

## **APPENDIX**

**APPENDIX****TABLE OF CONTENTS**

Appendix A	Opinion in the United States Court of Appeals for the Sixth Circuit (July 25, 2023) .....	App. 1
Appendix B	Order in the United States District Court Western District of Kentucky Louisville Division (October 25, 2022).....	App. 14
Appendix C	Memorandum and Order in the United States District Court Western District of Kentucky Louisville Division (September 30, 2022) .....	App. 16
Appendix D	Plaintiff's Verified Complaint in the United States District Court for the Western District of Kentucky Louisville Division (July 23, 2021) .....	App. 45

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## APPENDIX A

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**NOT RECOMMENDED FOR PUBLICATION**  
**File Name: 23a0344n.06**

**UNITED STATES COURT OF APPEALS**  
**FOR THE SIXTH CIRCUIT**

**Case No. 22-5983**

**[Filed July 25, 2023]**

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AUSTIN ROY CLARK,	)
Plaintiff - Appellant,	)
	)
v.	)
	)
NEELI BENDAPUDI, et al.,	)
Defendants - Appellees.	)
	)

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**ON APPEAL FROM THE UNITED  
STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF KENTUCKY**

**OPINION**

Before: GIBBONS, READLER, and DAVIS, Circuit  
Judges.

JULIA SMITH GIBBONS, Circuit Judge. Plaintiff Austin Clark, a medical student at the University of Louisville, was formally dismissed from the university for failing his Internal Medicine clerkship and for

## App. 2

exhibiting unprofessional conduct in the clinical setting. He sued the University of Louisville and fourteen university employees in their individual and official capacities, alleging violations of his constitutional rights to free speech, due process, and equal protection pursuant to 42 U.S.C. § 1983. The district court granted all of the defendants' motions to dismiss. Clark now appeals the district court's dismissal of his discrimination, retaliation, and equal protection claims. Because Clark failed to serve multiple defendants and his remaining claims fail to allege any constitutional violation, we affirm.

### I.

In 2017, Clark enrolled as a medical student at the University of Louisville School of Medicine ("ULSOM"), attending both the Madisonville Trover Campus ("Trover Campus") and the Jackson Street Louisville Campus ("Jackson Street Campus"). During his second year, Clark served as president of two student organizations: Medical Students for Life and the Christian Medical and Dental Association. In November 2018, Clark invited a "Christian" speaker to the Jackson Street Campus to present "as to when life actually began," a presentation that Clark alleges generated opposition among faculty and students. DE 4, Page ID 48-49. Clark completed his first two years of medical school with passing grades.

Clark began his third year of medical school with clinical instruction at the Trover Campus. He had a clinical rotation in Obstetrics and Gynecology ("OBGYN") with Dr. Thomas Neely. Clark alleges that, on August 10, 2019, he engaged in "respectful verbal

### App. 3

oppositional activity regarding his treatment” from Neely. *Id.* at Page ID 49. According to Clark, he told Neely that Neely was “the worst preceptor [he had] ever had” and that Neely could not “treat [him] that way.” *Id.* In response, Neely allegedly called Clark stupid and asked if his brain was functioning. Clark alleges that, later that day, Neely spoke with two other faculty members about Clark’s behavior: Mohan Rao, the Surgery Program Director for the Trover Campus, and Bill Crump, Assistant Dean and Operating Dean for the Trover Campus. Rao subsequently sent a letter to Crump stating that the Madisonville Surgical OBGYN faculty “w[ould] not accept [Clark] as a student” at the Trover Campus. *Id.* at Page ID 50. After receiving the letter, Crump instructed Clark that it would be against Clark’s interest to return to the Trover Campus.

Clark returned to the Jackson Street Campus. Olivia Mittel, an Assistant Dean, required Clark to sign a “professionalism contract” at that point, which Clark alleges was due to his interaction with Neely. *Id.* at Page ID 51. Three weeks after signing the contract, Clark met again with Mittel and Dr. Sara Petruska, Clerkship Director of the OBGYN Department at the Jackson Street Campus, to discuss Clark’s interactions with Neely and Rao. According to Clark, after he tried to defend himself, Petruska and Mittel told him that he “only sees himself as a victim.” *Id.* at Page ID 51.

Several months later, Clark alleges that he again engaged in “respectful verbal oppositional activity” with a supervisor. *Id.* at Page ID 51-52. This time, Clark told Jon Alexander, a resident physician in the

#### App. 4

Internal Medicine Program, that Alexander’s “criticism and overbearing behavior toward Clark regarding [Clark’s] performance on wards, [sic] was unwarranted,” as well as “unjust” and “unfair.” *Id.* at 52. Alexander allegedly responded by stating, “I am a third-year resident and you are a student.” *Id.* Alexander gave Clark a failing grade for the Internal Medicine Clinic, despite signing a memorandum the week before stating that Clark had “exceeded expectations” in the clinic. *Id.*

After that conversation, Dr. Samuel Reynolds, another resident physician in the Internal Medicine Program and colleague of Alexander, recommended to the Internal Medicine Clerkship Director at the Jackson Street Campus that Clark be removed from the course and given a failing grade. Clark alleges that the recommendation was made based on Clark’s engagement with Alexander. Clark alleges that Reynolds also “physically harassed and bullied” him the next day in response to Clark’s interaction with Alexander. *Id.* In response to that behavior, Clark claimed that he drafted a “mistreatment complaint” that day and sent it to Monica Shaw (an Assistant Dean at the Jackson Street Campus), Mittel, Jennifer Koch (the Internal Medicine Program Director at the Jackson Street Campus), and Dr. Juliana Brown (the Internal Medicine Clerkship Director at the Jackson Street Campus). *Id.* at Page ID 52-53.

Ten days after Clark and Alexander’s conversation, Clark received a failing performance evaluation from Dr. Cristina Giles, another resident physician in the Internal Medicine Program at the Jackson Street

## App. 5

Campus. Giles had previously signed a memorandum stating that Clark had “exceeded performance expectations,” and Clark alleges the failing evaluation was “solely as a result of the aforementioned protected activities.” *Id.* at 53. Due to his failing evaluations, Clark failed the Internal Medicine Clerkship.

Clark’s failure in Internal Medicine “triggered a meeting with the Student Promotions Committee of the Office of Medical Student Affairs” (“SPC”) where he faced disciplinary action. *Id.* The meeting was delayed due to the spread of COVID-19, allowing Clark to begin his surgical rotation. Clark alleges that Tony Ganzel, Dean of the ULSOM, called Clark’s preceptor on the first day of Clark’s surgical rotation, although the content of the phone call was not included in the amended complaint. Clark later received another failing evaluation from his supervising surgery resident—apparently a subordinate of the preceptor receiving Ganzel’s call. In the evaluation, the surgery resident referenced Clark’s belief that his previous Internal Medicine evaluations were biased. Clark claims that he never mentioned the Internal Medicine rotation to that resident.

Clark’s meeting with the SPC was scheduled for May 29, 2020. According to Clark, although the initial meeting was intended to discuss his Internal Medicine rotation alone, the ULSOM had changed its disciplinary policy so that the meeting would encompass his “entire academic record.” *Id.* at 54-55. Clark alleges that ULSOM denied most of his requests for emails and documents that he needed from the ULSOM to prepare. Clark also emailed Assistant Dean

## App. 6

Mittel with other evidence for his defense, which she stated she would consider. And two days before the meeting, Clark filed a complaint with the Liaison Committee for Medical Education (“LCME”) regarding 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.” *Id.* at Page ID 55. The next day, Clark filed a complaint with the Department of Health and Human Services Office for Civil Rights (“HHS OCR”) on the same grounds.

During Clark’s May 29, 2020 meeting with the SPC, Clark alleges that he “(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.” *Id.* at Page ID 56. The SPC recommended Clark’s dismissal to Dean Ganzel, who upheld the recommendation and formally dismissed Clark from the ULSOM. Clark claimed that he attempted to formally appeal his dismissal through the ULSOM’s academic grievance procedures but was unable to do so due to “repeated and continual University obstruction.” *Id.* at Page ID 57.

Clark then filed this lawsuit pursuant to 42 U.S.C. § 1983, alleging that fourteen named defendants violated his constitutional rights to free speech, procedural due process, and equal protection. His amended complaint added the University of Louisville as a defendant and added a substantive due process claim. All of the served defendants moved to dismiss. In

## App. 7

their motions, they raised the affirmative defenses of sovereign immunity and qualified immunity, argued that the claims against Defendants Koch, Crump, Rao, and Neely were barred by the one-year statute of limitations on § 1983 claims in Kentucky, and argued that Clark failed to state a claim that his constitutional rights were violated.

The district court granted both motions to dismiss. It held that, because Clark failed to plausibly allege a violation of his constitutional rights, the defendants were entitled to qualified immunity. The district court also ordered Clark to show cause why the action against the unserved defendants should not be dismissed pursuant to Federal Rule 4(m) for failure to serve process. Because Clark failed to respond to the show cause orders, the court later dismissed the unserved individuals from the action. Clark timely appealed the district court's dismissals of his discrimination, retaliation, and equal protection claims.

## II.

We review a district court's grant of a motion to dismiss de novo. *Lipman v. Budish*, 974 F.3d 726, 740 (6th Cir. 2020). A motion to dismiss is properly granted if the complaint "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A complaint must "contain sufficient factual matter. . .to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). We construe the complaint in the light most favorable to the plaintiff, accepting factual allegations as true

and drawing all reasonable inferences in the plaintiff's favor. *Royal Truck & Trailer Sales and Serv., Inc. v. Kraft*, 974 F.3d 756, 758 (6th Cir. 2020). However, we do not accept "conclusory legal allegations that do not include specific facts necessary to establish the cause of action." *Bickerstaff v. Lucarelli*, 830 F.3d 388, 396 (6th Cir. 2016) (quoting *New Albany Tractor, Inc. v. Louisville Tractor, Inc.*, 650 F.3d 1046, 1050 (6th Cir. 2011)).

