

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

Stephen Kleinschmit,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 25 C 1400
	)	
	)	
Board of Trustees of the	)	
University of Illinois, et	)	
al.,	)	
	)	
Defendants.	)	

Order

On December 17, 2025, I partially dismissed the Second Amended Complaint in this case, which alleged that Stephen Kleinschmit—a white man—lost his job as a clinical associate professor at the University of Illinois Chicago when his contract was not renewed “because he had the wrong-colored skin” and because he spoke out against the University’s allegedly discriminatory race-based hiring and retention policies. That complaint asserted liability under 42 U.S.C. § 1981, 42 U.S.C. § 1983, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., and sought both damages and injunctive relief against the Board of Trustees of the University of Illinois (“UIC”) and numerous individuals he explicitly sued in their official capacities: Timothy L. Killeen, as President of the University of Illinois System; Marie Lynn Miranda, as Chancellor of

the University of Illinois Chicago; Stacey Swearingen-White, as Dean of the University of Illinois Chicago College of Urban Planning and Public Affairs; Caryn Bills, as Associate Chancellor for the University of Illinois Chicago's Office for Access and Equity; and Karen Colley, as the University of Illinois Chicago's Provost and Vice Chancellor for Academic Affairs. I held that Mr. Kleinschmit lacked standing to pursue injunctive relief because he did not seek reinstatement or intend to return to work at UIC. ECF 35 at 2-3. I further held that Mr. Kleinschmit's damages claims under §§ 1981 and 1983 were barred by the Eleventh Amendment, as he pursued them only against state defendants—which included the individual defendants named in their official capacities—that had not waived their constitutional immunity. See *id.* at 3-5. But I rejected defendants' argument that Mr. Kleinschmit's Title VI theory was inadequately pled and allowed his discrimination claim under that statute to proceed.

Mr. Kleinschmit filed a Third Amended Complaint (sometimes, the "TAC") in an effort to cure the defects I identified in the Second Amended Complaint. Although he asserts violations of the same statutes, he now sues the individual defendants in both their official and personal capacities. Defendants move to dismiss the TAC in its entirety. The motion is granted in part.

Although the parties reargue many of the issues I addressed in my previous decision, neither the amendments to Mr. Kleinschmit's

complaint, nor the parties' additional arguments directed to issues I previously considered, warrant a departure from my prior analysis. With respect to his prayer for injunctive relief, Mr. Kleinschmit again cites the very cases I already concluded did not support his assertion of standing. See Resp., ECF 57 at 2 (citing *Walsh v. Nevada Dep't of Hum. Res.*, 471 F.3d 1033 (9th Cir. 2006) (former employee lacked standing to seek injunctive relief because she "would not stand to benefit from an injunction requiring the anti-discriminatory policies she requests at her former place of work"), and *Milwaukee Police Ass'n v. Flynn*, 863 F.3d 636, 639 (7th Cir. 2017) (addressing associational standing, which is not at issue here)). Mr. Kleinschmit now argues, for the first time, that he has standing to pursue an injunction because defendants "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." Resp., ECF 57 at 2. But if there is any authority for resting standing on such speculative future harms, Mr. Kleinschmit has not cited it. Nor is his omission surprising, as the Supreme Court held decades ago that standing to seek prospective injunctive relief requires a threat of future harm that is "real and immediate," not "conjectural" or "hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983). Nothing in Mr. Kleinschmit's complaint suggests that the harms he identifies satisfy this standard.

On the issue of defendants' Eleventh Amendment immunity, Mr. Kleinschmit similarly reasserts the same authorities and arguments I previously held unavailing. He again insists that his suit may proceed under the *Ex parte Young* doctrine, which he correctly observes permits suits against state actors when a "straightforward inquiry" reveals that the "complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 645 (2002). What Mr. Kleinschmit fails to grasp, however, is that *Ex parte Young* exempts from Eleventh Amendment immunity only requests for *prospective injunctive relief*, which is the type of relief he lacks standing to pursue for the reasons just explained. See *id.* (holding that Verizon's "prayer for injunctive relief—that state officials be restrained from enforcing an order in contravention of controlling federal law" satisfies *Ex Parte Young*). Nothing in the Third Amended Complaint or Mr. Kleinschmit's additional submissions alters my previous conclusion that his claim for damages from UIC and its officials pursuant to §§ 1981 and 1983 is barred by the Eleventh Amendment.

