**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| STEPHEN KLEINSCHMIT,<br><br>Plaintiff,<br><br>v.<br><br>BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, et al.,<br><br>Defendants | <br><br>Case No. 1:25-CV-01400<br><br>Judge Elaine E. Bucklo<br><br>Magistrate Judge Jeannice Williams Appenteng |

**RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT**

Plaintiff Stephen Kleinschmit was fired for being white and speaking out against pervasive anti-white racial discrimination in the University of Illinois's hiring system. He sued the University and several of its relevant lead officers, all of whom now move to dismiss through a scattershot "kitchen sink of grounds" approach that is contrary to the volume of evidence detailed in the SAC, published by the media, and the defendants own public websites. Defendants' motion should be denied.

## ARGUMENT

### I. Plaintiff has standing to obtain the injunctive relief he seeks.

Plaintiff alleges specific, ongoing racially discriminatory hiring and employment practices at the University, a "clear pattern of university-wide discriminatory behavior" that directly impacted him and continue to affect similarly situated

individuals (SAC[1] ¶¶ 67-74, 102-03, 134). Plaintiff has alleged that he seeks to continue professional engagement in academia (*Id.* ¶¶ 141-42), and the presence of these racially discriminatory practices creates a substantial risk of future harm. *See City of Los Angeles v. Lyons,* 461 U.S. 95, 102 (1983) (plaintiff may seek injunctive relief where there is a "real and immediate threat of repeated injury"); *Walsh v. Nev. Dep't of Human Res.,* 471 F.3d 1033, 1037 (9th Cir. 2006) (same). Plaintiff's request for an injunction to halt these practices relates to his personal injury – his termination on the basis of his race, *see, e.g.,* SAC ¶ 123.

Defendants' reliance on *Feit* is inapposite. In *Feit,* the plaintiff sought only a general injunction against First Amendment violations without a personal stake: "Feit seeks to have the policy of prohibiting Forest Service *employees* from protesting native American spearfishing invalidated as violative of the *employees*' first amendment rights." 886 F.2d 848, 857 (emphasis in original). The court noted that "Feit is no longer an employee of the Forest Service," and thus "would not benefit" from such relief if the court were to grant it. *Id.* Professor Kleinschmit seeks a broader form of declaratory relief: that "the acts and practices complained of herein" be declared in violation of three federal statutes. He does not limit the request to "the acts and practices complained of herein*, as applied to current employees*." Additionally, standing is also warranted here because Plaintiff's allegations of systemic discrimination create a broad public interest in enjoining such unlawful practices. *Lyons,* 461 U.S. at 111.

[1] Dkt. 19, Second Amended Complaint

Plaintiff alleges that the University and individual Defendants are responsible for ongoing discriminatory practices at the University (SAC ¶¶ 12-16, Prayer for Relief), for which they retaliated against Plaintiff, and for which they may continue to retaliate in the future in giving references, representing his time at the University, or considering him for future positions for which he might be eminently qualified. This ongoing threat of harm satisfies the redressability requirement for standing. *See Walsh*, 471 F.3d at 1037. Defendants' reliance on Plaintiff's lack of current employment ignores the prospective nature of the relief sought, which aims to prevent future discriminatory practices. Plaintiff's standing is thus sufficient under *Milwaukee Police Ass'n v. Flynn*, 863 F.3d 636, 639 (7th Cir. 2017).

**II. Defendants are not immune under the Eleventh Amendment.**

Fresh from arguing that Plaintiff lacks standing because he only "seeks prospective injunctive relief" (Memo[2] at 5), Defendants then argue that they have Eleventh Amendment immunity (Memo at 5-6), which does not apply to prospective relief for ongoing violations of federal law. *Ex parte Young,* 209 U.S. 123 (1908). *See, e.g., Council 31 of AFSCME v. Quinn,* 680 F.3d 875, 882 (7th Cir. 2012). The relevant test is "whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Maryland Inc. v. Public Service Comm'n of Maryland,* 535 U.S. 635, 645 (2002). This bar is easily cleared. The SAC alleges "a clear pattern of university-wide discriminatory

[2] Dkt. 27, Defendants' Memorandum of Law in Support of Their Motion to Dismiss Plaintiff's Second Amended Complaint

behavior," (SAC ¶ 134) via programs including Bridge to Faculty (¶¶ 61-83), Advancing Racial Equity (¶¶ 84-88), External Candidate of Outstanding Achievement/Target of Opportunity (¶¶ 89-94), Under-Represented Faculty Recruitment and Minority Faculty Recruitment (¶¶ 95-101). The SAC further alleges that "racial discrimination is" – present tense – "now fully integrated into every academic and administrative unit's strategic planning and hiring." SAC ¶ 43.

