

Introduction

1. As a state entity, and state employees sued in their official capacities, Defendants assert sovereign immunity to suit under the Eleventh Amendment. It is understood the Defendants' have claimed sovereign and qualified immunity in their defense, which enables protection when they have knowingly violated an individual's constitutional rights. Plaintiff, Amy Pickett *Pro Se* enforces her First Amendment right, that states,

“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The Fourteenth Amendment is also an important element to the Plaintiff's case as it states, "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Plaintiff is utilizing her First Amendment and Fourteenth Amendment rights to object to Defendants' entitlement of sovereign immunity.

2. The doctrine of qualified immunity shields governmental officials "from liability for civil damages in so far as their conduct does not violate clearly established statutory or constitutional rights." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity shields federal and state officials from money damages in federal civil rights cases unless a plaintiff pleads and produces facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was "clearly established" at the time of the challenged conduct. Plaintiff's constitutional rights were violated when TTUHSC deprived her of her disability rights as a graduate student with a documented and qualified disability. When Amy Pickett requested the approved ADA accommodations per her TTUHSC Letter of Accommodations (LOA), Ms. Pickett's professors neglected to accommodate her disability

needs. This violated her constitutional rights as a student with a disability, and as a result, punitive and retaliatory measures were taken by the Defendants without warning and unjust cause and the Plaintiff was dismissed from her academic programs without merit.

The Rehabilitation Act (RA) of 1973 is under federal jurisdiction and was the first legislation to address the notion of equal access for individuals with disabilities and addressed societal barriers within education discrimination.

RA Section 504 states,

“No qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under any program or activity that either receives federal financial assistance or is conducted by any executive agency or the United States Postal Service.”

The American Disability Act (ADA) gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. Section 504 covers “a college, university, or other postsecondary institution, or a public system of higher education” as well as other programs receiving federal funds. Title II of the American with Disabilities Act (ADA) states,

“No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

3. Defendants Motion to Stay Discovery is unjust in this discrimination suit, as this delays the flow of the case to trial. Plaintiff believes the Motion should be overruled and discovery should move forward under the rules. Defendants are attempting to circumvent accountability for their actions and delay progress of the case and to deny justice to the Plaintiff. Plaintiff objects to the Defendants’ entitlement of sovereign immunity by enforcing her First Amendment rights of freedom of speech, religion, and the Fourth Amendment.

4. The Defendants' argument that they would suffer "annoyance, embarrassment, oppression or undue burden or expense" is unjust and offensive to an individual with a disability representing herself in a discrimination case resulting from the Defendants actions of violating the Plaintiff's constitutional rights.

5. Plaintiff respectfully ask the Federal Court to authorize its judicial power by denying Defendants' sovereign and qualified immunity regarding question of violation of constitutional rights and proceed with court proceedings.

6. Response addressed in reference 2.

7. Plaintiff respectfully ask the Federal Court to authorize its judicial power, deny Defendants' immunity regarding question of violation of constitutional rights, and proceed with court proceedings.

8. Plaintiff opposes the Defendant's statement. A stay of discovery pending review of immunity is not appropriate nor warranted at this time as evidence will prove violation of constitutional rights were 'clearly established'. Even though qualified immunity is a judicial doctrine invented by the Supreme Court to shield public officials from liability, it is open to interpretation by the courts depending on the Plaintiff's claims and evidence. Qualified immunity can be overruled if a court determines those violation of constitutional rights were "clearly established".

9. As a result of the Defendants' actions breaching the constitutional rights of a TTUHSC student with a documented disability, discovery has merit and is warranted in this discrimination case for Defendants to be held accountable in their violation of the law.

10. The burden of the Defendants is a result of their actions in this matter. Public interest is addressed in reference 13.

11. Response addressed in reference 14.

12. Error in Defendants statement, Berry is unknown. Plaintiff requests Court to move case forward with normal court proceedings and discovery at this time.

13. Respectfully, the Court would do an injustice and disservice to the interests of the public to not move this civil rights case forward to trial. Taxpayers have a right to know how public officials conduct business, including how they accommodate students with disability needs. The general public has a right to know that their tax dollars are going to the Defendants who violated the constitutional rights of an accomplished TTUHSC student and how the Defendants defend their unlawful actions by claiming immunity to excuse ADA discrimination and retaliation.

14. When there is a plausible question of ‘clear established’ violation of Plaintiff’s constitutional rights, the Court has the authority to move forward with case proceedings. Even though the Defendants have grounds to use immunity as a defense, the Court is well within its power to allow Plaintiff the opportunity to plead her case and move forward with court proceedings.

Conclusion

15. Plaintiff respectfully ask the Federal Court to authorize its judicial power and deny the Defendants’ immunity regarding ‘clear established’ question of violation of constitutional rights and proceed with court proceedings.

16. There are advantages with moving court proceedings forward with discovery at this time, as this permits an opportunity for ‘clearly established’ questions of Plaintiff’s

constitutional rights to be evaluated and supported by evidence in this case. The Defendants state they have serious disadvantages with proceeding with the case. Plaintiff argues because of the Defendants actions and violations of her constitutional rights as an ADA disability graduate nursing student, she has suffered greatly due to the actions of the Defendants. As a result of the Defendants actions, Plaintiff is unable to carry out DNP and NP nursing leadership to help patients and healthcare during this pandemic. Defendants' statement referring to themselves as 'justly entitled' is a controversial statement when violation of constitutional rights is currently in question of a student with a disability.

Plaintiff, Amy Pickett *Pro Se* respectfully request the Court to deny Defendants' Motion to Stay Discovery as well as deny Defendants' Motions to Dismiss this case.

Respectfully submitted,

DATED this 2nd day of April 2021.

By /s/ Amy Pickett
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PLAINTIFF, PRO SE

CERTIFICATE OF CONFERENCE

I certify that on March 29th, 2021, I conferred with Defendants' Attorney, Mr. Scanlon, regarding Plaintiff's opposition of Motion to Stay Discovery via email (cory.scanlon@oag.texas.gov).

By /s/ Amy Pickett
AMY PICKETT
PLAINTIFF, PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served electronically through the Court's Electronic Case File Notification on this 2nd day of April 2021, to:

CORY A. SCANLON

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