



February 16, 2017

The Honorable Julie Armstrong  
Charleston Count Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401

RE: *Robert T. Dillon, Jr., PhD. vs. The College of Charleston and Brian McGee,  
in his individual capacity*  
Case No.: 2016-CP-10-3774  
Our File No.: 2016-00105

Dear Julie,

This case is scheduled before Judge Dennis on February 21, 2017, at 2:00 p.m. Enclosed please find an original and a copy of Plaintiff's Response to Defendants' Motion to Dismiss regarding the above-referenced matter. Please file the original and return a clocked-in copy of the same to me in the enclosed self-addressed stamped envelope.

By copy of this letter to Judge Dennis and opposing counsel, I am likewise providing them with a copy of the same.

With kindest regards, I am

Sincerely,

Nancy Bloodgood

NB/alk  
Encloses

cc: The Honorable R. Markley Dennis, Jr.  
Robert Dillon, *via email*  
Henry W. Frampton, IV, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Robert T. Dillon, Jr., PhD.,	)	Case No.: 2016-CP-10-3774
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
The College of Charleston and Brian	)	
McGee, in his individual capacity,	)	
	)	
Defendants.	)	
	)	

**PLAINTIFF’S RESPONSE TO  
DEFENDANTS’ MOTION TO DISMISS**

**I.     INTRODUCTION**

Plaintiff Dr. Robert T. Dillon, Jr., PhD. was a tenured Associate Professor and employed by Defendant College for 25 years before he was suspended and barred from campus because he complained that his academic freedom as a tenured professor was being infringed upon when he was told how he had to word his course syllabus and then punished for refusing to comply. (Compl. ¶¶ 6, 110, 112.) Plaintiff filed a Complaint alleging defamation and state constitutional violations of free speech and due process. Defendant has moved to dismiss all three (3) of Plaintiff’s causes of action.

**II.   STANDARD OF REVIEW**

“Under Rule 12(b) (6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper.” *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d

869, 874 (2006) (citing *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999)).

### III. LEGAL ARGUMENT

#### A. Defamation

Plaintiff's first cause of action is defamation against Defendant College. Defendants allege Plaintiff has failed to allege the necessary element of publication. In fact, Plaintiff has alleged as follows:

1. "...false statements and actions were published to persons who had no need to know, including faculty and students, in public meetings." (Comp. ¶101.)

2. Defendant McGee hand-picked three faculty members to be on an 'investigative review panel' regarding the sufficiency of Plaintiff's course syllabus ,which panel was not provided for in the Faculty Handbook, and whose members never spoke to Plaintiff before reporting to Provost McGee their conclusions that Plaintiff's course syllabus was insufficient. (Comp. ¶¶57-62.) These three faculty members had no right to review Plaintiff's alleged deficient job performance and Defendants' action of sharing this information constitutes publication.

3. Plaintiff's 60 colleagues discovered he was suddenly not teaching any classes and had been removed from the classroom. As the only reason in the Faculty Handbook for removing a professor from the classroom is a strong threat of immediate harm, such actions were defamatory. (Comp. ¶¶ 94-98.)

4. A faculty member named Kingsley-Smith, after speaking to another faculty member named Dr. Plante removed Plaintiff from a student's graduate advisory committee because Plaintiff had been suspended. (Comp. ¶64.)

5. "Dr. Kingsley-Smith's actions show Plaintiff's colleagues considered Plaintiff unfit to perform his duties as an associate professor based on the wrongful actions taken against

him by Defendant College.” (Comp. ¶65.)

These allegations show that Defendants’ actions and statements, which were published to faculty and students who had no right to know, indicated Plaintiff was unfit for his profession. Plaintiff has referred specifically to five (5) faculty members in the Complaint and to one (1) particular student to whom Defendants’ actions and statements were published. These allegations are sufficient to allege publication.

**B. Retaliation in Violation of Exercise of First Amendment Rights**

Defendants admit Defendant College of Charleston is a state educational institution. (Ans. ¶ 2.) Plaintiff’s second cause of action alleges retaliation in violation of the S.C. Constitution’s right to free speech.<sup>1</sup> The basis for this claim is that Plaintiff engaged in protected expression regarding a matter of public concern because he complained that his academic freedom as a tenured professor was being infringed upon when he was told what language he had to use to describe his courses. (Compl. ¶¶ 66-80, 107-112.)

