APPENDIX A

Order Granting Motion to Dismiss (W.D. Mo. May 19, 2025).

U.S. District Court for the Western District of Missouri, Central Division

Phillips v. Board of Curators of Lincoln University, et al., No. 25-04024-CV-C-BP

Order dated May 30, 2025

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

EMIR JAMES PHILLIPS,)
)
Plaintiff,)
)
v.) No. 25-04024-CV-C-BP
)
BOARD OF CURATORS OF LINCOLN)
UNIVERSITY, and DR. STEVIE LAWRENCE,)
)
Defendants.)

ORDER GRANTING MOTION TO DISMISS

Plaintiff, acting pro se, has filed suit against the Board of Curators of Lincoln University and an administrator at the University, Dr. Stevie Lawrence,[1] asserting a variety of state and federal claims. Defendants have filed a Motion to Dismiss, (Doc. 8), which the Court concludes should be GRANTED.

I. BACKGROUND

The Amended Complaint is replete with legal arguments and citations, but the Court here focuses on the factual allegations, which are relatively straightforward.

Plaintiff is an Associate Professor at Lincoln University. (Doc. 7, ¶ 1.) He served on "a search committee for the Online Developer Position," (Doc. 7, ¶ 8), and the search committee recommended a particular candidate be hired. (Doc. 7, ¶¶ 8–10.) However, Dr. Lawrence allegedly "disregarded the committee's recommendation and attempted to install his own preferred candidate, in clear violation of Lincoln University's own hiring policies and well-established legal precedent." (Doc. 7, ¶ 12.) [1]

[1] Plaintiff also purports to sue up to 20 John Doe Defendants, but he has not identified them and nothing in the Amended Complaint explains who they might be, so the Court disregards them.

Plaintiff has asserted seven claims; for reasons that will be explained, the Court focuses on the two federal claims.[2] Count I alleges Plaintiff was deprived of his due process rights and Count II alleges a violation of Title VII of the Civil Rights Act. All the relief he seeks is equitable in nature. (See Doc. 7, pp. 12–13 (Amended Complaint's Prayer for Relief).)[3]

Defendants present several arguments for dismissal, some of which are jurisdictional and some of which argue Plaintiff has failed to state a claim for which relief can be granted. Plaintiff opposes the Motion, and the Court will address the arguments as necessary to resolve the matter.

II. DISCUSSION

Under Rule 12(b)(6), the Court "must accept as true all of the complaint's factual allegations and view them in the light most favorable to the Plaintiff[ ]." *Stodghill v. Wellston* Sch. Dist., 512 F.3d 472, 476 (8th Cir. 2008); see also *Alexander v. Hedback*, 718 F.3d 762, 765 (8th Cir. 2013).

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quotations and citations omitted); see also *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Horras v. American Capital Strategies, Ltd.*, 729 F.3d 798, 801 (8th Cir. 2013). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. In making this evaluation, the Court is limited to a review of the Complaint, exhibits attached to the Complaint, and materials necessarily embraced by the Complaint. E.g., *Mattes v. ABC Plastics, Inc.*, 323 F.3d 695, 697 n.4 (8th Cir. 2003). The Court can also consider matters that are amenable to judicial notice. E.g., *Podraza v. Whiting*, 790 F.3d 828, 833 (8th Cir. 2015).

Rule 12(b)(1) governs motions to dismiss for lack of subject matter jurisdiction. "A court deciding a motion under Rule 12(b)(1) must distinguish between a 'facial attack' and a 'factual attack' on jurisdiction." *Carlsen v. GameStop, Inc.*, 833 F.3d 903, 908 (8th Cir.

2016) (quotation omitted). Defendants' jurisdictional arguments raise facial attacks because they are based solely on the Amended Complaint's allegations and do not rely on material outside the pleadings. See id.

A. Eleventh Amendment

The Court first addresses Defendants' argument that Plaintiff's claims are barred, in whole or in part, by the Eleventh Amendment. The Eleventh Amendment generally forbids suits by citizens against states. See, e.g., *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 267–68 (1997). This prohibition extends to state agencies and other arms of the state, e.g., *Thomas v. St. Louis Bd. of Police Comm'rs*, 447 F.3d 1082, 1084 (8th Cir. 2006), and state universities are typically held to be arms of the state. E.g., *Monroe v. Arkansas State Univ.*, 495 F.3d 591, 594 (8th Cir. 2007); *Scherer v. Curators of Univ. of Missouri*, 49 F. App'x 658, 658–59 (8th Cir. 2002); *Treleven v. Univ. of Minnesota*, 73 F.3d 816, 817–18 (8th Cir. 1996).[4]

[4] Missouri law provides that Lincoln University's Board of Curators has the same powers as the Board of Curators for the University of Missouri. Mo. Rev. Stat. § 175.040.

