IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NATALIE PLUMMER, et al. Plaintiffs, v. UNIVERSITY OF HOUSTON, et al. Defendants	Case No. Judge: MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal R. Civil Rule 65, Plaintiffs Natalie Plummer ("Plummer") and Ryan McConnell ("McConnell") seek, following a hearing, a preliminary injunction prohibiting the University of Houston ("UH") from imposing discipline against them in violation of their federal due process rights and rights under Title IX.

FACTS

Plaintiffs Natalie Plummer and Ryan McConnell brought this action for a declaratory judgment, violation of 42 U.S.C. §1983, violation of Title IX, and injunctive relief. This case arises out of the decision of UH to impose disciplinary sanctions against Plummer and McConnell in violation of the their Constitutional and federal statutory rights.

Plummer is a current UH Student. She has completed two years of coursework at UH. McConnell has graduated from UH, but still seeks to take additional classes as he pursues a career as a certified public accountant.

A. UH's Response to The Growing Problem of Sexual Assaults on Campus

This case arises amidst a growing national controversy about the responses of colleges and universities to sexual assaults on campuses. After years of criticism for being too lax on campus

sexual assault, on April 11, 2011, the U.S. Education Department's Office of Civil Rights sent a "Dear Colleague" to colleges and universities. The Dear Colleague Letter indicated that, in order to comply with Title IX, colleges and Universities must have transparent, prompt procedures to investigate and resolve complaints of sexual misconduct. Most notably, the Dear Colleague Letter required schools to adopt a relatively low burden of proof—"more likely than not"—in cases involving sexual misconduct, including assault.

The Federal Government, through the Department of Education, has been using Title IX to pressure colleges and universities to aggressively pursue investigations of sexual assaults on campuses. In May 2014, the federal Department of Education disclosed the names of 55 colleges under investigation for possibly violating federal rules aimed at stopping sexual harassment. This list has grown to approximately 74, and schools face the prospect of the loss of all federal funding if they do not comply with Education Department proposals. The assistant secretary of education who heads the Education Department's Office for Civil Rights, told college officials attending a conference that schools need to make "radical" change.[1] She later told a separate conference, "I will go to enforcement, and I am prepared to withhold federal funds."[2]

Against this background, UH adopted a "Sexual Misconduct Policy" in 2012. The Sexual Misconduct Policy was revised on August 7, 2013. The Sexual Misconduct Policy defines "sexual misconduct," as a form of sex discrimination prohibited by Title IX. The Sexual Misconduct Policy promises to provide those accused of misconduct "a prompt, fair, and impartial investigation and resolution." Yet, as shown below, that is not what happened to Plummer and McConnell. Instead, Defendant Baker, UH's Title IX coordinator, engaged in a witch hunt designed against Plummer and

[1] *Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases*, Chronicle of Higher Education, February 11, 2014.

[2] *How Campus Sexual Assaults Came To Command New Attention*, NPR, August 12, 2014.

McConnell, resulting in their discipline by UH in September 2014 for an incident that occurred in 2011.

B. The November 19, 2011 Incident

On November 19, 2011, McConnell attended a UH event, and then went with some friends to a bar called the "Den." While at the bar, McConnell met the Female UH student at the center of this case. McConnell and the Female UH Student were drinking heavily, were kissing at the bar, and decided to go back to McConnell's apartment. After arriving at McConnell's dorm room, McConnell and the Female UH Student engaged in consensual sexual activity. They fell asleep, naked, on the floor.

Plummer, McConnell's girlfriend, came to the room. She was, unsurprisingly, upset with McConnell. She woke McConnell and the Female UH Student and started to video the scene with her cell phone.[3] McConnell woke the Female UH Student by pushing on her leg. She woke and asked Plummer to have sex with her. She stated, "You're hot" and "I want to sex you." Plummer declined and pushed the Female UH Student into an elevator. She The Female UH Student was found naked and intoxicated in the elevator by other students. The UH Police conducted an investigation of the November 19, 2011 Incident. They determined that there was insufficient evidence that any criminal conduct occurred.

