

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

RAJIN PATEL,

Plaintiff,

v.

TEXAS TECH UNIVERSITY; DUANE JONES, individually and in his official capacity as adjunct professor; WILLIAM PASEWARK, individually and in his official capacity as TTU Rawls College of Business Associate Dean of Graduate Programs and Research; ROBERT RICKETTS, individually and in his official capacity as Area Coordinator in Accounting; and BRITTANY TODD, individually and in her official capacity as Associate Director of the Office of Student Conduct;

Defendants.

Civil Action No.: 5:17-CV-174-C

**PLAINTIFF'S BRIEF IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION
TO STAY FURTHER PROCEEDINGS PENDING APPEAL**

TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
I. INTRODUCTION.....	1
II. PROCEDURAL BACKGROUND.....	1
III. LEGAL STANDARD.....	2
IV. LEGAL ANALYSIS.....	3
A. A Discretionary Stay is Not Warranted Because Mr. Patel’s Claims Against the Individual Defendants Will Be Tried Regardless of The Outcome of Defendants’ Appeal.....	3
B. A Balance of The Equities Does Not Merit The Extraordinary Relief of Staying Further Proceedings Pending Defendants’ Appeal.....	4
1. Defendants are unlikely to succeed on appeal as Mr. Patel has sufficiently pleaded facts which allow a court to draw the reasonable inference Defendants are liable for the misconduct alleged in their personal capacities.	5
2. Defendant TTU waived sovereign immunity as to the breach of contract claim.....	10
3. Defendants made no showing of irreparable injury in the absence of a stay	10
4. Mr. Patel will suffer substantial injury if the stay is granted.....	11
5. The public interest weighs against a stay.....	13
V. CONCLUSION.....	13
VI. CERTIFICATE OF SERVICE	14

TABLE OF AUTHORITIES

<i>Alice L. v. Dusek</i> , 492 F.3d 563(5th Cir. 2007).....	3
<i>Anderson v. Creighton</i> , 483 U.S. 635, (1987).....	6
<i>Arnold v. Garlock, Inc.</i> , 278 F.3d 426 (5th Cir. 2001).....	3
<i>Behrens v. Pelletier</i> , 516 U.S. 299 (1996).....	4
<i>Bhd. of Ry. & S.S. Clerks, Freight Handlers, Express and Station Emps. v. Nat’l Mediation Bd.</i> , 374 F.2d 269 (D.C. Cir. 1966).....	2
<i>Board of Regents of State Colleges v. Roth</i> , 408 U.S. 564, 575 (1972).....	6
<i>Brennan v. Stewart</i> , 834 F.2d 1248 (5th Cir. 1998).....	5 ,6
<i>Burnett v. Coll. Of the Mainland</i> , 994 F. Supp. 2d 823 (S.D. Tex. 2014).....	10
<i>Chrissy F. ex rel. Medley v. Miss. Dep’t of Pub. Welfare</i> , 925 F.2d 844 (5th Cir. 1991).....	4
<i>Dismukes v. Hackathorn</i> , 802 F. Supp. 1442 (N.D. Miss. 1992).....	6
<i>Dixon v. Alabama St. Bd. Of Educ.</i> , 294 F.2d 150 (1961).....	6
<i>Doe v. Middlebury College</i> , No. 1:15-CV-192-JGM, 2015 WL 5488109, at *3 (D. Vt. Sept.16, 2015).....	12
<i>Doe v. Univ. of Notre Dame</i> , No. 3:17CV298-PPS/MGG, 2017 WL 1836939, at *12 (N.D. Ind. May 8, 2017).....	12
<i>Eiland v. Wolf</i> , 764 S.W. 2d 827, 833 (Tex. App. 1989).....	7
<i>Freeman v. Gore</i> , 483 F.3d 404, 411 (5th Cir. 2007).....	6
<i>Goss v. Lopez</i> , 419 U.S. 565, 574-75 (1975).....	6
<i>Harris v. Bd. of Educ. of the City of Atlanta</i> , 105 F.3d 591, 595 (11th Cir. 1997).....	4, 11
<i>Harris v. City of Balch Springs</i> , 33 F.Supp.3d 730, 733 (N.D. Texas 2014).....	4
<i>Jacobs v. W. Feliciana Sheriff’s Dep’t</i> 228 F.3d 388, 392–93 (5th Cir. 2000).....	3, 10
<i>June Med. Servs, LLC v. Kliebert</i> , No. 3:14-00525-JWD-RLB (M.D. of La. February 16, 2016).2	
<i>King v. DePauw University</i> , No. 2:14-CV-70-WTL-DKL, 2014 WL 4197507, at *13 (S.D. Ind. Aug. 22, 2014).....	12
<i>Malley v. Briggs</i> , 475 U.S. 335, 341 (1986).....	6
<i>Mangaroo v. Nelson</i> , 864 F.2d 1202, 1208 (5th Cir. 1989).....	4
<i>Mawle v. Texas A&M Univ. Kingsville</i> , No. Civ. CC-08064, 2010 WL 1782214, at *10 (S.D. Tex. Apr. 30, 2010).....	6
<i>Pham v. Univ. of La. at Monroe</i> , 194 F. Supp. 3d 534, 544 (W.D. La. 2016).....	6

