24-6943

ORIGINAL

No: _____

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

NOAH DUNCAN

Petitioner

vs.

THE CURATORS OF MISSOURI, JULIE DRURY, KELSEY FORQUERAN, MARK KUHNERT, LEA BRANDT, SETH HUBER, BREANNE MEYER, EVAN WHITE, JOHN MIDDLETON, PAULA BARRETT, and KYLER RICHARD

Respondents

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

PETITION FOR WRIT OF CERTIORARI

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Acting *PRO SE*

QUESTIONS PRESENTED FOR REVIEW

The Petitioner files this writ to rectify significant issues regarding the dismissal of his case. The presiding judge, Steven Bough, did not disclose his prior employment by and professional ties to the Respondents nor recused himself due to the evident conflict of interest. Rather, the District Court decided and resolved all factual disputes in favor of the Respondents that were contrary to the Petitioner's complaint, and resolved all legal disputes in favor of the Respondents, contrary to relevant law issued by higher courts.

On appeal to the Eighth Circuit, the Petitioner was informed by a court clerk that he need not file an appellate brief, as the matter was set before the judges. The Eighth Circuit Court subsequently dismissed the appeal without review. The Petitioner, unable to retain legal counsel due to financial constraints, respectfully petitions this Court to strictly review the present case and allow him to offer evidence to support his claims.

Questions Presented

Regarding [FERPA] 20 U.S.C § 1232g(a)(1)(A):

I. Does 20 U.S.C § 1232g(a)(1)(A) use "rights-creating language" to infer that a student has a right to receive his or her records from an educational institution within 45 days?

Regarding the First Amendment:

II. Does the First Amendment prohibit a public university from using a student's disciplinary history at a private institution to compound sanctions against him or her, particularly when that disciplinary history solely concerns the use of his constitutionally protected speech?

Regarding the Fourteenth Amendment:

III. Do public school students have a protected right under due process to be heard in a meaningful time and manner?

IV. Do public school students have a protected right under due process to cross-examine another student when that student's testimony is in controversy?

V. Does the Fourteenth Amendment's Due Process Clause require a public university to provide meaningful notice to a student before suspension, investigation, interrogation, and or his or her hearing?

VI. Does the Fourteenth Amendment's Due Process Clause prohibit a public university from arbitrarily violating its own established procedures for student disciplinary actions?

VII. Do university disciplinary actions based on vague and unsupported allegations violate a student's constitutional rights to procedural fairness and equal protection under the law?

These questions raise significant constitutional issues regarding the limits of public universities' authority over students and the rights and protections afforded by federal law and the First and Fourteenth Amendments.

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I. PETITION FOR WRIT OF CERTIORARI

Noah Duncan, a former student at the University of Missouri in Columbia, Missouri, was expelled after a student accused him of false threats. The University and its faculty intentionally hid and deleted exculpatory evidence in Mr. Duncan's case and further decided to expel him based on no singular consideration of material fact. Mr. Duncan, by and through self-representation, respectfully petitions this Court for a writ of certiorari to review the judgments of the Western District Court of Missouri and the Eighth Circuit Court of Appeals in this case.

II. JURISDICTION

Mr. Duncan's Complaint was removed from state court to federal court on June 14th, 2024, and dismissed by the Western District Court of Missouri on July 22nd, 2024. Mr. Duncan filed a notice of appeal on the same day. The Eighth Circuit Court of Appeals affirmed the judgment on September 27th, 2024. Mr. Duncan filed a Petition for Rehearing on October 11th, 2024. The Eighth Circuit Court of Appeals denied the Petition for Rehearing on November 1st, 2024. Mr. Duncan invokes this Court's jurisdiction under 28 U.S.C § 1254(1), having timely submitted his petition within ninety days of the Eighth Circuit Court of Appeals' Judgment on January 29th, 2025. Mr. Duncan was granted sixty days to correct and resubmit the petition from the date February 7th, 2025. Mr. Duncan resubmits this writ of certiorari in compliance with the above timeframe.