The assertion of widespread institutional immunity from the state of Illinois is completely unfounded. On March 12, 2025, a decision by the U.S. 7th District Court of Appeals in *Kilborn v. Amiridis*, 131 F.4th 550, 558 (7th Cir. 2025) held that the UIC chancellor and other senior administrators could be sued in their official capacity for violating employees' rights. The court emphasized that universities occupy a "special niche" in the American constitutional tradition (131 F.4th at 557), and that public employees speaking pursuant to their official duties are entitled to free expression and academic freedom (*Id.* at 558). Plaintiff's protected status was violated in speaking not only about the administrative elements of the programs, but their effects on the teaching and research mission of the university, which enjoy explicit protection and are demonstrated in the Complaint. SAC ¶¶ 31-32. 37, 56, 76-77, 79-80.

The individually-named defendants are proper parties under *Ex parte Young*, because as explained in greater detail in Part V, *infra,* they are the officials responsible for overseeing and managing the implementation of the policies challenged by this lawsuit.

**III. The named defendants are "persons" under §§ 1981 and 1983**

Citing *Levenstein v. Salafsky* for the proposition that "officials of the University of Illinois . . . [are] not 'persons' who could be sued in their official capacity for damages," Defendants claim that their individual officers are not "persons" under § 1981 or § 1983, (Memo at 9). But the very next sentence in *Levenstein* reads: "Nevertheless, under the well-recognized theory of *Ex parte Young,* [the plaintiff] was entitled to pursue injunctive relief against them for actions they took in violation of his constitutional rights." 414 F.3d 767, 772 (2005).

State officials, sued in their official capacities for prospective relief to remedy ongoing violations of federal law are "persons" under § 1981 and § 1983. *Will v. Mich Dep't of State Police*, 491 U.S .58, 71 n.10 (1989). Plaintiff alleges that the individual Defendants, as high-ranking University officials, oversaw or implemented the discriminatory policies leading to his non-renewal (SAC ¶¶ 12-16, 52-54, 60, 66, 85-87, 106-08, 111-114, 117, 125-26). These allegations sufficiently implicate the individual Defendants in ongoing violations of federal anti-discrimination laws, making them proper parties for injunctive relief.

**IV. The Title VI claim is valid against the University.**

Next, Defendants argue that Plaintiff failed to state a Title VI claim because he did not show intentional racial discrimination or that he was treated less favorably than similarly situated individuals outside his protected class. (Memo at 7-8). Not

true. The complaint is *littered* with allegations of intentional racial discrimination. SAC ¶¶ 26-39 (Plaintiff "personally witnessed conversations about expressly using race as a determinant for hiring faculty members;" "a staggering amount of illegal behavior emerging across the university concerning discriminatory recruitment and hiring"); 61-83 (Bridge to Faculty program), 84-88 (Advancing Racial Equity program), 89-94 (External Candidate of Outstanding Achievement/Target of Opportunity program), 95-101 (Under-Represented Faculty Recruitment and Minority Faculty Recruitment programs). This is in addition to the actively discriminatory evidence alleged in SAC ¶¶ 27-28, 46-49.

As for less favorable treatment, Plaintiff clearly alleges that he "was one of two non-tenure track faculty members who were selected for contract nonrenewal," and that, while he was "let go permanently," the other faculty member, "an Asian woman, was moved to a replacement position within the college." SAC ¶ 122. And the Complaint spells it out in the next paragraph: "as a practical matter, Professor Kleinschmit, the only white male faculty member, was the only person UIC actually terminated." If that is not an allegation that "he was treated less favorably than similarly situated individuals outside his protected class," nothing is.

