STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 2, 2015)

WILLIAM FELKNER	:	
	:	
v.	:	**C.A. No. PC 2007-6702**
	:	
RHODE ISLAND COLLEGE; JOHN NAZARIAN, Individually and in his Official Capacity as President of Rhode Island College; SCOTT KANE, Individually and in his Official Capacity as Dean of Students at Rhode Island College; CAROL BENNETT-SPEIGHT, Individually and in her Official Capacity as Dean of the School of Social Work; JAMES RYCZEK, Individually; ROBERTA PEARLMUTTER, Individually and in her Official Capacity as Professor of Social Work; and S. SCOTT MUELLER, Individually and in his Official Capacity as Assistant Professor of Social Work	:	

DECISION

VOGEL, J. This matter is before the Court on Defendants' Motion for Summary Judgment and on Plaintiff's objection thereto. Plaintiff William Felkner (Felkner or Plaintiff) has sued Rhode Island College (RIC); John Nazarian, individually and in his official capacity as President of RIC (President Nazarian); Carol Bennett-Speight, individually and in her official capacity as Dean of the School of Social Work (Dean Bennett-Speight); James Ryczek, individually (Ryczek); Roberta Pearlmutter, individually and in her official capacity as Professor of Social Work (Professor Pearlmutter); S. Scott Mueller, individually and in his official capacity as Assistant Professor of Social Work (Mueller); and Scott Kane, individually and in his official capacity as Dean of

Students at RIC.[1] All of the Defendants argue that there exists no genuine issue as to a material fact and that they are entitled to judgment as a matter of law.

In his seven-count First Amended Complaint, Felkner alleges Defendants knowingly and intentionally violated, as well as engaged in a conspiracy to violate, his constitutional rights to free speech, equal protection, and due process through political viewpoint discrimination and suppressive academic conduct. Felkner seeks recovery "[p]ursuant to 42 U.S.C. §§ 1983 and 1988, as well as the Rhode Island Civil Rights Act of 1990 [RICRA] . . ." on all counts other than the conspiracy charge, which he brings pursuant to 42 U.S.C. § 1985(3). (First Am. Compl. ¶¶ 115, 121, 127, 133, 139, 150, and 152.) He seeks monetary damages and equitable relief.[2] Id. at 34. Defendants deny violating Felkner's constitutional rights, but maintain that even if they had done so, their actions are protected from suit pursuant to the doctrine of qualified immunity.

In his objection to the Motion for Summary Judgment, Felkner maintains that the Court should not entertain Defendants' Motion because they previously sought summary judgment on the same grounds, and another justice of this Court denied that motion. He also contends that this justice had an opportunity in November 2014 to rule in favor of Defendants on the qualified immunity doctrine, but declined to do so. He argues that the Motion is barred by the doctrine of law of the case, to wit, that it is the law of this case that Defendants are not entitled to summary judgment on the doctrine of qualified immunity.

In the alternative, Felkner asserts that even if considered on its merits, the Court should deny Defendants' Motion for Summary Judgment. Felkner notes that he has brought federal

[1] Pursuant to Super. R. Civ. P. 41(a)(2), the Court dismissed the claim against Scott Kane in his individual capacity. See Order, dated Nov. 7, 2008.

[2] With respect to his claims for equitable relief, Felkner seeks an order to expunge the Academics Standing Committee (ASC) hearing from his academic file and an order to extend the time in which to complete his master's program. (First Am. Compl. at 34.) At oral argument, Felkner, through counsel, conceded that he no longer is seeking the Court to invalidate RIC's speech code.

claims against Defendants and that those claims cannot be resolved by summary judgment. Felkner further points to voluminous discovery responses in asserting that the case is fact driven and that there exists genuine issues as to material facts. Finally, Felkner contends that should the Court find for Defendants based upon their qualified immunity defense, his equitable claims nevertheless would survive the Motion.

For the reasons set forth herein, the Court finds that the doctrine of the law of the case does not bar the Court from considering Defendants' Motion. The Court further finds that there exist no genuine issues of material fact to demonstrate that Defendants violated Felkner's constitutional rights, state and federal; consequently, Defendants are entitled to judgment as a matter of law on his 42 U.S.C. § 1983 and RICRA claims. As Felkner has failed to demonstrate any constitutional violations, the Court also finds that he is not entitled to relief on his equitable claims. In addition, the Court finds that Felkner failed to state a claim with respect to the conspiracy charge.

I

Facts and Travel

Felkner was accepted into the graduate program in RIC's School of Social Work (SSW)[3] and began classes in October 2004. By May 2006, Felkner had completed all of his graduation requirements except one in his field of concentration, Social Work Organizing Policy (SWOP). He had not submitted his integrative project, a requirement for the second part of the two-part curriculum. Master's candidates must complete their studies in four years. As the four-year time

[3] In support of, and in objection to, the instant Motion for Summary Judgment, the parties have relied upon the exhibits that they previously filed with this Court. Defendants' exhibits are attached to the "Memorandum in Support of Defendants' Motion for Summary Judgment," filed July 2, 2008, and shall be referred to as "Defs.' Ex." Felkner's exhibits consist of "Plaintiff's Appendix of Exhibits in Support of his Objection to Defendants' Motion for Protective Order" and "Plaintiff's Supplemental Appendix of Exhibits in Support of his Objection to Defendants' Motion for Protective Order." Said exhibits shall be referred to as "Pl.'s Ex."

limit approached, Felkner sought an extension to finish his degree requirements. Dean Bennett-Speight granted the request which would have given Felkner until May 11, 2009 to complete his studies. However, Dean Bennett-Speight expressly conditioned the extension on Felkner's compliance with set timelines.

For some unexplained reason, Felkner failed to comply with those conditions and timelines, even the one which merely required him to provide Dean Bennett-Speight with written acceptance of the terms of her offer by January 31, 2008. Felkner then sought a further extension to June 30, 2009. Noting his silence on the initial conditional offer, Dean Bennett-Speight rejected the second request and reminded Felkner of the conditions attached to the previous extension offer, one of which he already had breached by failing to accept the conditions by January 31, 2008. She gave him another opportunity to provide the acceptance if he did so by April 4, 2008. However, she did not extend the other timelines and further reminded him that he must submit his problem statement and methodology by April 15, 2008. She informed him that the school would view noncompliance with those conditions as a rejection of the extension offer to May 11, 2009. When Felkner failed to respond—either by accepting the extension offer or by submitting his problem statement and methodology—Professor Pearlmutter informed him that he was no longer considered enrolled in the graduate school.

Felkner's departure from the program was the culmination of an enrollment that was marked by conflict and disagreement with faculty and administration over a variety of issues, some of which triggered additional controversy.

Felkner protested his professor's selection of a movie to present to the class. (Defs.' Ex. E.) In response to that disagreement, Felkner created a website—http://www.collegebias.com—on which he regularly posted comments in order "to catalog his experiences of liberal bias at the

College." (Verified Compl. ¶ 21.) Felkner "also criticized the College's bias and discriminatory actions in other media including, radio talk shows, a TV news show, online magazines, and newspapers." Id. at ¶ 22.

On another occasion, his Policy and Organizing (part one) class professor, Ryczek, assigned a project for students to form groups to debate a social welfare issue and then to write a paper in support of the position advanced by the group. Id. at ¶¶ 34-35. After choosing his topic, Felkner requested permission to switch positions on the issue, and Ryczek rejected his request. Id. at ¶¶ 37-42. Felkner disregarded the professor's ruling and completed the position paper as though the request had been granted. Id. at ¶ 44. When Felkner received a failing grade on the paper, he rejected Ryczek's offer to resubmit the assignment for an improved mark. Id. at ¶¶ 47, 50. Instead, Felkner appealed the grade through the administrative channels at the school, which appeal was repeatedly denied. Id. at ¶¶ 52-57. Nonetheless, Ryczek gave Felkner a "C+" as his overall coursework grade. Id. at ¶ 51.

The hearing on the unsuccessful grade appeal led to further controversy. Felkner disputed Ryczek's version of events and informed the school that he would begin recording his conversations with college professors. Id. at ¶ 52.

Ryczek taught as an adjunct professor and had other commitments, including his enrollment in a Ph.D. program at Northeastern University. (Pl.'s Ex. 16.) Before part two of the Policy and Organizing class began, he advised RIC that he would be unable to teach the second session of the program because dealing with Felkner required too much additional time and conflicted with his other obligations. Id. Ryczek acquiesced and taught part two of the course when the school agreed to transfer Felkner into another class within the same program taught by Professor Pearlmutter, who was a full Professor of Social Work. (Verified Compl. ¶¶ 11, 60.)

Felkner's relationship with Professor Pearlmutter was not without its own set of problems. While a student in Ryczek's class, Felkner claimed to have found flaws in a study Professor Pearlmutter published, and he articulated his criticism to her by e-mail. Id. at ¶ 45. Professor Pearlmutter, who had never even met Felkner, was very disturbed by the rudeness and disrespectful nature of his e-mails and took particular offense to his inappropriate suggestion that she "walk down to the psychology department and take a refresher course[.]" (Pl.'s Exs. 12 and 25.) Professor Pearlmutter complained to the Chair of the Master of Social Work (MSW) program, Dr. Lenore Olsen, who responded by notifying Felkner that his comments were not consistent with the National Association of Social Workers Code of Ethics (NASW Code of Ethics). (Pl.'s Ex. 12.)

Things did not improve after Felkner began attending part two of the Policy and Organizing class. The class dealt with policies affecting low income and other vulnerable populations, and the syllabus required students to complete specific assignments. (Pl.'s Ex. 23.) One of the assignments involved having students testify and/or lobby for the passage of pertinent legislation, regulations, policies, etc. Id. at 7.