III. OPINIONS BELOW

The decision by the Western District Court of Missouri dismissing Mr. Duncan's Complaint is reported as *Duncan v. Curators of Univ. of Mo.,* No. 24-CV-04096-SRB, 2024 WL 3520847 (W.D. Mo. July 22, 2024) and attached hereto as App. B. The decision by the Eighth Circuit Court of Appeals affirming the dismissal is reported as *Duncan v. Curators of Univ. of Mo.,* No. 24-2501, 2024 WL 5340677 (8th Cir. Sept. 27, 2024) and attached hereto as App. C. The decision by the Eighth Circuit Court of Appeals denying rehearing is reported as *Duncan v. Curators of Univ. of Mo.,* No. 24-2501, 2024 WL 5340677 (8th Cir. Nov. 1, 2024) and attached hereto as App. D.

IV. FEDERAL AND CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION, Amendment I:

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

UNITED STATES CONSTITUTION, Amendment XIV § 1:

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

42 U.S.C. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

20 U.S.C § 1232g(a)(1)(A):

No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, **the right to inspect and review** the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have **the right to inspect and review** only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but **in no case more than forty-five days after the request has been made**.

20 U.S.C § 1232g(d):

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the **rights** accorded to the parents of the student shall thereafter only be required of and accorded to the student.

V. STATEMENT OF THE CASE

On August 23rd, 2021, the Petitioner fully enrolled as a student at the University of Missouri. Before his enrollment, the Petitioner disclosed that he had been suspended from Belmont University, a private institution, for posting videos online. The suspension was not reflected on his transcripts, but the Petitioner was forthcoming about this history. The Respondents knowingly admitted the Petitioner with full knowledge of his prior suspension. These videos constitute constitutionally protected speech.

In September 2023, Respondent Kyler Richard reported allegations of sexual abuse, threats, and discriminatory behavior involving members of the Mizzou Mock Trial Association (MMTA) to the University of Missouri. The Petitioner was named in the report for alleged threats toward Richard. These threats are alleged to have occurred before and after Richard made several sexual advances toward the Petitioner, all of which were refused. The Respondents did not take any action after receiving Richard's report for about fifteen days after receiving it. Not one student, other than the Petitioner, has been charged or found guilty of any of Richard's accusations.

Respondent Julie Drury initiated the Petitioner's disciplinary case and imposed his temporary suspension after receiving word of a video the Petitioner had posted online. This video constitutes constitutionally protected speech. Drury never received a report of physical abuse by the Petitioner or any report of the Petitioner having ever possessed an illegal weapon. Nonetheless, Drury charged the Petitioner with physical abuse, illegal possession of a weapon, and threatening behavior.

Throughout the Respondents' investigation and leading into the conduct hearing, Drury withheld critical information from the Petitioner, including the origin and specifics of the allegation. Richard alleged the Petitioner made multiple threats in spring of 2022, over a year and a half before Richard made her report. Richard could give no date for any alleged threat other than one on February 8th, 2022. No evidence or any mention of any threat exists prior to September of 2023. Drury ignored the Petitioner's repeated requests for such information and failed to secure the existing video footage of where Richard alleged the threat took place. The Petitioner and Richard have never been alone in a room together for him to have threatened her without an eye-witness present.

Drury cited the Petitioner's prior disciplinary history from Belmont University, a private institution, as a factor in determining sanctions. Such considerations were inappropriate, as the Petitioner's disciplinary history strictly involved his lawful exercise of free speech and was completely irrelevant to the specific allegations Richard had made. Despite this, Drury recommended the Petitioner's expulsion.

After this, the Petitioner requested a formal hearing and all the information the university had gathered in this case for his own inspection. Drury deleted, in her own words, "quite a few things" from the Petitioner's file exactly one hour before providing her evidentiary disclosure to the Petitioner. The full extent of such information will never be known to the Petitioner, however much of the information was exculpatory and would've benefited the Petitioner had he been allowed to review it before his hearing. Much of the evidence presented at the hearing was never disclosed prior to, including the information provided by Belmont University that the Respondents relied upon.