Defendants contend the South Carolina State Constitution does not recognize a cause of action for free speech retaliation. This is not true. S.C. Const. Ann. Art. I, § 2 provides, “The General Assembly shall make no law ... abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances.” This provision of the State Constitution has been the basis for several free speech complaints. *See, e.g., Town of Duncan v. State Budget & Control Bd.*, 326 S.C. 6, 482 S.E.2d 768 (S.C. 1997) (public employee’s report of misconduct implicated First Amendment protection because it was a matter of public concern.) In *Town of Duncan*, the Court

---

<sup>1</sup> Plaintiff refers to free speech rights as First Amendment rights, although this constitutional right is technically found in Article 1 section 3 of the State Constitution. If the basis of Defendants’ motion is the use of the term “First Amendment” Plaintiff can clarify that wording, although the allegations are clear that it is Plaintiff’s right of free speech that is implicated in this cause of action.

held, “An action for violation of a plaintiff’s First Amendment rights based on retaliatory discharge requires a showing that (1) the plaintiff’s speech is protected by the First Amendment, meaning (a) the speech involves a matter of public concern and (b) the employee’s interest in speaking outweighs the employer’s interest in promoting office efficiency; and (2) the plaintiff’s speech was a substantial motivating factor in the government action.” 326 S.C. at 13-14, 482 S.E.2d at 772 (citing *Connick v. Myers*, 461 U.S. 138, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983); see also *City of Beaufort v. Baker*, 315 S.C. 146, 150, 432 S.E.2d 470, 472 (1993) (ordinance is not content-neutral as applied, thereby infringing upon plaintiffs’ freedom of speech in violation of the First Amendment of the United States Constitution and Article I, § 2 of the South Carolina Constitution) (emphasis added); *Honea Path v. Flynn*, 255 S.C. 32, 39, 176 S.E.2d 564, 567 (1970) (unconstitutional vagueness is aggravated when a statute operates to inhibit the exercise of individual freedoms effectively guaranteed by the state and federal constitutions); and *Botchie v. O’Dowd*, 318 S.C. 130, 456 S.E.2d 403 (1995), cert. denied, 516 U.S. 864, 116 S. Ct. 178, 133 L. Ed. 2d 117 (U.S. 1995) (former public employee’s action against a county sheriff for alleged wrongful discharge in violation of his right to free speech under S.C. Const. art. I, § 2 failed based on a weighing of the employee’s First Amendment rights). Clearly, plaintiffs in South Carolina can bring free speech claims under both the state and federal constitutions.

### C. Due Process Violations

Plaintiff’s third cause of action alleges violation of his due process right under the State Constitution. Article I, § 3 of the South Carolina Constitution provides, “The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall anyone be denied the equal protection of the laws.” This section of the South

Carolina Constitution addresses both equal protection and due process.

Defendants' contention that the South Carolina State Constitution does not recognize causes of action for violations of due process is wrong. *See, e.g. Dew v. City of Florence*, 279 S.C. 155, 161, 303 S.E.2d 664, 667 (1983) ("Both the constitution of the United States and of South Carolina require notice and a hearing comporting with due process if [plaintiff] could show she had a 'property' interest in continued employment.") Plaintiff has alleged he had a property interest in his tenured status and a liberty interest in being free from unwarranted disciplinary actions such as being barred from campus and having to report to an unauthorized group of faculty members, which group's actions subsequently resulted in Plaintiff being denied his grievance rights. Specifically, he has alleged, "After the group of three upheld McGee's actions, Plaintiff attempted to grieve the issue of academic freedom with the Faculty Hearing Committee. However, Provost McGee's previous creation of the group of three resulted in a finding by the Faculty Hearing Committee that Plaintiff's complaint to them had been filed too late. The Faculty Hearing Committee found McGee's use of the group of three had used up the time Plaintiff had to have the Faculty Hearing Committee decide the issues of academic freedom and due process." Compl. ¶¶ 84-86.

