No. _____

In the
Supreme Court of the United States

AUSTIN CLARK,
Petitioner,
v.

UNIVERSITY OF LOUISVILLE, A PUBLIC UNIVERSITY IN LOUISVILLE, KY; ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case involves the expulsion of a medical student from the University of Louisville School of Medicine in retaliation for his expression and support of conservative, Christian, "pro-life" views and whether the trial court erred in dismissing Petitioner's complaint for failure to state a claim. The claims of Petitioner are matters of national importance given the Court's recent ruling in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ____ (2022) and the remedies available to pro-Christian, pro-life individuals who maintain views on abortion contrary to those of school administrators and faculty members and who suffer maltreatment or retaliation as a result.

PARTIES TO THE PROCEEDING

Petitioner Austin Clark is a former medical student at the University of Louisville School of Medicine who completed two (2) full years of instruction and education successfully and who, until the date of his dismissal, was a third-year student in good standing.

Respondents are the University of Louisville, a public university in Louisville, KY; Neeli Bendapudi, former President of the University of Louisville; Lori Gonzalez, Executive Vice President and University Provost at the University of Louisville; Toni Ganzel, Executive Dean of the School of Health Medicine at the University of Louisville; Bill Crump, Assistant Dean of the University of Louisville School of Medicine, Madisonville Campus, Olivia Mittel, Assistant Dean, University of Louisville School of Medicine, Jackson Street Campus; Monica Shaw, Assistant Dean, University of Louisville School of Medicine Jackson Street Campus; Sara Petruska, Clerkship Director, OBGYN Department, University of Louisville School of Medicine, Jackson Street Campus; Thomas Neely, Instructor, University of Louisville School of Medicine, Madisonville Campus; Mohan Rao, Instructor, University of Louisville School of Medicine, Madisonville Campus; Julianna Brown, Clerkship Director, Internal Medicine, University of Louisville School of Medicine, Jackson Street Campus; Jennifer Koch, Program Director, Internal Medicine, University of Louisville School of Medicine, Jackson Street Campus; Cristina Giles, Resident Doctor, Internal Medicine, University of Louisville School of Medicine, Jackson Street

Campus; Jon Alexander, Resident Doctor, Internal Medicine, University of Louisville, Jackson Street Campus and Samuel Reynolds, Resident Doctor, Internal Medicine, University of Louisville School of Medicine, Jackson Street Campus. All of the individual Respondents named hereinabove were named parties in both their respective official and individual capacities.

RELATED PROCEEDINGS

Austin Clark v. University of Louisville, et al., No. 3:21-CV-480-DJH, U.S. District Court, Western District of Kentucky. Judgment entered September 20, 2022.

Austin Roy Clark v. Neeli Bendapudi, et al., No. 22-5983, U.S. Court of Appeals for the Sixth Circuit. Judgment entered July 25, 2023.

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Cases

Constitution

Statutes

OPINIONS BELOW

The United States District Court for the Western District of Kentucky entered its judgment on September 30, 2022 and was not published. The United States Court of Appeals for the Sixth Circuit entered its decision on July 25, 2023 in an opinion not recommended for publication.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered its decision on July 25, 2023. This Court has jurisdiction under 28 U.S.C. § 1254.

STATUTORY PROVISIONS

The relevant statutory provision is 42 U.S.C. § 1983.

INTRODUCTION

42 U.S.C. §1983 is the primary remedial statute for asserting federal civil rights claims against local public entities, officers and employees. Section 1983 is the codification of the Civil Rights Act of 1871, otherwise known as the "Klu Klux Klan Act." The legislative purpose was to provide a federal remedy in federal court because the state governments and courts, "by reason of prejudice, passion, neglect, intolerance or otherwise" were unwilling to enforce the due process rights of African-Americans guaranteed by the 14th Amendment. *Monroe v. Pape*, 365 U.S. 167 (1961). 42 U.S.C. provides as follows:

> "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 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."

To succeed on a Section 1983 claim, a plaintiff must prove that the defendant operated under color of state law and that the defendant's actions denied the plaintiff a right guaranteed by the Constitution. *West v. Atkins*, 487 U.S. 4242 (1988).