### III.

We first address issues regarding service of process before considering whether Clark stated any claim for which he is entitled to relief. Further, because we conclude that Clark failed to establish that his constitutional rights were violated, we affirm the district court's dismissal of his claims without addressing whether any of his claims were barred by the applicable statute of limitations.

#### 1. Dismissal of Unserved Defendants

Although the district court dismissed multiple defendants pursuant to Federal Rule 4(m) for failure to serve process, Clark references all named defendants—served and unserved—in his appellate briefing. But Clark never effected service of process upon defendants Petruska, Brown, Giles, Alexander, Reynolds, and the University of Louisville, and the record contains no evidence that Clark responded to the district court's show cause order as to why his claims against them should not be dismissed under Rule 4(m). By failing to present any argument to the district court, Clark waived his right to challenge the dismissal of these

defendants on appeal. *United States v. Universal Mgmt. Servs.*, 191 F.3d 750, 758-59 (6th Cir. 1999). We affirm the district court's dismissal of any claims against these defendants.

## **2. Failure to State a Claim**

On appeal, Clark argues that the defendants were not entitled to qualified immunity on the First Amendment and Equal Protection claims and that he validly stated claims that his constitutional rights were violated. The defendants maintain that dismissal was proper because Clark failed to adequately allege a violation of his constitutional rights, entitling them to qualified immunity.

For a qualified immunity analysis, we consider two issues: whether a constitutional violation occurred and, if so, whether the constitutional right at issue was clearly established. *Pearson v. Callahan*, 555 U.S. 223, 232, 236 (2009). Here, the threshold consideration is whether the facts alleged in the amended complaint plausibly demonstrate the existence of a constitutional violation. *Hardy v. Jefferson Cnty. Coll.*, 260 F.3d 671, 682 (6th Cir. 2001) (noting that the first prong of qualified immunity is met when First Amendment retaliation is adequately alleged). Because the amended complaint fails to plausibly allege any constitutional violation, we affirm.

### **1. Retaliation**

In the amended complaint, Clark made three claims of retaliation. First, he claimed that he was subjected to heightened professional scrutiny, awarded failing grades, and ultimately dismissed from medical school

for his “political and religious beliefs as exhibited by his activities in . . . Medical Students For Life and the Christian Medical and Dental Association.” DE 4, Am. Compl., Page ID 58. Second, he claimed that he suffered the same retaliation for filing complaints against ULSOM with the LSME and with the HHS OCR. Finally, he alleged that he was retaliated against for engaging in “verbal and written attempts to obtain a modicum of respect as a medical student.” *Id.* On appeal, Clark only pursues his first theory for retaliation (“retaliation for expression of religious beliefs,” *see* CA6 R. 38, Corr. Appellant Br. at 9–12), abandoning his other claims, *see In re Fifth Third Early Access Cash Advance Litig.*, 925 F.3d 265, 276 n.2 (6th Cir. 2019) (holding that a party forfeits for appellate review any alternative theories for liability raised in the complaint that lack developed argument on appeal).

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. City of Norton Shores*, 977 F.3d 503, 513 (6th Cir. 2020) (citing *Novak v. City of Parma*, 932 F.3d 421, 427 (6th Cir. 2019)). For a causal connection to exist, a decisionmaker must have been aware of the plaintiff’s protected activity. *Thaddeus-X v. Blatter*, 175 F.3d 378, 387 n.3 (6th Cir. 1999) (“[T]he defendant must have known about the protected activity in order for it to have motivated the adverse action.”).

Clark’s retaliation claim fails because he does not establish any causal connection between his personal

beliefs, as expressed through his extracurricular activities, and any adverse action taken against him. The amended complaint includes no facts demonstrating that any identifiable defendants were aware of Clark's invitation to a "Christian" speaker to express pro-life beliefs or the contents of the presentation. *See Thaddeus-X*, 175 F.3d at 387 n.3; *see also Edgar v. City of Collierville*, 160 F. App'x 440, 442-43 (6th Cir. 2005) (affirming dismissal of First Amendment retaliation claim where decisionmaker was unaware of plaintiff's previous union activities). Nor does it allege how any specific defendant was motivated to scrutinize Clark more carefully, evaluate him negatively, or dismiss Clark from medical school due to Clark's engagement with a Christian speaker. *See Koch v. Dep't of Nat. 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 at least in part" by the protected conduct (citing *Mezibov v. Allen*, 411 F.3d 712, 717 (6th Cir. 2005))); *see also Boxill v. O'Grady*, 935 F.3d 510, 518 (6th Cir. 2019) ("Summary reference to a single, five-headed 'Defendants' does not support a reasonable inference that *each* Defendant is liable for retaliation.") (emphasis in original).

## **2. Content and Viewpoint Discrimination**

Similar to his retaliation argument, Clark's focus on appeal is on his allegations that the defendants violated his constitutional rights by discriminating against the content and viewpoint of his speech with respect to the pro-life speaker he invited and his verbal interactions with faculty. But, again, Clark does not

point to any constitutionally protected speech or viewpoint he expressed that caused *any* defendant to discriminate against him. As previously mentioned, the amended complaint contains no specific allegations that any faculty member was aware of Clark's invitation to the pro-life speaker. *Boxill*, 935 F.3d at 518. We therefore affirm the dismissal of Clark's claims of discrimination.

### **3. Equal Protection**

Lastly, to state an equal protection claim, Clark had to "adequately plead that the government treated [him] 'disparately as compared to similarly situated persons and that such disparate treatment either burden[ed] a fundamental right, target[ed] a suspect class, or ha[d] no rational basis.'" *Ctr. for Bio-Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 379 (6th Cir. 2011) (quoting *Club Italia Soccer & Sports Org., Inc. v. Charter Twp. of Shelby*, 470 F.3d 286, 299 (6th Cir. 2006)). The defendants contend that Clark waived the right to argue this issue on appeal because he failed to object to the defendants' argument in the district court. On appeal, Clark does not respond to the argument of waiver.

Before the district court, Clark never articulated why his equal protection claim should have survived dismissal. Clark cannot now seek a substantive review of the district court's dismissal of this claim when he failed to challenge that dismissal before the district court. *Bldg. Serv. Loc. 47 Cleaning Contractors Pension Plan v. Grandview Raceway*, 46 F.3d 1392, 1399 (6th Cir. 1995). Indeed, without objection from Clark

App. 13

against waiver in his appellate briefing, we easily deem this claim waived.

**IV.**

For the foregoing reasons, we affirm.

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**APPENDIX B**

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

**Civil Action No. 3:21-cv-480-DJH-LLK**

**[Filed October 25, 2022]**

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AUSTIN ROY CLARK,	)
Plaintiff,	)
	)
v.	)
	)
NEELI BENDAPUDI et al.,	)
Defendants.	)
	)

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\* \* \* \* \*

**ORDER**

Plaintiff Austin Roy Clark was granted fourteen days to show cause why his claims against Defendants Sara Petruska, Juliana Brown, Christina Giles, Jon Alexander, Samuel Reynolds, and the University of Louisville should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m). (Docket No. 33; D.N. 34, PageID.294) The record reflects no action by Clark in response to those show-cause orders. Accordingly, and the Court being otherwise sufficiently advised, it is hereby

**ORDERED** as follows:

(1) Clark's claims against Petruska, Brown, Giles, Alexander, Reynolds, and U of L are **DISMISSED**. The Clerk of Court is **DIRECTED** to terminate Sara Petruska, Juliana Brown, Christina Giles, Jon Alexander, Samuel Reynolds, and the University of Louisville as defendants in the record of this matter.

(2) All claims having been resolved (*see* D.N. 34), this matter is **DISMISSED** and **STRICKEN** from the Court's docket.

October 25, 2022

/s/ David J. Hale  
David J. Hale, Judge  
United States District Court

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**APPENDIX C**

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

**Civil Action No. 3:21-cv-480-DJH-LLK**

**[Filed September 30, 2022]**

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AUSTIN ROY CLARK,	)
Plaintiff,	)
	)
v.	)
	)
UNIVERSITY OF LOUISVILLE et al.,	)
Defendants.	)
	)

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\* \* \* \* \*

**MEMORANDUM AND ORDER**

Plaintiff Austin Roy Clark sued fourteen University of Louisville employees in their individual and official capacities, alleging that he was denied his constitutional rights to free speech, procedural due process, and equal protection during the events that led to his dismissal from the university's medical school. (Docket No. 1) Clark filed an amended complaint adding the University of Louisville (U of L) as a defendant and adding a substantive due process claim. (D.N. 4) Five of the defendants—then-University President Neeli Bendapudi, Provost Lori Gonzalez,

Dean of the School of Medicine Toni Ganzel, Associate Dean Olivia Mittel, and Vice Dean Monica Shaw—moved to dismiss, arguing that the official-capacity claims are barred by the Eleventh Amendment and that Clark fails to state a plausible claim for relief against them in their individual capacities. (D.N. 9) Upon being served, four of the remaining defendants—Associate Dean Bill Crump, Dr. Thomas Neely, Dr. Mohan Rao, and Dr. Jennifer Koch—filed a second motion to dismiss on similar grounds.<sup>1</sup> (D.N. 26) Clark’s attempts to cast himself as having been subjected to unconstitutional disciplinary procedures because of his personal beliefs are not supported by his own factual allegations. For the reasons explained below, the Court will grant both motions to dismiss.