Felkner sought to modify the assignment. Rather than working with his fellow students on a project that impacted the target population, he wanted to join with students from other schools to lobby RIC to adopt an Academic Bill of Rights (ABOR). (Verified Compl. ¶ 66.) When Professor Pearlmutter rejected this proposal, he asked to lobby in favor of the Governor's welfare reform plan. Id. at ¶¶ 67, 68. Professor Pearlmutter denied the request, voicing the opinion that the Governor's plan would "tear apart" the achievements of the federal Temporary Assistance for Needy Families welfare program. Id. at ¶ 68.

Another assignment required students to form groups to plan and implement a project approved by the professor. (Pl.'s Ex. 23 at 9.) Felkner encountered difficulty recruiting any fellow students to work on his chosen project. (Verified Compl. ¶ 70.) He wanted to advocate against legislation that would increase spending on education and training for families in need. (Verified Compl. ¶¶ 37, 69.) After initially requiring Felkner to work with his classmates, Professor Pearlmutter relented and permitted Felkner to form a group consisting of non-SSW members to advocate in class for the defeat of the bill and to present the project to the class. Id. at ¶¶ 69, 70.

Throughout this period, Felkner continued to publicize his disagreements with RIC on his website. Id. at ¶¶ 59, 72, 82. It is significant to note that at the beginning of the course, RIC had provided students with a course description which stressed: "Maintenance of complete confidentiality regarding issues that may be raised in class. Discussions that occur here stay here and are not meant to be conveyed into public spaces." (Pl.'s Ex. 23 at 3.) However, much of Felkner's website commentary was based upon recordings that he had made during class which triggered confidentiality concerns among his classmates. (Pl.'s Ex. 64.) When Professor Pearlmutter allowed students to express these concerns during an in-class discussion, Felkner recorded the discussion and posted details about the incident on his website. (Verified Compl. ¶ 73.)

Professor Pearlmutter then filed an ethics charge with ASC against Felkner, asserting that he had violated the NASW Code of Ethics with respect to those sections governing respect and confidentiality between colleagues and the prohibition on deception. See Pl.'s Ex. 25. After notice, ASC conducted a hearing and found that Felkner had violated the ethics code when he "deceptively audio-taped a conversation with Dr. Pearlmutter . . . ." (Pl.'s Ex. 36 at 1.) The ASC

made certain recommendations to Dr. Olsen, one of which was that as a condition of remaining in the program Felkner agree in writing to "refrain from any deceptive audio or video copying of conversations with social work colleagues and refrain from any audio or video copying without express permission from them." Id. Felkner took no appeal from the recommendation in spite of receiving notice of his right to do so.

Felkner's final degree requirements involved both an integrative project and a field placement requirement as part of his SWOP concentration. (Defs.' Ex. DD.) Felkner sought to satisfy both aspects of this requirement by working as an intern in the Governor's office on his social welfare reform legislation. (Verified Compl. ¶¶ 87, 96.) Both Ryczek, who was the Director of Field Placements, and Dr. Olsen rejected the proposal as failing to implement all of the program's mandatory objectives, several of which involved working toward progressive social change. Id. at ¶¶ 89-90; Pl.'s Ex. 38. Felkner complained to Dean Bennett-Speight, and she transferred Felkner from Ryczek to Mueller, who took over as his field placement supervisor. (Verified Compl. ¶ 93.)

Although Mueller at first refused to give Felkner permission to work on welfare reform for either of his projects, in October 2005, the school relented as it related to his field placement proposal, but not his integrative project. Id. at ¶¶ 94-96. Having been denied permission to work on welfare reform for the integrative project, Felkner chose an alternative topic of healthcare reform, and that topic was approved. Id. at ¶ 97. However, after Felkner accepted the alternative healthcare reform project, he expressed a concern that the topic did "not advanc[e] his professional goals . . . ." Id. at ¶ 99. On November 30, 2005, he renewed his effort to work on welfare reform, and ultimately, in September 2006, he was permitted to change topics from healthcare reform to welfare reform. Id. at ¶¶ 99 and 101.

In December 2007, before the regular four-year time limit for matriculation had run, and well before he asked for and received his extension offer from Dean Bennett-Speight, Felkner filed his Verified Complaint in this case. (Verified Compl.) On October 28, 2008, another justice of this Court denied Defendants' first motion for summary judgment which included a contention that the suit was barred by the doctrine of qualified immunity. On December 3, 2013, Felkner amended his complaint to include a claim of conspiracy. (First Am. Compl.)

The case was referred to this justice for handling after Defendants filed a motion to strike Felkner's claim for punitive damages. After conducting a so-called Palmisano hearing, the Court issued a bench decision in November 2014, granting the motion to strike. See Palmisano v. Toth, 624 A.2d 314 (R.I. 1993). In support of that motion, Defendants argued, in part, that the doctrine of qualified immunity precluded Felkner from obtaining punitive damages. However, the Court specifically declined to rule on that issue, and this judge articulated that point in her bench decision in clear and unambiguous language. The Court based its bench decision on the absence of evidence of willfulness, recklessness, or wickedness, tantamount to criminality which for the good of society and warning to the Defendants ought to be punished. See Palmisano, 624 A.2d at 318.

After hearing on the present Motion for Summary Judgment and Felkner's objection thereto, and in consideration thereof, the Court grants Defendants' Motion for the reasons set forth in this Decision. The Court will provide additional facts, as necessary, in the Analysis portion of the Decision.

II

Standard of Review

The standard by which a motion justice considers a motion for summary judgment is clear. Briefly, summary judgment is appropriate only when, after reviewing the admissible evidence in the light most favorable to the nonmoving party, "no genuine issue of material fact is evident from 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' and the motion justice finds that the moving party is entitled to prevail as a matter of law." Smiler v. Napolitano, 911 A.2d 1035, 1038 (R.I. 2006) (quoting Super. R. Civ. P. 56(c)). When considering such a motion, "the court may not pass on the weight or credibility of evidence, but must consider affidavits and pleadings in the light most favorable to the party opposing the motion." Westinghouse Broad. Co., Inc. v. Dial Media, Inc., 122 R.I. 571, 579, 410 A.2d 986, 990 (1980) (internal citations omitted).

Mindful that summary judgment is an extreme remedy, the Court also is cognizant of the fact that the nonmoving party has the burden of "produc[ing] competent evidence that 'prove[s] the existence of a disputed issue of material fact[.]'" Sullo v. Greenberg, 68 A.3d 404, 407 (R.I. 2013) (quoting Hill v. Nat'l Grid, 11 A.3d 110, 113 (R.I. 2011)). This means that "the issue of fact must be 'genuine.'" Matsushita Elec. Indus. Co., v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (quoting Fed. R. Civ. P. 56(c), (e)). See Hennessy v. City of Melrose, 194 F.3d 237, 249 (1st Cir. 1999) (stating "factual disputes, in and of themselves, do not forestall summary judgment; to accomplish that end, the disputes must involve material facts") (emphasis in original). If a court concludes that "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co., 475 U.S. at 587. In addition, "a '[c]omplete failure of proof concerning an essential element of the nonmoving

party's case necessarily renders all other facts immaterial.'" Beauregard v. Gouin, 66 A.3d 489, 494 (R.I. 2013) (quoting Lavoie v. N.E. Knitting, Inc., 918 A.2d 225, 228 (R.I. 2007)).

III

Analysis

Felkner argues that Defendants' Motion is barred by the previous ruling denying summary judgment which Felkner maintains is the law of the case. In the alternative, Felkner asserts that Defendants' Motion should be denied because there exist genuine issues as to material facts. Although he specifies the federal claims as providing sufficient grounds for denying the Motion, the Court has considered all of the claims set forth in Felkner's Complaint, both federal and state, in determining whether a genuine issue of material fact exists. Felkner contends that the case is fact driven and that the voluminous record contains genuine issues as to material facts that would preclude the granting of the Motion.

A

Law of the Case

Felkner argues that the doctrine of law of the case precludes the Court from considering the Defendants' Motion for Summary Judgment. He bases this assertion on two separate Court rulings: one made in 2008 and another issued in a bench decision by this justice in November 2014.

The Court first addresses Felkner's law of the case contention as it relates to the November 2014 bench decision on the punitive damages issue. This argument—that the Court's bench decision precludes consideration of the instant Motion—is flawed and inconsistent with the clear and unambiguous language of the bench decision. In its 2014 Decision on the motion to strike punitive damages, this Court specifically stated that the Decision was not based on the doctrine of

qualified immunity. Moreover, this Court did not opine on the merits of that defense or on whether it was barred by the 2008 ruling of the motion justice denying Defendants' motion for summary judgment.

The judicial task requires the Court to concentrate on those questions that must be determined in order to resolve a specific case. It is entirely appropriate for a judge to decline to pass on legal issues that are not pertinent to his or her decision. See Planned Env'ts Mgmt. Corp. v. Robert, 966 A.2d 117, 123 n.11 (R.I. 2009) ('"The judicial task, properly understood, should concentrate on those questions that must be decided in order to resolve a specific case.'") (quoting United States v. Gertner, 65 F.3d 963, 973 (1st Cir. 1995)). Having decided the punitive damages issue on other grounds, the Court had no reason to opine on whether the law of the case doctrine impacted Defendants' claim of qualified immunity. Accordingly, the Court categorically rejects Felkner's argument that the Court's 2014 bench decision precludes it from reviewing the instant Motion based upon the law of the case doctrine.