Individual liability is premised on personal involvement but there are exceptions. For example, an officer may still be liable even if he or she did not commit the act that injured the plaintiff. An officer who is present and fails to intervene to prevent other law enforcement officers from violating a person's constitutional rights is liable under Section 1983. *Byrd v. Brishke*, 466 F.2d 6 (7th Cir. 1972) (an officer who knows about the unlawful conduct and has a realistic opportunity to intervene and prevent harm from occurring is liable).

STATEMENT OF THE CASE

I. Legal Background

One common type of Section 1983 claim relates to the First Amendment to the United States Constitution which "prohibits the making of any law . . . abridging the freedom of speech" and retaliation against a speaker for the exercise of same. A Section

1983 First Amendment retaliation claim requires the plaintiff to show (1) he engaged in protected speech, (2) the government's retaliatory conduct adversely affected that speech and (3) a causal link exists between the conduct and the adverse effect. As this Court has previously observed, retaliatory animus is "easy to allege and hard to disprove." *Nieves v. Bartlett,* 139 S. Ct. 1715, 1725, (2019). In broad terms, the First Amendment protects the right to be free from government abridgment of speech. Retaliation for the exercise of First Amendment rights is a constitutional violation. In fact, an act taken in retaliation for the exercise of a constitutionally protected right is actionable under § 1983 even if the act, when taken for a different reason, would have been proper. To succeed on a First Amendment retaliation claim, a civil-rights plaintiff must demonstrate three things. First, the plaintiff engaged in protected conduct. This means that the plaintiff's speech or expression was the type traditionally covered under the First Amendment. Second, an adverse action was taken against the plaintiff that would deter "a person of ordinary firmness" from continuing to engage in that speech or conduct. Third, there is a cause-and-effect relationship between these two elements, i.e., the adverse action was motivated at least in part by the plaintiff's protected conduct.

II. Factual Background and Procedural history

The Complaint in this case was filed on July 23, 2021. Doc. 1, Trial Record. It alleged that the Petitioner was retaliated against, his grades were reduced or he was given failing grades, and that he

was bullied and ultimately expelled, for voicing conservative Christian "pro-life" views at the University of Louisville School of Medicine. See Complaint. At the time of the Appellant's expulsion he was a third year medical student having successfully passed all criteria for admission into the School of Medicine, as well as two (2) full years of course work and, but for the retaliation, was well on his way to achieving a goal of becoming a doctor until he was given failing marks in retaliation for his professed beliefs.

On August 10, 2021 the Petitioner, as Plaintiff filed his First Amended Complaint. See Amended Complaint, Doc. 4, Trial Record. Both Complaints were "verified" meaning they operated as an affidavit, or sworn statements of factual truth, as to the facts alleged.

On December 9, 2021, Defendants Neeli Bendapudi, Lori Gonzalez, Toni Ganzel, Olivia Mittel, andMonica Shaw, in their individual and official capacities moved to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). Doc. 10, Trial Record. These Defendants were denominated the "served defendants" for obvious reasons.

On January 8, 2022 the Petitioner filed a response to the above noted Motion to Dismiss by the "served defendants". Doc 18, Trial Record. The Response contained an affidavit by the Plaintiff supporting his factual contentions, but the District Court in its Order Dismissing held it would not and did not consider the affidavit. See Memorandum and Order, filed 9/30/22, Doc. 34 of Trial Record, page 8.

On January 31, 2022 Defendants Jennifer Koch, William Crump, Mohan Rao, and Thomas Neely, in their individual and official capacities, moved to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) Doc 26, Trial Record.

On March 10, 2022, the Petitioner, Plaintiff below, filed his Response to the above noted Motion to Dismiss. Doc. 27, Trial Record.

In the Memorandum and Order, filed September 30, 2022, Doc. 34, the Trial Court considered certain facts as true for purposes of ruling on the Defendants' Motions to Dismiss, to-wit:

1. Between July 2017 and July 2020, Austin Roy Clark was enrolled as a medical student at the University of Louisville School of Medicine (hereinafter "ULSOM"), attending both the Madisonville Trover Campus and the Jackson Street Louisville Campus.

2. During his second year at ULSOM, Clark was president of the student organizations "Medical Students For Life" and "Christian Medical and Dental Association."