However, while Lincoln University was named as a defendant in Plaintiff's initial Complaint, it is not named as a party in his Amended Complaint. And while Lincoln University is protected by the Eleventh Amendment, state officials, including school officials, can be sued in their official capacities for prospective injunctive relief. E.g., *Monroe*, 495 F.3d at 594; *Treleven*, 73 F.3d at 819; see also *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985) ("[O]fficial-capacity actions for prospective relief are not treated as actions against the State. See *Ex parte Young*, 209 U.S. 123 (1908)."). Plaintiff seeks only injunctive relief, and the relief he seeks can be provided only by virtue of the Defendants' official capacities.

Defendants "do not allege the Individual Defendants enjoy Eleventh Amendment immunity from Plaintiff's claims, where such claims seek only injunctive relief. Instead, Defendants allege the Eleventh Amendment bars all claims against Lincoln University." (Doc. 11, p. 4.) However, Lincoln University is not a defendant. Therefore, the Eleventh Amendment has no applicability here.[5]

[5] Plaintiff has named the "Board of Curators" as a defendant collectively and has not named each board member separately. The parties do not clearly address whether this is sufficient to present a claim under *Ex parte Young*, or whether this should be considered the equivalent of a claim against Lincoln University. The Court will not independently consider the issue, particularly because Plaintiff has named Dr. Lawrence as a defendant in his official capacity. In this regard, while Defendants assert the defense of qualified immunity, "[q]ualified immunity does not apply to a claim for injunctive relief" and only applies in suits seeking damages from government officials in their individual capacity." *Hamner v. Burls*, 937 F.3d 1171, 1175 (8th Cir. 2019).

B. Count I – Procedural Due Process

Count I alleges Plaintiff had "a protected interest in the procedural integrity of hiring processes" and he was "deprived . . . of [his] procedural due process rights" when Defendants overrode the search committee's recommendation. (Doc. 7, ¶¶ 48–49.) Defendants argue (and the Court agrees) Plaintiff does not have a property interest in having the committee's recommendation adopted by Defendants. "A protected property interest exists where a plaintiff has a legitimate claim of entitlement to a benefit that is derived from a source such as state law." *Schueller v. Goddard*, 631 F.3d 460, 462–63 (8th Cir. 2011) (quotation omitted). "It is [also] well-settled that a contract with a state entity can give rise to a property right protected under the Due Process Clause." *Omni Behav. Health v. Miller*, 285 F.3d 646, 652 (8th Cir. 2002). However, neither the Amended Complaint nor Plaintiff's response to the Motion to Dismiss permit the conclusion that Plaintiff has a property interest in having Lincoln University hire the person the search committee recommended.

In his opposition to the Motion, Plaintiff contends that, in ignoring the committee's recommendation, Defendants violated (1) § 173.005 of the Revised Statutes of Missouri, (2) §2.C of the criteria for accreditation adopted by the Higher Learning Commission, and (3) Lincoln University's Faculty Handbook. (Doc. 10, p. 10.) These items are referenced at various points in the Amended Complaint, but none plausibly establishes the property interest Plaintiff claims was interfered with. Neither § 173.005 nor § 2.C of the accreditation criteria bear on this issue,[6] and Plaintiff does not identify any provision of the Faculty Handbook that provides Lincoln University must hire the candidates recommended by search committees. Regardless, not every statute, policy, or contract "gives rise to a property interest protected by the Due Process Clause," *Omni Behav. Health*, 285 F.3d at 652 (citing *Perry v. Sindermann*, 408 U.S. 593 (1972)), and Plaintiff presents no allegations or argument demonstrating the statute, the accreditation criteria, or the faculty handbook falls into any of the categories that would give rise to due process protections. See id. at 652–53.

[6] The accreditation standards can be found at *Current Criteria for Accreditation (CRRT.B.10.010) | The Higher Learning Commission* (last visited May 16, 2025). The Court can consider this information even though it is not in the Amended Complaint because (1) it is fairly embraced by the Amended Complaint or (2) the Court can take judicial notice of the information.

Plaintiff has not properly alleged he has a protectible property interest in having the committee's recommendation accepted by Lincoln University. Therefore, his procedural due process claim must be dismissed for failure to state a claim.