Plummer shared the photograph and the videos she took that evening with a friend because she wanted to expose McConnell as a cheating boyfriend. These videos later found their way to the Harris County Sheriff, who conducted another investigation. This investigation, like the prior investigation, did not result in any criminal charges.

[3] Plummer took two videos: (i) the first video, the "Dorm Room Video," depicts McConnell and the Female UH Student waking up; and (ii) the second video, the "Elevator Video," depicts the Female UH Student in the hallway outside of the dorm room. The Dorm Room Video was deleted from Plummer cell phone at a later date.

C. The UH Investigation and Disciplinary Process

McConnell and Plummer did not commit any violations of the Sexual Misconduct Policy. Nonetheless, on February 26, 2012 – nearly three months after the November 19, 2011 incident – the Female UH Student submitted a complaint to UH. The Female UH Student stated, "I believe my Title 9 [sic] rights were violated" and "I . . . believe that I was the victim of a sexual assault." However – significantly – the Female UH Student does not include any description of any conduct by McConnell that could be described as sexual assault or a violation of the Sexual Misconduct Policy.

Defendant Baker, even at this early stage, was eager to obtain this complaint against McConnell, a male student. He allegedly traveled to College Station, TX, to obtain the complaint from the Female UH Student and encouraged her to file the complaint. Baker never instigated an investigation into conduct by the Female UH Student that violated the UH Sexual Misconduct Policy.

On March 12, 2012, Baker sent to McConnell a letter notifying him that Baker's office "is reviewing an incident of alleged sexual misconduct that occurred . . . on November 19, 2011." Plummer and McConnell met with Baker to discuss the matter and provided him with the evidence in their possession – a copy of one of the videos taken by Plummer as well as a photograph No further action was taken by UH after this meeting. McConnell and Plummer, accordingly, believed that the matter had been resolved.

On September 30, 2013 – almost two years after the November 19, 2011 incident – Baker sent a letter to McConnell and Plummer indicating that UH "is serving a complainant in a formal complaint of misconduct . . ." The letter indicates that Baker's office considered the information provided by Plummer and McConnell in March, 2012, as well as additional information obtained from the Harris County Sheriff's Office. The letter represents the first time of many that Baker

falsely characterizes one of Plummer's videos, including stating that "the nude male [McConnell] is attempting to make sexual contact with the" Female UH Student. The letter also falsely states that Plummer encouraged McConnell "to make sexual contact with" the Female UH Student, and further falsely states that "there is audio footage of what may be a physical assault on" the Female UH Student.

McConnell and Plummer, through their attorneys, submitted a written response to Baker. On November 8, 2013, Plummer met with Baker. The meeting was expected by Plummer to be for the purpose of gathering information. Instead, Plummer was subjected to a vigorous examination by Baker and other UH employees, including an attorney. It was clear from this meeting that Baker did not intend to conduct a full and fair investigation. Instead, it was apparent that he had already concluded that McConnell and Plummer had violated UH policy and he was seeking, like a prosecutor, to gather additional evidence.

On February 17, 2014, Baker submitted a "Report of Finding" to the Dean of Students. The Report of Finding includes the statement by the Female UH Student that "nobody [had] touched or hit [her]." The Report of Finding falsely characterized the Dorm Room Video as follows: "it appeared to capture Mr. McConnell physically touching [the Female UH Student] in a sexual manner and, his girlfriend, Natalie Plummer, striking her." The Report of Finding concluded that McConnell and Plummer violated the Sexual Misconduct Policy.

Appeal hearings were held for McConnell and Plummer. The students were permitted to have an attorney present at the hearing, but the attorney could not actively participate. The hearing board relied solely upon written statements and hearsay. In particular, the Female UH Student did not attend the hearing. As a result, nobody testified that McConnell or Plummer did anything wrong. Instead, Baker offer his "interpretation" of the videos taken by Plummer. Baker attempted to convince the hearing board that McConnell and Plummer planned the rape of the Female UH

Student, even though he had no evidence to support this allegation. He theorized, again, without any evidence, that Plummer was mad because her plan to film McConnell and the Female UH Student having sex had fallen through.[4]

On September 24, 2014, McConnell and Plummer received letters from Walker. The letter indicated that Walker had reviewed their appeals. The final sanctions imposed on McConnell and Plummer included: expulsion from the University; a ban from future enrollment in the UH system; and a ban from attending or being present at any UH activities.[5] This lawsuit followed.

