

No. 19-2552

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**In the United States Court of Appeals  
for the Eighth Circuit**

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JOHN DOES 1-2; JOHN DOES 4-11,  
*Plaintiffs – Appellants,*

v.

REGENTS OF THE UNIVERSITY OF MINNESOTA;  
ERIC W. KALER; TINA MARISAM,  
*Defendants – Appellees.*

**On Appeal from the U.S. District Court for the District of Minnesota  
0:18-cv-01596-DWF, Donovan W. Frank, U.S. District Judge**

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**APPELLANTS' OPENING BRIEF ON APPEAL**

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Argument Requested

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## **SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT**

This case explores the limits of a public university's largely unfettered control of the outcome of investigations into alleged sexual assaults involving students. In September of 2016, eleven African American football players were accused of sexual misconduct by a white female who, when later questioned on the facts, asserted her right against self-incrimination. The University, apparently unsatisfied with the findings of the judicial process, prepared its own report, which systematically omitted every exculpatory fact (including the alleged victim's assertion of the Fifth Amendment) from its "investigative" report, which it later leaked to the press. Prior to any hearing, the University suspended the students from the football team, placed holds on their transcripts, meal plans, and ability to register for classes. The University President, meanwhile, made public statements suggesting the guilt of Plaintiffs and noting the leaked university report was "helpful".

The District Court granted the Respondents' motion to dismiss on the grounds that the First Amended Complaint failed to plead a violation of any federal civil rights or constitutional law and that the 11<sup>th</sup> Amendment to the United States Constitution bars the Respondent or its Administrators from any liability to the Appellants.

Since this case raises complex issues of federal and constitutional law and implicates rights of exceptional importance, the Appellants respectfully suggest that oral argument is appropriate and that at least twenty minutes should be allocated to each side.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to F.R.A.P. 26.1 and Rule 26.1A of the Local Rules of the United States Court of Appeals for the Eighth Circuit, the Appellants disclose the following corporate interests:

1. The parent companies of the corporation: Not Applicable. Appellants are individual persons.
2. Subsidiaries not wholly owned by the corporation: Not Applicable. Appellants are individual persons.
3. Any publicly held company that owns ten percent (10%) or more of the corporation: Not Applicable. Appellants are individual persons.

## TABLE OF CONTENTS

SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT .....	i
CORPORATE DISCLOSURE STATEMENT .....	ii
TABLE OF AUTHORITIES .....	v
JURISDICTIONAL STATEMENT .....	1
STATEMENT OF ISSUES .....	1
I. STATEMENT OF THE CASE .....	2
II. STANDARD OF REVIEW .....	5
III. MOST APPLICABLE LAW .....	5
Summary of the Argument .....	7
IV. ARGUMENT.....	8
a. Plaintiffs state a per se claim of retaliation. ....	8
b. Plaintiffs similarly state claims for Archaic Assumptions, Erroneous Outcome, Selective Enforcement, and Deliberate Indifference. ....	10
i. Archaic Assumptions Claim .....	10
ii. Erroneous Outcome.....	10
iii. Selective Enforcement .....	12
iv. Deliberate Indifference Claim.....	13
c. Appellants allege a plausible claim for racial discrimination and Equal Protection. ....	14
d. The accused students state a claim for due process violations .....	15

i.	Appellants’ exhaustion requirements of their administrative and judicial remedies are excused because Appellants suffered prehearing deprivations and because such an exhaustion requirement would be futile .....	15
ii.	By suspending the students, preventing them from registering for classes, preventing their free movement around campus, locking their transcripts, and publicly smearing their good names all prior to a formal hearing, the University unlawfully deprived Plaintiffs of their Fourteenth Amendment Rights to Due Process.....	17
e.	The Eleventh Amendment immunity is inapplicable pursuant to the holding of Ex Parte Young .....	20
i.	Scholarship recipients the Does 2-11 are quasi-employees of the university .....	22
ii.	The athletic department is neither the State nor an “Arm of the State” of Minnesota: It is a commercial enterprise that is not entitled to sovereign immunity under the Eleventh Amendment.....	23
f.	The enactment of the California Fair Pay to Play Act, together with the growing recognition of the objectives of the statute by several states and Congress, are additional factors to consider in refusing to impose the Eleventh Amendment immunity .....	26
V.	CONCLUSION.....	28
	CERTIFICATE OF COMPLIANCE.....	29
	VIRUS CHECK CERTIFICATION.....	30
	CERTIFICATE OF SERVICE .....	31
	ADDENDUM	

