

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

**KEVIN N. BASS,
Plaintiff,**

v.

**TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER, et al.,
Defendants.**

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Civil Action No. 5:25-cv-00244-H-BV

**PLAINTIFF'S OBJECTIONS TO THE FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Use of Generative Artificial Intelligence (N.D. Tex. LR 7.2(f)). Plaintiff used generative artificial intelligence as a research and drafting aid in preparing these objections. Plaintiff has reviewed the content and accepts full responsibility for it.

1. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(2), Plaintiff Kevin N. Bass respectfully submits these specific written objections to the Findings, Conclusions, and Recommendation entered July 14, 2026 (Dkt. No. 54) ("FCR"). Each numbered objection below identifies the specific finding or conclusion objected to and the place in the FCR where it appears. The contentions of fact and law, argument, and authorities supporting each objection are set forth in the contemporaneously filed Brief in Support ("Brief"), submitted pursuant to N.D. Tex. Local Rule 72.2(a), and are incorporated here by reference. Attached as Exhibit A to these Objections is a proposed Second Amended Complaint that pleads, within the Rule 8 limits this Court has enforced, every fact the FCR identified as missing. An Appendix containing the materials relied on (App. 001-007) is filed contemporaneously pursuant to LR 72.2(d) and LR 7.1(i).

OBJECTION 1: The recommendation to deny leave to amend as futile (FCR § 3.F, pp. 45-56; Recommendation, p. 56)

2. Plaintiff objects to the following findings and conclusions: (a) that "Bass has pleaded his best case," FCR at 45, and "Bass has had ample opportunity to plead his best case," FCR at 55; (b) that "Bass's proposed amendments still fail to cure the deficiencies," FCR at 46; (c) that "Bass has not shown that he can plead sufficient facts to overcome the deficiencies such that he should be permitted to amend further," FCR at 55; (d) the recommendation to deny leave to amend and to dismiss most claims with prejudice, FCR at 56; and (e) each per-claim futility determination, FCR at 46-56, to the extent it rests on the absence of facts the FCR declined to consider under FCR § 3.A, FCR at 8-10, and FCR at 44 n.6. The grounds — including that the March 27, 2026 order (Dkt. No. 42) denied leave to file the detailed pleading solely under Rule 8, that every fact the FCR identifies as missing is pleaded in Dkt. No. 32-1, and that Exhibit A cures within Rule 8 — are set forth in the Brief, Objection 1.

3. For specificity under the FCR's Right-to-Object instruction, FCR at 56, Plaintiff objects to each per-claim futility determination at FCR pp. 46-56 on the grounds stated in the Brief section addressing that claim, and additionally objects to: (a) the determination that proposed Count 7 against Gibson is futile "for the same reasons" as the procedural due process claim, FCR at 55 — Count 7 additionally pleads structural-independence facts, Ex. A ¶ 101, that the FCR did not address; (b) the determinations at FCR pp. 51-52 that the amended retaliation allegations fail, on the grounds stated in the Brief, Objections 1 and 3; and (c) the FCR's failure to analyze Plaintiff's request to add David Trotter as a defendant under Fed. R. Civ. P. 15(c)(1) (C), a request the FCR acknowledges, FCR at 46, but never resolves. See Brief, Objection 1 ¶ 10A.

OBJECTION 2: Dismissal of the Rehabilitation Act claim against TTUHSC (FCR § 3.B, pp. 11-21)

4. Plaintiff objects to the following findings and conclusions: (a) that Plaintiff was not denied participation "solely by reason of his disability" and "arguably was not excluded from the hearing," FCR at 13-14, including the application of the sole-causation requirement notwithstanding FCR at 14 n.4; (b) that Plaintiff failed to plead a failure-to-accommodate claim, FCR at 15-19; (c) that "it appears TTUHSC provided the preferred accommodation" because counsel could submit written questions, and the accompanying findings that Plaintiff "does not explain what his requested accommodation even means" and "does not contend that his attorney was prevented from helping Bass with that questioning," FCR at 16; (d) that Plaintiff's submissions did not impute knowledge to TTUHSC under *Pickett v. Texas Tech University Health Sciences Center*, 37 F.4th 1013 (5th Cir. 2022), FCR at 18-19, and that Plaintiff "pleads no facts showing he notified TTUHSC of his disability's limitations," FCR at 16-17; and (e) that Plaintiff failed to plead intentional discrimination, FCR at 19-21. The grounds are set forth in the Brief, Objection 2.

OBJECTION 3: Dismissal of the RA retaliation and interference claims — response to the sua sponte grounds (FCR § 3.D, pp. 25-29, 51-52)

5. Plaintiff objects to the following findings and conclusions: (a) that Plaintiff pleaded no causal connection between his accommodation request and adverse action, FCR at 27-28; (b) that Plaintiff "has not alleged that the lack of communication with his coach dissuaded him from filing complaints about disability discrimination," FCR at 51; and (c) the resulting recommendation to dismiss the RA retaliation and interference claims with prejudice. Because Defendants moved against these claims solely on sovereign immunity and the FCR evaluated the elements sua sponte while designating these objections as Plaintiff's notice and opportunity to respond, FCR at 27, the Brief's Objection 3 is the first briefing by any party on the elements of these claims. The grounds are set forth in the Brief, Objection 3.