It is clear that if the doctrine of law of the case applies at all, it would be based upon the 2008 ruling denying summary judgment on the issue of qualified immunity. It is well settled that "'[t]he purpose of the law of the case doctrine is to ensure the stability of decisions and avoid[ ] unseemly contests between judges that could result in a loss of public confidence in the judiciary.'" Lynch v. Spirit Rent-A Car, Inc., 965 A.2d 417, 424-25 (R.I. 2009) (quoting Chavers v. Fleet Bank (RI), N.A., 844 A.2d 666, 678 (R.I. 2004)) (internal quotations omitted). For the law of the case doctrine to apply, there must exist an interlocutory ruling that has binding effect. See McNulty v. Chip, 116 A.3d 173, 179 n.6 (R.I. 2015) (reiterating that "'after a judge has decided an interlocutory matter in a pending suit, a second judge, confronted at a later stage of the suit with the same question in the identical manner, should refrain from disturbing the first ruling'")

(emphasis added) (quoting Chavers, 844 A.2d at 677); see also Lynch, 965 A.2d at 424 (same); Ferguson v. Marshall Contractors, Inc., 745 A.2d 147, 151 (R.I. 2000) (same). This doctrine is "particularly applicable when the rulings under consideration pertain to successive motions for summary judgment . . . ." Ferguson, 745 A.2d at 151.

However, the law of the case doctrine "does not have the finality of the doctrine of res adjudicata . . . ." R.I. Hosp. Trust Nat'l Bank v. Nat'l Health Found., 119 R.I. 823, 829, 384 A.2d 301, 305 (1978). Rather, it "is more in the nature of a rule of policy and convenience and 'does not apply when the second motion is based on an expanded record[.]'" Goldberg v. Whitehead, 713 A.2d 204, 206 (R.I. 1998) (quoting Goodman v. Turner, 512 A.2d 861, 864 (R.I. 1986)); see also Ferguson, 745 A.2d at 152 ("The law-of-the-case doctrine is not applicable when a second motion is based upon an expanded record.") As a result, said doctrine should be treated as '"a flexible rule that may be disregarded when a subsequent ruling can be based on an expanded record.'" Berman v. Sitrin, 101 A.3d 1251, 1262 (R.I. 2014) (quoting Lynch, 965 A.2d at 424). This is true even in cases where there are successive motions for summary judgment. See Lynch, 965 A.2d at 425 (affirming grant of summary judgment "on an expanded record, replete with new evidence"); see also Kirby v. P. R. Mallory & Co., 489 F.2d 904, 913 (7th Cir. 1973) ("If good reason is shown why a prior denial of a motion for summary judgment is no longer applicable or should be departed from, the trial court may, in the exercise of sound discretionary power, consider a renewed motion for summary judgment, particularly when the renewed motion is based on an expanded record."). Where there is evidence of an expanded record, it always "'is within the trial justice's sound discretion whether to consider the issue.'" Ferguson, 745 A.2d at 152 (quoting Goodman, 512 A.2d at 864). Thus, under both state and federal law, a court may consider a subsequent summary judgment motion based upon an expanded record.

This Court observes that nearly six years have elapsed since Defendants first moved for summary judgment based upon qualified immunity. During the intervening period, the parties have conducted significant discovery, including ten depositions and thousands of pages of documents—some of which Felkner included in his previous pleadings.[4] In addition, Felkner has amended his Complaint to add a new claim for conspiracy. See State v. Presler, 731 A.2d 699, 703 (R.I. 1999) (reasoning, in dicta, "the defendant's additional and new allegation contained in his second motion to suppress might well have actually served to rescue his motion from the non-final aspect of the law-of-the-case doctrine and permitted its reconsideration"). Thus, although Defendants have included the same materials that they submitted in support of their original motion, they also have incorporated Felkner's newer exhibits by reference—exhibits that did not exist when the Court ruled on Defendants' first motion for summary judgment.

As the record has been expanded significantly over the past seven years since the Court's previous decision on summary judgment, the Court concludes that it has been expanded sufficiently to consider the motion for a second time. See Pari v. Corwin, 620 A.2d 86, 87 (R.I. 1993) ("With the now expanded record, the trial justice was fully justified in considering the motions."). Accordingly, the law of the case doctrine does not preclude consideration of the Motion, and the Court will exercise its discretion to do so.

B

The Constitutional Claims

Felkner asserts that his 42 U.S.C. § 1983 claims against Defendants establish genuine issues of material facts. He contends that those facts, when considered in a light most favorable to

[4] Plaintiff acknowledges this fact in his objection to the instant Motion. See Pl.'s Obj. to Defs.' Third Mot. for Summ. J. Based on Qualified Immunity, at 40 (stating, "On June 5, 2014, Plaintiff submitted an additional memorandum and exhibits to demonstrate material issues of disputed fact").

him, demonstrate that Defendants knowingly and intentionally violated his constitutional rights to free speech, equal protection, and procedural due process.

It is well settled that "[t]he very purpose of § 1983 was to interpose the * * * courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial." Jolicoeur Furniture Co. v. Baldelli, 653 A.2d 740, 749 (R.I. 1995) (quoting Patsy v. Bd. of Regents of Florida, 457 U.S. 496, 503 (1982)) (internal quotations omitted); see also Laurence v. Sollitto, 788 A.2d 455, 457 (R.I. 2002) ("It is well settled that 42 U.S.C. § 1983 claims are cognizable only for constitutional violations committed by persons acting under color of state law.") (citing Brunelle v. Town of S. Kingstown, 700 A.2d 1075, 1081 (R.I. 1997)).

Thus, "the first inquiry in any § 1983 suit is * * * whether the plaintiff has been deprived of a right secured by the Constitution and laws of the United States." Jolicoeur Furniture Co., 653 A.2d at 749-50 (quoting Baker v. McCollan, 443 U.S. 137, 140 (1979)) (internal quotations omitted). "All other issues [including that of immunity] are secondary to this determination." Jolicoeur Furniture Co., 653 A.2d at 750 (declining to address claim of immunity after holding invalid plaintiff's 42 U.S.C. § 1983 claim). Accordingly, the very first issue for the Court to determine is whether Defendants deprived Felkner of any constitutional rights.

1

Free Speech

In some of his 42 U.S.C. § 1983 claims, Felkner asserts that Defendants violated his free speech rights and then retaliated against him in a number of ways when he then exercised those free speech rights. With respect to such free speech claims, Felkner specifically contends that

Defendants compelled him to write papers on, and advocate in favor of, ideas that conformed to the school's alleged political perspective, but that were contrary to his own political beliefs. He further asserts that by denying him the opportunity to work on welfare reform because the subject did not conform to the school's social perspective, Defendants placed unconstitutional conditions on his continuing in the Master's program in violation of his free speech.

With respect to the alleged violations of free speech, the Court first must determine whether the speech in question was protected under the First Amendment as a matter of law. See Adler v. Lincoln Hous. Auth., 544 A.2d 576, 581 (R.I. 1988) (stating '"[t]he inquiry into the protected status of speech is one of law, not fact'") (quoting Connick v. Myers, 461 U.S. 138, 148 n.7 (1983)). It is well settled that "[t]he freedom of speech protected by the First Amendment, though not absolute, 'includes both the right to speak freely and the right to refrain from speaking at all.'" Steirer by Steirer v. Bethlehem Area Sch. Dist., 987 F.2d 989, 993 (3rd Cir. 1993) (quoting Wooley v. Maynard, 430 U.S. 705, 714 (1977)). The reason is that "[a]t the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence. Our political system and cultural life rest upon this ideal." Turner Broad. Sys., Inc. v. F.C.C., 512 U.S. 622, 641 (1994); see also Hurley v. Irish–American Gay, Lesbian and Bisexual Grp. of Boston, 515 U.S. 557, 573 (1995) (stating "one important manifestation of the principle of free speech is that one who chooses to speak may also decide 'what not to say'") (quoting Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal., 475 U.S. 1, 16 (1986) (plurality opinion)). Thus, "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess

by word or act their faith therein." W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943).

Applying these principles to the public school context means that "students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved." Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 511 (1969). However, while "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," those rights are not unlimited. Id. at 506. Indeed, "the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." Id. at 507.

As a result, "courts have traditionally given public colleges and graduate schools wide latitude 'to create curricula that fit schools' understandings of their educational missions.'" Ward v. Members of Bd. of Control of E. Mich. Univ., 700 F. Supp. 2d 803, 814 (E.D. Mich. 2010) (quoting Kissinger v. Bd. of Trs. of Ohio State Univ., Coll. of Veterinary Med., 5 F.3d 177, 181 (6th Cir. 1993)). This principle has been extended to clinical education. See Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 95 (1978) ("Evaluation of [a medical student's] performance in the [clinical and experiential courses] is no less an "academic" judgment because it involves observation of [his or] her skills and techniques in actual conditions of practice, rather than assigning a grade to [his or] her written answers on an essay question.").

It is well settled that "educators do not offend the First Amendment . . . so long as their actions are reasonably related to legitimate pedagogical concerns." Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988). It is only when an educator's action "has no valid

educational purpose that the First Amendment is so 'directly and sharply implicate[d]' as to require judicial intervention to protect students' constitutional rights." Id. (internal citation omitted). More specifically, the standard for evaluating a graduate student's First Amendment claim stemming from curricular speech "balances a university's interest in academic freedom and a student's First Amendment rights. It does not immunize the university altogether from First Amendment challenges but, at the same time, appropriately defers to the university's expertise in defining academic standards and teaching students to meet them." Brown v. Li, 308 F.3d 939, 952 (9th Cir. 2002).