Drury also engaged in witness tampering by discouraging a student witness from testifying by alleging that the Petitioner would "drag him through the mud" at the Petitioner's hearing. Following this incident, the student refused to testify. After refusing to state whether or not a threat actually took place, the student faced retaliatory actions from the Respondents, including the loss of his Residential Assistant position at the university and the financial benefits he relied upon for his tuition.

The Petitioner's hearing, presided over by Respondents Kuhnert, Brandt, Huber, Meyer, and White, resulted in a determination of guilt. This determination contradicted Richard's account of events, but was also unsupported by any specific allegation, evidence, or fact. The panel failed to follow the University's established CRR procedures, the Petitioner relied upon when preparing for his hearing. On appeal, Respondent John Middleton, a faculty member, refused to address or even acknowledge multiple procedural violations raised on appeal by the Petitioner.

VI. REASONS FOR GRANTING THE WRIT

A. Introduction

When considering a 12(b)(6) motion, the Court must assume that the factual allegations of a complaint are true and considered in the light most favorable to the Petitioner. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). Specific facts are not necessary; the statement need only give the Respondents fair notice of what the claim is and the grounds upon which it rests. *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007).

The Supreme Court's review is necessary for consistent application of precedent. Failure to grant certiorari further risks premature dismissal without allowing the Petitioner an opportunity to offer proof to substantiate valid claims. The Petitioner respectfully requests this court remand the case back to the Western District Court for the following reasons:

B. Reliance on Factual Assertions Outside of the Complaint

The Petitioner respectfully disputes the dismissal of his case due to the District Court's reliance on factual assertions not contained in the Complaint.

In reviewing a 12(b)(6) motion to dismiss, courts must draw all reasonable inferences in favor of the Petitioner. *Crooks v. Lynch*, 557 F.3d 846, 848 (8th Cir. 2009). In its order to dismiss, the District Court made no inferences in favor of the Petitioner but made several in favor of the Respondents in direct contradiction with the facts provided in the complaint.

In dismissing Count I, the District Court improperly relied on the Respondents' incorrect assertion that their promises were not "definite and delineated." (Ord., p. 5). Whether a promise is "definite and delineated" cannot be judged in the abstract. "Because the elements of promissory estoppel are fact dependent, they necessarily involve fact-finding and require inquiry into the circumstances surrounding the making of the promise and the promisee's reliance." *Ruzicka v. Conde Nast Publications, Inc.*, 999 F.2d 1319, 1323 (8th Cir. 1993). The question of whether or not a promise is valid cannot be reasonably decided summarily as a question of law. *Id.*

In dismissing Count II, the District Court improperly relied on the Respondents' incorrect assertion that their CRR does not "constitute specific, discrete promises" sufficient for a breach of contract claim. (Ord., p. 6-7), quoting *Lucero v. Curators of University of Missouri*, 400 S.W.3d 1, 9 (Mo. Ct. App. 2013). This is in direct contradiction with the District Court's own ruling that certain provisions of the CRR *do* constitute specific, discrete promises sufficient for a breach of contract claim. *Doe v. Curators of Univ. of Mo.*, 19-cv-04229-NKL, 53 (W.D. Mo. Aug. 30, 2022). Whether an obligation is contractual cannot be judged in the abstract. "The terms of a contract, if it be ambiguous, are matters of fact to be determined in the same manner as other facts." *Mutual Ben. Health Acc. Ass'n v. Hobbs*, 186 F.2d 321, 323 (8th Cir. 1951). The CRR provisions in this case are materially different from those reviewed in *Lucero* and, like in *Lucero*, are equally deserving of judicial review.

In dismissing Count III, the District Court improperly relied on the Respondents' incorrect assertion that the Petitioner did not make his requests for open records. Under § 610.021.6 and § 610.010.6, RSMo 2000, **personally identifiable student records** maintained by public educational institutions shall be open for inspection by the student. The Respondents failed to provide the Petitioner's request for **his student records**. (Comp., ¶¶ 45, 46, 47, 48).