## I.

The following facts are set forth in the amended complaint and accepted as true for purposes of the present motion. *See Siefert v. Hamilton Cnty.*, 951 F.3d 753, 757 (6th Cir. 2020). Between July 2017 and July 2020, Austin Roy Clark was enrolled as a medical student at the University of Louisville School of Medicine (ULSOM), attending both the Madisonville Trover Campus and the Jackson Street Louisville

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<sup>1</sup> The final five defendants—U of L, Dr. Sara Petruska, Associate Professor Julianna Brown, Dr. Cristina Giles, Dr. Jon Alexander, and Dr. Samuel Reynolds—have yet to appear. (See D.N. 33 (directing Clark to show cause why claims against Petruska, Brown, Giles, Alexander, and Reynolds should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m))) The Court will direct Clark to show cause why the claims against U of L should not be dismissed pursuant to Rule 4(m) in this Order as well.

Campus. (D.N. 4, PageID.41 ¶ 14; *id.*, PageID.48, ¶ 39; *id.*, PageID.56–57 ¶ 72) During his second year at ULSOM, Clark was president of the student organizations “Medical Students For Life” and “Christian Medical and Dental Association.” (*Id.*, PageID.48 ¶ 42) Clark invited a “Christian speaker” to ULSOM to make an “academic presentation as to when life actually began.” (*Id.*) Clark alleges that this event “generated substantial opposition” (*id.*, PageID.49 ¶ 43), 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.” (*Id.* at ¶ 44)

During Clark’s third year of medical school, he was enrolled in a class on Obstetrics and Gynecology taught by Dr. Neely. (*Id.* at ¶¶ 45–46) On August 10, 2019, Clark engaged in “respectful verbal opposition activity regarding his treatment from Defendant Neely.” (*Id.* at ¶ 46) Clark told Neely that Neely was “not going to treat [him] that way” and that Neely was “the worst preceptor [he had] ever had.” (*Id.*) Neely responded by calling Clark stupid and asking if his brain was working. (*Id.*) Clark alleges that later that day, Neely spoke with Rao, a surgical instructor, and Crump, the Assistant Dean, about Clark’s behavior. (*Id.*, PageID.50 ¶ 47) Crump told Clark that Clark could not speak in that manner “to a senior faculty member.” (*Id.*) Four days later, Rao sent a letter to Crump stating that the Madisonville Surgical OBGYN faculty “w[ould] not accept him (Clark) as a student here (Madisonville Trover Campus).” (*Id.* at ¶ 49) Crump then instructed Clark that it was “not ‘in his best interest for him to return to the Trover Campus.’” (*Id.* at ¶ 50)

On September 15, 2019, Clark met with Associate Dean Mittel, who required Clark to sign a “professionalism contract” because of his previous interaction with Neely.<sup>2</sup> (*Id.*, PageID.51 ¶ 51) Clark alleges that no other students have ever been required to sign a professionalism contract. (*Id.* at ¶ 52) On October 5, 2019, Clark met with Dr. Petruska and Mittel to discuss “the retaliatory conduct from Thomas Neely and Mohan Rao.” (*Id.* at ¶ 53) When Clark attempted to defend himself, Petruska and Mittel allegedly told Clark that he “only sees himself as a victim.” (*Id.*)

On February 7, 2020, Clark engaged in “respectful verbal oppositional activity” with Jon Alexander, a resident physician in the Internal Medicine Program. (*Id.*, PageID.51–52 ¶ 54) Clark told Alexander that his “criticism and overbearing behavior” were unwarranted. (*Id.*) Dr. Alexander responded that he was a “third year resident and [Clark was] a student.” (*Id.*) Alexander gave Clark a failing grade for the Internal Medicine Clinic. (*Id.*) Clark alleges that Alexander had signed a memorandum several days earlier saying that Clark had “exceeded expectations” in the clinic. (*Id.*) One of Alexander’s colleagues, Dr.

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<sup>2</sup> The “professionalism contract” was filed under seal by the defendants pursuant to the Family Educational Rights and Privacy Act. (D.N. 12-2) The Court notes here that the defendants describe the document as outlining “the standards required to graduate from the University of Louisville School of Medicine,” a typical student performance agreement. (*Id.*) The nature of the contract is not determinative of any issues here. The parties do not dispute its content or purpose, and the Court need not interpret its terms.

Reynolds, emailed Dr. Brown, the Internal Medicine Clerkship Director, to recommend that Clark be removed from the course and given a failing grade based on Alexander's interaction with Clark. (*Id.*) Clark alleges that the next day, Reynolds "physically harassed and bullied" him "as a result of the respectful First (1<sup>st</sup>) Amendment oppositional activity with Jon Alexander." (*Id.* at ¶ 56)

On February 17, 2020, Dr. Giles, another resident physician in the Internal Medicine Program, gave Clark a failing performance evaluation "solely as a result of the aforementioned protected activities." (*Id.*, PageID.53 ¶ 57) Giles had previously signed a memorandum stating that Clark "exceeded performance expectations." (*Id.*) As a result of the failing evaluations from Alexander and Giles, Clark failed the Internal Medicine Clerkship. (*Id.* at ¶ 58) Failure of a course "triggered a meeting with the Student Promotions Committee of the Office of Medical Student Affairs" (SPC). (*Id.* at ¶ 59)

Clark's initial meeting with the SPC was canceled "due to COVID," and he began his surgical rotation. (*Id.*, PageID.54 ¶¶ 60–61) On the first day of the surgical rotation, Dean Ganzel called Clark's preceptor, which Clark claims is a "practice that is not typical." (*Id.* at ¶ 61) Clark later received a failing evaluation from his supervising surgery resident, who is subordinate to the preceptor who received a call from Ganzel. (*Id.* at ¶ 62) The resident's evaluation mentioned Clark's belief in the "biases of his Internal Medicine evaluations." (*Id.*) Clark alleges that he never

mentioned his Internal Medicine rotation to the evaluator. (*Id.* at ¶ 63)

Clark's meeting with the SPC was rescheduled for May 29, 2020. (*Id.* at ¶ 64) Clark alleges that while the initial meeting was supposed to only discuss his Internal Medicine rotation, the new meeting would consider his "entire academic record." (*Id.*) Clark alleges that ULSOM changed its policy "with regards to the dismissal and academic discipline of medical students" between March 10 and May 20, 2020. (*Id.*, PageID.55 ¶ 65) To prepare for the meeting, Clark requested "emails and documents from the ULSOM," but "ULSOM repeatedly denied most of his requests." (*Id.*, PageID.56 ¶ 70) Clark sent other evidence for his defense to Associate Dean Mittel via email, and she said she would "consider it." (*Id.*, PageID.55 ¶ 67)

On May 27, 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 (1<sup>st</sup>) Amendment right to free speech." (*Id.*, PageID.55 ¶ 68) On May 28, Clark filed a complaint with the Department of Health and Human Services Office for Civil Rights on the same grounds. (*Id.* at ¶ 69)

Clark met with the SPC on May 29, 2020. (*Id.*, PageID.55 ¶ 70) 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." (*Id.*,

PageID.56 ¶ 71) The SPC recommended Clark’s dismissal to Dean Ganzel (*id.*), and Ganzel upheld the recommendation. (*Id.*, PageID.57 ¶ 72) Between July 2020 and August 2020, Clark attempted to “formally appeal his dismissal through the University academic grievance procedures.” (*Id.* at ¶ 73) Clark alleges that he was unable to file a grievance due to “repeated and continual University obstruction.” (*Id.*)

Clark filed this action on July 23, 2021, under 42 U.S.C. § 1983, alleging that the fourteen named defendants violated his constitutional rights to free speech, procedural due process, and equal protection. (D.N. 1) Clark later amended his complaint, adding U of L as a defendant and adding a substantive due process claim. (D.N. 4) Upon being served, Bendapudi, Gonzalez, Ganzel, Mittel, and Shaw filed a motion to dismiss. (D.N. 9) Upon being served several weeks later, Koch, Crump, Rao, and Neely also moved to dismiss. (D.N. 26) For the reasons discussed below, the Court finds that the amended complaint contains only conclusory statements that Clark was discriminated against because of his beliefs, without sufficient factual allegations to support those claims.

## II.

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. M&G 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).

#### **A. FIRST MOTION TO DISMISS**

Bendapudi, Gonzalez, Ganzel, Mittel, and Shaw (first defendants) argue that all of Clark’s official-capacity claims against them are barred by sovereign immunity and all of the individual-capacity claims against them are barred by qualified immunity. As explained below, the Court concludes that the first defendants are entitled to qualified immunity because Clark fails to state a claim that his constitutional rights were violated. As a result, the Court need not address the sovereign-immunity argument.