In summary,

> "First Amendment jurisprudence recognizes that the educational process itself may sometimes require a state actor to force a student to speak when the student would rather refrain. A student may also be forced to speak or write on a particular topic even though the student might prefer a different topic. And while a public educational institution may not demand that a student profess beliefs or views with which the student does not agree, a school may in some circumstances require a student to state the arguments that could be made in support of such beliefs or views. See Brown v. Li, 308 F.3d 939, 953 (9th Cir. 2002) (explaining in the context of First Amendment challenge to a university's refusal to approve a student thesis that a college history teacher may demand a paper defending Prohibition, and a law-school professor may assign students to write opinions showing how Justices Ginsburg and Scalia would analyze a particular Fourth Amendment question . . . . Such requirements are part of the teachers' curricular mission to encourage critical thinking . . . and to conform to professional norms); see also Board of Regents of Univ. of Wisconsin Sys. v. Southworth, 529 U.S. 217, 242–43, 120 S.Ct. 1346, 146 L.Ed.2d 193 (2000) (Souter, J., concurring) (noting that university students are inevitably required to support the expression of personally offensive viewpoints in ways that cannot be thought constitutionally objectionable unless one is prepared to deny the University its choice over what to teach.); Marinello v. Bushby, 1996 WL 671410 *14 (N.D. Miss. 1996) (unpublished) (it is part of the function of schools to compel speech from students to some degree so that officials can ensure that the students are in fact learning what is taught), aff'd 163 F.3d 1356 (5th Cir. 1998) (table); Smolla & Nimmer, Freedom of Speech § 17:1.50

> (2005) (compelling speech may be part of a school's curricular mission.)." C.N. v. Ridgewood Bd. of Educ., 430 F.3d 159, 187 (3rd Cir. 2005) (internal quotations omitted).

With respect to "compelled speech," the United States Supreme Court jurisprudence "has only ever found a violation of the First Amendment right . . . in the context of forced speech that requires the private speaker to embrace a particular government-favored message." Id. at 188. However, "[i]n order to compel the exercise or suppression of speech, the governmental measure must punish, or threaten to punish, protected speech by governmental action that is 'regulatory, proscriptive, or compulsory in nature.'" Phelan v. Laramie Cnty. Cmty. Coll. Bd. of Trs., 235 F.3d 1243, 1247 (10th Cir. 2000) (quoting Laird v. Tatum, 408 U.S. 1, 11 (1972)). Similarly, the government may not place constitutional conditions such as withholding a benefit for failure to surrender a constitutionally protected interest. See Perry v. Sindermann, 408 U.S. 593, 597 (1972) (stating government "may not deny a benefit to a person on a basis that infringes his [or her] constitutionally protected interests—especially, his [or her] interest in freedom of speech").

Felkner alleges that in part one of the Policy and Organizing class, Ryczek violated his free speech when he "provided the students with an approved list of issues to lobby[]" that "involved a leftist position on social welfare issues[]" with which he disagreed, but was compelled to follow. (Verified Compl. ¶ 34.) He contends that Ryczek further violated his free speech rights when he would not allow Felkner to switch sides on his chosen topic—support of SB 525—after Felkner argued that Professor Pearlmutter's study of the issue was flawed and that he had discovered a contradictory study. Felkner further alleges that Ryczek then gave him a failing grade after he exercised his right to free speech by writing his paper and debating the topic from the opposite perspective.

Felkner's version of events simply is not supported by the record. On the contrary, the record demonstrates that Ryczek "provided students with a list of 'suggested' issues[,]" and he also "encouraged students to come up with other ideas/choices." (Defs.' Ex. H, Affidavit of Ryczek, ¶¶ 20-21.) The record fails to establish any evidence that Felkner ever approached Ryczek about an alternative idea or choice. Id. at ¶ 22. Ryczek further testified that "[n]o students were assigned to lobby for or against any issue in the class [Felkner] took with me, which ended before the General Assembly was in session." Id. at ¶ 19. Felkner has offered no evidence to refute this contention.

Referring to Felkner's request to switch sides for his chosen topic, Ryczek testified that "the reason why I refused to allow him to change sides at the last minute was because it would have been unfair to the other group members and because it was a useful academic exercise, as with any academic debate, to argue from different perspectives regardless of one's personal beliefs." Id. at ¶ 38. In his Debate and Policy Paper Feedback, Ryczek noted that he had explained to Felkner at the time that "[a]t least half the class was also arguing from a perspective that they did not necessarily agree with. Hence, you were not being asked to do an assignment that was any different than that being required of other students[.]" (Pl.'s Ex. 17 at 3.) In addition, Ryczek told Felkner:

> "I was clear that you would be required to write the paper and present the debate from the *pro* side of the policy issue . . . the policy issue that you personally picked in October and the perspective (pro) that you personally chose in consultation with your group classmates." Id. (Emphasis in original, ellipses in original.)

When Felkner nevertheless wrote his paper from the opposite perspective, Ryczek gave him a failing grade, explaining,

> "As you know, your paper is not written from the position you chose in your group (pro). Regardless of the content, application of theory and critical analysis, you did not write from the perspective you were required to use in this academic exercise. Therefore, the paper is [sic] must receive a failing grade." Id. at 4.

Commenting on Felkner's participation in the group debate, Ryczek stated that Felkner's "participation was anemic and [he] graded him on that portion of the assignment accordingly." (Defs.' Ex. H ¶ 36.) In his notes about the debate, Ryczek observed that Felkner "said that he had no research to support his client's perspective, but as a social worker he supports her right to self-determination." (Pl.'s Ex. 17 at 2.) In feedback, Ryczek informed Felkner that it was "unfortunate that you decided not to properly participate on the pro side of the policy issue in your group's presentation in class." Id. at 3. He also noted that Felkner "made an unsupportive remark about your client to your colleagues. You stated, 'Wouldn't you like your education paid for?' regarding your client's expressed need for education and training services." Id. at 3-4. Although Ryczek opined that "both of those actions [were] unprofessional and inconsistent with the Code of Ethics and appropriate social work practice[,]" he stated that he was

> "most concerned about your decision not to fully participate in the debate exercise. It is very distressing that you placed the entire burden for the presentation on the shoulders of your three classmates. Most important, you left one classmate to carry the entire pro side of the debate on her own." Id. at 4.

Thus, after concluding that Felkner's "work for this debate presentation assignment was not acceptable[,]" Ryczek awarded Felkner with an "F" grade for the assignment. Id.

Although Felkner maintains that Ryczek violated his free speech rights in part one of the Policy and Organizing class when he compelled Felkner to write about, and argue in favor of, a topic with which he disagreed politically, he has not provided genuine issues of material fact to support this assertion. The undisputed facts demonstrate that Felkner was given an assignment to

write a paper and debate a topic in class as part of a group. Felkner chose his topic, but then changed his mind and wanted to switch sides late in the course. After Ryczek explained his reasons for refusing to give Felkner permission to switch sides—that it was a useful academic exercise to argue from a non-preferred perspective and that it would unfairly impact other group members—Felkner ignored that refusal by writing his paper and participating in his group debate from the opposite perspective to that which he had chosen earlier in the year. Ryczek then reasonably awarded Felkner an "F" grade on both assignments for failure to follow directions. See Hazelwood Sch. Dist., 484 U.S. at 273 (stating "educators do not offend the First Amendment . . . so long as their actions are reasonably related to legitimate pedagogical concerns"). Ryczek went so far as to offer Felkner an opportunity to improve his grade on the assignment by resubmitting it, an offer that Felkner failed to accept. (Defs.' Ex. H ¶ 43.) Ryczek still gave him a passing grade for his overall work in the course. (Verified Compl. ¶ 51.)

There is nothing in the record to suggest that Felkner was forced to embrace any subject; rather, the assignments simply were part of SSW's curricular mission to encourage critical thinking. See Brown, 308 F.3d at 953 (recognizing that "a teacher may require a student to write a paper from a particular viewpoint, even if it is a view-point with which the student disagrees, so long as the requirement serves a legitimate pedagogical purpose"). Consequently, the Court finds that Felkner has not provided any genuine issues of material fact demonstrating that Defendants compelled him to speak in violation of his free speech rights when Ryczek refused him permission to switch sides in part one of the Policy and Organizing class. The Court further finds that there exist no genuine issues of material fact to show that Felkner was engaged in protected speech when he chose to switch sides from his chosen topic and to write about and present the topic from

the opposite perspective. Thus, the ASC and Dr. Olsen did not violate Felkner's constitutional rights when they later denied Felkner's grade appeal.

With respect to part two of the Policy and Organizing class, Felkner asserts that Defendants violated his right to free speech by requiring him to lobby from a political perspective that would directly impact the "poor and oppressed" or advance "social justice"—a perspective with which he disagreed—rather than allowing him to lobby for the adoption of ABOR or to lobby in favor of the Governor's welfare reform proposal. (Verified Compl. at ¶¶ 66-68.) Felkner also maintains that even though Professor Pearlmutter later granted him permission to lobby for the defeat of SB 525, she threatened to reduce his grade if he formed his own group. According to Felkner, this left him with the untenable choice of "either form[ing] his own group and face certain grade reduction, or join[ing] a group that would publicly promote social policies that go against his conscience." Id. at ¶ 69.

Part two of the Policy and Organizing class focused "on matters of policy that affect low-income and other vulnerable populations[,]" and employed "a highly interactive format using small and large group discussion and other experiential activities." (Pl.'s Ex. 23 at 1, 3.) However, although the course description required students to "testify and/or lobby for passage of specific legislation, regulations, state plans or other public policy at public hearings, legislative and administrative offices in Rhode Island, Massachusetts, or Connecticut," id. at 7, the record reveals that Felkner never was compelled to lobby or testify at a public hearing, and his only outstanding degree requirement when his enrollment ended involved his integrative project.

Furthermore, despite Felkner's characterization of the class as one which required him to adopt political beliefs with which he disagreed, the record fails to support this description. The record reveals that although Professor Pearlmutter initially refused his request to argue in favor of

defeating SB 525, she later granted him permission to do so and to form his own group with the help of outside students. The Court further notes that the course had a valid educational purpose of encouraging critical thinking by using "a highly interactive format" for purposes of "group discussion and other experiential activities." (Pl.'s Ex. 23 at 3.) Consequently, regardless of Felkner's characterization of events, the Court concludes that Felkner has presented no genuine issues of material fact to support his contention that he was required to lobby from a political perspective in violation of his constitutional right to free speech in part two of the Policy and Organizing class.