In dismissing Count III, the District Court also improperly relied on the Respondents' incorrect assertion that the Petitioner received his requested documents within three business days. The facts listed in the Complaint make it abundantly clear (to

the point a reasonable inference can be made) that the Respondents received the Petitioner's record requests and failed to respond to the Petitioner's record requests for more than three full business days. (Comp., ¶¶ 44, 45, 47, 48, 50, 51).

In dismissing Count V, the District Court erroneously asserts that the Petitioner "failed to adequately state a First Amendment violation" because he did not allege what his speech was or why it was protected. (Ord., p. 13-14). In doing so, the District Court improperly asserts that **1)** the Petitioner's speech is not protected and **2)** that he has the burden of proving its constitutionality. "When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 804 (2000). Absent any showing that the Petitioner's speech is unlawful or seriously disruptive, the Respondents and the District Court cannot arbitrarily assume that it is.

In dismissing Count VI, the District Court erroneously asserts that the Petitioner "disagrees with how the hearing was conducted but does not allege he was unable to present evidence at the hearing." (Ord., p. 15). The Complaint asserts that the Respondents fabricated evidence and deleted evidence before providing it to the Petitioner. (Comp., ¶¶ 40, 59, 71). The Respondents also went as far as to pressure another student against giving testimony, claiming that the Petitioner was going to "drag his name through the mud." (Comp., ¶¶ 70). As provided in the Complaint, these issues extend beyond the bounds of mere disagreement or dissatisfaction, but go directly towards the Petitioner's ability to review and present exculpatory evidence, both of which are basic requirements for a fair hearing.

C. Affirmative Defenses

The Petitioner respectfully contests the dismissal of his case due to the District Court's assertion of the Respondents' affirmative defenses without a *de minimis* review of the facts necessary to establish the required elements of the defense.

This Court has emphasized that affirmative defenses, such as the failure to exhaust administrative remedies, do not justify dismissal unless the defense is apparent from the allegations in the complaint itself. *Jones v. Bock*, 549 U.S. 199, 215 (2007). Similarly, this Court has also held that resolving qualified immunity—a classic affirmative defense—requires factual determinations about the Respondent's conduct, which cannot be decided on a motion to dismiss. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). These rulings underscore that fact-intensive defenses are inappropriate for resolution at the pleading stage because they go beyond the limited scope of inquiry permitted under Rule 12(b)(6). Dismissal is especially erroneous as each and every one of the Respondents' claims of immunity are fact-dependent.

In dismissing Count III, the District Court improperly assumed the Respondent's affirmative Defense of state-sovereign immunity was valid. (Ord., p. 7), citing *Langley v. Curators of the Univ. of Mo.*, 73 S.W.3d 808, 811 (Mo.Ct.App. 2002). In *Langley*, however, the plaintiff never disputed the Respondent's claim of immunity. In the present case, the Petitioner disputes the Respondent's immunity claim. The Respondent "bears the burden of showing that it is an arm of the state" for sovereign immunity purposes. *United States ex rel. Fields v. Bi-State Dev. Agency of the Missouri-Illinois Metro. Dist.*, 872 F.3d 872,

876-877 (8th Cir. 2017). There are several factors surrounding Missouri state-sovereign immunity doctrine that require inquiry and review from the court. *Id.*

In dismissing Count III, the District Court also improperly assumed the Respondent's claim of official immunity. (Ord., p. 7). Official immunity is an affirmative defense that the Respondents also have the burden to plead and prove. *Molasky v. Brown*, 720 S.W.2d 412, 414 (Mo. App. W.D. 1986). Whether or not the Respondents can claim immunity "depends on facts peculiarly within the knowledge and control of the [Respondents]." *Id.* Assuming such an immunity at the dismissal stage is entirely inappropriate and goes directly against precedent established by the State of Missouri.