Further Plaintiff alleges, "Plaintiff has a property right in his tenured status as he has an enforceable expectation of continued employment. Plaintiff also has a liberty interest because Defendant College and Defendant McGee took unwarranted disciplinary actions against Plaintiff that impaired his good name and reputation. Plaintiff was denied the opportunity to be heard as to the important issues of academic freedom and due process due to Defendant McGee's creation of a hand-picked group of three which group of three's actions used up Plaintiff's time to file a grievance with the Faculty Hearing Committee. Plaintiff was denied an adequate opportunity to

be heard on these important issues before the Faculty Hearing Committee. Plaintiff's right to academic freedom and due process were clearly established in Defendant College's FAM, by the AAUP, and in the SACSCOC standards. Defendant McGee should have known his actions violated Plaintiff's constitutional right to procedural due process under the state constitution." Compl. ¶¶ 115-120.

Our State courts have held that public employees are entitled to due process. *See, e.g., Spur at Williams Brice Owners Ass'n, Inc. v. Lalla*, 415 S.C. 72, 86, 781 S.E.2d 115, 123 (Ct. App. 2015) (holding the State denied petitioners the equal protection of the laws in granting judicial enforcement of certain restrictive agreements; "...for a restrictive covenant to be judicially enforceable, it must not discriminate on the basis of a classification that, if applied by the state, would contravene *either the state or federal* Equal Protection Clause.") (emphasis added); *see also, Weaver v. S.C. Coastal Council*, 309 S.C. 368, 373-374, 423 S.E.2d 340, 343 (1992) (denial of respondent's permit was a violation of her equal protection *and due process rights under the federal and state constitutions* and that Council's decision was based upon matters not properly before the agency) (emphasis added).

Further, a person with a protected property interest is entitled to due process protections, specifically "a pre-termination opportunity to respond and a post-termination procedure." *Ross v. MUSC*, 328 S.C. 51, 66, 492 S.E.2d 62, 71 (1997). While a full evidentiary pre-termination hearing is not required, "some kind of hearing is required prior to the discharge of an employee who has a constitutionally protected property interest in employment." *Id.* It is, "essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action." *Id.* Clearly, as part of the right to notice and an opportunity to be heard, the employee must be given the "opportunity to present reasons . . .

why proposed action should not be taken.” *Id.* This opportunity is a fundamental due process requirement. *Id.* Determining whether due process is met is “an uncertain enterprise which must discover what ‘fundamental fairness’ consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake.” *Lassiter v. Dep’t of Social Services*, 452 U.S. 18, 24-25 (1981). Here, Plaintiff has adequately alleged a violation of due process under the State Constitution as he has alleged he was denied the ability to grieve the actions taken against him which resulted in the loss of his tenured position.

For all of these reasons, Plaintiff respectfully requests Defendants’ Motion be dismissed in its entirety. In the event the Court believes an issue needs to be more clearly stated in the Complaint, Plaintiff respectfully requests permission to amend.

**SIGNATURE BLOCK ON FOLLOWING PAGE**



BLOODGOOD & SANDERS, LLC



Nancy Bloodgood, SC Bar No.: 6459  
Lucy C. Sanders, SC Bar No.: 78169  
242 Mathis Ferry Road, Suite 201  
Mt. Pleasant, SC 29464  
Telephone: (843) 972-0313  
Facsimile: (843) 377-8997  
Email: [nbloodgood@bloodgoodsanders.com](mailto:nbloodgood@bloodgoodsanders.com)  
[lsanders@bloodgoodsanders.com](mailto:lsanders@bloodgoodsanders.com)

*Attorneys for Plaintiff*

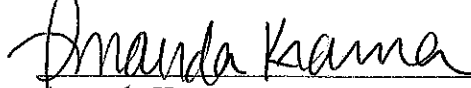
Charleston, South Carolina

Date: February 16, 2017

CERTIFICATE OF SERVICE

I certify that on **February 16, 2017** I served the foregoing **Plaintiff's Response to Defendants' Motion to Dismiss** upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsel's last known address.

By:



Amanda Kramer