Felkner next maintains that his being refused permission to choose welfare reform as his topic for both SWOP option projects violated his right to free speech. Specifically, he contends that because students typically choose the same subject matter for both their integrative and field placement projects, when Ryczek and Mueller initially refused him permission to work on welfare reform for his field placement project, Defendants violated his First Amendment Rights. He further contends that when Mueller later denied him permission to work on welfare reform for the integrative project because the subject matter allegedly was "toxic," he forced Felkner to either abandon his field placement internship or to choose another topic in violation of Felkner's constitutional right to free speech. (Verified Compl. at ¶¶ 94-97.) Moreover, Felkner avers that Defendants placed unconstitutional conditions upon his graduating from the program when they required him to fulfill certain mandatory objectives—such as working toward advancing progressive social change—that were against his own political beliefs.

The record reveals that when Felkner proposed fulfilling his field placement requirement by working on social welfare reform legislation as an intern in the Governor's office, Ryczek would not approve his proposed field placement because it did not implement some of the course's

mandatory academic objectives. (Pl.'s Ex. 32.) In doing so, Ryczek noted Felkner's "stated refusal to do the majority of the social work organizing and policy practice (SWOP) curriculum objectives . . . ." Id. Dr. Olsen supported Ryczek's decision in a letter to Felkner in which she stated that she "cannot approve the Plan of Study you have developed, given your statement that you would not work on a number of the academic objectives of the concentration." (Pl.'s Ex. 38.) Recognizing that these objectives were mandatory, she also reiterated Ryczek's suggestion to Felkner that "there are other concentrations in the MSW program that you may choose as alternatives to the SWOP concentration." Id. After Felkner complained to Dean Bennett-Speight about Ryczek and Dr. Olsen's refusal, Dean Bennett-Speight assigned Mueller as Felkner's field placement supervisor. (Verified Compl. ¶ 93.)

Although Mueller initially refused to allow Felkner to conduct his internship at the Governor's office, the school later granted his request in October 2005. Id. at ¶¶ 94-95. The fact that Felkner received permission to intern at his chosen location renders any argument on this point moot. The Court concludes that Felkner has not satisfied his burden of providing genuine issues of material fact to demonstrate that his constitutional right to free speech was violated with respect to his field placement assignment.

Regarding Felkner's choice of topic for the integrative project, whereas Ryczek and Mueller rejected his request to focus of welfare reform, he later met with Dean Bennett-Speight and Vice President of Academic Affairs Dan King in September 2006 and received permission to do so. (Pl.'s Ex. 46.) Dean Bennett-Speight also gave Felkner permission to take an extended period during which he could complete his integrative project and asked him to provide, in writing, his projected date of completion. Id.

Over one year later, on January 4, 2008, Dean Bennett-Speight acknowledged Felkner's request to extend the school's four-year time limit for completion of his MSW degree. (Pl.'s Ex. 47) She also acknowledged that his proffered reasons for the request were professional and personal interferences, as well as the lack of supports that normally would come from still being in the internship program. Id. Dean Bennett-Speight noted that SSW policy permits extensions in extraordinary circumstances, and that she was willing to grant his extension request, provided that (1) he submitted his problem statement and methodology to his advisor before April 15, 2008, and that they be completed and accepted by May 12, 2008; and (2) he submitted "a detailed plan, no later than, May 2008, outlining how [he] will finish the research project by May 11, 2009, notwithstanding [his] work and family obligations." Id. Dean Bennett-Speight required Felkner to acknowledge his understanding and acceptance of these conditions in writing by January 31, 2008. Id.

On March 25, 2008, Dean Bennett-Speight responded to Felkner's additional request for an extension until June 30, 2009, by refusing the request. (Pl.'s Ex. 48.) In her letter, she observed that Felkner had yet to respond to her earlier request to acknowledge and accept the conditions of his previous extension. Id. She again directed Felkner to provide said acknowledgement, this time by April 4, 2008, and that failure to do so would be considered a rejection of the previous extension offer. Id. Dean Bennett-Speight also told him that even if he accepted the extension by April 4, 2008, the April 15, 2008 deadline for submitting his problem statement and methodology to his advisor was mandatory and that failure to meet that deadline would result in termination of the extension. Id. Felkner failed to meet either deadline, April 4 or 15, 2008; therefore, on April 25, 2008, Professor Pearlmutter informed Felkner that, as a result, he no longer was considered to be enrolled as a student in SSW. (Pl.'s Ex. 49).

From the foregoing, it is clear to the Court that Felkner has not demonstrated that his free speech rights were violated with respect to the integrative project. While Felkner has provided the Court with evidence of disputes that he had with various Defendants, he has not submitted any genuine issues of material fact to demonstrate that Defendants placed unconstitutional conditions on his graduating from the program. Rather, Defendants gave Felkner permission to work on the subject of his choice for the integrative project and allowed him to extend the time for graduation provided that he submit his problem statement and methodology by a certain date. Felkner failed to meet that deadline, and Defendants reasonably considered his behavior to have constituted a rejection of the extension offer resulting in his termination from the program. See John Hancock Mut. Life Ins. Co. v. Dietlin, 97 R.I. 515, 518, 199 A.2d 311, 313 (1964) (stating "before a contractual relationship can come into being the offer must be unconditionally accepted") (citing Thurber v. Smith, 25 R.I. 60, 54 A. 790 (1903)).

Felkner also asserts that Defendants retaliated against him in various ways for exercising his free speech rights. Despite such assertions, Felkner has not met his burden of proving such retaliation.

To establish a First Amendment retaliation claim, "a plaintiff must prove '(1) that the activity in question is protected by the First Amendment, and (2) that the protected activity was a substantial factor in the alleged retaliatory action.'" Serodio v. Rutgers, 27 F. Supp. 3d 546, 551 (D.N.J. 2014) (quoting Hill v. Borough of Kutztown, 455 F.3d 225, 241 (3d Cir. 2006)). To demonstrate the second prong of the retaliation claim, "a plaintiff may rely on 'a range of circumstantial evidence' including temporal proximity between the speech and adverse action, evidence of retaliatory animus in the intervening period, proof of ongoing antagonism and inconsistent explanations for the alleged retaliation." Serodio, 27 F. Supp. 3d at 551 (citing Farrell

v. Planters Lifesavers Co., 206 F.3d 271, 280–81 (3d Cir. 2000); Ivan v. Cnty. of Middlesex, 595 F. Supp. 2d 425, 472 (D.N.J. 2009)).

Felkner asserts that Defendants retaliated against him by transferring him into Professor Pearlmutter's class for part two of the Policy and Organizing class because he had attempted to exercise his free speech rights in part one of the class taught by Ryczek. However, as this Court has rejected Felkner's claim that he was engaged in protected speech during part one of the Policy and Organizing class, he cannot satisfy the first prong of a retaliation analysis. See Serodio, 27 F. Supp. 3d at 551 (requiring a plaintiff to first prove "that the activity in question is protected by the First Amendment"). Consequently, this specific claim must fail.

Felkner further alleges that Professor Pearlmutter retaliated against him during his group presentation to the class when she allowed his classmates "to ridicule [his] associates and attack the group's position on SB 525[,]" and when she "prevented [him] from answering questions or defending his associates." (Verified Compl. at ¶ 83.) Felkner also claims that Professor Pearlmutter lowered his grade because he did not work with other students from RIC—all of whom had chosen progressive social change projects with which he disagreed. Id. at ¶ 84. According to Professor Pearlmutter, however, the questions in class "were directed to other members of the group[,]" and not to Felkner. (Pl.'s Ex. 52, Dep. of Professor Pearlmutter, Vol. II, 86.)

Even assuming that Felkner's classmates, in fact, did ridicule Felkner and his associates during his group presentation, and that Professor Pearlmutter did penalize him with a reduced grade for working with other students, Felkner has failed to establish that such action amounted to retaliation for engaging in protected behavior. As stated previously, Felkner has failed to establish the existence of genuine issues of material fact to show that his First Amendment rights were

violated in either part one or part two of the Policy and Organizing class. Consequently, he has failed to establish the first prong of his retaliation claim with respect to these allegations. See Serodio, 27 F. Supp. 3d at 551 (requiring a plaintiff to first prove "that the activity in question is protected by the First Amendment"). Furthermore, with respect to his allegation that Professor Pearlmutter penalized his grades for working with outside students, the Court will not second guess her decisions regarding her grading of Felkner's work. See Horowitz, 435 U.S. at 90 (stating "the decision of an individual professor as to the proper grade for a student in his [or her] course" is a judgment that "requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial . . . decisionmaking").

Felkner next asserts that Professor Pearlmutter retaliated against him by organizing and/or facilitating an in-class attack against him because he had exercised his constitutional right to free speech when he tape recorded his classes and disseminated them on his website. It is well settled that "[t]he act of making an audio or audiovisual recording is necessarily included within the First Amendment's guarantee of speech and press rights as a corollary of the right to disseminate the resulting recording." Am. Civil Liberties Union of Ill. v. Alvarez, 679 F.3d 583, 595 (7th Cir. 2012) (emphasis in original). Furthermore "[t]he right to publish or broadcast an audio or audiovisual recording would be insecure, or largely ineffective, if the antecedent act of making the recording is wholly unprotected . . . ." Id. (emphasis in original). Thus, "banning photography or note-taking at a public event would raise serious First Amendment concerns; a law of that sort would obviously affect the right to publish the resulting photograph or disseminate a report derived from the notes. The same is true of a ban on audio and audiovisual recording." Id. at 595-96.