In dismissing Count IV, the District Court improperly assumed that the Respondents' defamatory statements were protected by intra-corporate immunity. (Ord., p. 11-12). Under the doctrine of intra-corporate immunity, the publication of an allegedly defamatory statement is still actionable if made with malice. *Rice v. Hodapp*, 919 S.W.2d 240, 244 (Mo. 1996). Malice is established if "the statements were made with knowledge that they were false or with reckless disregard for whether they were true or false at a time when the [Respondent] had serious doubts as to whether they were true." *Id.* The Respondents defamed the Petitioner, specifically by charging the Petitioner despite a severe lack of material evidence, fabricating evidence, and falsely accusing the Petitioner of plans to slander a potential witness at his hearing. (Comp., ¶¶ 59-62, 70). "Whether the [Respondent] acted with malice is a question of fact for the jury." *Bugg v. Vanhooser Holsen & Eftink P.C.*, 152 S.W.3d 373, 377 (Mo.App. W.D.2004).

In dismissing Counts V and VI, the District Court improperly assumed that a Respondent is immune to 42 U.S.C. § 1983 claims. (Ord., p. 11-12) citing *Ajiwoju v. University of Missouri-Kansas City, No. 06-1005-CV-W-FJG*, 1 (W.D. Mo. Feb. 28, 2007). *Ajiwoju* relies on a Supreme Court ruling which limited immunity to governmental entities considered "arms of the State" for Eleventh Amendment purposes. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 70-71 (1989). The Respondent "bears the burden of showing that it is an arm of the state" for such purposes. *United States ex rel. Fields*, 872 F.3d 872, 876-877 (8th Cir. 2017). A local school board "is more like a county or city than it is like an arm of the State. We therefore hold that it was not entitled to assert any Eleventh Amendment immunity from suit in the federal courts." *Mt. Healthy City Board of Ed. v. Doyle*, 429 U.S. 274, 280 (1977). Compared to federal sovereign immunity standards, denying the Respondent's claim of sovereign immunity would be consistent with this Court's rulings.

This Court has further denied extending public school boards immunity from 42 U.S.C. § 1983, stating that it "would be inconsistent with several instances in which Congress has refused to immunize school boards from federal jurisdiction under § 1983." *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 659 and 696-699 (1978). Students have the right to sue public universities under 42 U.S.C. § 1983 and be awarded compensatory, punitive, and emotional damages. *Carey v. Piphus*, 435 U.S. 247, 266 (1978). This Court has also allowed for 42 U.S.C. § 1983 actions against the Respondent specifically. *Papish v. University of Missouri Curators*, 410 U.S. 667 (1973).

In dismissing Counts V and VI, the District Court also improperly assumed the Respondents' qualified immunity claims. (Ord., p. 13). Qualified immunity is an affirmative defense that the Respondents have the burden to plead and prove. *Gomez*, 446 U.S. 635, 640 (1980). Whether the Respondents have such immunity "depends on facts peculiarly within the knowledge and control of the [Respondent]." *Id.*

* * *

Requiring the Petitioner to disprove the Respondents' claims of immunity without allowing him the opportunity to present evidence leaves the issue of these immunity claims unjustly decided without review of the facts of this case.

D. *Stare Decisis*

The Petitioner respectfully contests the dismissal of his case as the District Court disregarded and improperly deviated from well-established precedent, contrary to the principle of *stare decisis*. As the Supreme Court has noted, this doctrine fosters reliance on judicial decisions and reinforces the integrity of the judicial process, both in practice and perception. *Payne v. Tennessee*, 501 U.S. 808, 827 (1991).

This Court has held that students have property and liberty interests in their education and that schools must provide students with due process, even for short-term suspensions. *Goss v. Lopez*, 419 U.S. 565, 565 and 572-576 (1975). Specifically, students have the constitutional right "not to be suspended for as much as a single day without notice and a due process hearing before or promptly following the suspension." *Id* at 585.