At all events, Eleventh Amendment immunity aside, Mr. Kleinschmit's §§ 1981 and 1983 damages claims fail for the additional reason that "Section 1983 'provides the exclusive federal damages remedy for the violation of the rights guaranteed by § 1981 when the claim is pressed against a state actor,'" *Campbell v. Forest Pres.*

Dist. of Cook Cnty., 752 F.3d 665, 666 (7th Cir. 2014) (quoting *Jett v. Dall. Indep. Sch. Dist.*, 491 U.S. 701, 735 (1989)), yet state universities and their officials are not “person[s]” amenable to a damages suit under § 1983, *Carmody v. Bd. of Trs. of Univ. of Illinois*, 893 F.3d 397, 403 (7th Cir. 2018) (citing *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 64 (1989)). As another court in this district has explained, “§ 1981 creates substantive rights but not a private right to sue to enforce them; rather, to bring a damages claim against a state actor for violating the rights § 1981 protects, the plaintiff must proceed through § 1983.” *Edmond v. City of Chicago*, No. 17-CV-04858, 2018 WL 5994929, at *6 (N.D. Ill. Nov. 15, 2018) (citing *Goldberg v. 401 N. Wabash Venture LLC*, 755 F.3d 456, 467 (7th Cir. 2014)). This means that “if the plaintiff does not satisfy § 1983’s requirements for bringing suit, a § 1981 claim must be dismissed.” *Id.* Because that is the case here, Mr. Kleinschmit’s damages claims against UIC and its officials pursuant to §§ 1981 and 1983 cannot proceed.

What is new to the Third Amended Complaint is Mr. Kleinschmit’s claim for damages against the individual defendants in their personal capacities. Defendants argue that this claim fails on the principle just explained: that § 1983 is the exclusive vehicle for pursuing such claims, yet the TAC explicitly asserts *official capacity* claims under § 1983, leaving the *personal capacity* claims for a count asserted under § 1981. I agree with Mr. Kleinschmit, however, that

this is not the sort of pleading deficiency that warrants dismissal. “[I]t is axiomatic that a plaintiff is not required to plead legal theories, period.” *Volling v. Antioch Rescue Squad*, 999 F. Supp. 2d 991, 996 (N.D. Ill. 2013). What matters is not how – or even if – Mr. Kleinschmit tethers his factual allegations to various “counts,” but whether those allegations raise a plausible basis for individual liability under § 1983. See *Leavell v. Cook Cnty. State’s Attorney’s Off.*, No. 22 C 4731, 2025 WL 777540, at *2 (N.D. Ill. Mar. 11, 2025) (“The federal rules ‘do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted.’”) (quoting *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 11 (2014)). In similar contexts, courts have construed claims facially asserted under § 1981 as arising under § 1983. See, e.g., *Winston v. Dart*, No. 18 C 5726, 2021 WL 3633918, at *7 (N.D. Ill. Aug. 17, 2021); *Smith v. Chief Judge of Cir. Ct. of Cook Cty.*, No. 17 C 8341, 2021 WL 767624, at *1 n.2 (N.D. Ill. Feb. 26, 2021). Following that sensible approach here, I conclude that Mr. Kleinschmit has adequately pled damages claims against one of the individual defendants.