Defendants spend time arguing that Title VI does not provide for individual liability. Memo at 12-13. But unlike Counts I-III, which refer to "Defendants"[3] collectively (SAC ¶¶ 150-66), Count IV foregoes the term "Defendants" and refers only to "UIC" (SAC ¶¶ 167-74).

[3] Or, due to scrivener error, to "Defendant."

**V. Plaintiff Alleges Sufficient Involvement by Individual Defendants in his § 1981 Claim.**

Defendants assert that Plaintiff's § 1981 claim against the individual Defendants fails because he does not allege their direct participation in the decision to not renew his employment (Memo at 11-12). False. Plaintiff's Second Amended Complaint sufficiently alleges the individual Defendants' involvement in the discriminatory practices leading to his non-renewal. Plaintiff alleges that the individual Defendants, as University officials (President, Chancellor, Dean, Associate Chancellor, and Provost), were responsible for or complicit in the University's racially discriminatory hiring and employment policies:

*President Killeen*

The SAC alleges that President Killeen has required "each campus to craft policies for the appropriate use of issuing statements on university websites," and therefore has given tacit approval to "[t]he numerous Black Lives Matter and Palestinian solidarity statements" that "demonstrate[] an extensive pattern of institutional activism and disregard of state and federal law." SAC ¶ 52. Additionally, President Killeen is the chief administrator of the UI System, which sets policy for all UI member schools, including allocating state and federal resources to the programs mentioned in the Complaint, including the Target of Opportunity hiring waiver program that exists at all UI system universities. SAC ¶ 40, SAC ¶ 89. Additionally, as the system's chief executive he has direct oversight

and approval of system budgets, major policy initiatives, and knowledge of third-party groups whose funding was allowed to create the faculty fellows programs and usurp UIC's academic hiring governance. It was under Killeen's leadership that a widespread culture of institutional corruption was able to operate unchecked. SAC ¶¶ 41, 46-52).

*Chancellor Miranda*

The SAC alleges that Chancellor Miranda's office was complicit in requiring "each University department to create a plan to Advance Racial Equity." SAC ¶ 85. The publicly available template for this program "openly suggests illegal goals." SAC ¶ 87. The B2F faculty fellows program is funded by the UIC Chancellor's office, which transfered funds away traditional academic unit support to focus on hiring candidates with the desired demographic characteristics. SAC ¶ 127. The SAC also openly demonstrates that the chancellor's office openly flouted its illegal discrimination by published illegal goals for the Bridge to the Faculty Fellows program, including the December 7, 2021 news update published online that mentioned actions taken to meet its goal of 30% increase in Black faculty hires by 2023. SAC ¶ 133. The plaintiff also sought redress of his rights of the chancellor through his communication to its office, for which he was referred to the Provost (SAC ¶ 112).

*Dean Swearingen-White*

The SAC alleges that "Dean Swearingen-White stated her intent to make [the College of Urban Planning and Public Affairs] 'the most diverse it can be,' and that

the college must center social justice as its mission" as well as "compelling the college to racial-justice activism." SAC ¶ 107. When Professor Kleinschmit objected, Dean Swearingen-White and Provost Colley exchanged a "knowing glance." SAC ¶ 108. Contrary to Defendants' assertion that "the Second Amended Complaint does not substantively reference . . . Dean White . . . in relation to Plaintiff's employment" (Memo at 11-12), the SAC alleges that Dean Swearingen-White "formally confirmed" Professor Kleinschmit's nonrenewal in February 2023 only after the plaintiff confronted his department chair (SAC ¶ 111). And per Provost Colley, Dean Swearingen-White made the decision to not renew Professor Kleinschmit's employment. SAC ¶ 114. The SAC likewise alleges that that Dean Swearingen-White and the plaintiff had three conversations about recruitment strategy and the racial climate of the college, after which having been made aware of the fact that "the College's elevator and stairwells" had "become heavily defaced with graffiti and activist political slogans," chose to have "only portions of the main stairwell that included profanity" repainted. SAC ¶ 106. Likewise, that "Dean Swearingen-White had directed the department not to inform Professor Kleinschmit of his impending layoff," so as to give Plaintiff "little time for or chance of a successful appeal" and was "a substantial deviation from field norms and a particularly heinous act to a senior member of the school's faculty," a direct form of retaliation. SAC ¶ 117-118. The SAC further alleges that Dean Swearingen-White endorsed and signed a Bridge to Faculty application that sought an applicant "who

comes, precisely, from a community of color" while the plaintiff was being terminated for "budget cuts." SAC ¶¶ 125-26.