## TABLE OF AUTHORITIES

### Cases

<i>Ace Prop &amp; Cas.Co. v. Fed. Crop Ins. Corp.</i> , 440 F.3d 992 (8th Cir. 2006) .....	2, 16
<i>Barber v. C1 Truck Driver Training, LLC</i> , 656 F.3d 782 (8th Cir. 2011) .....	14
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007) .....	10, 12, 13
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963) .....	4
<i>Brenden v. Independent School District No. 742</i> , 477 F.2d 1292 (8th Cir. 1973) .....	18
<i>Brown v. J.B. Hunt Transp. Sevs., Inc.</i> , 586 F.3d 1079 (8th Cir. 2009) .....	16
<i>Doe v. Miami University</i> , 882 F.3d 579 (6th Cir. 2018) .....	1, 11
<i>Doe v. University of Cincinnati</i> , 872 F.3d 393 (6th Cir. 2017) .....	1, 12
<i>Doe v. Univ. of St. Thomas</i> , 368 F. Supp. 3d 1309 (D. Minn. 2019) .....	6
<i>Doyle v. Mount Healthy City School Dist. Bd. Of Education</i> , 429 U.S. 274 (1977) .....	24
<i>Earles v. State Bd. Of Certified Pub. Accountants of Louisiana</i> , 139 F.3d 1033 (1998) .....	24
<i>Edelman v. Jordan</i> , 415 U.S. 651 (1974) .....	24

<i>Ex Parte Young</i> , 209 U.S. 123 (1908) .....	2, 8, 21, 22
<i>Fitzpatrick v. Bitzer</i> , 427 U.S. 445 (1976) .....	22, 23
<i>Fond du Luc Band of Chippewa Indians v. Carlson</i> , 68 F.3d 253 (8th Cir. 1995) .....	2, 21
<i>Gebser v. Lago Vista Independent School Dist.</i> , 524 U.S. 274 (1998) .....	13
<i>Goss v. Lopez</i> , 419 U.S. 565 (1975) .....	19
<i>Hammer v. Osage Beach, Mo.</i> , 318 F.3d 832 (8th Cir. 2003) .....	19
<i>Hess v. Port Auth. Trans-Hudson Corp.</i> , 513 U.S. 30 (1994) .....	25
<i>Idaho v. Coeur d' Alene Tribe of Idaho</i> , 521 U.S. 261 (1997) .....	21
<i>Jackson v. Birmingham Bd. Of Education</i> , 544 U.S. 167 (2005) .....	1, 6, 7, 9
<i>Jones v. Alfred H. Mayer Co.</i> , 392 U.S. 409 (1968) .....	15
<i>Keating v. Nebraska Public Power Dist.</i> , 562 F.3d 923 (8th Cir. 2009) .....	2, 16
<i>Kroupa v. Nielsen</i> , 731 F.3d 813 (8th Cir. 2013) .....	18
<i>Maher v. Iowa State Univ.</i> , 915 F.3d 1210 (8th Cir.), <i>cert. denied</i> , 139 S. Ct. 2763 (2019) .....	6

<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976) .....	1, 18
<i>Mayfield v. Texas Dept. of Criminal Justice</i> , 529 F.3d 599 (5th Cir. 2008) .....	21
<i>McCarthy v. Madigan</i> , 503 U.S. 140 (1992) .....	2, 8, 16
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923) .....	19
<i>Pennhurst State School &amp; Hospital v. Halderman</i> , 465 U.S. 89 (1994) .....	2, 24
<i>Riley v. St. Louis County</i> , 153 F.3d 627 (8th Cir. 1998) .....	5
<i>Schmidt v. Des Moines Pub. Schs.</i> , 655 F.3d 811 (8th Cir. 2011) .....	18
<i>Treleven v. University of Minnesota</i> , 73 F.3d 816 (8th Cir. 1996) .....	2, 20, 25, 26
<i>U.S. ex. Rel. Barron v. Deloitte &amp; Touche, LLP</i> , 381 F.3d 438 (5th Cir. 2004) .....	25
<i>Verizon Md., Inc. v. Public Service Commission of Maryland</i> , 535 U.S. 635 (2002) .....	21
<i>Winskowski v. Stephen</i> , 442 F.3d 1107 (8th Cir. 2006) .....	19