It appears that Felkner has satisfied the first prong of his retaliation claim—engaging in a protected activity—when he tape recorded his classes and posted the recordings to his website.

However, the next inquiry in a First Amendment retaliation claim is whether "the protected activity was a substantial factor in the alleged retaliatory action." Serodio, 27 F. Supp. 3d at 551.

It is undisputed that students had raised concerns to Professor Pearlmutter about Felkner's publication of what they had believed to be confidential information on his website. See Pl.'s Ex. 23 at 3 (requiring students to maintain "complete confidentiality regarding issues that may be raised in class. Discussions that occur here stay here and are not meant to be conveyed into public spaces."). Felkner's own partial transcript of the class discussion reveals that Professor Pearlmutter informed Felkner that "some students have approached me about their safety saying things in class . . . some students have approached to talk about just an underlying discomfort so I wanted to offer an opportunity everyone to talk about it." (Pl.'s Ex. 64 at 4495.) In a subsequent discussion, several students expressed their discomfort with Felkner's publication and editorializing of class discussions and activities, which they had previously believed were held in confidence. Id. 4499-4509.[5] Some students expressed anger at Felkner, and others commiserated

[5] One student, who said he initially sympathized with Felkner's position, accused Felkner of having an agenda and feared that the class discussions possibly could be brought up in a future lawsuit. (Pl.'s Ex. 64 at 4503-04.) Thereafter, the following colloquy took place:

> "[STUDENT:] . . . And I understand what your [sic] doing and this is a calculated move and I wish you would just be open and honest about that thing instead of, for instance using you know this project, that's not fair, your [sic] inviting them into something that your [sic] not providing the knowledge to understand, that's not fair.
> "[FELKNER:] Well I would have to say that's your opinion because there are others like the lawyers involved who didn't find it not to be appropriate. They found it to be an interesting point.
> "[STUDENT:] Interesting but not fair.
> "[FELKNER:] Maybe not fair but its [sic] instrumental to our purpose." Id.

Another student asked Felkner: "[D]o you think its [sic] appropriate for you to promote your personal agenda at the cost of our right to privacy which is a fundamental right[?]" Id. at 4506. The student also stated: "My right to having a classroom become a confidential setting where I can share my ideas and hear back from other people in the classroom is being violated by your agenda

with him about his minority political views; however, it is undisputed that every student recorded in the transcript expressed a loss of respect, safety, or confidentiality. Id.

While this discussion may have been uncomfortable for Felkner, he has not provided any genuine issues of material fact to suggest that it constituted an adverse action for purposes of a retaliation claim. See Russo v. Dep't of Mental Health, Retardation and Hosps., 87 A.3d 399, 408 (R.I. 2014) (stating, in the context of an employment retaliation claim, for the claim to be actionable, the adverse action "must have been materially adverse in order to 'prevent lawsuits based upon trivial workplace dissatisfactions' or 'bruised ego[s]'") (quoting White v. Burlington N. & Santa Fe Ry. Co., 364 F.3d 789, 795, 797 (6th Cir. 2004)). Furthermore, "in analyzing a given act of retaliation, '[c]ontext matters.'" Russo, 87 A.3d at 408 (quoting Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 69 (2006)). In the present context, although Felkner may have been upset about the class discussion concerning his recording activities, he has failed to provide any genuine issues of material fact to show that said discussion constituted a materially adverse or disciplinary action. The Court notes that when claiming to be violated by comments voiced by his fellow students, Felkner seems to consider free speech a one-way street.

Felkner additionally contends that Professor Pearlmutter retaliated against him by filing baseless ethics complaints against him with the ASC, and that the ASC then violated his right to record when it ordered him to stop taping classes and conversations with instructors and threatened him with suspension if he failed to do so.

With respect to Felkner's claim that he was denied his constitutional right to record, there is no evidence of any such violation in the record. In its decision, the ASC found that Felkner had

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. . . the basic bottom line to me here is your [sic] violating my right to privacy, my right to expression." Id. Later in the class, another student asked Felkner: "And does this mean that someday I am going to be asked by a lawyer about my group organizing project[?]," to which Felkner replied, "I don't know, I don't make those decisions." Id. at 4509.

"failed to adhere to academic standards of the School when [he] deceptively audio-taped a conversation with Dr. Pearlmutter in violation of Section 4.04 of the NASW Code of Ethics." (Pl.'s Ex. 36 at 1) (emphasis added). See also Defs.' Ex. C, School of Social Work, Academic & Field Manual, at 71 (setting forth Section 4.04 of the NASW Code of Ethics: "Social workers should not participate in, condone, or be associated with dishonesty, fraud, or deception."). After expressing its "concern[] that [Felkner's] testimony reveal[ed] an unwillingness or inability to understand the academic necessity to comply with the School's standards[,]" the ASC "recommend[ed] to the Chair of the MSW department, Dr. Lenore Olsen, that [Felkner] be requested to declare immediately, in writing, that [he] will henceforth refrain from any deceptive audio or video copying of conversations with social work colleagues and refrain from any audio or video copying . . . without express permission from them." (Pl.'s Ex. 36 at 1.) The ASC warned Felkner that if he was "unwilling to do so, the Committee [would] recommend[] that [he] be dismissed from the School of Social Work." Id.

It is clear from the foregoing that Felkner was not disciplined for the actual act of recording; rather, he was prohibited from engaging in deceptive behavior by making surreptitious recordings of his colleagues. The ASC found these actions to be in violation of Section 4.04 of the NASW Code of Ethics and sought to prevent such deceptive behavior in the future by requiring Felkner to obtain express permission from his colleagues before making any further recordings. At oral argument, through counsel, Felkner conceded that he was not disciplined for creating his website and that he never was ordered to take down said website. Consequently, the Court concludes that Felkner has not provided any genuine issues of material fact to show that Defendants interfered with his right to record public officials in violation of the First Amendment or that their actions constituted retaliation for same.

For all of the reasons set forth above, there exists no genuine issue as to a material fact concerning Felkner's free speech claim. For this reason, Felkner's retaliation claims also must fail. The Court concludes, as a matter of law, that Defendants did not violate Felkner's constitutional right to free speech with respect to Count I (free speech), Count II (compelled speech), Count III (retaliation), and Count IV (unconstitutional conditions).

2

Equal Protection

Felkner maintains that he was singled out and treated differently due to his political viewpoint at the expense of his academic progress and that this prejudicial treatment constituted a violation of his right to equal protection (Count V). To support this allegation, Felkner asserts that by denigrating his beliefs, penalizing his grades, trumping up ethics charges against him, and by denying him the opportunity to work on welfare reform, Defendants violated his right to equal protection. Specifically, he contends that Ryczek violated his equal protection rights by disaggregating his grade from the group debate to give him a failing grade and for consulting with other professors before failing him on his written assignment.

Although '"the First Amendment protects speech in the public square, [it] does not mean it gives students the right to express themselves however, whenever and about whatever they wish on school assignments or exams. A school need not tolerate student speech that is inconsistent with its basic educational mission."' Corlett v. Oakland Univ. Bd. of Trs., 958 F. Supp. 2d 795, 806 (E.D. Mich. 2013) (quoting Ward v. Polite, 667 F.3d 727, 733 (6th Cir. 2012)) (internal quotations omitted). In Corlett, the court observed:

> "'A research paper is not an expression of opinion, and the restriction of choice of topic is not readily analogous to the kind of pure expression of student opinion, that happened to take place in the classroom . . .

> * * *
> "The bottom line is that when a teacher makes an assignment even if [he or] she does it poorly, the student has no constitutional right to do something other than that assignment and receive credit for it. It is not necessary to try to cram this situation into the framework of constitutional precedent, because there is no constitutional question.'" Corlett, 958 F. Supp. 2d at 809 (quoting Settle v. Dickson Cnty. Sch. Bd., 53 F.3d 152, 158 (6th Cir. 1995) (Batchelder, J., concurring)).

Furthermore, "the decision of an individual professor as to the proper grade for a student in his [or her] course" is a judgment that "requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial . . . decisionmaking." Horowitz, 435 U.S. at 90; see also Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 225 (1985) ("When judges are asked to review the substance of a genuinely academic decision . . . they should show great respect for the faculty's professional judgment."). Thus, courts should defer to decisions by school officials unless a plaintiff can show that the academic decision "is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment." Id.

With respect to a class of one, "when it appears that an individual is being singled out by the government, the specter of arbitrary classification is fairly raised, and the Equal Protection Clause requires a 'rational basis for the difference in treatment.'" Engquist v. Or. Dep't of Agric., 553 U.S. 591, 602 (2008) (quoting Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000)). Thus, prior to conducting a rational basis analysis, a court must look to the record to determine whether evidence exists to make an initial showing that an individual indeed "is being singled out by the government[.]" Engquist, 553 U.S. at 602.

As previously stated, the evidence reveals that midway through part one of the Policy and Organization class, Felkner disagreed with the topic that he chose for the written assignment and

group debate and wanted to switch sides. Ryczek refused Felkner's request. When Felkner nevertheless presented his group project from the opposite perspective to the one he initially had chosen, Ryczek disaggregated his grade from the group and gave him an "F" grade. Ryczek also gave Felkner an "F" grade on the written assignment for the same reason; namely, presenting the topic from the opposite perspective to that which he had chosen previously. While this Court already has found that Ryczek violated none of Felkner's free speech rights when he gave Felkner an "F" on both his group debate and written assignment, Count V raises the additional claim that Ryczek's grading violated Felkner's equal protection rights.

In his deposition, Ryczek admitted to disaggregating Felkner's grade and that he had never done that before, but he testified that he did so because "this is a group grade that I agreed to disaggregate from his group because his group members approached me and said he was not participating in the group as expected." (Pl.'s Ex. 51 at 207, 210). Ryczek also stated that in his past experience, no other student had ever switched sides. Id. at 212.