To state a personal-capacity claim for race discrimination under § 1983, Mr. Kleinschmit must allege that each defendant was personally involved in a “materially adverse action” taken against him because of his race. *Foggey v. City of Chicago*, No. 16 CV 10963, 2018 WL 704688, at *6 (N.D. Ill. Feb. 5, 2018). But nothing in the

TAC suggests that defendants Killeen, Miranda, Bills, or Colley was involved in the decision not to renew Mr. Kleinschmit's contract:

- Mr. Killeen is identified as the President of UIC and is alleged to have been mentioned in a 2024 *Chicago Tribune* editorial. Specifically, the article allegedly stated that Mr. Killeen was "requiring each campus to craft policies for the appropriate use of issuing statements on university websites that use state resources." The TAC does not otherwise mention Mr. Killeen.
- Ms. Miranda is identified as the Chancellor of UIC. No substantive conduct is attributed to her.
- Ms. Bills, the Associate Chancellor, is alleged to have "provided guidance and support" to staff of the UIC Office of Access and Equity, "to help craft position announcements that hid their discriminatory intent." The TAC does not identify any specific job announcement in which Ms. Bills was involved. The paragraph referencing Ms. Bills goes on to allege that "[s]earch committees created advertisements that were inflected with requirements for scholars that research subjects like 'disparities, social justice, underrepresented populations, critical race theory, decolonization, minoritized populations' and other terms for activist scholarship."¹
- Ms. Colley—UIC's Provost and Vice Chancellor for Academic Affairs—allegedly exchanged a "knowing glance" with Dean Swearingen-White after Mr. Kleinschmit objected to the Dean's statements concerning her intent to encourage diversity, racial-justice activism, and student comfort.

Id. at ¶¶ 52-53; 107-108. None of these allegations is sufficient to allege these individuals' personal involvement in any discriminatory action against Mr. Kleinschmit.

Defendants do not dispute that the TAC sufficiently alleges Dean Swearingen-White's involvement in the decision not to renew

¹ Even assuming Mr. Kleinschmit's description of these advertisements is accurate, and that Ms. Bills was involved in their creation, they do not suggest race-based discrimination, as scholars of any race can potentially satisfy the specified requirements, which relate to "research subjects," not to the scholar's personal characteristics.

Mr. Kleinschmidt's contract, but they argue that the claim against her should be dismissed for failure to plead that she acted with discriminatory intent. Reading Mr. Kleinschmidt's allegations as a whole and in the light most favorable to him, however, I conclude that he plausibly claims that Dean Swearingen-White's alleged commitment to "diversity" in hiring, and her endorsement of application materials for a position that allegedly displaced Mr. Kleinschmidt's faculty role and that stated a preference for scholars from "a community of color," suggest racial bias against him in considering the renewal of his position. Accordingly, he is entitled to discovery on his race discrimination claim against Dean Swearingen-White in her personal capacity.

This leaves only Mr. Kleinschmidt's claim under Title VI, which prohibits race discrimination by recipients of federal funding. Although I previously held that this claim was adequately pled, defendants argue that *Faculty, Alumni, and Students Opposed to Racial Preferences v. Northwestern Univ.*, No. 25 C 1129, 2026 U.S. Dist. LEXIS 21518 (N.D. Ill. Jan. 22, 2026) ("*FASORP*"), is intervening persuasive authority that militates in favor of its dismissal. The *FASORP* court dismissed a Title VI discrimination case under *Ahern v. Bd. of Educ.*, 133 F.3d 975 (7th Cir. 1998), which held that "Title VI does not provide a judicial remedy for employment discrimination by institutions receiving federal funds unless (1) providing employment is a primary objective of the federal aid, or (2)

discrimination in employment necessarily causes discrimination against the primary beneficiaries of the federal aid.” *Id.* at 978 (citation omitted). But *Ahern* was decided at summary judgment. Whether Mr. Kleinschmit can satisfy its standards and prevail on his Title VI discrimination theory must await factual development of this claim. See *Thomas v. JBS Green Bay, Inc.*, 120 F.4th 1335, 1338 (7th Cir. 2024) (“[t]hat something must be proved (if plaintiff is to win) does not imply that it must be alleged in the complaint.”).

For the foregoing reasons, defendants’ motion to dismiss the Third Amended Complaint is granted in part. Mr. Kleinschmit may proceed on his §§ 1981/1983 damages claims for race discrimination and retaliation against Dean Swearingen-White in her personal capacity, and he may pursue his race discrimination claim against UIC under Title VI. All individual defendants other than Dean Swearingen-White are dismissed.

ENTER ORDER:



Elaine E. Bucklo
United States District Judge

Dated: August 24, 2026