C. Count II – Title VII

Defendant presents several arguments for dismissing Count II, one of which is that Plaintiff lacks standing to assert a Title VII claim. The Court must address jurisdictional issues before merit-based issues, e.g., *Steel Co. v. Citizens for a Better Environment*, 523

U.S. 83, 94 (1998), and the Court agrees Plaintiff lacks standing to assert a Title VII claim.

"[S]tanding consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (quotations omitted). Plaintiff's Title VII claim is based on his allegations about Lincoln University's hiring practices, (Doc. 7, ¶¶ 50–51), and Title VII of the Civil Rights Act makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). However, Plaintiff does not allege that he was not hired by Lincoln University; to the contrary, he alleges he is a member of the faculty. Even if Defendants discriminated against the candidate endorsed by the committee (an issue the Court does not address), any injury was suffered by the candidate, not Plaintiff. Therefore, Plaintiff has not suffered a cognizable injury from Defendants' hiring practices.[7]

[7] In his Surreply, (Doc. 13-1), Plaintiff observes that Title VII protects individuals who suffer retaliation for opposing practices that violate Title VII. However, the Amended Complaint does not allege Plaintiff was subjected to retaliation.

D. Counts III through VII – The State Law Claims

Defendants argue (1) the Court should decline supplemental jurisdiction over Counts III through VII and, alternatively, (2) Counts III through VII fail to state a claim. The Court agrees with Defendants' first argument and Counts III through VII will be dismissed without prejudice.

The Amended Complaint specifically invokes the Court's authority to resolve federal questions, (Doc. 7, ¶ 5); furthermore, it does not allege there is diversity of citizenship between the parties or more than $75,000 in controversy. See 28 U.S.C. § 1332. Therefore, the Court has only supplemental jurisdiction over the state law claims. See 28 U.S.C. § 1367(a). Supplemental jurisdiction is not mandatory, and a court may decline supplemental jurisdiction if it "has dismissed all claims over which it has original jurisdiction . . . ." Id. § 1367(c)(3). Here, the Court had original jurisdiction over Counts I and II, but as discussed those counts are being dismissed. Accordingly, the Court declines to exercise supplemental jurisdiction over Counts III – VII.

III. CONCLUSION

The Motion to Dismiss, (Doc. 8), is GRANTED. Count I is dismissed for failure to state a claim. Count II is dismissed without prejudice for lack of jurisdiction. Counts III through VII are dismissed without prejudice because the Court declines to exercise supplemental jurisdiction over them.

IT IS SO ORDERED.

/s/ Beth Phillips
BETH PHILLIPS, CHIEF JUDGE
Date: May 30, 2025
UNITED STATES DISTRICT COURT

APPENDIX B

Eighth Circuit Judgment (Nov. 7, 2025) (Rule 47B summary affirmance).
Judgment and Opinion of the U.S. Court of Appeals for the Eighth Circuit
Phillips v. Board of Curators of Lincoln University, et al.
Nos. 25-2051 & 25-2169 (8th Cir.)

Filed November 7, 2025

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Susan E. Bindler
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

November 07, 2025

Emir James Phillips
806 Chancery Lane
Cave Springs, AR 72718

RE: 25-2051 Emir Phillips v. Board of Curators, Lincoln U., et al
25-2169 Emir Phillips v. Board of Curators, Lincoln U., et al

Dear Emir James Phillips:

The court has issued an opinion in these cases. Judgment has been entered in accordance with the opinion.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. Except as provided by Rule 25(a)(2)(iii) of the Federal Rules of Appellate Procedure, no grace period for mailing is allowed. Any petition for rehearing

or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Susan E. Bindler
Clerk of Court

CRJ

Enclosure(s)

cc: Cathleen A. Martin
Ryan J. McDaniels
Paige A. Wymore-Wynn

District Court/Agency Case Number(s): 2:25-cv-04025-BP; 2:25-cv-04024-BP

United States Court of Appeals
For the Eighth Circuit

No. 25-2051

Emir James Phillips
Plaintiff – Appellant

v.

Board of Curators of Lincoln University, formerly known as Lincoln University; Dr. Stevie Lawrence; Dr. Cornelius Brownlee; Dr. Deneia Thomas; Does, 1-20
Defendants – Appellees

No. 25-2169

Emir James Phillips
Plaintiff – Appellant

v.

Board of Curators of Lincoln University, formerly known as Lincoln University; Dr. Stevie Lawrence; Does, 1-20
Defendants – Appellees

Appeals from United States District Court
for the Western District of Missouri – Jefferson City

Submitted: November 4, 2025
Filed: November 7, 2025

[Unpublished]

Before SHEPHERD, KELLY, and GRASZ, Circuit Judges.