With respect to the written paper, Ryczek testified that he didn't grade the paper on the criteria set forth for grading as, "I stopped after the first readthrough [sic] because I had determined it wasn't the paper that he was supposed to write." Id. at 212. He said that he "was very clear about the assignment" and that he previously had told Felkner "that if he chose not to do the assignment as assigned, he would receive an F on the paper." Id. Before he graded the paper, Ryczek gave it to Professor Pearlmutter and two other instructors to read "[b]ecause I just wanted to have a check-and-balance to make sure that I was reading it correctly." Id. at 220. They all agreed that Felkner failed to write the paper from a "prosocial work perspective" which "was the perspective that [Felkner] chose in his debate group and the perspective he was supposed to write the paper from." Id. at 221. Ryczek admitted that he had never before marked down a student's

grade for not writing it from the assigned perspective, but that was because "[n]o other student has ever done that." Id. at 212. He also agreed that he previously had never asked any other instructor to perform a similar review of a student's written paper, but that was because he "never had need to . . . ." Id. at 221. However, despite giving Felkner an "F" grade on his class paper and debate performance, and although he disaggregated Felkner's grade from the group, he also gave him the opportunity to resubmit the paper on the chosen topic for an improved grade, but Felkner failed to do so. Ryczek ultimately gave Felkner a "C+" as an overall grade for part one of the two-part program.

Assuming, arguendo, that students have a protected interest in obtaining a degree and that the grade Felkner received somehow implicated that interest, Felkner's attempt to switch sides in the middle of the course and his presentment of the opposite perspective when this attempt was thwarted did not bring him within a protected class because he failed to show that other similarly situated individuals were treated differently. See Hennessy, 194 F.3d at 244 (finding college student who failed his student teaching class and was terminated from teacher certification program "ha[d] no equal protection claim against anyone[] [because] he ha[d] not brought himself within any protected class and he ha[d] failed to show that others, similarly situated, were treated differently") (citing Alexis v. McDonald's Rests. of Mass., Inc., 67 F.3d 341, 354 & n.13 (1st Cir. 1995)). As no other student attempted to switch sides in the past, Felkner has been unable to show evidence that Ryczek failed to disaggregate another student's grade when that student, like Felkner, presented a side opposite that to which he or she was assigned. In other words, there were no other students who were similarly situated to Felkner but who were treated differently.

Furthermore, considering that due process is not implicated when a student at a public school receives a failing grade, see Hennessy, 194 F.3d at 250 n.3, it is not implicated in this case,

where Felkner ultimately received a "C+," rather than a failing grade. Thus, Felkner has failed to demonstrate that his substantive due process rights were violated under the facts of this case, and he has not provided any genuine issues of material fact to show that Ryczek's decision regarding his grade constituted "such a substantial departure from accepted academic norms" so as to show that he "did not actually exercise professional judgment." Ewing, 474 U.S. at 225.

For all of the reasons set forth above, there exists no genuine issue of material fact as to Felkner's equal protection claim (Count V). Consequently, the Court concludes as a matter of law that Defendants did not violate his constitutional right to equal protection under the law.

3

Procedural Due Process

Felkner contends his procedural due process rights were violated when Defendants did not permit him to cross-examine witnesses at the disciplinary proceedings in violation of RIC's own internal policies and procedures (Count VI). See Pl.'s Ex. 71 at 18 ("Hearings will be conducted in an informal manner, with both the student and members of the committee having the right to question all participants on pertinent matters.").

To the extent that university students have a liberty interest in procedural due process, this interest is intrinsically limited. See Thomas v. Gee, 850 F. Supp. 665 (S.D. Ohio 1994). Thus, while "[t]he Fourteenth Amendment guarantees that '[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law,'" Barnes v. Zaccari, 669 F.3d 1295, 1303 (11th Cir. 2012) (quoting U.S. Const. amend. XIV), "[t]he standards of procedural due process are not absolutes." Jenkins v. La. State Bd. of Educ., 506 F.2d 992, 1000 (5th Cir. 1975). In the context of proper school administration, due process rights are "not to be equated with that essential to a criminal trial and the notice of charges need not be drawn with the precision of a

criminal indictment." Id. (finding sufficient notice where student plaintiffs were prepared to rebut the charges against them despite not being explicitly notified of the charge of conspiracy).

In Horowitz, the United States Supreme Court held process sufficient when "[t]he school fully informed respondent of the faculty's dissatisfaction with her clinical progress and the danger that this posed to timely graduation and continued enrollment . . ." and "[t]he ultimate decision to dismiss respondent was careful and deliberate." Horowitz, 435 U.S. 78, 85 (1978).[6] Furthermore,

> "[l]ike the decision of an individual professor as to the proper grade for a student in his course, the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decisionmaking." Horowitz, 435 U.S. at 90.

In this case, each time a complaint was filed against Felkner, he was informed of the charge and offered an opportunity to rebut those charges prior to the imposition of a penalty pursuant to local procedural rules.[7] Although he contends that he was not permitted to conduct cross-examination of Defendants at any proceeding, this procedural shortcoming does not rise to the level of constitutional violation. Horowitz, 435 U.S. at 85; Goss v. Lopez, 419 U.S. 565, 584 (1975) (finding notice and informal hearing satisfied due process in the school context and requiring just an "informal give-and-take between student and disciplinarian" prior to serious

[6] The record demonstrates that the ASC informed Felkner of Professor Pearlmutter's ethics complaint in a letter dated March 14, 2005. (Pl.'s Ex. 27). Plaintiff responded to this letter on March 28, 2005. (Pl.'s Ex. 28). Following a hearing on the matter, on May 2, 2005, the ASC notified Felkner that "[a]fter consideration of all of the evidence, including [Felkner's] testimony, the Committee determined that you failed to adhere to academic standards of the School when you deceptively audio-taped a conversation with Dr. Pearlmutter in violation of Section 4.04 of the NASW Code of Ethics." (Pl.'s Ex. 36.)

[7] Felkner may argue that he was not given notice of Professor Pearlmutter's initial ethics complaint prior to Dr. Olsen's December 14, 2004 letter informing Felkner of her complaint (Pl.'s Ex. 12); however, there is no evidence in the record to imply that he sustained any adverse consequence as a result of this letter.

disciplinary action); Whiteside v. Kay, 446 F. Supp. 716, 721 (W.D. La. 1978) (finding limited suspension proceedings fundamentally fair).

The evidence reveals that Felkner was afforded "the opportunity to voice his dissatisfaction about his grade [and the accusations concerning his recording of professors and fellow students] before a duly authorized faculty panel that considered his concerns, and the panel's decision was made with careful deliberation." Negrete v. Trs. of Cal. State Univ., 260 F. App'x 9 at 1 (9th Cir. 2007) (per curiam) (citing Horowitz, 435 U.S. at 84–91). However, assuming that Defendants did not follow RIC's procedural policies regarding a student's right to question participants, such a violation would not give rise to a constitutionally cognizable violation of due process. See James v. Rowlands, 606 F.3d 646, 656–57 (9th Cir. 2010) ("'[A]n expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause.'") (quoting Olim v. Wakinekona, 461 U.S. 238, 250 n.12 (1983)); Bilbrey by Bilbrey v. Brown, 738 F.2d 1462, 1471 (9th Cir. 1984) ("[A] state agency's violations of its own internal rules not otherwise constitutionally required would not give rise to a due process violation.") (citing Horowitz, 435 U.S. at 92 n.8). Indeed, a regulation that simply sets forth procedural requirements, even if mandatory, does not create a constitutionally protected liberty interest. See Smith v. Noonan, 992 F.2d 987, 989 (9th Cir. 1993) (holding that administrative code "d[id] not create a liberty interest that requires that [prisoner] remain in the general prison population").

For all of the reasons set forth above, the Court finds that there exists no genuine issue as to a material fact to support Felkner's due process claim (Count VI). Accordingly, the Court concludes as a matter of law that Defendants did not violate Felkner's constitutional right to due process under the facts of this case.

C

The State Claims

In addition to contending that Defendants violated his constitutional rights under 42 U.S.C. § 1983, Felkner also asserts that Defendants violated his civil rights under RICRA with respect to the identical counts in his Amended Complaint. The Court observes that neither party addressed these claims either in their submissions to, or legal arguments before, the Court. However, on September 5, 2015, after oral arguments were presented, counsel for all parties confirmed by e-mail to the Court that a resolution of Defendants' Motion in favor of Defendants would resolve all legal issues contained in Plaintiff's First Amended Complaint.[8]

Considering that Felkner has failed to provide any genuine issue as to a material fact to show that his constitutional rights were violated, he necessarily has failed to demonstrate an injury under RICRA. See Horn v. S. Union Co., 927 A.2d 292, 300 (R.I. 2007) (Suttell, C.J., dissenting) (observing that "a violation of rights protected under the RICRA . . . would constitute an injury to the person") (emphasis added). Furthermore, this Court's finding that Felkner failed to show that he is a member of a suspect class requiring equal protection likewise would preclude his RICRA claims—particularly where the statute delineates the protected classes covered by the Act and Felkner did not allege that he was a member of any such class. See G.L. 1956 § 42-112-1 (protecting from discrimination "[a]ll persons within the state, regardless of race, color, religion, sex, disability, age, or country of ancestral origin"). For the same reason, assuming his RICRA claims are ones for retaliation—see Conetta v. Nat'l Hair Care Ctrs., Inc., 236 F.3d 67, 76 (1st Cir. 2001) (citing RICRA in discussing an employment retaliation claim)—as the Court already has

[8] Plaintiff's counsel does not concede that resolution of the legal claims in Defendants' favor would resolve Plaintiff's equitable claims. Defense counsel, however, maintains that resolution of their Motion in favor of Defendants would resolve all claims set forth in Plaintiff's First Amended Complaint.

rejected Felkner's retaliation claims under 42 U.S.C. § 1983 for failure to provide genuine issues of material fact to show that he was engaged in protected conduct, Felkner's RICRA claims for retaliation would likewise fail.

