exhibit 7p57:** All student but Mr. Mullaney/Co. received email directive to remove property from storage; except Mr. Mullaney/Co. With Brian Swanson prior interference it is highly suspect that further interference had prevented the email directive.
6. **Exhibit 5 p52:** Instead of maintenance cleaning storage. Malicious intent and failure in duty of care is established with the presence of Joe Kubista and Brian Swanson's during the theft and destruction of Mr. Mullaney/Co.'s property.
7. **Exhibit 6 p54:** Brian Swanson denied being in possession of Student's property (for over a year).

8. **Exhibit 8p61**: Joe Kubista's department produced the written report alleging misconduct for Mr. Mullaney/Co. for academic sanctions for not following a directive (conduct rule 9).

9. **Exhibit 9p62**: Swanson returned property. Destroyed property (12 of 52) was all property that the University of St. Thomas could resell at its general bookstore. The probability odds of this randomly occurring to UST and not the other property is 1 of 8.06e+67. Literally, a Trillion to one. Multiplied by 7. That's Science

Mr. Mullaney/Co. erroneously was denied a continuation to trial by summary judgement. When there was material fact the University's admitted that Mr. Mullaney/Co. missing from the email directive. Put at a very significant disadvantage from other student to remove property. The following random sanctions for not complying with directives, never given was shameful negligence; if not entrapment.

By contract common law Mr. Mullaney/Co. is entitled to a trail recognizing material fact towards an injunction of the interference resulting in the academic sanctions; intent to enhance expulsion. Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ., 526 U.S. 629, 648 (1999) ("courts should refrain from second-guessing the disciplinary decisions made by school administrators."). EXCEPT, to case law *Chronopolous v. Univ. of Minnesota,* 520 N.W.2d 437, 441 (Minn. Ct. App. 1994), (Minn. Oct. 27, 1994), "for the district court to serve and oversight when an **arbitrary, capricious or bad-faith** decision by the educational decision was made." Without involving the irrelevant influence of FERPA regulations for access, amendment, and privacy which were circumvent by UST when they did not allow Mr. Mullaney/Co. to discover refutable evidence aforementioned in an academic hearing and did not issued appeal form at dean's office upon request. The FERPA regulations *Gonzaga Univ. v. Doe* that have no right as a spending bill that only serves as a deterrent and an incentive of conduct. Since all academic conflict in this scenarios can be set aside for the judicial process under common law contractual tortious interference, and therefore the resulting random negligent sanctions can be rescinded as arbitrary.

II. THE MINNESOTA SUPREME COURT'S DECISION CONFLICTS WITH *GONZAGA UNIV. V. DOE*, 536 U.S. 273 (2002).

Mr. Mullaney/Co. being denied evidence related to material fact 1-8 under FERPA would conflict with *Gonzaga Univ. v. Doe*, 536 U.S. at 278-89. Mr. Mullaney/Co. has no barriers with FERPA in this civil matter as preliminary discovery establishes tortious contractual interference. Further evidence from material facts is sought through the civil process of discovery. In addition, the balance test FERPA access is, "Should the merit of privacy outweigh public disclosure". In this case the privacy belongs the Mr. Mullaney/Co. to access; which is the precedence and barrier to access records. Most importantly FERPA has no rights in judicial law (monetary deterrent and incentives).

In *Gonzaga Univ. v. Doe*, 536 U.S. at 278-89, a Gonzaga University undergraduate sued the school and teacher under 42 U.S.C. § 1983, alleging a violation of FERPA. The student was planning to become an elementary teacher, and under Washington State Law, all new teachers required an affidavit of good moral character from their graduating college. The teacher in charge of certifying such affidavits, overheard a student conversation discussing sexual misconduct by the undergraduate student, and after an investigation, refused to certify the affidavit. The student sued, claiming a violation of his confidentiality rights.

This Court ruled that FERPA, which prohibits the federal government from funding educational institutions that release education records to unauthorized persons, does not create a right which is enforceable under 42 U.S.C. § 1983. In so ruling, the Court declared that FERPA is merely spending legislation which prohibits "the federal funding of educational institutions that have a policy or practice of releasing education records to unauthorized persons." *Gonzaga*, 536 U.S. at 276. In other words, this Court held that the statute addresses only federal funding and does not confer any enforceable right of privacy which could serve as a basis for withholding student records.