<i>Roberts v. City of Shreveport</i> , 397 F.3d 287, 290–91 (5th Cir. 2005).....	3, 11
<i>Ruiz v. Estelle</i> , 650 F. 2d 555 (5th Cir. 1981).....	3
<i>Sanders-Burns v. City of Piano</i> , 594 F.3d 366, 371 (5th Cir. 2010).....	4
<i>Schuler v. Univ. of Minn.</i> , 788 F.2d 510, 516 (8th Cir. 1986).....	7
<i>Seals v. Mississippi</i> , 998 F. Supp. 2d 509, 523 (N.D. Miss. 2014).....	6
<i>Univ. of Tex. Health Sci. Ctr. at Houston v. Babb</i> , 646 S.W. 2d 502, 506 (1982).....	10
<i>Univ. of Texas Med. Sch. v. Than</i> , 901 S.W. 2d 926, 930.....	6
<i>Verizon Md. v. Public Service Comm’n of Md</i> , 535 U.S. 635 (2002).....	5
<i>Walker v. City of Orem</i> , 451 F.3d 1139, 1152 (10th Cir. 2006).....	3, 11
<i>Werneck v. Garcia</i> , 591 F.2d 386, 392 (5th Cir. 2009).....	5
<i>Williams v. Texas Tech Univ. Health Sciences Ctr</i> , 6 F.3d 290, 294 (5th Cir. 1993).....	6
<i>Wilkenfield v. Powell</i> , 577 F. Supp. 579, 583 (W.D. Tex. 1983).....	7
<i>Woodson v. Surgitek, Inc.</i> , 57 F.3d 1406, 1417 (5th Cir. 1995).....	2
<i>Zarnow v. City of Wichita Falls, Tex.</i> , 500 F.3d 401, 406–07 (5th Cir. 2007).....	3, 11

TO THE HONORABLE JUDGE SAMUEL RAY CUMMINGS:

COMES NOW, RAJIN PATEL (“Plaintiff” or “Patel”), by and through his attorney of record, Jason J. Bach, Esq., of The Bach Law Group, PLLC, and files this brief in support of the Opposition (the “Opposition”) to Defendants’ Notice of Partial Stay and Motion to Stay Further Proceedings (the “Motion”) filed by Defendants Texas Tech University (“TTU”), and Duane Jones, William Pasewark, Robert Ricketts, and Brittany Todd (collectively, the “Individual Defendants” and, together with TTU, the “Defendants”). In support of the Opposition, Mr. Patel respectfully represents as follows:

I. INTRODUCTION

As this Court has already recognized, neither sovereign immunity nor qualified immunity applies to claims such as Plaintiff’s that seek only prospective relief against state officials in their official capacity premised on their alleged failure to comply with federal law. Regardless of the outcome of Defendants’ interlocutory appeal, Mr. Patel’s claims for injunctive relief must still be tried. Moreover, Defendants have made no showing they are likely to succeed in their appeal or that Defendants will be irreparably injured if the stay is not granted. Mr. Patel, on the other hand, will be substantially harmed if a stay is issued, and the public has an interest in speedily resolving legal disputes. In short, there is simply no good reason to delay ruling on Plaintiff’s preliminary injunction, discovery, or any additional proceedings.