3. In his role as president of the aforementioned groups, Clark invited a "Christian speaker" to ULSOM to make an "academic presentation as to when life actually began."

4. This event and the invited speaker "generated substantial opposition", because "the speaker put forward ideas that are not held by the majority of students or faculty at ULSOM leading to oppositional and retaliatory conduct from the administration."

5. During Clark's third year of medical school, he was enrolled in a class on Obstetrics and Gynecology taught by Dr. Thomas Neely.

6. On August 10, 2019, Clark engaged in "respectful verbal opposition activity regarding his treatment from Defendant Neely. "

7. Clark told Neely that Neely was "not going to treat [him] that way" and that Neely was "the worst preceptor [he had] ever had." Neely responded by calling Clark stupid and asking if his brain was working. Clark alleges that later that day, Neely spoke with Mohan Rao, a surgical instructor, and Bill Crump, the Assistant Dean, about Clark's behavior.

8. Crump told Clark that Clark could not speak in that manner "to a senior faculty member."

9. Four days later, Rao sent a letter to Crump stating that the Madisonville Surgical OBGYN faculty "would not accept him (Clark) as a student here (Madisonville Trover Campus)."

10. Crump then instructed Clark that it was "not 'in his best interest for him to return to the Trover Campus.

11. On September 15, 2019, Clark met with Associate Dean Olivia Mittel, who required Clark to sign a "professionalism contract" allegedly based upon Clark's previous interaction with Neely, though no other students have ever been required to sign a professionalism contract.

12. On October 5, 2019, Clark met with Dr. Sara Petruska and Olivia Mittel to discuss "the retaliatory conduct from Thomas Neely and Mohan Rao." When

Clark attempted to defend himself, Petruska and Mittel allegedly told Clark that he "only sees himself as a victim."

13. On February 7, 2020, Clark engaged in "respectful verbal oppositional activity" with Dr. Jon Alexander, a resident physician in the Internal Medicine Program. Clark told Alexander that his "criticism and overbearing behavior" were unwarranted. Dr. Alexander responded that he was a "third year resident and [Clark was] a student." (Ids) Alexander gave Clark a failing grade for the Internal Medicine Clinic even though Alexander had signed a memorandum several days earlier saying that Clark had "exceeded expectations" in the clinic.

14. One of Alexander's colleagues, Dr. Samuel Reynolds, emailed Dr. Julianna Brown, the Internal Medicine Clerkship Director, to recommend that Clark be removed from the course and given a failing grade purportedly based on Alexander's interaction with Clark. The next day, Reynolds "physically harassed and bullied" Clark as a result of the interaction with Dr. Alexander.

15. On February 17, 2020, Dr. Cristina Giles, another resident physician in the Internal Medicine Program, gave Clark a failing performance evaluation "solely as a result of the aforementioned protected activities."

16. Dr. Giles had previously signed a memorandum stating that Clark "exceeded performance expectations." As a result of the failing evaluations from Alexander and Giles, Clark failed the Internal Medicine Clerkship. Failure of a course "triggered a

meeting with the Student Promotions Committee of the Office of Medical Student Affairs" (SPC).

17. Clark's meeting with the SPC was rescheduled for May 29, 2020. While the initial meeting was supposed to only discuss his Internal Medicine rotation, the new meeting would consider his "entire academic record." ULSOM changed its policy "with regards to the dismissal and academic discipline of medical students" between March 10 and May 20, 2020.

18. To prepare for the meeting, Clark requested "emails and documents from the ULSOM," but "ULSOM repeatedly denied most of his requests." Clark sent other evidence for his defense to Associate Dean Mittel via email, and she said she would "consider it."

19. On May 27, 2020, Clark filed a complaint with the Liaison Committee for Medical Education concerning the university's alleged failure to "correct such demeaning treatment and due to substantial restrictions on Clark's First (1st) Amendment right to free speech." On May 28, Clark filed a complaint with the Department of Health and Human Services Office for Civil Rights on the same grounds.