Gonzaga also respects FERPA lack of rights to claim no monetary damages with the sub-societies of education institutions that students accept their governing rules except with oversight when decisions are arbitrary, capricious or bad-faith

III. THE QUESTION PRESENTED RAISES A PUBLIC ISSUE OF NATIONAL IMPORTANCE REGARDING UNIVERSI- TIES' DENIAL OF Discovery TO REFUTABLE EVIDENCE RELAVENT TO ACEDEMINC DISIPLINARY SANCTIONS.

Relevant to review, since acceptance of the district court's ruling instead of calling for an exercise of this court's supervisory power, would set a precedence for refusal of access to education records contrary to court rules Claims against private schools and public universities that have a contractual relationship with students in which students pay tuition and the school provides instruction, form some of the terms of the relationship, have proved more favorable for plaintiffs. Gens v. Casady Sch., **177 P.3d 565, 571-72** (Okla. **2008**). The case involved a private-school student, a court refused to dismiss a case that included claims of invasion of privacy and conversion of a student's school and psychological records where the private school refused to release them to the parent.

Access has expanded over the years post Falvo, Buckley/Pell, and U.S. v. Miami U. Post Falvo the scope of educational record access has broadened. Justice Scalia disagreed vehemently with the "central custodian" approach to defining FERPA records. ***Falvo,*** 534 U.S. at 437 (Scalia, J., concurring in the judgment). Justice Scalia noted that this formulation would also exclude teacher grade books (which of course are kept by individual teachers rather than school central records custodians); this was an issue that the majority opinion explicitly did not decide".**73** Congress deliberately broadened FERPA's definition.

FERPA defines education records quite broadly as all information recorded about a student maintained by a school or a person acting for the school. 20 U.S.C. § 1232g(a)(4)(A). A Joint Statement in Explanation of Buckley/Pell Amendment provides guidance on the purpose of this change: "An individual should be able to ***know, review, and challenge*** all information" "that an institution keeps on him, particularly when the institution may make important ***decisions affecting his future***, or may ***transmit*** such personal information to parties outside the institution/college."

United States v. Miami University, 294 F.3d 797, 812-15 (6th Cir. 2002); WASH. REV. CODE. **ANN.** § 42.17.310(1)(a) (West 2006). Most recently and significantly, the Sixth Circuit held in a post-Falvo case that discipline records are covered by FERPA.

FERPA "education records": (1) adult students may access their own records; (2) records may not in general be disclosed without written consent of the adult student; and (3) adult students may request an internal hearing to challenge the accuracy of their records.

Federal district courts adopted the balancing test to decide a motion to quash a subpoena of student records, reviewing the records

and weighing the need for the requested student information against the intrusion on the student's privacy. The Petitioner's is not a 3rd party requesting discovery, but the Student therefore meets the balance test of merit affecting future and his own privacy. MN Data Practices Act § 13.012 et seq. in addition allows for disclosure of information.

In the context of John, Paul Mullaney v. University of St. Thomas case. The primary issues can be resolved by basic common law material fact discovery on contractual interference meeting the threshold for the district court to intervene by the education institution acting in an arbitrary and capricious manner while adhering to the fundamental FERPA regulations not relevant to this case. However, this case can hold national importance in the censorship of free speech.

Courts are increasingly holding or suggesting that FERPA is only violated by a pattern or policy of misconduct, rather than individual violations. *See* Weixel v. Bd. of Educ. of City of N.Y., 287 F.3d 138, **151** (2d Cir. 2002) (holding multiple alleged privacy violations by a single school were insufficient to establish a FERPA claim) University of St. Thomas has a history of mishandling of FERPA through a pattern of policy by a Breach of the Covenant of Good Faith and Fair Dealing in Doe v. University of St. Thomas, No. 0:2016cv01127 - Document 296 (D. Minn. 2019), in addition to Breach of Contract and Negligence. University of St. Thomas's pattern of misconduct with conflict and altering information before disclosure with an evident agenda to dismiss/expel students that brought rise to controversy. However, a pattern of violations is not required. The regulations also provide that FPCO may issue a finding of noncompliance based on a single violation. *See id.* at 74,855 (to be codified at 34 C.F.R. § 99.66(c)). In addition, FPCO may initiate investigations of FERPA violations even if no complaint has been filed. *See id.* (to be codified at 34 C.F.R. § 99.64(b)). A federal court of appeals recently held that violation of FERPA's ***access*** provisions does not require a showing of a pattern or policy. Lewin v. Cooke, 28 F. App'x 186, 192 (4th Cir. 2002).