II. PROCEDURAL BACKGROUND

Plaintiff filed the instant litigation seeking injunctive relief against the Defendants in their official and individual capacities. (Dkt 1). Plaintiff seeks injunctive relief for causes of action under 42 U.S.C. §1983 against Defendants in their official and individual capacities for substantive due process and equal protection violations, as well as a cause of action against TTU for breach of

contract. (Dkt 1). Defendants moved to dismiss each of the claims. (Dkt 9,10). On, September 26, 2017, this Court granted Defendants' Motion as to the § 1983 claims asserted against TTU and denied it as to the claims against Individuals Defendants' individual and official capacities and Defendant TTU's claim of immunity from the breach of contract claim. (Dkt 25). Defendants filed a Motion for Reconsideration of their Motion to Dismiss on September 27, 2017. (Dkt 27, 28). This Court denied Defendants' Motion for Reconsideration stating, "Plaintiff's Complaint is sufficiently well pleaded to survive Defendant's motion to dismiss at this early stage of the litigation." (Dkt 30). Defendants' filed a Notice of Interlocutory Appeal to the United States Court of Appeals for the Fifth Circuit appealing this Court's denial of TTU's defense of sovereign immunity as a defense to the breach of contract claim and the Individual's defendants qualified immunity defense. (Dkt 32). Defendants now seek a stay of all further proceedings of Mr. Patel's official capacity claims pending resolution of their appeal. (Dkt 34, 35).

III. LEGAL STANDARD

Federal courts have inherent authority to manage their dockets to ensure "the orderly and expedition disposition of cases." *Woodson v. Surgitek, Inc.*, 57 F.3d 1406, 1417 (5th Cir. 1995) (citation omitted). "This power is necessarily incident to the judicial power granted under Article III of the [United States] Constitution." *Id.* (citations omitted). "Generally, a stay is an extraordinary remedy, and the burden to demonstrate that stay is warranted is rather heavy, with the need to balance equities paramount." *June Med. Servs, LLC v. Kliebert*, No. 3:14-00525-JWD-RLB (M.D. of La. February 16, 2016).

"A stay pending appeal is always an extraordinary remedy . . ." *Bhd. of Ry. & S.S. Clerks, Freight Handlers, Express and Station Emps. v. Nat'l Mediation Bd.*, 374 F.2d 269, 275 (D.C. Cir. 1966). In deciding whether a stay of an order pending appeal is warranted, a court must assess (1)

whether the petitioner is likely to prevail on the merits of the appeal; (2) whether, without a stay, the petitioner will be irreparably injured; (3) whether issuance of a stay will substantially harm other parties interested in the proceeding; and (4) wherein lies the public interest. These factors are interconnected considerations that must be balanced together. *Arnold v. Garlock, Inc.*, 278 F.3d 426 (5th Cir. 2001). The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury the movant will suffer absent the stay. *Ruiz v. Estelle*, 650 F.2d 555 (5th Cir. 1981).

IV. LEGAL ANALYSIS

A. **A Discretionary Stay is Not Warranted Because Mr. Patel's Claims Against the Individual Defendants Will Be Tried Regardless of The Outcome of Defendants' Appeal.**