[4] McConnell has requested a copy of the UH hearing panel proceedings. Baker has indicated that a copy cannot be made available, but only that McConnell may come and listen to the hearing.

[5] Walker agreed to modify the sanction by removing any note on McConnell's transcript that discipline had been imposed.

ARGUMENT

A. The Standard For Resolution Of This Motion

The purpose of a preliminary injunction is to preserve the *status quo*. *Wenner v. Tex. Lottery Comm'n*, 123 F.3d 321, 326 (5th Cir. 1997). *See also Meis v. Sanitas Serv. Corp.*, 511 F.2d 655 (5th Cir. 1975) ("the purpose of a preliminary injunction is always to prevent irreparable injury so as to the preserve the court's ability to render a meaningful decision on the merits"). In considering a preliminary injunction, the court considers four elements: (1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is denied; (3) that the threatened injury outweighs any damage that the injunction might cause the defendant; and (4) that the injunction will not disserve the public interest. *Sepulvado v. Jindal*, 729 F.3d 413, 417 (5th Cir. 2013); *Hoover v. Morales*, 164 F.3d 221, 224 (5th Cir. 1998); *Sunbeam Products, Inc. v. West Bend Co.*, 123 F.3d 246, 250 (5th Cir. 1997).

B. The Plaintiff Has A Substantial Likelihood of Success.

1. Due Process

The United States Constitution guarantees "due process." The Fifth Circuit has recognized a liberty interest in higher education in Texas, and has held that due process requires notice and some opportunity for hearing before a student at a tax-supported college is expelled for misconduct. *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961). *See also O'Neal v. Alamo Cmty. College Dist.*, 2010 U.S. Dist. LEXIS 6637, 20-22 (W.D. Tex. Jan. 27, 2010) (holding that Constitutional right of due process applied to Texas college student); *Univ. of Tex. Medical Sch. v. Than*, 901 S.W.2d 926, 930 & n.1 (Tex. 1995) ("We hold that [a student] has a constitutionally protected liberty interest in his graduate education that must be afforded procedural due process."). [6]

[6] The "Dear Colleague Letter" specifically states that public schools are obligated to protect the due process rights of students accused of sexual assault. For example, on page 12 of the Dear Colleague Letter, the Department of Education states, "Public and state-supported schools must provide due process to the alleged

In order to comply with this constitutional requirement, UH students facing discipline must be afforded the opportunity to defend, enforce or protect their rights through presentation of their own evidence, confrontation of adverse witnesses, and oral argument. *Goldberg v. Kelly*, 397 U.S. 254 (1970). In determining whether UH provided constitutionally adequate due process, the competing interests of the governmental institution and the individual must be balanced.[7] *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews,* 424 U.S. at 355 *quoting Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). The procedure employed by UH violated this fundamental requirement in two significant ways: (1) UH failed to provide Plummer and McConnell with a fair and unbiased investigation; and (2) UH relied solely on hearsay without providing Plummer and McConnell with the opportunity for effective cross-examination.

Plummer and McConnell will expound on the due process problems once a copy of the hearing is received from UH. *See* Motion for Expedited Discovery. However, one due process issue in this case is obvious: McConnell and Plummer faced discipline for an incident that occurred on November 19, 2011. *Yet the UH Sexual Misconduct Policy was not even in effect at this time* (the initial draft was adopted over a year later, in 2010; the revised policy was adopted in 2013). *Cf. Trinity Broad. of*

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perpetrator." (April 4, 2011 Guidance at p. 12) And, on page 22, the Department notes, "The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding." (April 4, 2011 Guidance at p. 22.)