20. Clark met with the SPC on May 29, 2020. During the meeting, Clark "(1) reiterated his concerns regarding restrictions on his constitutional right to free speech, viewpoint discrimination, and student abuse, (2) . . . complain[ed] about the lack of due process and lack of transparency, and (3) . . . attempt[ed] to defend himself." The SPC recommended Clark's dismissal to Dean Toni Ganzel,

and Ganzel upheld the recommendation. Between July 2020 and August 2020, Clark attempted to "formally appeal his dismissal through the University academic grievance procedures." Clark alleges that he was unable to file a grievance due to "repeated and continual University obstruction."

21. Clark filed this action on July 23, 2021, pursuant to 42 U.S.C. 1983, alleging that the fourteen named defendants violated his constitutional rights to free speech, procedural due process, and equal protection. Clark later amended his complaint, adding U of L as a defendant and adding a substantive due process claim.

REASONS FOR GRANTING THE WRIT

I. The Decision Below is Incorrect

In granting the Defendants' respective motions to dismiss the Trial Court erred in its application of the law to the alleged facts contained in Petitioner's Complaint. As noted in the Trial Court's Memorandum and Opinion, both motions were filed "on similar grounds". Doc 34, page 1. On page 6 of the aforementioned Memorandum and Order the Trial Court states the standard, which the Petitioner accepts, thusly:

> To avoid dismissal for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face. '" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is plausible on its face

> "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. If "the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct," the plaintiff has not shown that he is entitled to relief. Id. at 679. For purposes of a motion to dismiss, "a district court must (1) view the complaint in the light most favorable to the plaintiff and (2) take all well-pleaded factual allegations as true." Tackett v. Polymers, USA, LLC, 561 F.3d 478, 488 (6th Cir. 2009) (citing Gunasekera v. Irwin, 551 F.3d 461, 466 (6th Cir. 2009)). "But the district court need not accept a 'bare assertion of legal conclusions. '" Id. (quoting Columbia Natural Res., Inc. v. Tatum, 58 F.3d 1101, 1109 (6th Cir. 1995)). A complaint is not sufficient when it only "tenders naked assertions devoid of further factual enhancement." Iqbal, 556 U.S. at 678 (internal quotations omitted) (citing Twombly, 550 U.S. at 557).

Emphasis by Petitioner.

In Response to the served Defendants 12 (b)(6) motion the Petitioner, Plaintiff below, also described the standard thusly:

> []. . . when an allegation is capable of more than one inference, this Court

> must construe it in the plaintiff's favor. Columbia Natural Res. Inc. v. Tatum, 58 F.3d 1101, 1109 (6th Cir. 1995) (citing Allard v. Weitzman, 991 F.2d 1236, 1240 (6th Cir. 1993)). This being the case, a Court may not grant a Rule 12(b)(6) motion merely because it may not initially believe the plaintiff's factual allegations. Id.

Doc 18, page 2, first full paragraph.

And:

> On the other hand, the plaintiff still must do more than merely assert bare legal conclusions. Id. Specifically, the complaint must contain "either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." Scheid v. Fanny Farmer Candy Shops, Inc., 859 F.2d 434, 436 (6th Cir. 1988) (quotations and emphasis omitted).

In the Memorandum Opinion, the Trial Court correctly stated the standard for applying Qualified Immunity:

> When a public official is sued in her individual capacity, qualified immunity shields her from suit unless her conduct violated a clearly established constitutional right of which a reasonable official would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). If a defendant raises qualified

> immunity as a defense, the plaintiff bears the burden of demonstrating that the defendant is not entitled to such immunity. [6] Crawford 15 F.4th 752, 760 (6th Cir. 2021); Everson v. Leis, 556 F.3d 484, 494 (6th Cir. 2009). Still, the Sixth Circuit has cautioned against "'resolv[ing] a Rule 12(b)(6) motion on qualified immunity grounds' because development of the factual record is frequently necessary to decide whether the official's actions violated clearly established law. "7 Hart v. Hillsdale Cn 973 F.3d 627, 635 (6th Cir. 2020) (quoting Singleton v. Sentugky, 843 F.3d 238, 242 (6th Cir. 2016)). The Court may decide a subset of cases at the motion-to-dismiss stage if the plaintiff has not plausibly shown a violation of his clearly established rights. Siefert, 951 F.3d at 762.

Doc 34, pages 8-9. Emphasis by Petitioner.