The Fifth Circuit Court of Appeals has recognized that “[a] notice of appeal from an interlocutory order does not produce a complete divestiture of the district court’s jurisdiction over the case; rather, it only divests the district court of jurisdiction over those aspects of the case on appeal. . . . [W]here an appeal is allowed from an interlocutory order, the district court may still proceed with matters not involved in the appeal.” *Alice L. v. Dusek*, 492 F.3d 563, 564-65 (5th Cir. 2007). “The rationale that supports qualified immunity from suit in individual capacity cases is absent in official capacity cases, and, as is well settled, the qualified immunity does not apply to official capacity claims.” *Jacobs v. W. Feliciana Sheriff's Dep't* 228 F.3d 388, 392–93 (5th Cir. 2000) (denying jurisdiction regarding official-capacity claims against sheriff, while considering defenses to personal-capacity claims); *Roberts v. City of Shreveport*, 397 F.3d 287, 290–91 (5th Cir. 2005) (same); *Zarnow v. City of Wichita Falls, Tex.*, 500 F.3d 401, 406–07 (5th Cir. 2007) (denying interlocutory-appeal jurisdiction regarding official-capacity claims because “officers in their official capacity, however, have no comparable right to be free from suit”); *Walker v. City of Orem*, 451 F.3d 1139, 1152 (10th Cir. 2006) (noting that qualified-immunity appeal “only divested

the district court of jurisdiction over claims against the individual officers,” not against official-capacity defendants); *Harris v. Bd. of Educ. of the City of Atlanta*, 105 F.3d 591, 595 (11th Cir. 1997) (considering qualified-immunity appeal by board members, while denying jurisdiction to consider same members’ defenses to official-capacity claims).

A suit for damages is different from a suit requesting injunctive relief, and qualified immunity is immunity from money claims, not from all litigation. *Behrens v. Pelletier*, 516 U.S. 299, 312 (1996). Even in the unlikely event the Individual Defendants succeed in overturning this Court’s determination qualified immunity judgment, it will have no impact on Mr. Patel’s pursuit of injunctive relief from the Individual Defendants in their official capacities. *See Sanders-Burns v. City of Piano*, 594 F.3d 366, 371 (5th Cir. 2010) (Qualified immunity is a “defense that is only relevant to individual capacity claims.”). Qualified immunity does not prevent an award of prospective injunctive relief. *See Mangaroo v. Nelson*, 864 F.2d 1202, 1208 (5th Cir. 1989); accord *Chrissy F. ex rel. Medley v. Miss. Dep’t of Pub. Welfare*, 925 F.2d 844, 849 (5th Cir. 1991) (“Neither absolute nor qualified immunity extends to suits for injunctive or declaratory relief under § 1983.”). Therefore, as qualified immunity is unavailable as a defense to these claims, they are legally distinct. *Harris v. City of Balch Springs*, 33 F.Supp.3d 730, 733 (N.D. Texas 2014).

B. A Balance of The Equities Does Not Merit The Extraordinary Relief of Staying Further Proceedings Pending Defendants’ Appeal.

Despite Defendants’ attempts to confuse the issue, they have made no showing of a strong likelihood of success on appeal or articulated what irreparable harm they will suffer if this Court rules on Mr. Patel’s preliminary injunction or other proceedings on Mr. Patel’s official capacity claims. In fact, they have not even attempted to do so. Defendants have the burden of demonstrating probable success on the merits and the possibility of irreparable injury that

outweighs the hardship to Mr. Patel and the public interest in the speedy resolution of legal disputes.

1. **Defendants are unlikely to succeed on appeal as Mr. Patel has sufficiently pleaded facts which allow a court to draw the reasonable inference Defendants are liable for the misconduct alleged in their personal capacities.**

As this Court has already determined, Mr. Patel's well-pleaded complaint alleges specific facts that Defendants' arbitrary and capricious actions violated Mr. Patel's substantive due process and equal protection rights under the Fourteenth Amendment and are depriving him of his property and liberty interest in his continuing education at TTU. Likewise, Defendant TTU's sovereign immunity is waived pursuant to Texas statute and the nature of Mr. Patel's relationship with Defendant TTU. Moreover, Mr. Patel's complaint seeks only injunctive relief from the Defendant TTU and the Individual Defendants in their official capacities.