[7] The three factors set forth in *Mathews v. Eldridge*: "(1) the nature of the private interest affected -- that is, the seriousness of the charge and potential sanctions, (2) the danger of error and the benefit of additional or alternate procedures, and (3) the public or governmental burden were additional procedures mandated." *See Ingraham v. Wright*, 430 U.S. 651, 676 (1977) (applying *Mathews*). The amount of process due will vary according to the facts of each case and is evaluated largely within the framework laid out by the Supreme Court in *Mathews*. Because Plummer and McConnell are facing disciplinary expulsion, rather than an academic one, this Court is required to conduct a more searching inquiry. *See Missouri v. Horowitz*, 435 U.S. 78, 86 (1978) (academic decisions "call[] for far less stringent procedural requirements").

Fla., Inc., 211 F.3d at 628 (noting that due process requires that parties receive fair notice about what is expected from administrative regulations).

Regardless of which regulations UH applied, Plummer and McConnell were entitled under the Due Process Clause to a full and fair investigation by UH. *Goldsmith v. Board of Tax Appeals*, 270 U.S. 117 (1926). In *Goldsmith*, a lawyer sued after he was denied admission to practice before the Board of Tax Appeals. The Court explained that while the Board of Tax Appeals had certain discretionary powers to determine admission, this power "must be construed to mean the exercise of a discretion to be exercised *after fair investigation*, with such a notice, hearing and opportunity to answer for the applicant as would constitute due process." *Id.*, at 123. Instead of following the direction from *Goldsmith*, Baker undertook an investigation aimed at finding the students responsible, rather than finding the truth. Part of the problem is the conflict of interest presented by Baker's job. At the beginning of the process, Baker was charged to be a neutral fact finder. However, later in the process, Baker took on the role of an advocate who told the hearing panel his job was to interpret evidence.

The most significant problem with the hearing offered to Plummer and McConnell is that it relied completely on hearsay without providing any opportunity to examine the declarants. Hearsay evidence is generally admissible in informal administrative proceedings. See *Richardson v. Perales*, 402 U.S. 389, 407-08, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971). However, "[m]ere uncorroborated hearsay or rumor does not constitute substantial evidence." *Consol. Edison Co. v. Nat'l Labor Relations Bd.*, 305 U.S. 197, 230 (1938). In this case, the Female UH Student never appeared at the hearing. While, as noted, hearsay can be admissible at such hearings, it is improper for a hearing to rely *solely* on hearsay evidence; "the opportunity to confront and cross-examine witnesses is essential when the information supplied by those witnesses is the reason for the" adverse actions. *Edgecomb v. Hous. Auth. of Vernon*, 824 F. Supp. 312, 315-16 (D. Conn.1993) (citing *Goldberg*, supra, 397 U.S. at 269-70).

Likewise, courts have held that the right to unlimited cross-examination has not been deemed an essential requirement of due process in school disciplinary cases. *See Gorman v. University of Rhode Island*, 837 F.2d 7, 16 (1st Cir. R.I. 1988), *citing Winnick v. Manning*, 460 F.2d 545, 549 (2d Cir. 1972); *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150, 159 (5th Cir. 1961). However, while school disciplinary proceedings are less formal than judicial proceedings, the opportunity to confront and cross-examine witnesses is essential when the information supplied by those witnesses is the reason for the imposition of discipline. The Second Circuit has noted, for example, that school disciplinary proceedings could require cross examination if the case "had resolved itself into a problem of credibility." *Winnick v. Manning*, 460 F.2d 545, 550 (2d Cir. 1972) (noting that in those circumstances "cross-examination of witnesses might have been essential to a fair hearing."), *citing* Wright, *The Constitution on the Campus*, 22 Vand.L.Rev. 1027, 1076 (1969). In recent cases, courts have relied on the fact that students were permitted at least a minimal right of cross-examination to determine that there was not constitutional violation. *See e.g. Johnson v. Temple Univ.*, E.D. Pa No. NO. 12-515, 2013 U.S. Dist. LEXIS 134640 (Sept. 19, 2013) (rejecting due process claim because plaintiff was "able to functionally cross-examine witnesses by presenting questions to Greenstein to be asked to the witness).