## **1. Consideration of Documents Outside the Complaint**

When a district court decides a Rule 12(b)(6) motion, it may “consider the Complaint and any exhibits attached thereto, public records, items appearing in the record of the case and exhibits attached to defendant’s motion to dismiss so long as they are referred to in the Complaint and are central to the claims contained therein.” *Bassett v. Nat’l Collegiate Athletic Ass’n*, 528 F.3d 426, 430 (6th Cir. 2008) (citing *Amini v. Oberlin Coll.*, 259 F.3d 493, 502 (6th Cir. 2001)). Here, the first defendants filed three exhibits under seal alongside their motion to dismiss, all of which are referred to in the amended complaint:

- Exhibit One: A July 27, 2020 letter from Dean Ganzel to Clark affirming Clark’s expulsion. (D.N. 20-1) Clark alleges that Ganzel “issued a formal letter to Clark dismissing him from the ULSOM.” (D.N. 4, PageID.57 ¶ 72)
- Exhibit Two: A September 17, 2019 professionalism contract signed by Clark. (D.N. 12-2) Clark alleges that Associate Dean Mittel “required him to sign a ‘professionalism contract.’” (D.N. 4, PageID.43 ¶ 28)
- Exhibit Three: A May 29, 2020 memo from Simms (Director who oversaw the Student Promotions Committee Meeting) to Ganzel, recommending Clark’s dismissal. (D.N. 12-3) Clark alleges that the Student Promotions Committee “recommended, to Defendant Ganzel, Clark’s dismissal.” (D.N. 4, PageID.56 ¶ 71)

The exhibits therefore satisfy the first *Bassett* prong. *See* 528 F.3d at 430. They satisfy the second prong as well: because Clark alleges that the defendants violated his constitutional rights during the school disciplinary process, documents that detail the process Clark received are “central to the claims contained” in his amended complaint. *Id.*; *see, e.g., Brent v. Wayne Cnty. Dep’t. of Hum. Servs.*, 901 F.3d 656, 699 (6th Cir. 2018) (finding that a police department’s policy was “central to the claims contained” within a complaint that alleged the department failed to follow its policy); *Stein v. HHGREGG, Inc.*, 873 F.3d 523, 528 (6th Cir. 2017) (finding that a company’s compensation policy was “central to the claim[]” that the company’s policy violated the Fair Labor Standards Act).

The Court must also determine whether it may consider the affidavit that Clark attached to his response. (D.N. 18-1, PageID.167–76) In general, “affidavits attached to briefs may not properly be considered at the motion to dismiss stage.” *Hill v. Funk*, No. 4:18-CV-P170-JHM, 2019 U.S. Dist. LEXIS 75643, at \*3 (W.D. Ky. May 3, 2019) (citation omitted). Neither the complaint nor the amended complaint refers to Clark’s affidavit, and the affidavit is not a public record. *Bassett*, 528 F.3d at 430; *see also Rudd v. City of Norton Shores*, No. 1:18-CV-124, 2018 U.S. Dist. LEXIS 133746, at \*11 (W.D. Mich. Aug. 8, 2018) (refusing to consider an affidavit filed in support of a Rule 12(b)(6) motion despite movant’s argument that “a court may consider an affidavit that merely ‘clarifies’ facts alleged in a complaint” because doing so “would obliterate the distinction between a Rule 12(b)(6) motion to dismiss and a Rule 56 motion for summary

judgment.”). The Court thus will not consider Clark’s affidavit.

## **2. Qualified Immunity**

Bendapudi, Gonzalez, Ganzel, Mittel, and Shaw argue that Clark’s individual-capacity claims against them are barred by qualified immunity. (D.N. 9, PageID.93) 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. *Crawford v. Tilley*, 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.” *Hart v. Hillsdale Cnty.*, 973 F.3d 627, 635 (6th Cir. 2020) (quoting *Singleton v. Kentucky*, 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.

To determine if an official is entitled to qualified immunity, the Court first views the facts alleged in the light most favorable to the plaintiff to see whether those facts show that the official’s conduct violated a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201

(2001). If no constitutional right would have been violated on the facts alleged, the inquiry ends, and the official is entitled to qualified immunity. *Id.* If a violation can be made out based on a favorable view of the pleadings, the Court must then determine whether the right at stake was clearly established. *Id.* As explained below, the Court finds that Clark has not plausibly alleged that the first defendants violated his constitutional rights.

**a. Retaliation**

Clark alleges that the first defendants violated his First and Fourteenth Amendment rights by retaliating against him because he engaged in protected speech. (D.N. 4, PageID.59–61 ¶¶ 86–92) 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. City 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)).

Clark first claims that he was retaliated against for his “political and religious beliefs as exhibited by his activities in . . . Medical Students for Life and the Christian Medical and Dental Association.” (D.N. 4, PageID.58 ¶ 77) The amended complaint describes the event that Clark’s organizations planned, as well as the

negative reaction “from many faculty and students” and certain restrictions imposed by ULSOM. (*Id.*, PageID.48–49 ¶¶ 42–44) Clark further alleges that “Defendants” violated his First Amendment rights “by (1) submitting him to heightened scrutiny under ‘professionalism’ standards, (2) arbitrarily and capriciously awarding failing grades, and (3) . . . remov[ing him] from the ULSOM” as punishment for “expressing his pro-life and religious views through the speech made by Alex McFarland on campus.” (*Id.*, PageID.60 ¶ 87)

These allegations are insufficient to state a retaliation claim for two reasons. First, Clark fails to identify which defendants retaliated against him. *See Boxill v. O’Grady*, 935 F.3d 510, 518 (6th Cir. 2019) (“Summary reference to a single, five-headed “Defendants” does not support a reasonable inference that each Defendant is liable for retaliation.” (citing *Heyne v. Metro Nashville Pub. Sch.*, 755 F.3d 556, 564 (6th Cir. 2011))). Second, Clark fails to allege facts showing that the defendants took retaliatory action *because of* his views. *See id.* (finding that dismissal was proper because the plaintiff “offer[ed] no facts to support a reasonable inference that any of the[] Defendants” took adverse action against her “in response to [plaintiff’s] protected speech”). 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))).

Clark also claims that the first defendants retaliated against him because he filed complaints against ULSOM with the Liaison Committee for Medical Education (LCME) (D.N. 4, PageID.55 ¶ 68), and with the Health and Human Services Office for Civil Rights (HHS OCR) (*id.*, PageID.55 ¶ 69). (*Id.*, PageID.58) This allegation fails to state a claim for two reasons. First, Clark did not plead any “plausible, non-conclusory facts to show that [the defendants] w[ere] even aware of h[is] complaints.” *Boxill*, 935 F.3d at 518. Second, even if the defendants were aware of the complaints, Clark does not allege any facts that suggest they disciplined him *because* he filed the complaints. *Rudd*, 977 F.3d at 515; *see also Salyers v. Anthem Blue Cross Blue Shield*, No. 3:20-cv-124-BJB-LLK, 2021 U.S. Dist. LEXIS 131981, at \*5–6 (W.D. Ky. July 15, 2021) (granting a motion to dismiss a retaliation claim because the plaintiff “points to no factual allegations that directly or circumstantially support her assertion that [the defendant] terminated her because she engaged in a protected activity. Indeed, she never identifies . . . whether the person who decided to [dismiss] her knew about any protected activity”) (citing *Harris v. Burger King Corp.*, 993 F. Supp. 2d 677, 689 (W.D. Ky. 2014)). Clark offers only the conclusory assertion that he was disciplined “as a result” of his complaints. (D.N. 4, PageID.40 ¶ 8; *id.*, PageID.53 ¶ 57; *id.* at ¶ 58; *id.*, PageID.56 ¶ 71) Those allegations are insufficient to survive a motion to dismiss. *See Agema v. City of Allegan*, 826 F.3d 326, 333 (6th Cir. 2016) (affirming a motion to dismiss when

the complaint did not allege “sufficient accompanying facts” to plausibly state a claim).

Clark finally alleges that the first defendants retaliated against him for engaging in “verbal and written attempts to obtain a modicum of respect as a medical student.” (D.N. 4, PageID.58 ¶ 77) Specifically, Clark engaged in several conversations with ULSOM employees in which Clark disagreed with their methods of teaching and treatment of him.<sup>3</sup> The issue is whether Clark’s “respectful verbal oppositional activity regarding his treatment” (D.N. 4, PageID.49 ¶ 46), qualifies as constitutionally protected speech such that the defendants could not discipline him for it without running afoul of the First Amendment. *See Ryan v. Blackwell*, 979 F.3d 519, 527 (6th Cir. 2020) (affirming a motion to dismiss because plaintiff’s “speech was not on a matter of public concern and therefore not protected”).

The Sixth Circuit has held that a student’s First Amendment retaliation claim “fails at the inception where his alleged speech, i.e., his conduct of disrupting the classroom milieu for the sole purpose of advancing

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<sup>3</sup> The amended complaint details two situations where Clark engaged in “respectful verbal oppositional activity” with the defendants. (D.N. 4, PageID.49 ¶ 46) First, Clark told Dr. Neely (his OGBYN professor) that “you are not going to treat me that way” and “you are the worst preceptor I have ever had.” (*Id.*) Clark told Dr. Alexander, a resident physician in the Internal Medicine Program, that Alexander was “unjust” and “unfair” and that his “criticism and overbearing behavior toward Clark regarding his performance on wards[] was unwarranted.” (*Id.*, PageID.51–52 ¶ 54)

or pursuing his admitted ‘power struggle’ with the University, was not protected activity.” *Salehpour v. Univ. of Tenn.*, 159 F.3d 199, 208 (6th Cir. 1998) (citing *Tinker v. Des Moines Cnty. Sch. Dist.*, 393 U.S. 503 (1969)). Further, “conduct by the student, in class or out of it, which for any reason – whether it stems from time, place, or type of behavior – materially disrupts classwork or involves substantial disorder . . . is, of course, not immunized by the constitutional guarantee of freedom of speech.” *Tinker*, 393 U.S. at 513.

Even taking all allegations in the amended complaint as true, the Court does not find any facts to support Clark’s allegation that his statements to ULSOM faculty qualify as protected speech. Clark allegedly told Dr. Neely that he was “the worst preceptor [Clark had] ever had” (D.N. 4, PageID.49 ¶ 46), and told Dr. Alexander that he was “unjust” and “unfair.” (Id., PageID.51–52 ¶ 54) Criticism of educational faculty, “where the expression appears to have no intellectual content or even discernable purpose, and amounts to nothing more than expression of personal proclivity designed to disrupt the educational process, . . . is not protected.” *Salehpour*, 159 F.3d at 208; *see also Lowery v. Euverard*, 497 F.3d 584, 588 (6th Cir. 2007) (finding that a school may discipline a student to ensure “appropriate discipline in the operation of the school” without violating that student’s First Amendment rights.) Absent an allegation that the plaintiff engaged in protected speech, a plaintiff has not stated a claim for First Amendment retaliation. *Id.* (“Plaintiff’s claim fails to present a constitutional violation because Plaintiff’s conduct did not constitute protected speech”).