Under well-settled Supreme Court precedent, sovereign immunity "does not ... extend to claims brought against state officials in their official capacity alleging an ongoing failure to comply with federal law and seeking only prospective relief." The Eleventh Amendment and the doctrine of *Ex Parte Young* create a relatively simple rule of state immunity: injunctive or declaratory relief against a state is permitted, whatever its *financial* side-effects, but retrospective relief in the form of a money judgment in compensation for past wrongs is barred. *Brennan v. Stewart*, 834 F.2d 1248, 1253 (5th Cir. 1998) (citing *Ex Parte Young*, 209 U.S. 123 (1908)). When determining whether Eleventh Amendment immunity is applicable, a court need only conduct a "straightforward inquiry" into whether a complaint alleges (1) an ongoing violation of federal law, and (2) seeks relief properly characterized as prospective. See *Verizon Md. v. Public Service Comm'n of Md*, 535 U.S. 635 (2002).

A right is clearly established when the contours of the right are sufficiently clear that a reasonable official would understand his actions violated that right. *Werneck v. Garcia*, 591 F.2d

386, 392 (5th Cir. 2009); *Freeman v. Gore*, 483 F.3d 404, 411 (5th Cir. 2007). While qualified immunity extends to officials who act reasonably but mistakenly, it does not extend to “the plainly incompetent or those who knowingly violate the law.” *Anderson v. Creighton*, 483 U.S. 635, 640, (1987); *Malley v. Briggs*, 475 U.S. 335, 341 (1986). As Mr. Patel set forth in his Opposition to Defendant’s motion to dismiss, Mr. Patel’s right to due process in the educational context is clearly established. See *Univ. of Texas Med. Sch. v. Than*, 901 S.W. 2d 926, 930 (citing *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 575 (1972); see also *Goss v. Lopez*, 419 U.S. 565, 574-75 (1975); *Dixon v. Alabama St. Bd. Of Educ.*, 294 F.2d 150, 157 (1961).

Substantive due process bars certain arbitrary government actions even if the implementation of those actions was fair. *Pham v. Univ. of La. at Monroe*, 194 F. Supp. 3d 534, 544 (W.D. La. 2016) (citing *Dismukes v. Hackathorn*, 802 F. Supp. 1442, 1447 (N.D. Miss. 1992). To state a substantive due process claim, a plaintiff must show the government’s deprivation of a protected interest was arbitrary or not reasonably related to a legitimate governmental interest. *Williams v. Texas Tech Univ. Health Sciences Ctr*, 6 F.3d 290, 294 (5th Cir. 1993) citing *Brennan v. Steward*, 834 F.2d 1248, 1256 (5th Cir. 1988), *Mawle v. Texas A&M Univ. Kingsville*, No. Civ. CC-08064, 2010 WL 1782214, at *10 (S.D. Tex. Apr. 30, 2010). Whether the sanction was appropriate in relation to the alleged wrong is relevant to the analysis. *Mawle*, at *9. In the academic context, a plaintiff meets the burden of stating a substantive due process claim where he pleads a protected interest in his education and the decision to strip him of that interest is “beyond the pale of reasoned academic decision making when viewed against the background of the student’s entire career at the University.” *Seals v. Mississippi*, 998 F. Supp. 2d 509, 523 (N.D. Miss. 2014). Factors showing “beyond the pale of reasoned academic decision-making” include: whether the university handled a claimant’s case differently than other students’ cases; whether

the university's decision was not careful and deliberate; and whether decision makers were "motivated by bad faith or ill will unrelated to academic performance." *Eiland v. Wolf*, 764 S.W. 2d 827, 833 (Tex. App. 1989); *Wilkenfield v. Powell*, 577 F. Supp. 579, 583 (W.D. Tex. 1983); *Schuler v. Univ. of Minn.*, 788 F.2d 510, 516 (8th Cir. 1986).