PER CURIAM.

In these appeals, Emir Phillips appeals following the district court's[1] dismissal of his two pro se 42 U.S.C. § 1983 actions. After careful review of the record and the parties' arguments on appeal, we conclude that the district court did not err in dismissing the cases. See *Ingram v. Ark. Dep't of Corr.*, 91 F.4th 924, 927 (8th Cir. 2024) (dismissal for failure to state claim is reviewed de novo). We also conclude that the district court did not abuse its discretion in denying Phillips's motions for relief from judgment. See *Harley v. Zoesch*, 413 F.3d 866, 870 (8th Cir. 2005) (standard of review). Accordingly, we affirm in both appeals, and we deny Phillips's pending motions as moot. See 8th Cir. R. 47B.

---

[1] The Honorable Beth Phillips, Chief Judge, United States District Court for the Western District of Missouri.

APPENDIX B-1: Order Denying Petition for Panel Rehearing and Rehearing En Banc (Dec. 5, 2025).

Order of the U.S. Court of Appeals for the Eighth Circuit Denying Rehearing and Rehearing En Banc
Phillips v. Board of Curators of Lincoln University, et al. Nos. 25-2051 & 25-2169 (8th Cir.) Filed December 5, 2025

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 25-2051

Emir James Phillips
Appellant

v.

Board of Curators of Lincoln University, formerly known as Lincoln University, et al.
Appellees

No: 25-2169

Emir James Phillips
Appellant

v.

Board of Curators of Lincoln University, formerly known as Lincoln University, et al.
Appellees

Appeal from U.S. District Court for the Western District of Missouri – Jefferson City
(2:25-cv-04025-BP)
(2:25-cv-04024-BP)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 05, 2025

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

APPENDIX C

CONSTITUTIONAL AND STATUTORY PROVISIONS (FULL TEXT)

U.S. CONST. amend. 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.

U.S. CONST. amend. XIV, § 1 (Due Process Clause)

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

Civil action for deprivation of rights

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. § 1099b

Recognition of accrediting agency or association

(Key provisions relevant to this petition)

Section 1099b directs the Secretary of Education to recognize only those accrediting agencies or associations that meet criteria established by the Secretary and that are reliable authorities on the quality of education offered by the institutions they accredit. Among other things, it provides:

- The Secretary must, after notice and opportunity for a hearing, establish criteria for determining whether an accrediting agency is a reliable authority on educational quality.
- Those criteria must include appropriate measures of student achievement.
- To be recognized, an accrediting agency must have appropriate scope (State, regional, or national), demonstrate the ability and experience to operate as an accreditor, and have as a principal purpose the accreditation of institutions of higher education or their programs, depending on context.
- The statute defines "separate and independent" structures for accrediting agencies, addresses conflicts of interest, requires notice to the Secretary and State authorities of adverse actions, and authorizes limitation, suspension, or termination of recognition if an accrediting agency fails to apply the statutory criteria effectively.

For purposes of this petition, § 1099b is cited to show that federal law ties recognition of accreditors—and thus Title IV eligibility—to agencies that set and enforce standards concerning the quality of curricula, faculty, student achievement, and academic policies at the institutions they accredit.

---

34 C.F.R. § 602.16(a)(1)(ii)–(v)

Accrediting agency standards – required areas

Section 602.16 describes the "accrediting agency standards" the Secretary uses in recognizing an accrediting agency. Subsection (a)(1) lists specific areas that an accreditor's standards must effectively address in order for the agency to be recognized.

In particular, § 602.16(a)(1) provides that an accrediting agency's standards must effectively address the quality of an institution or program in the following areas (among others):

- **§ 602.16(a)(1)(ii) – Curricula.** The agency's standards must address the quality and rigor of the institution's or program's curricula.
- **§ 602.16(a)(1)(iii) – Faculty.** The standards must address the qualifications, roles, and effectiveness of faculty responsible for teaching and academic oversight.
- **§ 602.16(a)(1)(iv) – Facilities, equipment, and supplies.** The standards must address whether the institution has adequate physical and instructional resources to support its educational programs.
- **§ 602.16(a)(1)(v) – Fiscal and administrative capacity.** The standards must address whether the institution has sufficient fiscal and administrative capacity, appropriate to the scale of its operations, to maintain quality and carry out its academic mission.

These provisions are cited in this petition to underscore that recognized accreditors—and thus Title IV eligibility—depend on institutions having and following robust academic policies and faculty-governed processes in core areas such as curricula, faculty, and student achievement, including academic-dishonesty grading.