As Felkner has failed to establish a genuine issue as to a material fact that his constitutional rights were violated, the Court finds that he also failed to demonstrate any injury under RICRA. Furthermore, Felkner's failure to allege, or even to show, that he was a member of any class protected under RICRA also precludes relief under that statute. Consequently, the Court concludes as a matter of law that Felkner is not entitled to relief on his RICRA claims.

D

Qualified Immunity

Defendants have asserted that they are protected from suit under the doctrine of qualified immunity. However, because Felkner failed to establish a genuine issue as to a material fact that he has an actionable claim on any of his federal and state claims, this issue is rendered moot.

Our Supreme Court has declared that "in an appropriate case, the doctrine of qualified immunity might well be applied by this Court." Ensey v. Culhane, 727 A.2d 687, 690 (R.I. 1999). Considering it "is an immunity from suit rather than a mere defense to liability," the court "repeatedly ha[s] stressed the importance of resolving immunity questions at the earliest possible stage in litigation." Id. at 691 (emphasis in original) (quoting Hunter v. Bryant, 502 U.S. 224, 227 (1991)). With that in mind, "[w]hen a defendant pleads qualified immunity as a defense, the court must determine whether the facts alleged by the plaintiff set forth a violation of a constitutional right and whether the constitutional right was clearly established at the time of the alleged misconduct." Walker v. Howard, 517 F. App'x 236, 237 (5th Cir. 2013) (citing Ontiveros v. City of Rosenberg, 564 F.3d 379, 382 (5th Cir. 2009)).

Thus, just like a 42 U.S.C. § 1983 claim, "the first step in evaluating a claim to qualified immunity is to determine whether the plaintiff has alleged the deprivation of an actual constitutional right at all * * *." Fabrizio v. City of Providence, 104 A.3d 1289, 1294 (R.I. 2014) (quoting Monahan v. Girouard, 911 A.2d 666, 674 (R.I. 2006)). If there is no evidence of a constitutional violation, the inquiry ends at step one because '"[g]overnment officials need not avail themselves of the protections of qualified immunity when no constitutional violation is present.'" Fabrizio, 104 A.3d at 1293 (quoting Monahan, 911 A.2d at 673–74).

The Court already has addressed the factual allegations upon which Felkner alleges a deprivation of his constitutional rights and determined that there is no genuine issue as to a material fact to support his claims. Even considering the evidence in a light most favorable to Felkner, he has not established evidence of any constitutional violations. That being the case, the inquiry ends at step one, and consequently, the issue of qualified immunity is rendered moot.

E

The Conspiracy Claim

In his First Amended Complaint, Felkner asserts that Defendants conspired to violate his freedom of speech and due process rights pursuant to 42 U.S.C. § 1985(3). However, Felkner's conspiracy claim fails because this Court has found that Felkner did not suffer a violation of his civil rights.

A civil conspiracy claim requires an actionable underlying wrong, and none exists in this case. See Read & Lundy, Inc. v. Washington Trust Co. of Westerly, 840 A.2d 1099, 1102 (R.I. 2004) (recognizing that a civil conspiracy claim "is a means for establishing joint liability for other tortious conduct; therefore, it 'requires a valid underlying intentional tort theory'") (quoting Guilbeault v. R.J. Reynolds Tobacco Co., 84 F. Supp. 2d 263, 268 (D.R.I. 2000)). Here, although

Felkner alleges that Defendants conspired to violate his constitutional rights, he has failed to provide genuine issues as to a material fact to demonstrate that Defendants actually violated his rights in the first instance, much less conspired to violate same.

Furthermore, our Supreme Court has declared that "[u]nlike § 1983, which provides a remedy for deprivations of any constitutional right, § 1985(3) provides a remedy exclusively for deprivations of the equal protection of the law or of the privileges and immunities guaranteed under the law." Salisbury v. Stone, 518 A.2d 1355, 1361 (R.I. 1986) (citing Jennings v. Shuman, 567 F.2d 1213, 1221 (3d Cir. 1977)). In setting forth a 42 U.S.C. § 1985(3) claim, "a claimant must allege that a conspiracy was not only established to deprive the claimant of the equal protection and privileges or immunities of the law but also was predicated upon a racial or suspect class-based, invidiously discriminatory animus." Salisbury, 518 A.2d at 1361 (citing United Bhd. of Carpenters & Joiners of Am. v. Scott, 463 U.S. 825, 828-29 (1983); Griffin v. Breckenridge, 403 U.S. 88, 101-03 (1971)).

Failure to allege a racial or class-based animus as motivation for the conspiracy is fatal to any such claim. See Salisbury, 518 A.2d at 1361 ("In failing to allege that his dismissal was the act of a conspiracy motivated by a racial or class-based animus, [plaintiff] failed to state a claim under § 1985(3)."); see also Cruz Velazquez v. Rodriguez Quinones, 550 F. Supp. 2d 243, 251 (D.P.R. 2007) (reiterating "in order for plaintiffs to have a viable claim, they must belong to a constitutionally protected class under section 1985(3)").

The United States Supreme Court has questioned whether 42 U.S.C. § 1985 prohibits "wholly non-racial, but politically motivated conspiracies," stating that if it accepted such a theory, "the proscription of § 1985(3) would arguably reach the claim that a political party has interfered with the freedom of speech of another political party by encouraging the heckling of its rival's

speakers and the disruption of the rival's meetings." United Bhd. of Carpenters and Joiners of Am., 463 U.S. at 836. Lower courts since have rejected the proposition. See Cruz Velazquez, 550 F. Supp. 2d at 251 (stating "[b]eing a member of a political party does not constitute a protected class envisioned by Congress when it created § 1985(3)"); Rodriguez v. Nazario, 719 F. Supp. 52, 57 (D.P.R. 1989) (declaring "there can be no Section 1985(3) protection for purely political conspiracies").

In Count VII of his First Amended Complaint, Felkner alleges that Defendants conspired to deny him "his freedom of speech and due process rights on account of his political beliefs . . . ." (First Am. Compl. ¶ 152.) In doing so, however, he failed to allege that this alleged conspiracy was "motivated by a racial or class-based animus . . . ." Salisbury, 518 A.2d at 1361. Furthermore, considering that actual political party membership "does not constitute a protected class" under 42 U.S.C. § 1985(3)—Cruz Velazquez, 550 F. Supp. 2d at 251—it follows that the mere holding of political beliefs would not bring Felkner within a protected class for purposes of 42 U.S.C. § 1985(3).

In view of the foregoing, the Court determines that Felkner has failed to establish evidence of any underlying constitutional violation that would support his conspiracy claim. Furthermore, even if he had, the fact that he failed to allege a racial or class-based animus as motivation for the alleged conspiracy is fatal to the viability of his civil rights claim under 42 U.S.C. § 1985(3). Accordingly, the Court dismisses Count VII of the First Amended Complaint.

F

The Equitable Claims

In addition to seeking compensatory relief, Felkner seeks equitable relief in the nature of an order to expunge the ASC hearing from his academic file and an order to extend the time in which

to complete his master's program. (First Am. Compl. at 34.) Citing to Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982), Felkner asserts that in the event that the Court finds in favor of Defendants based on their qualified immunity defense, then the equitable claims would survive the instant Motion. (Pl.'s Obj. to Defs.' Third Mot. for Summ. J. at 1, n.1.)

The United States Supreme Court has declared that "where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." Bell v. Hood, 327 U.S. 678, 684 (1946). Thus, had this Court ruled in favor of Defendants based upon qualified immunity, Felkner's equitable claims would have survived the motion. See Wood v. Strickland, 420 U.S. 308, 314 n.6 (1975) (stating "immunity from damages does not ordinarily bar equitable relief as well"); Denius v. Dunlap, 209 F.3d 944, 959 (7th Cir. 2000) ("The doctrine of qualified immunity does not apply to claims for equitable relief.").

However, as Felkner failed to establish a genuine issue as to a material fact that a constitutional violation occurred, Defendants had no need to avail themselves of the protections of the qualified immunity doctrine. See Fabrizio, 104 A.3d at 1293 (stating "[g]overnment officials need not avail themselves of the protections of qualified immunity when no constitutional violation is present"). It necessarily follows that because Felkner did not provide evidence of any constitutional violations, he is not entitled to equitable relief. See Granger v. Johnson, 117 R.I. 440, 451, 367 A.2d 1062, 1068 (1977) (declaring that "before [a court] may act [in equity], the complainant must show that he has suffered an injury to a legally recognized right"). Consequently, the Court concludes as a matter of law that Felkner is not entitled to equitable relief.

IV

Conclusion

For the foregoing reasons, the Court finds that Felkner has failed to present any genuine issues of material fact to demonstrate that he suffered a violation of his constitutional rights. Consequently, all of his 42 U.S.C. § 1983 and RICRA claims must fail. The Court further finds that Felkner has failed to allege a prima facie case of conspiracy under 42 U.S.C. § 1985(3); thus, this claim also fails for failure to state a claim. The Court rejects Felkner's claim for equitable relief. Accordingly, the Court grants Defendants' Motion for Summary Judgment as to all counts in the First Amended Complaint.

Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Felkner v. Rhode Island College, et al.**
CASE NO:	**PC 2007-6702**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 2, 2015**
JUSTICE/MAGISTRATE:	**Vogel, J.**
ATTORNEYS:	
For Plaintiff:	**Diane M. Kildea, Esq.** **Thomas W. Lyons, III, Esq.**
For Defendant:	**Timothy J. Dodd, Esq.** **Jeffrey S. Michaelson, Esq.**