OBJECTION 4: Dismissal of the procedural due process claim (FCR § 3.E, pp. 30-40, 52-54)

6. Plaintiff objects to the following findings and conclusions: (a) that the process afforded was "akin to" *Van Overdam v. Texas A&M University*, 43 F.4th 522 (5th Cir. 2022), and constitutionally sufficient, FCR at 36-37, including the finding that Plaintiff "was represented by counsel" in the sense *Van Overdam* used that phrase and that the limits on his questioning went only to "the format or . . . extensiveness that Bass preferred," FCR at 36-37; (b) that Gibson "was not the decisionmaker" and that the bias allegations fail against the presumption of integrity, FCR at 34-35, 53; (c) the absence of any analysis of the yearlong criminal trespass warning as an independent deprivation; (d) that Plaintiff "has not pleaded facts showing that additional procedural safeguards would have lessened the risk of an erroneous deprivation or that they would have altered the outcome of the hearing" and "failed to even hint that these procedures were somehow fundamentally unfair," FCR at 37; (e) the qualified-immunity holding, FCR at 38-40, and the omission of any ruling on Plaintiff's request for a Rule 7(a) reply under *Schultea v. Wood*; and (f) the adequate-notice finding, FCR at 33, to the extent it is read to reach notice of the charges' substance. The grounds are set forth in the Brief, Objection 4.

OBJECTION 5: Dismissal of the First Amendment retaliation claim (FCR pp. 42-45, 54-55)

7. Plaintiff objects to the following findings and conclusions: (a) that the protected status of Plaintiff's speech could not be evaluated "because Bass elected not to include the specific language of his post," FCR at 43, and that the proposed amendment "still fails to explain the content of his other posts," FCR at 54; (b) that retaliatory animus was not the but-for cause of the adverse actions, FCR at 44-45; (c) the qualified-immunity holding, FCR at 45; (d) the holding that the post was "unprotected speech" because members of the TTUHSC community "perceived" it as threatening, FCR at 54; and (e) the characterization of Plaintiff's public-health

speech as a second post made on November 3, 2023, FCR at 2, which underlies the findings at FCR 43 and 54 that the content of his other speech is undescribed. The grounds are set forth in the Brief, Objection 5.

OBJECTION 6: Dismissal of the stigma-plus claim (FCR pp. 41-42, 54)

8. Plaintiff objects to the finding that Plaintiff "has not shown how these communications were false," FCR at 41, and to the resulting recommendation of dismissal with prejudice. The grounds are set forth in the Brief, Objection 6.

OBJECTION 7: Dismissal of the ADA claims for lack of standing / sovereign immunity (FCR § 3.C, pp. 22-25, 50)

9. Plaintiff objects to the finding that no ongoing violation is alleged, FCR at 24-25, and preserves for review the positions that (a) the continuing refusal to provide a name-clearing hearing is an ongoing violation supporting prospective relief under *Ex parte Young*, and (b) each enrollment-verification response is a new publication rather than the residual effect of a completed act. Ex. A ¶¶ 6, 63, 75, 86. Plaintiff notes that the FCR's recommended disposition of these claims is without prejudice, FCR at 56, and respectfully requests that any adoption preserve that designation. The grounds are set forth in the Brief, Objection 7.

OBJECTION 8: The background characterization (FCR p. 1)

10. Plaintiff objects to the FCR's opening characterization that Plaintiff "apparently engaged in objectionable conduct," FCR at 1, on the ground that at the Rule 12(b)(6) stage the existence of accusations cannot be converted into a finding that the accused conduct occurred. The grounds are set forth in the Brief, Objection 8.

RELIEF REQUESTED

For the reasons stated in the accompanying Brief, Plaintiff respectfully requests that the Court:

1. Decline to adopt the recommendation to deny leave to amend (FCR § 3.F); receive Exhibit A as further evidence under 28 U.S.C. § 636(b)(1) and grant leave to file it (or grant

Plaintiff's contemporaneous renewed motion for leave); or, in the alternative, recommit the matter to the Magistrate Judge with instructions to consider Exhibit A;

2. Decline to adopt the recommended dismissal of the Rehabilitation Act claims against TTUHSC (Counts 1 and 6), as to which no immunity applies and as to which Exhibit A states plausible claims;

3. In the alternative as to the § 1983 claims, order a Rule 7(a) reply under *Schultea v. Wood* before resolving qualified immunity, rather than dismissal with prejudice;

4. In the further alternative, modify the recommended disposition so that all dismissals are without prejudice;

5. Decline to adopt the background characterization identified in Objection 8; and

6. Grant such other relief as is just.

Dated: July 28, 2026.

Respectfully submitted,

/s/ Kevin N. Bass

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CERTIFICATE OF SERVICE

I certify that on July 28, 2026, I served these Objections, the Brief in Support, Exhibit A, and the accompanying Appendix on counsel for Defendants of record via the Court's ECF system.

/s/ Kevin N. Bass