The University of St. Thomas policy pattern as well as the action of individuals in violation of the FERPA access. When they abuse "Factfinders" to collect and alter disciplinary evidence before disclosure. Done by means of exemption not intended for this purpose. There are several categories of records exempted, such as "sole possession" notes created by an individual school employee such as a teacher or counselor as a confidential memory aid *Id. §* 1232g(a)(4)(B)(i). and certain records of a school's law enforcement unit, 20 U.S.C. § 1232g(a)(4)(B)(ii).

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in

the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;

The University of St. Thomas pattern of mishandling is by placing a "sole possession" or "enforcement" faculty as "Factfinder" with a conflict of interest compensation from the University of St. Thomas to control the facts, evidence, statements, and allegations before allowing student access. Under this control the information is reiterated into a disclosed summary. Which is rout with potential for information manipulation, missing, alteration, and edits. Similarly, to Mr. Mullaney/Co. University enforcement excluding in their sanction: a directive of noncompliance. However, All received an email directive but Mr. Mullaney/Co.

Doe v. University of St. Thomas, No. 0:2016cv01127 - Document 296 (D. Minn. 2019. The Court did believe that UST acted improperly on two occasions. First, while Dean Baughman was writing the final disposition letter to Doe of the Factfinder's to punishment "she sent a draft to VP Lange, who would go on to be the Appeal Officer, and asked for suggestions or edits". Second, just six days after Doe received notice of the decision, Baughman emailed Lange, "stating that she didn't see any of the grounds for appeal being applicable."

Material fact and discovery thereof carry the merits of Mullaney v. UST alone. However, the institution is clearly abusing their right to excluded records with edits before discovery. Since FERPA issues no rights *Gonzaga* and if there is material fact within "sole possession" and/or "law enforcement"; Federal district courts adopted the balancing test "Does the merit of privacy outweigh public disclosure"? Merit of public disclosure may be warranted with 2nd and 3rd hand altering and editing that have conflict of interest with information in disciplinary matters. Especially in regard to censorship of free speech to plead innocent of guilt. Addressing these legal concerns may be exercised potentially, through Executive Order on Censorship of Free Speech on College Campus Section 1. Purpose. The purpose of this order is to enhance the quality of postsecondary education by making it more affordable, more ***transparent***, and more ***accountable***. Institutions of higher education (institutions) should be accountable both for ***student outcomes*** and for student life on campus. In particular, my Administration seeks to promote ***free and open debate on college*** and university campuses. ***Free inquiry is an essential feature of our Nation's democracy***, and it promotes learning, scientific discovery, and economic prosperity. We must encourage institutions to appropriately account for this bedrock principle in their administration of student life and to ***avoid creating environments that stifle competing perspectives***, thereby potentially impeding beneficial research and undermining learning.

Sec. 2. Policy. It is the policy of the Federal Government to: (a) encourage institutions to foster environments that ***promote open***, intellectually engaging, and diverse ***debate***, including through compliance with the ***First Amendment*** for public institutions and compliance with stated institutional policies regarding ***freedom of speech*** for *private institutions*;

The University of St. Thomas has a policy or a pattern of hiding behind a shield of anonymity by allegations within enforcement unit or sole possession under FERPA, which under *Gonzag* establishes no rights from FERPA, but is only a spending bill which serves as a deterrent and incentive.

However, a resolution in the John, Paul Mullaney v. University of St. Thomas may be sought in common law at the district court level for tortious contractual interference and breach of contract with relevant material facts for discovery. A fact is material (aforementioned: I. CALL TO SUPERVISORY POWER 1-8) if it might affect the outcome of the suit, and a dispute is genuine if the evidence is such that it could lead a reasonable jury to return a verdict for either party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Examples: 1) Third party tortious contractual interference with routine audit course registration. Material fact. 2) Resulting is student sanction for a compromised directive not complied because not given. Material fact. Threshold for Rule 26. General Provisions Governing Discovery; Duty of Disclosure is "Subdivision (b) is the heart of the discovery rule, and defines what is discoverable." "Anything that is relevant is available for the other party to request, as long as it is not privileged or otherwise protected. (Gonzaga; FERPA is not right) Under §1, relevance is defined as anything more or less likely to prove a fact that affects the outcome of the claim. It does not have to be admissible in court as long as it could reasonably lead to admissible evidence."

The preponderance of material facts by the Petitioner alone should allow discovery under Rule 26 and not be prevented by the privacy of FERPA, which the petitioner is involved with a decision affecting future and transmittance to his information, and most specially preventing would have no claimable right.