*Associate Chancellor Bills*

The SAC alleges that Associate Chancellor Bills "provided guidance and support to help craft position announcements that hid their discriminatory intent," by using terms that "were intended and used as proxies for race to circumvent nondiscrimination law." SAC ¶¶ 53-54. The SAC further alleges that Associate Chancellor Bills, by and through her Office of Access and Equity, created and implemented the racially discriminatory Bridge to Faculty and Advancing Racial Equity programs. SAC ¶¶ 60, 66, 85-86. Associate Chancellor Bills's Office of Access and Equity not only implemented these programs, but also "pushed faculty to believe that the illegal discrimination they were performing was legally justifiable." SAC ¶ 66. Additionally, the OAE office has responsibility for reviewing personnel recruited through search waivers and ensuring compliance with antidiscrimination law as explicitly stated in the UIC Academic Hiring Manual (SAC ¶ 66-69).

*Provost Colley*

The SAC alleges that the Provost's office was complicit in "requir[ing] each University department to create a plan to Advance Racial Equity" SAC ¶¶ 85-86. Contra Defendants' assertion that "the Second Amended Complaint does not substantively reference . . . Provost . . . Colley in relation to Plaintiff's employment" (Memo at 11-12), the SAC alleges that Professor Kleinschmit had a Zoom meeting with Provost Colley shortly after his nonrenewal upon referral by the UIC

chancellor (SAC ¶ 112), at which he raised various issues related to his termination (SAC ¶¶ 112-13). The Provost did not engage with any of Plaintiff's arguments but did express "her support for . . . Dean Swearingen White's decision for nonrenewal." SAC ¶ 114. The Provost is the chief university officer responsible for supporting and retaining faculty, for recruiting faculty, and directly implements the strategic priorities set by the Chancellor. Additionally, the Provost is directly named in numerous publicly available websites, documents, and university press releases mentioned in the programs mentioned within the lawsuit, has substantial oversight of the university budget for directing academic programming (SAC ¶ 95-100), and on information and belief provides final approval for hiring personnel through search waivers, target of opportunity hiring, and the B2F programs. This includes tenured hires that must be reviewed by the Provost for recommendation to the Chancellor, who approves and recommends tenure to be reviewed by the Illinois Board of Trustees.

Defendants also hope that this Court ignores the extensive volume of evidence of intentional discrimination when evaluating Plaintiff's Title VI claim. Memo at 8 n.2. There is no reason for the Court to do so. Plaintiff was terminated in part because he protested the University's racist policies. Indeed, discovery may prove that Plaintiff's termination was part of an ongoing effort to conceal those racist policies.

At the pleading stage, Plaintiff is not required to provide detailed evidence of each Defendant's specific actions but must only plead facts making their

involvement plausible. *Iqbal*, 556 U.S. at 678. The Complaint's allegations that these officials oversaw the Department of Public Policy, Management, and Analytics and its employment decisions, including the non-renewal of Plaintiff's contract, satisfy this standard. Discovery will further clarify their roles, making dismissal premature. *See Tamayo v. Blagojevich*, 526 F.3d 1074, 1084 (7th Cir. 2008) (plaintiff need only allege facts suggesting official's involvement at pleading stage).

## CONCLUSION

Plaintiff's Second Amended Complaint adequately pleads claims under § 1981, § 1983, and Title VI against both the University and the individual Defendants. Plaintiff has standing to seek injunctive relief, as the requested remedies address ongoing discriminatory practices that could affect him in the future. The Eleventh Amendment does not bar claims for prospective injunctive relief under *Ex parte Young*, and the University and its officials are proper parties for such claims. Plaintiff's allegations of intentional discrimination, supported by circumstantial evidence, meet the plausibility standard under *Iqbal* and *Twombly*. The individual Defendants' involvement in the University's policies is sufficiently alleged to survive a motion to dismiss. Accordingly, Plaintiff respectfully requests that the Court deny Defendants' Motion to Dismiss and allow the case to proceed to discovery.

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