"There need be no delay between the time notice is given and the time of the hearing." *Id* at 582. The Respondents held the Petitioner's hearing at the end of the Fall 2023 term, eighty days after his temporary suspension. (Comp., ¶¶ 66). That is by no means prompt and has substantively and unfairly impacted the Petitioner's educational property and liberty interests.

This Court has further ruled that students should receive "oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." *Goss*, 419 U.S. 565, 566 and 581 (1975). The Respondents deleted exculpatory evidence in the Petitioner's case one hour before sharing it with him (Comp., ¶¶ 41, 71). The Respondents also provided the hearing panel with evidence that the Petitioner never received and three sets of vague witness meeting notes that contain several fabrications. (Comp., ¶¶ 59, 71-72). The Petitioner had requested much of this information before his hearing on December 8th, 2023, but did not receive any of it. (Comp., ¶¶ 44). The Petitioner was unable to review or present such evidence at his hearing as he was never given access to it and had no knowledge of it in the first place.

E. Questions Presented

a. 20 U.S.C § 1232g(a)(1)(A)

Does 20 U.S.C § 1232g(a)(1)(A) use "rights-creating language" to infer that a student has a right to receive his or her records from an educational institution within 45 days?

When considering this question, the District Court did not refer to any authority or provide any review of the Petitioner's claim. Rather, the District Court improperly asserted that 20 U.S.C § 1232g in its entirety does not create a private cause of action. According to this Court, for a statute to create such private rights, its text must be "phrased in terms of the persons benefited." *Cannon v. University of Chicago*, 441 U.S. 677, 692, n. 13 (1979). 20 U.S.C § 1232g(a)(1)(A) is phrased in terms that directly benefit students and their parents.

The Respondents' only justification for the dismissal of this claim is that FERPA contains no existing "rights creating language." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 287 (2002). In *Gonzaga*, this Court specifically stated that "FERPA's ***nondisclosure provisions*** fail to confer enforceable rights," limiting the decision to 20 U.S.C. § 1232g(f) and (g). *Id* at 273-274, 286-291. The Petitioner's Complaint *does not* cite these provisions as the basis for his claim. Instead, the Petitioner's claim rests on the explicit language of 20 U.S.C. § 1232g(a)(1)(A), which the Court in *Gonzaga* did not review.

20 U.S.C. § 1232g(a)(1)(A) explicitly provides that students have **"the right to inspect and review"** their education records within 45 days. This statutory language is unequivocally "***rights***-creating." *Gonzaga*, 536 U.S. 273, 287 (2002). In *Gonzaga*, Justice Stevens delivered a dissenting opinion pointing out several instances of "rights creating language" listed in 20 U.S.C. § 1232g, including 20 U.S.C. § 1232g(a)(1)(A) as the very first. *Id* at 293-294. This Court must rectify these inconsistencies and establish precedent allowing students to take action when their rights are impeded upon.

b. First Amendment

Does the First Amendment prohibit a public university from using a student's disciplinary history at a private institution to compound sanctions against him or her, particularly when that history concerns constitutionally protected speech?

This Court has routinely emphasized that government institutions, including public universities, cannot adopt policies that place individuals in a position where any exercise of their rights is penalized. *Healy v. James*, 408 U.S. 169 (1972); *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973); *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995).

When private actions are adopted or enforced by state actors, those actions become subject to constitutional scrutiny. *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288, 295 (2001). If a public university compounds sanctions based on a private institution's disciplinary decision, particularly one involving constitutionally protected speech, the university essentially ratifies the private institution's policy. This transforms the private action into government action and renders it subject to First Amendment constraints.

The Respondents took action against the Petitioner's online posts during his tenure as a student of Belmont University. (Comp., ¶¶ 24-25). Respondents further suspended the Petitioner from campus for posting a separate video on his SnapChat account. (Comp., ¶¶ 23) "When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *United States*, 529 U.S. 803, 804

(2000). This Court has further ruled against assuming "any mistaken impression that the student newspapers speak for the University." *Rosenberger*, 515 U.S. 819, 841 (1995). A student's private online account should not be treated any differently. Online posts must have the highest protections afforded by the first amendment, especially when those posts are entirely unrelated and do not impede upon the normal function of a university or its campus. In the present case, the Petitioner was not afforded such protections.

c. Fourteenth Amendment

i. Meaningful Time and Manner

Do public school students have a protected right under due process to be heard in a meaningful time and manner?