The First Amendment:

> 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 the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment:

> 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.

The Trial Court correctly stated the standard to be applied when a claim of retaliation for expression of protected speech is alleged:

> The Sixth Circuit recognizes that the Free Speech Clause prohibits public universities from suppressing speech "because of its message.' ward v. Polite, 667 F.3d 727, 732-33 (6th Cir. 2012) (citing Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 828 (1995). To establish a First Amendment retaliation claim, Clark must show that "(1) he engaged in protected conduct; (2) the defendants took an adverse action against him; and (3) a causal connection exists between the two." Rudd v. Ci of Norton Shores Mi., 977 F.3d 503, 513 (6th Cir. 2020) (citing

> Novak v. City of Parma, 932 F.3d 421, 427 (6th Cir. 2019)).

Doc 34, page 9-10.

However, the Trial Court erroneously found that the Petitioner had failed to plead retaliation for two reasons: 1) he failed to identify which Defendant he claimed had retaliated against him, when the Complaint is clear he claimed ALL had, and (2) he failed to plead the Defendants had retaliated against him based upon his pro-Christian, pro-life views. Doc 34, page 10, Memorandum and Order. The Trial Court found that absent anyfactual allegations suggesting the defendants were motivated by Clark's religious or political expression, the amended complaint failed to state a claim for retaliation. That finding is clear error as evidenced by the Complaint itself, which extensively pleads retaliation for expression of religious beliefs, specifically espousing right to life, as well as the "facts" the Trial Court cited to in the Memorandum Opinion, that were accepted as "true" for purposes of the dismissal practice. These facts as alleged also extensively state retaliation for expression of religious beliefs. See Above.

A cursory review of the Amended Complaint, Doc. 4, reveals extensive allegations by the Petitioner that he was retaliated against for expressing a religious view:

Paragraph 4: Austin Clark ("Clark") holds traditional Christian beliefs and conservative political beliefs which medical schools tend to

discriminate against and/or hold hostile biases toward.

Paragraph 8: The University and ULSOM Administrators failed to alleviate or correct this demeaning behavior in which Clark is belittled and humiliated and retaliated against through the academic evaluation process and under guise of enforcing technical standards solely as a result of (1) his protected pro-life and religious speech on campus, and (2) expressing his protected concerns in the academic clinical environment and before the Student Promotions Committee and Defendant Ganzel.

Paragraph 32 (random named Defendant: Mohan Rao, M.D., is a surgical instructor and Program Director of Surgery at the Trover Campus. He has never had Clark as a student- in fact, he has never met Clark. However, he supported Neely in his insulting behavior toward Clark and supported Neely in having Clark removed from the Trover Campus. In such a role, he was authorized to, among other duties, implement university policy, and review, approve or reject the decisions of the Surgery and 0B/Gyn instructors over whom he has authority on the Trover Campus. As such, Defendant Rao has authorized and approved the retaliatory and unconstitutional decisions regarding Clark which are challenged herein.

Despite proof in the record to the contrary, the Trial Court dismissed Clark's claims on the technicality that the Complaint did not plead retaliation for religious views and expressions.

> Absent any factual allegations suggesting that the defendants were motivated by Clark's religious or political expression, the amended complaint fails to state a claim for retaliation. See Koch v. Dep't of Natural Res. Div. of Wildlife, 858 F. App'x 832, 837 (6th Cir. 2021) (finding that a claim for retaliation requires the allegation that the adverse action was motivated by the protected conduct (citing Mezibov v. Allen, 411 F.3d 712, 717 (6th Cir. 2005))).

Plaintiff extensively alleged what the Trial Court concluded he never did, thus the Trial Court erred in this instance alone. The context here is a third-year medical student who is in good standing until he expresses a pro-life sentiment and solicits a pro-life speaker to speak to students, not as a challenge to the school, but as an extension of his position of leadership in a pro-Christian student group, whereupon his impending career as a medical doctor is taken from him based upon the actions of the university, its administrators and certain faculty members. Clark's dismissal was unrelated to his performance in the classroom and all evidence indicates that but for the expression of his religious views, he would have continued to succeed in school.