CONCLUSION

For all of these reasons, and in the interest of justice, the petition for a writ of certiorari should be granted.

Respectfully submitted,

John, Paul Mullaney
Pro Se COUNSEL FOR PETITIONER
EGO LAW FIRM
P.O. BOX 330, 40 7th Street S. #212
MPLS., MN 55402
(763) 645-7582
JOHNPAULMULLANEY@HOTMAIL.COM

SEPETEMBER 29, 2020

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

John, Paul Mullaney — PETITIONER
(Your Name)

VS.

University of St. Thomas — RESPONDENT(S)

PROOF OF SERVICE

I, John, Paul Mullaney, do swear or declare that on this date, September 29, 20 , 20 , as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

U.S. Supreme Court, 1 1st Street North-East Washington D.C. 20543 Attention: Clerk's Office – Mr.

Redmond Barns, and The University of St. Thomas 2115 Summit Ave. St. Paul Mn 55105

Attention: General

Council Office

BENJAMIN W PORTER
Notary Public
State of Minnesota
My Commission Expires
January 31, 2024

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 30, 2020

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0964

John Mullaney,
Appellant,

vs.

University of St. Thomas,
Respondent.

Filed April 13, 2020
Affirmed
Cochran, Judge

Hennepin County District Court
File No. 27-CV-18-16185

John Mullaney, Minneapolis, Minnesota (pro se appellant)

Jessica L. Klander, Jonathan P. Norrie, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Bryan, Judge; and Segal, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

In this appeal from summary judgment, appellant John Mullaney argues that the district court erred in determining that there were no genuine issues of material fact regarding his claim for conversion and that the district court failed to address his "claim" for "dismissal of retaliatory sanctions," a remedy sought in his complaint. Because we

conclude that no genuine issues of material fact exist regarding Mullaney's conversion claim, and because we discern no basis to reverse based on a failure to address the remedy sought for that claim, we affirm.

FACTS

In 2017, Mullaney was a graduate student at the University of St. Thomas (the university). Mullaney was enrolled at the university's business school. The university also has a law school. Mullaney was not (and has never been) a law student. But it is undisputed that in 2017, Mullaney was storing some of his personal property—specifically, personal papers and textbooks—in a law school locker.

The law school cleans out the lockers every year before assigning them to new students in the fall. In May 2017, the law school posted signs near the law school lockers that notified students that they must remove their property before August 4, 2017, or the property would be discarded. The law school also sent an email to students who were assigned lockers to notify them of the locker cleanout. Mullaney did not remove his property from the locker he was using before August 4, 2017. On August 8, 2017, the university removed Mullaney's property from the locker.

In September 2018, Mullaney initiated a lawsuit against the university claiming that the university was liable for approximately $7,500 for "remov[ing] and discard[ing]" the property that Mullaney had stored in the locker. As a remedy for his unspecified cause of action—which the district court interpreted as a claim of conversion—Mullaney sought both monetary damages and "dismissal of any retaliatory sanctions for the [p]laintiff's claims."

In its answer to the complaint, the university alleged that Mullaney was not given permission or authorized to use a law school locker—only law students were permitted to use them. The university also noted that it had posted signs near the lockers indicating that the lockers would be cleaned out.

The university moved for summary judgment. It submitted affidavits from university employees that established that (1) the law school registrar who had the authority to assign law school lockers (the registrar) did not give Mullaney permission to use a locker; (2) the university posted signs near the law school lockers indicating that students must remove their property before August 4 or their property would be discarded; (3) the signs remained posted until the lockers were cleaned out; and (4) the university discovered some of Mullaney's property in an unemptied recycling bin and returned the property to Mullaney in the course of the litigation. The university argued that there was no genuine issue of material fact that Mullaney was not authorized to use a locker and no genuine issue of material fact that Mullaney had abandoned his property when he did not remove his property in compliance with the signs that the university posted. At a hearing on the university's motion for summary judgment, Mullaney asserted that the registrar gave him permission to use a law school locker and that he had no intention of abandoning his property.[1] But Mullaney did not submit any evidence to support his assertions.

[1] Mullaney only identified the registrar as the person who gave him permission to use a locker after the university identified the registrar as the person with the authority to assign lockers.