**b. Content and Viewpoint Discrimination**

Clark alleges that the first defendants violated his constitutional rights by discriminating against the content and viewpoint of his speech with respect to (1) “the speaker invited by Clark regarding political and religious perspectives on the pro-life topic,” and (2) “the verbal expressions of Clark regarding the proper treatment of medical students during their clinical practicum experience.” (D.N. 4, PageID.62 ¶ 95) The amended complaint alleges that the defendants singled Clark out for disfavored treatment because they did not like his views. (*Id.* at ¶ 95) *See Christian Legal Soc'y Chapter of the Univ. of Cal. v. Martinez*, 561 U.S. 661, 694 (2010) (finding that viewpoint discrimination occurs when the state singles out an individual for disfavored treatment because of their point of view).

Clark first alleges that the defendants discriminated against him because of the viewpoint of the speaker that he brought to campus (D.N. 4, PageID.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. *See Ctr. For Bio-Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 378 (6th Cir. 2011) (affirming dismissal where “the Amended Complaint fail[ed] to adequately plead that any adverse actions by Defendants were motivated by a desire to discriminate or retaliate against Plaintiffs on account of their constitutionally protected expressive activities”) (citing *Iqbal*, 556 U.S. at 680). Instead, Clark merely alleges that he expressed his views publicly and was later disciplined. (D.N. 4,

PageID.62 ¶ 96; *see generally* D.N. 4) These allegations are insufficient to allege a First Amendment violation. *See Napolitano*, 648 F.3d at 378.

Clark next alleges that the defendants discriminated against him because of the content and viewpoint of his speech when he criticized ULSOM faculty. (D.N. 4, PageID.62 ¶ 95) The amended complaint alleges that Clark made several comments to his instructors “regarding the proper treatment of medical students,” and that the defendants “evaluated the content and viewpoint” of those statements when they decided to take “adverse academic actions against him.” (*Id.* at ¶¶ 95–96) The Sixth Circuit’s decision in *Harris v. Morris* is instructive here. No. 16-1373, 2017 U.S. App. LEXIS 21425, at \*7 (6th Cir. Oct. 26, 2017). In *Harris*, the plaintiff was pursuing a master’s degree when he failed two of his courses. *Id.* at \*2. Harris attempted to appeal his grades through several university grievance procedures, and when those efforts failed, he filed suit alleging that the school engaged in viewpoint discrimination among several other claims. *Id.* at \*3. The Sixth Circuit affirmed the district court’s dismissal of the viewpoint discrimination claim because, although Harris “alleged that the grievance process violated his right to free speech and discriminated against him based on his viewpoint. . . . he never cited any speech or viewpoint that caused the defendants to discriminate against him.” *Id.* The Court ultimately found that “Harris failed to allege that he engaged in any constitutionally protected conduct” at all. *Id.* at \*7 (citing *Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 723 (6th Cir. 2010)). Similar to Harris, Clark alleges that the

defendants engaged in viewpoint discrimination because they dismissed him after he objected to their academic procedures. (D.N. 4, PageID.61 ¶ 94) The Court finds that Clark's allegations are insufficient to state a claim for viewpoint discrimination for the same reasons as the Sixth Circuit articulated in *Harris*: Clark has not alleged that he engaged in constitutionally protected conduct, nor has he identified the viewpoint on which the defendants based their discrimination. (D.N. 4); *Harris*, 2017 U.S. App. LEXIS 21425, at \*7.

### **c. Procedural Due Process**

To properly allege a procedural due process violation, a plaintiff must plead that (1) he had a property or liberty interest of which he was deprived; and (2) the state did not afford him adequate procedural rights prior to depriving him of the interest. *Cottrell v. Greenwell*, 3:17-cv-00041-RGJ-CHL, 2019 U.S. Dist. LEXIS 43749, at \*11 (W.D. Ky. 2019). The first defendants argue that Clark did not allege a protected property interest (D.N. 9, PageID.98), and that even if he did, he failed to state a claim under § 1983 (D.N. 9, PageID.101–04) Defendants' first argument is meritless, as Clark alleges that the Supreme Court has recognized a "sufficient property or liberty interest involved in the continuation of a medical school education to apply the 14th Amendment" (D.N. 18, PageID.164), and the Sixth Circuit has consistently held that public-university students are entitled to due process before "significant disciplinary decisions." *See, e.g., Doe v. Univ. of Cincinnati*, 872 F.3d 393, 399 (6th Cir. 2017) (citing

*Flaim v. Med. Coll. of Ohio*, 418 F.3d 629, 633 (6th Cir. 2005)); *Doe v. Cummins*, 662 F. App'x 437, 445 (6th Cir. 2016). The Court therefore turns to the first defendants' argument that Clark failed to state a procedural due process claim.

To determine what kind of process an individual is due, a court weighs the factors set forth in *Matthews*. *Kaplan v. Univ. of Louisville*, 10 F.4th 569, 578 (6th Cir. 2021) (citing *Matthews v. Eldridge*, 424 U.S. 319 (1976)). It considers: (1) the nature of the private interest subject to official action; (2) the risk of erroneous deprivation under the current procedures used, and the value of any additional procedural safeguards; and (3) the governmental interest, including the burden any additional or substitute procedures might entail. *Id.* In university disciplinary proceedings, these factors entitle an accused student to “at least receive the following pre-expulsion: (1) notice of the charges; (2) an opportunity to be heard.” *Flaim*, 418 F.3d at 634. The degree of notice, and the type of hearing, will vary depending on context. *Id.* Here, Clark acknowledges that “he was given some manner of notice and opportunity to be heard,” but he nevertheless alleges that the defendants violated his procedural due process rights in six ways. (D.N. 4, PageID.63 ¶ 101)

Clark first alleges that he was denied due process because the defendants “failed to adhere to University policy and the faculty Code of Conduct.” (*Id.*, PageID.64 ¶ 102) Whether the university “followed its own procedures, however, is not the proper inquiry. ‘Violation of a state’s formal procedure...does not in

and of itself implicate constitutional due process concerns.” *Ji Qiang Xu v. Mich. State Univ.*, 195 F. App’x 452, 457 (6th Cir. 2006) (quoting *Purisch v. Tenn. Tech. Univ.*, 76 F.3d 1414, 1423 (6th Cir. 1996) (citation omitted)). Absent additional factual allegations, Clark has failed to state a claim for a procedural due process violation on this ground. *See id.* (“A state cannot be said to have a federal due process obligation to follow all of its procedures; such a system would result in the constitutionalizing of every state rule, and would not be administrable.”) (quoting *Levine v. Torvik*, 986 F.2d 1506, 1515 (6th Cir. 1993)).

Clark claims that the defendants violated his right to due process by “failing to adequately consider alternative methods of discipline.” (D.N. 4, PageID.64 ¶ 102) Clark points to no authority, nor is the Court aware of any, that requires a university to consider alternative methods of discipline before dismissing a student in order to comport with due process. This allegation thus does not give rise to a plausible procedural due process claim. *See League of United Latin American Citizens v. Bredesen*, 500 F.3d 523, 527 (6th Cir. 2007) (finding that “a complaint must contain...all the material elements to sustain recovery under some viable legal theory”).

The amended complaint alleges the defendants “at best misrepresent[ed] and at worst falsif[ied] the official transcription of the [SRC] meeting and refus[ed] to issue corrections despite Clark’s repeated requests.” (D.N. 4, PageID.65 ¶ 102) It does not allege which defendant falsified the meeting transcript, however; nor does it allege when this falsification occurred or

what information was falsified. (*See generally* D.N. 4) This kind of bare factual assertion fails to state a claim under Rule 12(b)(6). *Iqbal*, 556 U.S. at 678.

The defendants allegedly failed to provide Clark with “access to documents necessary for his presentation and defense.” (D.N. 4, PageID.65 ¶ 102) The amended complaint does not identify which defendant denied Clark access to documents; rather, it alleges that “Clark formally requested emails and documents from the ULSOM which he believed necessary to ensure that his defense would be complete and professional. ULSOM repeatedly denied most of his requests.” (*Id.*, PageID.56 ¶ 70) ULSOM is not a defendant in this case. Even assuming that any of the named defendants *did* deny Clark’s request for documents, such a denial would not violate a due process right, as the Sixth Circuit has recognized no right to formal discovery in university disciplinary proceedings. *Doe v. Ohio State Univ.*, 219 F. Supp. 3d 645, 659 (S.D. Ohio 2016).

Clark alleges that the defendants violated his “FERPA rights.” (D.N. 4, PageID.65 ¶ 102) FERPA refers to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232 (2022), which “creates a binding obligation on schools that accept federal funds not to release educational records without consent.” *United States v. Miami Univ.*, 294 F.3d 797, 824 n.11 (6th Cir 2002). Clark does not allege who violated his FERPA rights, in what way they were violated, or what educational records were disclosed in violation of the statute. (D.N. 4) This claim fails under Rule 12(b)(6). *Iqbal*, 556 U.S. at 678.