Mr. Patel clearly pleaded facts showing Defendants' failure to exercise professional judgment in concluding he plagiarized his final examination and in deciding expulsion was an appropriate sanction when viewed against his exemplary cumulative academic and conduct history at TTU. Specifically, Mr. Patel averred facts showing he was treated differently than similarly situated students accused of plagiarism. Mr. Patel stated he did not use any materials during the exam and did not cheat. Complaint ¶¶ 21, 25. There is no evidence, testimonial or documentary, showing Mr. Patel cheated on his exam. Complaint ¶ 45. In fact, Defendant Jones himself proctored the test site and found no discrepancies in the exam process the day of the exam. *Id.* ¶ 22. Nonetheless, Mr. Jones advanced charges against Mr. Patel while dropping academic misconduct allegations against two similarly accused students. *Id.* ¶ 28. Ms. C.C. declared she and other students in a different exam session were permitted open book, open notes, and the internet during the exam without penalty. *Id.*

Mr. Patel also pleaded facts giving rise to the inference Defendant Jones' decision to press misconduct charges was motivated by ill will. Specifically, Defendant Jones failed to abide by his own exam rules by permitting some students to take the test with an open book, open notes, and the internet while not permitting later test takers, including Mr. Patel, test under the same conditions. Complaint ¶¶ 28, 44. Mr. Patel was among the first students to bring the inequities of Defendant Jones' exam proctoring to the attention of the TTU administration. *Id.* ¶25. In a matter of hours after Mr. Patel discussed Defendant Jones' inequitable test administration with the

department chair, Defendant Jones decided to press charges against Mr. Patel. *Id.* ¶ 26. Defendant Jones expressed anger about the situation months later and demonstrated hostility and animus towards Mr. Patel in emails to Defendant Todd once other student witnesses came forward. *Id.* ¶¶ 43-44.

Mr. Patel pleaded facts showing the decision to press forward with allegations of cheating was anything but “careful and deliberate.” The only support for the cheating charges levied against Mr. Patel was the Turnitin software analysis of his exam, which has a history of false positives and is suspect because of how Defendant Todd input Mr. Patel’s exam into the program. Complaint ¶¶ 36-38. Defendant Todd’s investigation was neither fair or impartial. Defendant Todd opened her initial interview with Mr. Patel by making conclusory accusations he cheated. During her second meeting with Mr. Patel, Defendant Todd called Mr. Patel a liar in front of his mother and screamed promising he would be expelled for cheating. *Id.* ¶ 34. Defendant Todd gave Mr. Patel a scant two days to provide evidence for her Final Investigation Report and then refused to consider or include the exculpatory evidence he provided for consideration by his panel. *Id.* ¶¶ 34-36, 49-41. Defendant Todd then led a panel she hand-picked and “scripted,” going so far as to instruct the panelists they “must choose” between the charges levied against Mr. Patel when one panelist suggested the charges were inappropriate, and refusing to instruct the panel they could find Mr. Patel innocent. *Id.* ¶¶ 46-47. Consequently, the panel found Mr. Patel guilty in spite of their finding that there was no direct evidence of wrongdoing. *Id.* ¶¶ 45-48. Accordingly, Defendants violated Mr. Patel’s substantive due process rights because the investigation was not fair and impartial, the results of the investigation were presented to the panel without Mr. Patel’s exculpatory evidence, and the instructions to the panel ensured an arbitrary and capricious determination that Mr. Patel engaged in academic dishonesty.

Mr. Patel has also alleged sufficient facts to support his claim Defendants' decision to expel him from the Master's program, pay a penalty, and admit to plagiarism was arbitrary and capricious. Mr. Patel's academic record demonstrates he was an exceptional student throughout his studies at TTU. *Id.* ¶¶ 14. In fact, Mr. Patel held a 97.7% test average and a 96% quiz average going into the Advanced Business Law final examination. *Id.* ¶ 18. Prior to the events surrounding the final, Mr. Patel was never accused of any wrongdoing at TTU and had no record with the Office of Student Conduct. *Id.* ¶ 14. TTU's Director of the Office of Student Conduct is on record saying first time academic honesty offenders receive a deferred suspension. *Id.* ¶ 16. TTU's Handbook states "sanctions will be proportionate to the severity of the violation and to the cumulative conduct history of the student." *Id.* ¶ 15. The sanctions imposed on Mr. Patel violate TTU's stated policies and procedures as they are disproportionate to the severity of his alleged offense and his cumulative conduct history and are therefore arbitrary and capricious.