This case presents a different set of facts because of the exclusive reliance on hearsay evidence. In this case, The Female UH Student never provided any testimony. This is significant because her out of court statement never stated: that she was sexually assaulted; that she did not consent to sexual activity to McConnell; or that any of Plummer actions created a hostile environment. Instead, UH relied upon an interpretation of photographs and videos by a person who was not even present when the video or pictures were taken. As a result, the decision to expel Plummer and McConnell was based upon evidence that, because of its hearsay character, was provided by witnesses who could not be cross-examined *at all about the essential facts of the case.*

Compare Gorman (noting that there is no right to "unlimited" cross examination, but not suggesting that there is no right").

2. Title IX

Plummer and McConnell assert a claim against UH based on Title IX, the federal statute designed to prevent sexual discrimination in educational institutions receiving federal funding.1 20 U.S.C. § 1681. A Title IX claim in this circumstance may be premised on two distinct theories of liability: erroneous outcome; and deliberate indifference. *See Wells v. Xavier Univ.*, 2014 U.S. Dist. LEXIS 31936 (S.D. Ohio, Mar. 11, 2014).

To assert a claim based on an erroneous outcome theory Plummer and McConnell would need to show that the hearing was flawed due to McConnell's gender. *Yusuf v. Vassar College*, 35 F.3d 709, 715 (2d Cir. 1994). In this case, the evidence will show that UH rushed to judgment, ignored the investigation by the Police and the Prosecutors, and, instead, conducted a flawed and biased investigation. At the hearing, Defendant Baker wrongfully attempted to steer the panel towards a pre-determined result.

The "deliberate indifference" standard is applied where a plaintiff seeks to hold an institution liable for sexual harassment and requires the plaintiff to demonstrate that an official of the institution who had authority to institute corrective measures had actual notice of, and was deliberately indifferent to, the misconduct. *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 277 (1998). In this case, Baker and Walker both had notice that misconduct was occurring. The gender bias in this matter takes two forms: selective enforcement and overly aggressive enforcement.

The selective enforcement in this case is obvious: both McConnell and the Female UH Student were drinking heavily and both engaged in sexual activity with a person who was extremely intoxicated. In addition, UH had video evidence (the Elevator Video) that the Female UH Student

made unwanted sexual advances towards Plummer. Yet, only McConnell, the male, and his girlfriend, were subject to enforcement proceedings by UH.[8]

The overly aggressive enforcement claim is more subtle but, perhaps, even stronger. One of the biggest flaws in the proceedings is the timing. The Department of Education has suggested that, in order to comply with Title IX, investigations should generally be completed with 60 days. (April 4, 2011 Guidance.) The investigations and proceedings in this matter lasted almost three years. This delay can be explained easily: UH kept the case open and pursued this matter despite a lack of evidence out of a desire to hold male students "accountable." They sought to make McConnell an example to show the Department of Education that UH is "tough" on allegations of sexual assault.[9]

C. Irreparable Harm

McConnell and Plummer have established potential constitutional violations. "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Bery v. City of New York*, 97 F.3d 689, 693 (2d Cir. 1996), *cert. denied*, 520 U.S. 1251 (1997). Courts have similarly held that the denial of an injunction can "cause irreparable harm if the claim is based upon a violation of the plaintiff's constitutional rights." *McNeilly v. Land*, 684 F.3d 611, 620-21 (6th Cir. 2012) ("Once a probability of success on the merits was shown, irreparable harm followed . . . ."); *Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) ("[t]he existence of a continuing constitutional violation constitutes proof of an irreparable

[8] Plummer would not have been subject to enforcement except as part of an effort to build a case against McConnell.

[9] This has happened at other schools. At Ohio State, for example, a lawsuit by the former band director alleges that the band director was targeted for dismissal to impress the U.S. Department of Education as it conducted a Title IX investigation into Ohio State's handling of sexual abuse claims. Just weeks after the band director was fired, a federal settlement agreement was reached in that case and the probe was closed. *See Associated Press: Ex-Ohio band director sues, alleges discrimination*, Sept. 26, 2014 (available at: http://www.salon.com/2014/09/26/ex_ohio_band_director_sues_alleges_discrimination/). In closing the case, the Department specifically referred to Ohio State's handling of the band director investigation. *Associated Press: Feds end Ohio St. inquiry, applaud band probe*, Sept. 11, 2014 (available at http://www.cincinnati.com/story/news/education/2014/09/11/ohio-state-band-probe-inquiry-ends/15459359/).