The Trial Court's analysis of the Petitioner's "Content and Viewpoint Discrimination" claims, Memorandum Contract, Doc. 34, page 13 et seq, are similarly flawed. As in its Retaliation analysis, the Trial Court did not dismiss Petitioner's action based

upon a finding of "no retaliation", rather, dismissed on its finding the Plaintiff failed to plead correctly.

Stated the Trial Court, Doc 34, page 13 et seq:

> Clark first alleges that the defendants discriminated against him because of the viewpoint of the speaker that he brought to campus (D.N. 4, PagelD.62 95). But the amended complaint contains no factual allegations to suggest that the defendants' decision to dismiss Clark was motivated by his, or the speaker's, political or religious views. (Citations omitted)... Instead, Clark merely alleges that he expressed his views publicly and was later disciplined. (D.N. 4, PagelD.62 96; see generally D.N. 4) These allegations are insufficient to allege a First Amendment violation. (Citations omitted).

The Trial Court erred in finding that the Petitioner failed to properly allege discrimination, when the entirety of the Amended Complaint, repeatedly and clearly alleges discrimination and retaliation. It is notable that the Trial Court's ruling was based only upon the pleadings and Petitioner was never afforded an opportunity to engage in further discovery. In effect, the Trial Court held that although Clark alleged that he expressed his religious views and was later harassed, retaliated against and ultimately removed from the program and the school, he failed to plead that the reason he was removed from the program was the expression of his religious belief. While it is true that the pleadings

taken alone do not prove that Petitioner was discriminated against for his religious beliefs, it was error to hold that he failed to plead that he was discriminated against for his religious beliefs—that claim is the very substance of the Complaint. As noted by the Trial Court, viewpoint discrimination occurs when the state singles out an individual for disfavored treatment because of their point of view Doc 34 , page 13 citing *Ctr. For Bio-Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365 (6th Cir. 2011). The Trial Court's reliance upon *Harris v. Morris*, No. 16-1373, 2017 U.S. App. LEXIS 21425 (6th Cir. Oct. 26, 2017) is misplaced in that the Plaintiff in *Harris* never cited any speech or viewpoint that caused the defendants to discriminate against him. While it is true that Petitioner Clark alleged that the defendants engaged in viewpoint discrimination based upon his complaints regarding the proper treatment of medical students, it is equally true that Clark's constitutionally protected conduct, i.e. pro-Christian, pro-life expressions and beliefs, and the retaliatory conduct of university administrators and faculty related thereto, is a common thread throughout his Complaint.

The Trial Court dealt with Petitioner's Equal Protection claim in the Memorandum and Opinion, Doc 34, page 19 et seq, where at the Trial Court stated, in pertinent part:

> To state an equal-protection claim, a plaintiff must allege that the state made a distinction that "burden[ed] a fundamental right, target[ed] a suspect class, or intentionally treat[ed] one

differently from others similarly situated without any rational basis for the difference." Miami Univ., 882 F.3d at 595 (quoting Radvansky v. City of Olmsted Falls, 395 F.3d 291, 312 (6th Cir. 2005)). Here, Clark has not pleaded any facts to support his allegation that other students were treated differently than he was after making similar statements. (D.N. 4) Clark does not identify any other students who made similar comments but were not disciplined. (Id.) Indeed, he does not allege that any other students made similar comments at all. (Id.) Absent factual allegations that Clark was treated differently than other students, his equal-protection claim fails. Ctr. For Bio-Ethical Reform, Inc. v. Napolitano, 648 F.3d 365, 379 (6th Cir. 2011) (affirming the dismissal of a complaint where the plaintiff did not adequately plead "that the government treated plaintiff disparately as compared to similarly situated persons"); Meriwether v. Hartop, 992 F.3d 492, 518 n.9 (6th Cir. 2021); see also Kollaritsch v. Mich. State Univ. Bd. of Trustees, 944 F.3d 613, 627 (6th Cir. 2019) (finding defendant entitled to qualified immunity where "[t]he complaint d[id] not allege facts showing that [the defendant] violated [the plaintiff's]

> clearly established constitutional right to equal protection").

Emphasis by Petitioner.