Clark's final procedural due process allegation is that the defendants obstructed his "attempt at a formal University grievance to overturn his academic dismissal." (D.N. 4, PageID.65 ¶ 102). Clark does not identify the individual or individuals who prevented his attempt. (*Id.*) Rather, he alleges that he was unable to pursue the grievance process "[d]ue to repeated and continual University obstruction including continued refusal to release records by both faculty and the Office of University Counsel, [and] repeated dishonesty on behalf of personnel, both inside and outside the academic unit of the School of Medicine." (D.N. 4, PageID.57 ¶ 73) To state a claim for a constitutional violation under § 1983, the plaintiff must identify the government official responsible for the violation. *See Iqbal*, 556 U.S. at 676 (finding that, to plead a § 1983 claim, "a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution"). Clark has not done so, and even if he had named a specific defendant who prevented his appeal, the amended complaint would not sufficiently allege a procedural due process violation because there is no constitutional right to appeal a disciplinary proceeding in a public university. *Heyne v. Metro. Nashville Pub. Sch*, 655 F.3d 556, 569 (6th Cir. 2011) (citing *Flaim*, 418 F.3d at 642).

#### **d. Substantive Due Process**

Clark added a substantive due process claim in his amended complaint. (D.N. 4, PageID.64–66 ¶¶ 104–10) He alleges that the defendants dismissed him in an "arbitrary and capricious manner that substantially departed from academic norms." (D.N. 4, PageID.64

¶ 105) Defendants argue that this claim is barred by the statute of limitations. (D.N. 9, PageID.88) The Court need not address the statute-of-limitations issue because, as explained below, even if the additional claim were permitted under Rule 15, Clark fails to state a claim for relief.

There are two forms of substantive due process violations: “(1) deprivations of a particular constitutional guarantee, and (2) actions that shock the conscience.” *Doe v. Miami Univ.*, 882 F.3d 579, 597 (6th Cir. 2018) (citing *Valot v. Southeast Local Sch. Dist. Bd. of Educ.*, 107 F.3d 1220, 1228 (6th Cir. 1997)). Clark has not alleged a deprivation of a particular constitutional guarantee as the Sixth Circuit has not recognized “an independent property interest in pursuing a post-secondary education.” *Id.* at 598 (“The interests protected by substantive due process are of course much narrower than those protected by procedural due process.” (quoting *Bell v. Ohio State Univ.*, 351 F.3d 240, 249–50 (6th Cir. 2003))). Similarly, Clark has not alleged any conduct that “shocks the conscience.” *Id.* at 597. State action meets this standard when it is “arbitrary, or conscience shocking, in a constitutional sense.” *Handy–Clay v. City of Memphis*, 695 F.3d 531, 547 (6th Cir. 2012) (quoting *City of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998)). This characterization only applies to the most egregious state conduct. See e.g., *Flaim*, 418 F.3d at 643 (describing an example of conscience-shocking conduct drawn from a case in which two African–American students were expelled from Alabama State College, without notice or a hearing, “for seeking to purchase lunch at a publicly owned grill in the

basement of the Montgomery, Alabama, county courthouse") (citing *Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961)). Clark has not alleged any conduct that meets that high bar. *See Handy-Clay*, 695 F.3d at 547 (dismissing an employee's claim that her boss violated her substantive due process rights for firing her after her "repeated complaints about malfeasance and corruption" because her claims were ultimately rooted in the First Amendment and thus not actionable under substantive due process.).

**e. Equal Protection**

Clark finally alleges that the defendants violated his right to equal protection by "punish[ing] Clark for expressing his views...when there are students who, when expressing contrary views...are not subject to the same or similar restrictions." (D.N. 4, PageID.66–67 ¶ 112) The first defendants argue that Clark fails to state a claim because his amended complaint contains only a "litany of events that Defendants allegedly inflicted on him for his views, claiming that no other students were subjected to similar treatment." (D.N. 9, PageID.104) Clark did not reply to this argument. (D.N. 18) Instead, he asserted again the general claim that the defendants "violated his constitutional right[ to]...equal protection under the law." (*Id.*, PageID.165)

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”).

In sum, Clark fails to allege “sufficient factual matter, accepted as true, to ‘state a claim for relief’ for violations of his constitutional rights to free speech, due process, or equal protection. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 570). Accordingly, the first defendants are entitled to qualified immunity for the individual-capacity claims. *Kollaritsch*, 994 F.3d at 627. Additionally, because Clark fails to state a claim that his constitutional rights were violated, the Court need not consider the defendants’ argument that they are entitled to sovereign immunity. (D.N. 9,

PageID.91); *See Pinkney v. Berrien Cnty.*, 2022 U.S. App. LEXIS 23224, at \*6 (6th Cir. 2022) (explaining a court “need not resolve the sovereign immunity issue” if it finds that the plaintiff “has not alleged a constitutional violation”).

## **B. SECOND MOTION TO DISMISS**

Upon being served, Koch, Crump, Rao, and Neely (second defendants) filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. (D.N. 26, PageID.211) They argue that (1) the statute of limitations bars all of Clark’s claims against them (*id.*, PageID.216); (2) sovereign immunity bars Clark’s official-capacity claims against them (*id.*, PageID.219); and (3) Clark failed to state a claim with respect to any individual defendant. (*id.*, PageID.221) For the reasons explained below, the second motion to dismiss will also be granted.

### **1. Statute of Limitations**

Koch, Crump, Rao, and Neely argue that Clark’s claims against them are time-barred as the one-year statute of limitations had run by the time Clark filed his initial and amended complaints. (D.N. 26, PageID.216–20) The Court need not consider this argument because, even if the claims were not time-barred, Clark has failed to state a claim that the second defendants violated his constitutional rights. *See* II.A.2.

### **2. Sovereign Immunity**

The Court need not consider whether the defendants are entitled to sovereign immunity because

Clark has failed to allege a violation of his constitutional rights. *See Pinkney*, 2022 U.S. App. LEXIS 23224, at \*6.

### **3. Qualified Immunity**

For the reasons discussed in Section II.A.2., the Court finds that Clark fails to plausibly allege that the second defendants, in their individual capacities, violated his constitutional rights. Accordingly, the second defendants are entitled to qualified immunity. *Saucier v. Katz*, 533 U.S. 194, 201 (2001) (finding that if no constitutional right would have been violated on the facts alleged, the officer will be entitled to qualified immunity).

## **III.**

The Court finds that Clark has failed to state a claim that Bendapudi, Gonzalez, Ganzel, Mittel, Shaw, Koch, Crump, Rao, or Neely violated his constitutional rights in their individual capacities. The defendants are therefore entitled to qualified immunity. The Court need not consider whether the defendants are entitled to sovereign immunity for the official-capacity claims because Clark has failed to allege a constitutional violation. Accordingly, and the Court being otherwise sufficiently advised, it is hereby

**ORDERED** as follows:

(1) The motion to dismiss filed by Defendants Bendapudi, Gonzalez, Ganzel, Mittel, and Shaw (D.N. 9) is **GRANTED**. Clark's claims against Defendants Bendapudi, Gonzalez, Ganzel, Mittel, and Shaw are **DISMISSED**. The Clerk of Court is **DIRECTED** to

App. 44

terminate Bendapudi, Gonzalez, Ganzel, Mittel, and Shaw as defendants in the record of this matter.

(2) The motion to dismiss filed by Defendants Koch, Crump, Rao, and Neely (D.N. 26) is **GRANTED**. Clark's claims against Defendants Koch, Crump, Rao, and Neely are **DISMISSED**. The Clerk of Court is **DIRECTED** to terminate Koch, Crump, Rao, and Neely as defendants in the record of this matter.

(3) Clark shall have **fourteen (14) days from entry of this Order to SHOW CAUSE** why this action against U of L should not be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

September 30, 2022

/s/ David J. Hale  
David J. Hale, Judge  
United States District Court

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## APPENDIX D

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

Case 3:21 cv-480-DJH

[Filed July 23, 2021]

**JURY TRIAL DEMANDED**

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AUSTIN ROY CLARK,	)
	)
<i>Plaintiff,</i>	)
	)
V.	)
	)
NEELI BENDAPUDI, President of the	)
University of Louisville, in her official	)
and individual capacities; <b>LORI</b>	)
<b>GONZALES</b> , Executive Vice President	)
and University Provost at the University	)
of Louisville, in her official and	)
individual capacities; <b>TONI M. GANZEL</b> ,	)
Executive Dean of the School of Health	)
No. _____ Medicine at the University of	)
Louisville, in her official and individual	)
capacities; <b>BILL CRUMP</b> , Assistant Dean,	)
University of Louisville School of	)
Medicine, Madisonville Campus in his	)
official and individual capacities;	)
<b>OLIVIA MITTEL</b> , Assistant Dean,	)

University of Louisville School of Medicine, )  
Jackson Street Campus, in her official and )  
individual capacities; **MONICA** )  
**SHAW**, Assistant Dean, University of )  
Louisville School of Medicine, Jackson )  
Street Campus, in her official and )  
individual capacities; **SARA** )  
**PETRUSKA**, Clerkship, Director OBGYN )  
Department, University of Louisville )  
School of Medicine, Jackson Street )  
Campus, in her official and individual )  
capacities; **THOMAS NEELEY M.D.**, )  
Instructor, University of Louisville School )  
of Medicine, Madisonville Campus, in his )  
official and individual capacities; **MOHAN** )  
**ROA, M.D.** Instructor, University of )  
Louisville School of Medicine, Madisonville )  
Campus, in his official and individual )  
capacities; **JULIANA BROWN**, Clinical )  
Director Internal Medicine, University of )  
Louisville School of Medicine, Jackson )  
Street Campus, in her official and )  
individual capacities; **JENNIFER KOCH**, )  
Program Director, Internal Medicine, )  
University of Louisville School of Medicine, )  
Jackson Street Campus, in her official and )  
individual capacities; **CHRISTINA GILES**, )  
Resident Doctor, University of Louisville )  
School of Medicine, Jackson Street Campus, )  
in her official and individual capacities; )  
**JON ALEXANDER**, Resident Doctor, )  
University of Louisville School of Medicine, )  
in his official and individual capacities; )  
**SAMUEL REYNOLDS**, Resident Doctor, )

University of Louisville School of Medicine, )  
Jackson Street Campus, in his official )  
and individual capacities. )  
Defendants. )  
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 )

## **PLAINTIFF'S VERIFIED COMPLAINT**

Plaintiff, Austin Roy Clark, by and through counsel, and for his Verified Complaint against Defendants, hereby states as follows:

### **INTRODUCTION**

1. The guiding principle of a Medical School education is to educate and train future members of the medical profession. A medical education consists of a four (4) year educational and clinical experience, then there is a residency/intern program. Upon completion the individual is a fully licensed and independent medical doctor.
2. Additionally, a medical school, just like any other college campus, is a forum of discussion of medical and related issues and ideas.
3. Further, a medical school, just like any other college campus, must allow its students to have sufficient intellectual freedom for a discussion of personal beliefs and opinions.
4. Austin Roy Clark ("Clark") holds traditional Christian beliefs and conservative political beliefs.
5. Unfortunately, there is also a custom of demeaning behavior directed toward medical students.