Likewise, Mr. Patel sufficiently pleaded a claim Defendants violated his rights of equal protection by treating Mr. Patel differently than similarly situated students. Two other students faced academic misconduct charges from the examination as Mr. Patel. Complaint ¶¶ 25, 79. All three were accused of using unauthorized materials during the exam and all three met with Defendant Pasewark before Defendant Jones filed any official charges. *Id.* ¶ 25. All three of them discussed Defendant Jones' inconsistent examination processes, including that some students were permitted to use outside resources and others were not. *Id.* There was no evidence of or witnesses to any wrongdoing in all three cases. *Id.* Notably, unlike the other two students, there was not even a recanted witness statement against Mr. Patel. *Id.* ¶ 28. Indeed, Defendant Jones reported no discrepancies in Mr. Patel's examination, which he proctored sitting four feet from Mr. Patel and in full view of Mr. Patel's computer screen. *Id.* ¶¶ 22, 40, 45. Nonetheless, Mr. Patel alone was

subjected to the student conduct process, convicted, and is facing long-term career altering sanctions as a result. *Id.* ¶¶ 52-53, 79-80. Thus, Mr. Patel’s complaint states a *prima facie* case Defendants violated his equal protection rights.

2. Defendant TTU waived sovereign immunity as to the breach of contract claim.

Defendant TTU’s immunity is waived pursuant to Texas Local Government Code and the nature of its contractual relationship with Mr. Patel. The Texas Local Government Code provides “a local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter.” Tex. Local Gov. Code § 271.152. Unlike an employee handbook, Texas state law recognizes a “school’s catalog constitutes a written contract between the educational institution and the patron where entrance is had under its terms.” *Univ. of Tex. Health Sci. Ctr. at Houston v. Babb*, 646 S.W. 2d 502, 506 (1982); *see also Burnett v. Coll. Of the Mainland*, 994 F. Supp. 2d 823, 829 (S.D. Tex. 2014). Accordingly, as both the state of Texas and the Fifth Circuit recognize a contract relationship between students and universities, and Defendant TTU’s immunity is waived by statute for adjudicating contract claims, Defendant TTU’s claim of sovereign immunity is unlikely to survive appeal.

3. Defendants made no showing of irreparable injury in the absence of a stay.

Defendants attempt to suggest that proceeding on the official capacity claims will somehow impinge on Defendant TTU’s sovereign immunity and the Individual Defendant’s qualified immunity by “requiring them to participate in proceedings before this Court involving the same claims, facts, discovery, and witnesses.” However, as mentioned *supra*, Mr. Patel’s official capacity claims seeking injunctive relief will be tried regardless of the outcome. *Jacobs v. W. Feliciana Sheriff’s Dep’t* 228 F.3d 388, 392–93 (5th Cir. 2000) (denying jurisdiction regarding

official-capacity claims against sheriff, while considering defenses to personal-capacity claims); *Roberts v. City of Shreveport*, 397 F.3d 287, 290–91 (5th Cir. 2005) (same); *Zarnow v. City of Wichita Falls, Tex.*, 500 F.3d 401, 406–07 (5th Cir. 2007) (denying interlocutory-appeal jurisdiction regarding official-capacity claims because “officers in their official capacity, however, have no comparable right to be free from suit”); *Walker v. City of Orem*, 451 F.3d 1139, 1152 (10th Cir. 2006) (noting that qualified-immunity appeal “only divested the district court of jurisdiction over claims against the individual officers,” not against official-capacity defendants); *Harris v. Bd. of Educ. of the City of Atlanta*, 105 F.3d 591, 595 (11th Cir. 1997) (considering qualified-immunity appeal by board members, while denying jurisdiction to consider same members’ defenses to official-capacity claims).

Granting the stay, at the very least, unnecessarily delays the resolution of Mr. Patel’s preliminary injunction. Moreover, even if the Fifth Circuit holds the Individual Defendants are entitled to qualified immunity and Defendant TTU is immune from the breach of contract claim, the Defendants fare none the worse if Mr. Patel’s preliminary injunction were decided and discovery underway or completed as to the official capacity claims by the time the appellate decision is rendered. Should the Fifth Circuit leave this Court’s decision undisturbed, this Court, if necessary, can easily make adjustments if discovery is needed on the issues of qualified immunity and the breach of contract claim.