The Eight Circuit has recognized that due process requires the opportunity to be heard in a meaningful time and manner. *Doe v. Univ. of Iowa*, 80 F.4th 891, 900 (8th Cir. 2023). The Petitioner's Complaint does not state anything that would permit a reasonable inference that his hearing was held in a meaningful time or manner. Quite the opposite is true, as the Petitioner's Complaint offers more than one example where the Respondents acted against his interest in a timely and meaningful hearing as well as stifled his access to relevant evidence in his case. Specifically, the Complaint notes that:

The Respondents inexplicably deleted exculpatory evidence in the Petitioner's case file one hour before the file became available to him. (Comp., ¶¶ 41, 71). Prior to its deletion, the Petitioner made multiple requests for information that was deleted without notice. (Comp., ¶¶ 44). The full nature of such evidence will never be known to the

Petitioner. The Respondents provided the hearing panel with evidence that the Petitioner never received. (Comp., ¶¶ 71). The Respondents provided three sets of vague witness meeting notes that contain several fabrications. (Comp., ¶¶ 72). The Respondents charged the Petitioner with physical abuse and the illegal possession of a weapon despite no existing allegations of such misconduct. (Comp., ¶¶ 76). The Respondents did not acknowledge the evidence the Petitioner provided, nor any allegation, fact, or evidence as support when issuing his expulsion. (Comp., ¶¶ 33, 61, 75).

ii. Right to Cross Examine

Do public school students have a protected right under due process to cross-examine testifying students when that testimony is in controversy?

The Eight Circuit has recognized that due process requires cross-examination when witness credibility is in question. *Doe v. Univ. of Ark.*, 974 F.3d 858, 867-868 (8th Cir. 2020). The students involved in the Petitioner's disciplinary case had inconsistent witness statements (notes written by the Respondents) with one student refusing to testify, likely because the Respondents informed this student that the Petitioner was going to "drag his name through the mud" at the hearing. (Comp., ¶¶ 70). The Petitioner made multiple requests for the attendance of these witnesses, contesting the credibility of their statements. The Respondents ignored his requests. (Comp., ¶¶ 73). The Respondents procured one witness three days before the hearing without proper notice and made no further efforts to procure the other witness. (Comp., ¶¶ 74).

iii. Right of Meaning Notice

Does the Fourteenth Amendment's Due Process Clause require a public university to provide meaningful notice to a student before suspension, investigation, interrogation, and or his or her hearing?

The Eight Circuit has recognized that students must receive "adequate notice, definite charge, and a hearing with opportunity to present one's own side of the case and with all necessary protective measures." *Jones v. Snead*, 431 F.2d 1115, 1117 (8th Cir. 1970). Other courts have recognized that proper notice is required before meeting with a student. *Sterrett v. Cowan*, 85 F. Supp. 3d 916, 927 (E.D. Mich. 2015). Proper notice is necessary to allow a student to collect relevant evidence before further investigation and suspension from campus.

After temporarily suspending the Petitioner, the Respondents had yet to provide a time frame, accuser, or charges and did not detail the allegation against him beyond "multiple reports" of threats. (Comp., ¶¶ 67). Only one report exists as to the Petitioner's knowledge. (Comp., ¶¶ 31, 67). The Respondents met with the Petitioner on September 20th, 2023. (Comp., ¶¶ 67). The Petitioner was not given proper notice, in "general terms" or otherwise, before this meeting. After the Petitioner's first interrogation, the Respondents had yet to provide an accuser and did not detail the allegation beyond "holding a knife to another student in a threatening manner," and the only time frame provided was "spring of 2022." (Comp., ¶¶ 68). As a result, the Petitioner was unable to properly prepare for the investigation, even disregarding the deleted evidence.

iv. Arbitrary or Capricious Actions

Does the Fourteenth Amendment's Due Process Clause prohibit a public university from arbitrarily violating its own established procedures for student disciplinary actions?