The Trial Court's ruling was that Petitioner's Amended Complaint failed to sufficiently plead a cause of action, in this case violation of Equal Protection rights. The Amended Complaint, Doc 4, deals with Equal Protection in paragraphs 111-125. The pleading speaks for itself and can be summarized thusly: The Petitioner was retaliated against for expressing his religious views, whereas those having no religious views, being agnostic, atheist, or having not expressed said views, are not discriminated against. As a "class", the Petitioner was in the following class: Medical students, attending med school, who are Christian, pro-life, and who express they are Christian and pro-life. In this it appears the Petitioner was in a class of one. In citing the Trial Court, immediately above, the Petitioner agrees that there is no other student the Petitioner is aware of that has expressed similar views. The Petitioner was a leading figure in Christian medical school "clubs", but no other members had expressed a pro-life sentiment at ULSOM. It is accurate that to the best of the Appellant's knowledge, and without the benefit of further discovery, he is the only medical student at the University of Louisville that has voiced a pro-life stance. The reason no others have been punished or retaliated against by the university, its administrators and faculty is because the Christian, pro-life is expressions espoused by Petitioner have not been heard in that context or that environment

previously. Petitioner was treated differently because he acted differently in that he expressed his views, specifically his views regarding life, its beginning, and by extension, his anti-abortion views in a religious context, as opposed to a medical one. While correctly citing the substantive law on Equal Protection, the Trial Court erred in finding that Petitioner failed to properly allege it. Running through the Trial Court's Memorandum and Opinion is the repeated concept that the Petitioner did not sufficiently plead his causes of action, when a review of the Amended Complaint shows that he pleaded each element as it related to each named defendant. In viewing the Complaint "in a light most favorable to the plaintiff and tak[ing] all well-pleaded factual allegations as true", see *Gunasekera v. Irwin*, 551 F.3d 461, 466 (6th Cir. 2009) it is clear that the Complaint clearly states causes for discrimination and retaliation and contains far more than bare assertions of legal conclusions.

II. The Question Presented is a Matter of Public Importance

Certiorari should be granted because the question presented is a matter of public importance. The Court's recent ruling in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ___, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022) held that the United States Constitution does not confer a right to abortion. The case overruled the previous decisions in both *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L.Ed. 2d 147 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). The *Dobbs* decision effectively returned

to the individual states the authority to regulate abortion. As noted by the Court in *Dobbs:*

> Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. No state constitutional provision had recognized such a right. Until a few years before Roe, no federal or state court had recognized such a right. Nor had any scholarly treatise. Indeed, abortion had long been a crime in every single State. At common law, abortion was criminal in at least some stages of pregnancy and was regarded as unlawful and could have very serious consequences at all stages. American law followed the common law until a wave of statutory restrictions in the 1800s expanded criminal liability for abortions. By the time the Fourteenth Amendment was adopted, three-quarters of the States had made abortion a crime at any stage of pregnancy. This consensus endured until the day Roe was decided. Roe either ignored or misstated this history, and Casey declined to reconsider Roe's faulty historical analysis.

Dobbs, 597, U.S. ___, 3 (2022).

Arguably, abortion rights versus the right-to-life is the primary social and legal issue of modern American society going back more than fifty years. The matter has been litigated and re-litigated before

the Court for decades even prior to the *Roe* decision. See, for example, *Griswold v. Connecticut*, 381 U.S. 479 (1965), *United States v. Vuitch*, 402 U.S. 62 (1971), *Webster v. Reproductive Heath Services*, 492 U.S. 490 (1989), *Gonzales v. Carhart*, 550 U.S 124 (2007), and *Gonzales v. Planned Parenthood Federation of America, Inc. (Carhart II)*, 127 S. Ct. 1610 (2007) just to cite some of the cases addressing the issue. Petitioner has alleged that his public expressions of his personal religious views regarding right-to-life as well as his invitation to a Christian, pro-life speaker at a medical school event ultimately resulted in retaliatory actions by the University of Louisville, its administrators and certain faculty members. Petitioner's exercise of his constitutionally protected speech caused a furor within the University of Louisville and its School of Medicine and resulted in his ultimate dismissal from the program when he was otherwise a successful student in good standing. The Petitioner now moves the Court to correct this egregious and unconstitutional infringement upon his First Amendment rights.

CONCLUSION

For the foregoing reasons, certiorari should be granted.

Respectfully submitted,

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