The district court granted summary judgment to the university. It reasoned that it was undisputed that Mullaney was not a law student, that Mullaney was using a law school locker without authorization, that the law school posted signs and sent an email to law students with an assigned locker informing students that the lockers had to be cleaned out by August 4, 2017, and that the lockers were in fact cleaned out on August 8, 2017. Based on these undisputed facts, the district court concluded that the university was justified in discarding the property that Mullaney had left in the locker and that Mullaney's conversion claim failed. Alternatively, the district court concluded that Mullaney's conversion claim failed because Mullaney had abandoned his property and therefore he lacked an enforceable interest in the property.

Mullaney appeals.

DECISION

Mullaney argues that the district court erred in granting summary judgment to the university. He maintains that he had permission to use a locker and that the university should have returned his property to him, rather than discarding it (and later finding some of it). He also asserts that the university wrongfully refused to return his property. The university argues that the district court properly granted summary judgment because there were no genuine issues of material fact in dispute and the university was legally justified in discarding the property under the circumstances.

A district court must grant summary judgment if the "movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. Appellate courts review the grant of summary judgment

de novo to determine "whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). A "party resisting summary judgment must do more than rest on mere averments." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). A reviewing court views the evidence in the light most favorable to the party against whom summary judgment was granted. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). "All doubts and factual inferences must be resolved against the moving party." *Montemayor*, 898 N.W.2d at 628 (quotation omitted). Summary judgment is "inappropriate when reasonable persons might draw different conclusions from the evidence presented." *Id.* (quotation omitted).

Mullaney's complaint alleged a claim of conversion. Minnesota courts have defined conversion as

> an act of willful interference with the personal property of another, done, without lawful justification, by which any person entitled thereto is deprived of use and possession, and the exercise of dominion and control over goods inconsistent with, and in repudiation of, the owner's rights in those goods.

Williamson v. Prasciunas, 661 N.W.2d 645, 649 (Minn. App. 2003) (quoting *Christensen v. Milbank Ins. Co.*, 658 N.W.2d 580, 585 (Minn. 2003)) (other quotations omitted). Put another way, "[c]onversion is the wrongful exercise of dominion or control over the property of another." *Bates v. Armstrong*, 603 N.W.2d 679, 682 (Minn. App. 2000), *review denied* (Minn. Mar. 14, 2000).

Mullaney argues that the district court erred by granting summary judgment because there was a genuine issue of material fact regarding whether a university employee gave

him permission to use a law school locker. He maintains that the registrar gave him verbal permission to use a law school locker. But, as the district court correctly determined, Mullaney offered no evidence to support his claim that he had permission to use a law school locker. Instead, he merely asserted in pleadings and at the summary judgment hearing that the registrar granted him permission to use the locker. In other words, Mullaney relied on mere averments. A "party resisting summary judgment must do more than rest on mere averments." *DLH, Inc.*, 566 N.W.2d at 71.

Because Mullaney did not provide more than mere averments to support his claim that he was given permission to use a law school locker, there did not exist a genuine issue of material fact that he had permission. And Mullaney cites no authority to suggest that the university acted without lawful justification when it disposed of items stored in the university's locker without permission. Consequently, we conclude that the district court did not err in granting summary judgment on the grounds that the university was justified in discarding the property under the circumstances. And, because the district court did not err in granting summary judgment on the grounds that Mullaney's affirmative claim for conversion failed, we need not determine whether the district court erred in concluding that summary judgment was appropriate on the alternative grounds that Mullaney lacked an enforceable interest in the property.

We also do not reach the issue of whether the district court erred by not addressing Mullaney's "claim" for the dismissal of "retaliatory sanctions." The primary issue that Mullaney appears to raise in his appellate brief is that the district court failed to analyze whether sanctions that the university imposed against Mullaney were justified. It is not

clear from the record whether the sanctions that Mullaney takes issue with are related to the locker incident. But in his complaint, Mullaney requested that the district court "dismiss" these sanctions as a *remedy* to his claim for conversion. He did not raise a separate legal claim based on the sanctions. Because the district court properly granted summary judgment against Mullaney's conversion claim, there was no need for the district court to address the remedies that Mullaney sought for that claim.

Affirmed.

STATE OF MINNESOTA

IN SUPREME COURT

A19-0964

John Mullaney,

Petitioner,

vs.

University of St. Thomas,

Respondent.

ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the motion of John Mullaney for leave to proceed in forma pauperis be, and the same is, granted.

IT IS FURTHER ORDERED that the petition of John Mullaney for further review be, and the same is, denied.

Dated: June 30, 2020

BY THE COURT:

Lorie S. Gildea
Chief Justice