4. Mr. Patel will suffer substantial injury if the stay is granted.

The third factor also weighs against a stay. As this Court noted in its September 26, 2017 *Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss*, Plaintiff’s Motion for Preliminary Injunction is still pending before this Court and should be addressed as soon as possible. (Dkt. 25). Absent a ruling on Mr. Patel’s preliminary injunction, Mr. Patel is faced with

Hobson's choice that he either: (a) gives a written confession admitting to something he did not do, pays a monetary penalty, takes a class and have all of it noted in his academic record so he can continue his education, or (b) refuse to be coerced into a confession and wait potentially a year or more¹ for resolution to his claims and, in the interim, cope with the effective termination of his education, resulting gap in his resume that will follow him throughout his career, and missed educational opportunities. Mr. Patel has already suffered the loss of a prestigious internship and is subject to losing additional professional and educational opportunities during the pendency of the litigation. *See Doe v. Univ. of Notre Dame*, No. 3:17CV298-PPS/MGG, 2017 WL 1836939, at *12 (N.D. Ind. May 8, 2017) (finding gap constitutes irreparable harm to a student's reputation and résumé for purposes of career prospects and possible further academic advancement because the questions raised and the explanation required are potentially damaging to the student in a manner not compensable by monetary damages or repaired by injunctive relief after a decision on the merits.); *Doe v. Middlebury College*, No. 1:15-CV-192-JGM, 2015 WL 5488109, at *3 (D. Vt. Sept. 16, 2015) (finding money damages or injunctive relief after resolution on the merits cannot compensate for student's loss of his senior year in college with his class, the delay in the completion of his degree, or the opportunity to begin his career and the required explanation for the rest of his professional life why his education either ceased or contains a gap.); *King v. DePauw University*, No. 2:14-CV-70-WTL-DKL, 2014 WL 4197507, at *13 (S.D. Ind. Aug. 22, 2014) (finding money damages and injunctive relief upon resolution of the merits because plaintiff would forever have a gap or transfer on his record that would inevitably raise questions requiring an

¹ According to the Fifth Circuit Court of Appeals website, the median length of time from the filing of the notice of appeal until a decision is 11 months. *See Practitioner's Guide to the U.S. Court of Appeals For the Fifth Circuit*, available at <http://www.ca5.uscourts.gov/clerk/guide2001.htm#GET%20A%20DECISION> (last accessed October 29, 2017).

explaining and that finding the disciplinary actions were arbitrary or in bad faith would be insufficient to fully erase the stigma of the disciplinary finding and affect plaintiff in concrete ways for years to come).

Furthermore, granting the stay will force Mr. Patel to continue to deal with the negative impact of Defendant TTU's collection action and the damage it will inflict on Mr. Patel's credit rating for months if not years. Mr. Patel's ability to obtain loans, credit, or certain employment prospects will be significantly diminished with a collections action persisting on his credit rating for a year or more.

Moreover, Mr. Patel faces the real harms that during the pendency of the appeal, memories will fade, documents will go missing, and witnesses will become unavailable. Given the depth and breadth of harm Mr. Patel faces if the stay were granted, this factor overwhelmingly weighs against staying Mr. Patel's preliminary injunction, discovery on the official capacity claims or further proceedings related to those claims.

5. The public interest weighs against a stay.

Granting a stay pending appeal could potentially delay the resolution of this case for up to a year or more. Defendants have presented no compelling reason why the public interest would be served in staying the resolution of Plaintiff's official capacity claims, particularly as Defendants will have to litigate them regardless of the outcome of their appeal. Accordingly, the public interest lies in speedily resolving this case, rather than issuing a stay.

V. CONCLUSION

Plaintiff Rajin Patel respectfully requests that this Court deny Defendant's Motion to Stay Further Proceedings in its entirety.

DATED this 31st day of October 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2017, a true and correct copy of the foregoing pleading was served upon each party to this action via the Court's electronic case filing system, as follows:

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