The Eighth Circuit Court has recognized student due process rights, stating that expulsion from a state actor violates due process if it results from arbitrary, capricious, or bad-faith actions of university officials. *Doe v. Univ. of St. Thomas*, 972 F.3d 1014, 1017 (8th Cir. 2020). "A university's decision may be arbitrary if the university violates its own procedures." *Id* at 1018, citing *Tatro v. Univ. of Minn.*, 800 N.W.2d 811, 816 (Minn. Ct. App. 2011). As stated in the Petitioner's Complaint, the Respondents violated twenty-two separate CRR procedures while conducting the Petitioner's case. (Comp., ¶¶ 30-36, 82). The Respondents further acted in bad-faith by hiding relevant information from the Petitioner and deleting evidence in his case file.

v. Void for Vagueness Doctrine

Do university disciplinary actions based on vague and unsupported allegations violate a student's constitutional rights to procedural fairness and equal protection under the law?

A void-for-vagueness doctrine is embodied in the due process clauses of the Fifth and Fourteenth Amendments. *D.C. and M.S. v. City of St. Louis, Mo.*, 795 F.2d 652, 653 (8th Cir. 1986). If any enactment of student discipline procedure is vague in its

applications, it violates due process requirements. *Woodis v. Westark Community College*, 160 F.3d 435, 438-439 (8th Cir. 1998). The Respondents' sanction of the Petitioner's expulsion for brandishing a knife in a "non-relevant manner" is entirely vague and contradicts Richard's accusation. (Comp., ¶¶ 75). As stated prior, no reported allegation, fact, or evidence was given as support for the Respondents' determination to expel the Petitioner. (Comp., ¶¶ 33, 61, 75).

VII. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Petitioner respectfully submits that the District Court erred in dismissing his claims by improperly relying on factual assertions not contained in the Complaint, failing to draw all reasonable inferences in his favor, and engaging in premature determinations of fact that are inappropriate at the pleading stage. The actions of the Respondents reflect a deprivation of due process and a profound negative impact on the Petitioner's property interest in continuing his education. The Respondents have taken further substantive action against the Petitioner, charging $4,422.64 in part for a judicial fee for the Petitioner's hearing, and for missing classes during his forced suspension from campus. (Comp., ¶¶ 103).

The Petitioner's right to pursue higher education and maintain a clean academic record is directly tied to his future career. The District Court's dismissal disregards these fundamental interests and imposes undue harm, violating the procedural safeguards that ensure fairness in the administration of justice. Furthermore, the Respondents' delays and actions, such as the eighty-day suspension and the deletion of exculpatory evidence,

exemplify a failure to provide the prompt and equitable process required by law, which has exacerbated the harm suffered by the Petitioner.

The Petitioner respectfully requests that this Court:

I. Grant the petition for a writ of certiorari to review the decision of the District Court;

II. Reverse the District Court's dismissal of the Petitioner's claims and remand the case for further proceedings consistent with the proper application of Rule 12(b)(6);

III. Allow the Petitioner to amend his complaint in the event he has failed to state a claim;

IV. and Grant any other relief that this Court deems just and proper.

CERTIFICATE OF SERVICE

The undersigned certifies that a complete copy of the foregoing instrument was served upon the attorneys of the parties of record via electronic mail

Date: March 31st, 2025

Signed: Noah D.

Respectfully submitted,

Noah D.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this motion complies with the type-volume limitation pursuant to Rule 33.1(h) of the Rules of the Supreme Court of the United States, excluding the parts of the document exempted under Rule 33.1(d), and states 4993 words

This filing also complies with the typeface requirements of Rule 33.1 of the Rules of the Supreme Court of the United States as it is composed in Century 12-point font.

Date: March 31st, 2025

Signed: Noah D.