## App. 48

Unfortunately, such is prevalent and well documented in medical schools, including University of Louisville School of Medicine (“ULSOM”).<sup>1</sup>

6. Clark found such demeaning behavior directed at him to be objectionable and voiced his concerns to Defendants.
7. The University and ULSOM Administrators failed to alleviate or correct this demeaning behavior.
8. Defendants retaliated against Clark for exercising his rights to free speech, and have deprived him of lawful process otherwise due him.

## **JURISDICTION & VENUE**

9. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.
10. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. § 1331 and § 1333.
11. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1333; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201-02; the requested injunctive relief pursuant to 28 U.S.C. 1333 and FED. R. Civ. P. 65; and costs and attorney's fees under 42 U.S.C. § 1988.

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<sup>1</sup> Human Rights Violations in Medicine, Pamela Wible, M.D.

App. 49

12. Venue is proper in this district and division pursuant to 28 U.S.C. § 1331(b) and JOINT L. Civ. R. 3.1 because Defendants reside in this district and division and/or all of the acts described in this Complaint occurred in this district and division.

**PLAINTIFF**

13. Clark is a resident of Kentucky. He was admitted to ULSOM in the summer of 2017. He completed his first two (2) years at ULSOM quite successfully. He was a medical student on both the Jackson Street Louisville Campus and the Trover Campus in Madisonville, Kentucky. And up to the time of his unlawful dismissal from the ULSOM, as a third year medical student.

**DEFENDANT**

14. Defendant Neeli Bendapudi is the President of the University of Louisville.

15. As President, Defendant Bendapudi is the Chief Executive and Administrative officer of the University.

16. Defendant Bendapudi's authority and powers include oversight of ULSOM.

17. Defendant Bendapudi's duties include, among others, authorizing, executing, enforcing, and implementing the policies governing students at the ULSOM.

18. Defendant Gonzalez is, and was at all times relevant to this Complaint, the Executive Vice President of Health Affairs at the University and the

Provost. As Provost she is the Chief Educational Officer.

19. Defendant Gonzalez oversees all academic matters at the University of Louisville, including ULSOM.

20. As President and Provost respectively, Defendants Bendapudi and Gonzalez are and were aware of the retaliatory and unconstitutional actions taken against Clark and did not instruct University personnel, including the other Defendants, to change or reverse those actions to comply with lawful mandates.

21. As President and Provost respectively, Defendants Bendapudi and Gonzales have the authority to review, approve, or reject the decisions of other University officials, including the other Defendants.

22. As President, and Provost respectively, either by action or neglect Defendants Bendapudi and Gonzales have, ratified the retaliatory and unconstitutional decisions regarding Clark that are challenged herein.

23. Defendant Toni M. Ganze I, M.D., is the Executive Dean of Health Affairs and Dean of the School of Medicine at the University.

24. As Executive Dean of Health Affairs, Defendant Ganzel directly oversees all of the educational, health related and student related matters at ULSOM.

25. Bill Crump, M.D., is an Assistant Dean and the Operating Dean at the Trevor Campus, Madisonville, Kentucky. As such, he was authorized to, among other duties, implement university policy, and review, approve or reject the decisions of instructors on the

Trover Campus. As such, Crump has authorized and approved the retaliatory and unconstitutional decisions regarding Clark which are challenged herein.

26. Olivia Mittel, M.D., is an Assistant Dean at the Jackson Street Campus. Upon Clark returning to the Jackson Street Campus, she required him to sign a “professionalism” contract. She is aware of the retaliatory actions against Clark, but does nothing to correct said actions. She is the recipient of the Mistreatment Complaint filed by Clark against three (3) resident physicians. She inappropriately fails to correct their retaliatory behavior and allows Clark to be removed from ULSOM.

27. Monica Shaw, M.D., is an Assistant Dean at the Jackson Street Campus. She is aware of the retaliatory actions against Clark, but does nothing to correct said actions. She along with Mittel is the recipient of the Mistreatment Complaint filed by Clark against three (3) resident physicians. She inappropriately fails to correct their retaliatory behavior and understands Clark to be dismissed from ULSOM.

28. Sara Petruska, M.D., is an Assistant Dean at the Jackson Street Campus, She is aware of the retaliatory actions against Clark, but when meeting with him about the aforementioned, she blames Clark for the retaliatory conduct.

29 Thomas Neeley M.D., is an Internal Medicine instructor at the Trevor Campus. he engaged in a pattern of insulting conversations with Clark. Such included calling him “stupid”, that he “learned nothing his first two (2) years of medical school” and questioned

the way Clark's "brain was working". He further refused to allow Clark to meet with him in his office and required him to sit in a chair in the hallway and speak through an open doorway. When Clark insisted that Neely treat him with some modicum of respect, Neely went to Assistant Dean Crump and insisted that Clark leave the Madisonville Campus.

30. Mohan Rao, M.D., is a surgical instructor at the Trevor Campus. He has never had Clark as a student. In fact, he has never met Clark. However, he supported Neeley in his insulting behavior toward Clark and supported Clark in having Clark removed from the Trevor Campus.

31. Julianna Brown, M.D., is the clerkship director of the Internal Medicine program at the Jackson Street Campus. Despite having passed his SHELF examination and otherwise obtaining a passing grade for the Internal Medicine Clinic, she chose to take the incorrect and retaliatory opinions of the three residents identified in this complaint, as well as her own incorrect and retaliatory opinions to fail Clark in the Internal Medicine class. Such resulted in Clark being expelled from ULSOM.

32. Jennifer Koch, M.D., is the Program Director of the Internal Medicine program at the Jackson Street Campus. Despite Clark having never met or otherwise knowing Jennifer Koch, M.D. and having passed his SHELF examination and otherwise obtaining a passing grade for the Internal Medicine Clinic, she chose to take the incorrect and retaliatory opinions of the three residents named in this complaint, as well as, her own retaliatory opinion to fail Clark in the Internal

Medicine class. Such resulted in Clark being expelled from ULSOM.

33. Jon Alexander, M.D., is a physician resident at the Jackson Street Campus. He initially signs a memo asserting that Clark exceeds performance expectations. Alexander then, for no good reason engages Clark in a mildly oppositional conversation which is demeaning to Clark. Clark responds advising such communication is not appropriate. Alexander then emails Julianna Brown and requests that Clark fail Internal Medicine class.

34. Cristina Giles, M.D., is a physician resident at the Jackson Street Campus. She initially signs a memo asserting that Clark exceeds performance expectations. Approximately two (2) weeks later Giles emails Julianna Brown that Clark has shown poor performance in the Internal Medicine Clinic.

35. Samuel Reynolds, M.D., is a physician resident at the Jackson Street Campus. He is a friend of Jon Alexander. At the request of Alexander, Reynolds engages in an unwarranted assault on Clark and advises Clark that he is not an individual who is wanted to be on their medical team.

#### **FACTUAL BACKGROUND**

36. ULSOM selects only the best candidates which it believes have the intellectual rigor and personal fortitude to complete the difficult learning process and achieve a medical degree.

App. 54

37. Plaintiff was admitted to ULSOM in July 2017. In order to be admitted to ULSOM, Plaintiff passed a rigorous admission process.

38. Clark achieved passing grades and completed the standard first year curriculum. This instruction took place on the Jackson Street campus.

39. Clark achieved objectively passing grades in all courses and completed the standard second year curriculum. This instruction took place on the Jackson Street Campus.

40. As part of his second year at ULSOM Clark, as president of a student organization, Students For Life invited a speaker to make a presentation as to when life actually began.

41. This generated substantial opposition from some faculty and students. Some of the flyers announcing the presentation were removed from the place they had been posted. ULSOM requested that Clark and his organization pay for security and for the first time at ULSOM, after the presentation ULSOM limited the space and locations where posting speaker announcements could occur.

42. Clark admits that the speaker put forth ideas that are not held by the majority of the students or faculty at ULSOM.

43. In the summer of 2019, Plaintiff began his third year at ULSOM. This curriculum is located on the Trevor Campus in Madisonville, Kentucky.

44. After successfully completing the Family Medicine course, the next class is Obstetrics and Gynecology. On/about 30 July 2019, Plaintiff participated in a verbal oppositional activity with Defendant Neely. Neely called Clark “stupid” and other untrue and derogatory terms. Clark insisted to Neely that as a student he was not immune from instructional criticism, but that demeaning, derogatory terms directed at him were inappropriate and unprofessional.

45. That same day Neeley had a conversation with Defendant Rao, a surgical instructor about his interaction with Clark. Both instructors then went to Bill Crump, the Assistant Dean and administrator of Defendants Trover Campus.

46. After the conversation mentioned above, instructor Neeley refused to meet with Plaintiff in his office. All further office conversations required Plaintiff to sit in a chair in the hallway and speak through the doorway to Neely.