harm, and its remedy certainly would serve the public interest."); *Campbell v. Miller*, 373 F.3d 834, 840 (7th Cir. 2004) (Williams, J., dissenting) ("[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable harm is necessary"). Accordingly, the due process violations in this case are, alone, sufficient to establish irreparable harm. *See Gordon v. Holder*, 826 F. Supp. 2d 279, 296 (D.D.C. 2011) (violation of plaintiff's procedural due process rights creates irreparable harm); *Goings v. Court Services and Offender Supervision Agency*, 786 F. Supp. 2d 48, 78-79 (D.D.C. 2011) (same).

In addition, Plummer and McConnell have affirmed in the Verified Complaint that dismissal from UH would deny them the benefits of education at their chosen school, would damage their academic and professional reputations, and may affect their ability to enroll at other institutions of higher education and to pursue a career. This, too, constitutes irreparable harm. *See Boman v. Bluestem Unified Sch. Dist. No. 205,* 2000 U.S. Dist. LEXIS 5389 (D. Kan. Jan. 28, 2000) (noting that suspension of student constitutes irreparable harm); . *Tully v. Orr*, 608 F. Supp. 1222 (E.D.N.Y. 1985) (an Air Force academy cadet who was expelled right before final exams and graduation suffered irreparable harm); *Bhandari v. Trustees of Columbia Univ. in N.Y.,* 2000 U.S. Dist. LEXIS 3720, at *15-16 (S.D.N.Y. 2000) (suspension or expulsion from an academic institution may constitute irreparable harm).

D. Harm to Third Parties and Public Interest

In constitutional cases, an inquiry into the public interest is difficult to separate from the likelihood of success on the merits because "the public interest is promoted by the robust enforcement of constitutional rights." *Am. Freedom Def. Initiative v. Suburban Mobility for Reg. Transp.*, 698 F.3d 885, 896 (6th Cir. 2012). In this case, an injunction will not cause any harm to third parties. UH remains able to enforce its rules and regulations in a manner consistent with constitutional and statutory requirements.

Moreover, an injunction is also in the public interest. This Court acts to support a broad public interest in enforcing fundamental constitutional principles. On the other hand, the failure to grant an injunction would harm the public because it would permit UH to violate the due process and Title IX rights of all current and future students on an ongoing basis while this case is resolved, which necessarily would cause substantial, irreparable harm to those students. *See G&V Lounge, Inc. v. Mich. Liquor Control Common*, 23 F.3d 1071, 1079 (6th Cir. 1994) (noting "it is always in the public interest to prevent the violation of a party's constitutional rights"); *Doe v. Lee*, U.S.D.C., D. Conn. No. NO. 3:99CV314, 2001 U.S. Dist. LEXIS 7282 (May 18, 2001) ("there is a distinct public interest in having this Court discharge its duty to protect and enforce [constitutional] rights").

E. Nominal Bond Should Be Imposed

Federal R. Civ. P. 65(C) provides that "The court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained."

UH is an educational institution. Accordingly, because money is not an issue for the Defendants and the school is not likely to suffer any potential losses if an injunction is granted, this Court should set surety in the nominal amount of $1. *See Ponce v. Socorro Indep. Sch. Dist.,* 432 F. Supp. 2d 682, 707 (W.D. Tex. 2006) (setting a nominal bond of one hundred dollars because the evidence indicates that Defendant will suffer little, if any, damage by the issuance of the preliminary injunction), rev'd on other grounds 508 F.3d 765 (5th Cir. 2007). Courts have declined to require plaintiffs to post a bond in cases involving constitutional rights, *see Ogden v. Marendt*, 264 F. Supp. 2d 785, 795 (S.D. Ind. 2003); *Wickersham v. City of Columbia*, 371 F. Supp. 2d 1061 (W.D. Mo. 2005).

CONCLUSION

Pursuant to Fed. R. Civil P. 65, this Court should, following a hearing, grant a Preliminary Injunction prohibiting UH from imposing any disciplinary sanctions against Plummer and McConnell.

Respectfully submitted,

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