## **Constitution and Statutes**

Education Amendments of 1972, § 901, 20 U.S.C.A. § 1681 .....	1, 5
Education Amendments of 1972 § 901, 20 U.S.C.A. § 1681(a) .....	6
Fair Pay to Play Act, 383 S.B. 206, California Education Code, § 67456 .....	26



28 U.S.C. § 1291 .....	1
28 U.S.C. § 1331 .....	1
28 U.S.C. § 1343(a)(4).....	1
42 U.S.C. § 1983 .....	1
42 U.S.C. § 2000e(a).....	22
Title VI of the Civil Rights Act .....	1
Title VII of the Civil Rights Act of 1964.....	22
Title IX of the Civil Rights Act .....	1
U.S. Const. Amend. XI .....	2, 4, 6, 8, 20, 21, 22, 23, 24, 27
U.S. Const. Amend. XIII .....	15
U.S. Const. Amend. XIV .....	1, 12, 17, 22, 23
<b>Rules</b>	
Fed. R. Civ. Pro. 12(b)(6) .....	5
<b>Other Authorities</b>	
<i>Hurst, Payment of Student-Athletes: Legal &amp; Practical Obstacles</i> , 7 Villanova Sports & Ent. Law Journal 55 (2000).....	27

## **JURISDICTIONAL STATEMENT**

The District Court has original jurisdiction over this case under Title VI, Title IX of the Civil Rights Act and the Fourteenth Amendment of the United States Constitution and 42 U.S.C. Section 1983 and 28 U.S.C. Sections 1331 and 1343(a)(4).

The District Court entered its final judgment on June 25, 2019. (R.35, Add. 30) The Appellants timely filed their notice of appeal on July 24, 2019. (R.3, Add. 31) This Court has jurisdiction pursuant to 28 U.S.C. Section 1291.

## **STATEMENT OF ISSUES**

1. Do Appellants' state a claim that the investigations and conduct undertaken by the Respondents in response to an unsubstantiated report of an alleged sexual assault violated Appellants' right to Due Process and Equal Protection under the 14<sup>th</sup> Amendment to the United States Constitution?

## **Apposite Statutes & Constitutional Amendments**

- U.S. Const., Amdt. 14
- 20 U.S.C. Section 1681

## **Apposite Cases**

- Matthews v. Eldridge, 424 U.S. 319 (1976)
- Jackson v. Birmingham Bd. Of Education, 544 U.S. 167 (2005)
- Doe v. Miami University, 882 F.3d 579 (6<sup>th</sup> Cir. 2018)
- Doe v. University of Cincinnati, 872 F.3d 393 (6<sup>th</sup> Cir. 2017)

2. Were Appellants required to exhaust state remedies, even if futile, before seeking relief in Federal Court?

**Apposite Cases**

- McCarthy v. Madigan, 503 U.S. 140 (1992)
- Keating v. Nebraska Public Power Dist., 562 F.3d 923 (8<sup>th</sup> Cir. 2009)
- Ace Prop & Cas.Co. v. Fed. Crop Ins. Corp., 440 F.3d 992 (8<sup>th</sup> Cir. 2006)

3. Is the University of Minnesota and all of its departments immune from civil liability in Federal Court under the 11<sup>th</sup> Amendment to the United States Constitution?

**Apposite Cases**

- Treleven v. University of Minnesota, 73 F.3d 816 (8<sup>th</sup> Cir. 1996)
- Fond du Luc Band of Chippewa Indians v. Carlson, 68 F.3d 253 (8<sup>th</sup> Cir. 1995)
- Ex Parte Young, 209 U.S. 123 (1908)
- Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1994)

**I. STATEMENT OF THE CASE**

On September 2, 2016, ten African American males (hereinafter “Appellants”) were suspended from the football team of Respondent University of Minnesota (“Respondent”) based upon the allegation of a single sexual assault allegedly committed by some members of the football team against a white female. (*Am. Compl* ¶10. R.22, A11). Additionally, Appellants were prevented from registering for classes, totally prohibited from accessing their transcripts, and some

The balance of this brief has been omitted for this sample.  
For a complete version of this brief, please contact our office.

Thank you.