47. On/about 01 August 2019, as a result of the actions of Rao and Neely, and their conversations with Crump, Clark is advised that it is not in his best interest for him to return to the Trover Campus.

48. On/about 05 September 2019, Defendant Olivia Mittel required Clark to sign a “Professionalism Contract”. Mittel also required Clark to take a medical leave due to depression and mental health developments that arose at least in part to the retaliatory conduct from Thomas Neely and Mohan Rao.

50. On/about 01 October 2019, Sara Petruska and Defendant Olivia Mittel met with Plaintiff to discuss “his insight” regarding the retaliatory conduct from Thomas Neely and Mohan Rao.

51. On/about 01 February 2020, Christina Giles, a resident physician in the internal medicine clinic, presented a failing performance evaluation for Plaintiff. Earlier in the class, Giles awarded an evaluation in which she stated that Plaintiff exceeded performance expectations.

52. On/about 07 February 2020, Plaintiff engaged in a verbal oppositional activity with Jon Alexander, a resident physician in the internal medicine clinic. After the contested conversation, Alexander issued a failure for the Internal Medicine Clinic, despite having previously issued a memorandum stating that Plaintiff had actually exceeded expectations.

53. On/about 12 February 2020, Plaintiff was harassed by Samuel Reynolds, a resident physician in the Internal Medicine Program and friend of Jon Alexander.

54. On/about 10 February 2020, Samuel Reynolds emails the Internal Medicine Clerk and recommends Plaintiff be removed from the Internal Medicine Clinical Program.

55. Clark made a request for a meeting with ULSOM’s student affairs committee in order to maintain his student status at ULSOM. As part of his preparation for such, Clark requested emails and documents from ULSOM which he believed necessary to ensure that his defense would be complete and professional. ULSOM

denied most of his request and limited his presentation at the meeting.

56. The student affairs committee recommended Clark's dismissal from ULSOM.

57. On 24 July 2020, Defendant Ganzel upheld the recommendation of the student affairs committee and issued a letter to Clark dismissing him from the ULSOM.

#### **STATEMENT OF LAW and IRREPARABLE HARM**

58. At all times relevant to this Complaint, each and all of the acts and policies alleged herein were attributed to Defendants who acted under color of a statute, regulation, or custom of the Commonwealth of Kentucky, that is Defendants acted under color of state law and authority.

59. Defendants knew or should have known that they were violating Plaintiff's constitutional rights by subjecting Plaintiff to retaliatory adverse disciplinary actions, including but not limited to removing him from student medical teams, issuing failing grades despite academically passing the courses, and removing him from ULSOM. This was done because of his political and religious beliefs as exhibited by his activities in the campus organization, Students For Life and because of his verbal attempts to obtain a modicum of respect as a medical student in an incredibly repressive environment.

60. The ULSOM failed to act carefully and deliberately and acted in an arbitrary and capricious manner that

App. 58

substantially departed from accepted academic norms in the dismissal of Clark.

61. The decisions that led to the violation of Plaintiff's constitutional rights remain in full force and effect.

62. Under the First and Fourteenth Amendments and under 42 USC § 1983 and § 1988 Clark is entitled to appropriate relief as set forth herein.

63. Clark has suffered irreparable harm and is suffering irreparable harm from Defendant's retaliatory and discriminatory decisions challenged here.

64. Clark has no adequate or speedy remedy at law to correct the deprivation of his rights by Defendants.

65. Defendants' actions and policies, as set forth above, do not serve any legitimate or compelling state interest and are not narrowly tailored to serve any such interests.

66. Defendants' retaliatory and discriminatory decisions are not narrowly tailored as applied to Clark because Clark's expression does not implicate any of the legitimate interests Defendants might have.

67. Unless the decisions of Defendants are enjoined, Clark will continue to suffer irreparable injury.

**FIRST CAUSE OF ACTION**  
**Violation of Plaintiff's First Amendment Right**  
**to Freedom of Speech Retaliation**  
**(42 U.S.C. § 1983)**

68. Plaintiff repeats and realleges each of the allegations contained in this Complaint.
69. By punishing Austin Roy Clark by providing him with unfounded failing grades and removal for ULSOM for expressing his pro-life and religious views which is in protected speech, Defendants violated his First Amendment rights.
70. When Clark communicated his views regarding the proper treatment of medical students experiencing overly-demanding and inappropriate treatment and harassment, he was speaking on a matter of public concern, engaging in speech related to teaching and scholarship, and engaging in expression the First Amendment protects.
71. Clark's interest, as a medical student, at a public university, in discussing matters of public concern in the context of teaching and scholarship outweighs Defendants' interest in the efficient provision of services.
72. Defendants subjected Austin Roy Clark to adverse actions due to the content and viewpoint of Clark's speech.
73. Defendants' retaliatory and unconstitutional actions taken against Clark violate his right to free speech as guaranteed by the First Amendment to the United States Constitution.

**SECOND CAUSE OF ACTION**  
**Violation of Plaintiff's First Amendment Right**  
**to Freedom of Speech**  
**Content & Viewpoint Discrimination**

74. Plaintiff repeats and realleges each of the allegations contained in his Complaint.
75. By punishing Clark for expressing his views regarding the sanctity of life, beginning at conception, and its religious origins, Defendants have engaged in content and/or viewpoint discrimination in violation of the First Amendment.
76. Defendant evaluated the content and viewpoint of Clark's speech to determine whether they would take any adverse academic actions against him based on what he said.
77. Defendants considered the content and viewpoint of Austin Roy Clark expression when they decided to take adverse academic actions against him.
78. Defendants' retaliatory and unconstitutional actions taken against Clark are unconstitutionally overbroad because they restrict a significant amount of constitutionally protected speech.
79. Defendants' retaliatory and unconstitutional actions taken against violate his right to free speech as guaranteed by the First Amendment to the United States Constitution.

**THIRD CAUSE OF ACTION**  
**Violation of Plaintiff's Fourteenth Amendment**  
**Right to Procedural Due Process of Law**  
**(42 U.S.C. § 1983)**

77. Plaintiff repeats and realleges each of the allegations contained in this Complaint.

78. That the administrative policies and practices of ULSOM are implemented in an arbitrary and capricious fashion and the faculty of the School of Medicine did not dismiss him in a careful and deliberate manner and did so in a manner that substantially departed from accepted academic norms.

Specifically, the highly-questionable awarded evaluations and coupled with the idea that Austin Roy Clark was not able to determine the number or identity of the decision makers. The official record of the meeting and the dismissal vote is at best an intentional misrepresentation and at worse fraudulent, as the record does not identify all persons present and the record falsely asserts that persons who were not present, were present and voted against him. He was not afforded copies of or access to documents necessary for his presentation and defense despite repeated requests.

79. That by failing to conduct a meeting that comports with a careful and deliberate process and in an arbitrary and capricious manner that substantially departed from accepted academic norms in his removal from ULSOM violates his right to procedural due process.

80. That there are no uniform standards equally applied to students by which to determine academic success and failure. By failing him under vague, ever-changing, and/or nonexistent standards, at the sole discretion of faculty motivated by bad-faith, ill-will, and impermissibility, Defendants have violated and are violating Clark's right to due process of law under the Fourteenth Amendment.

81. Defendants' adverse academic actions against Austin Roy Clark punished him for engaging in constitutionally protected expression in violation of Austin Roy Clark's right to due process of law under the Fourteenth Amendment.

82. They rely on assessments that are due to absolute discretion and elude any precise measurement that would be consistent from one to another. When coupled with ill-will, impermissibility, and bad-faith motivations, these are by definition arbitrary and capricious.

83. The lack of standardization of criteria, factors, or standards in Defendants' adverse academic actions motivated by ill-will and bad-faith renders these actions unconstitutionally vague and in violation of Clark's right to due process of law under the Fourteenth Amendment.

**FIFTH CAUSE OF ACTION**  
**Violation of Plaintiff's Fourteenth Amendment**  
**Right to Equal Protection of the Law**  
**(42 U.S.C § 1983)**

84. Plaintiff repeats and realleges each of the allegations contained in this Complaint.

85. By punishing Clark for expressing his views regarding the proper treatment of medical students, abortion, and the application of Christianity to the practice of medicine, when there are students who, when expressing a contrary view, or otherwise engaging in “unprofessional behavior” are not subject to the same restrictions or academic discipline.

86. Defendants take no adverse academic actions against students who take such contrary positions to that executed by the plaintiff.

67. Defendants’ retaliatory and unconstitutional actions against Clark violate his right to equal protection under law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Clark respectfully requests that this Court enter judgment against Defendants and provide him with the following relief:

A. A declaratory judgment that Defendants’ actions in removing Clark from ULSOM violates;

B. A preliminary and permanent injunction ordering Defendants sued in their official capacities, their agents, officials, servants, employees, and any other persons acting on their behalf:

1. To restore Clark’s as a student in good standing and academically eligible at ULSOM.

2. To purge Clark’s student file of any negative reference to his removal from ULSOM.

App. 64

C. Nominal, compensatory, and punitive damages for the violation of Clark's First and Fourteenth Amendment rights.

D. Clark's reasonable attorneys fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988.

E. All other further relief to which Clark may be entitled.

Respectfully submitted this 23rd day of July 2021.

/s/ [Illegible]  
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**DECLARATION UNDER PENALTY OF  
PERJURY**

I, Austin Roy Clark, a citizen of the United States and a resident of the State of Kentucky, here declare

App. 65

under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing, that the foregoing is true and correct to the best of my knowledge and that the foregoing statements that pertain to me are based on my personal knowledge.

Executed this 23rd day of July 2021, at Louisville, Kentucky.

/s/ [Illegible]

Austin Roy Clark