Comments

Student Challenges to Academic Decisions: The Need for the Judiciary to Look Beyond Deference

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Abstract

U.S. courts have consistently held that college students may not sue their institutions based on academic challenges. Academic challenges, to be distinguished from disciplinary issues, are those that involve a student's course work and acceptance into special academic programs. Due to the judiciary's categorization of academic challenges as not cognizable claims, students do not have a neutral third-party forum where their rights can be adequately evaluated. Although courts have stated that the judiciary is not the appropriate forum for academic claims due to lack of expertise, among other issues, this Comment argues that courts are an appropriate forum for the adjudication of certain academic challenges. This Comment further argues that there is strong support for judicial review of cases in the areas of contract formation, breach of

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contract, tort law, and personal liberties. Finally, this Comment presents a series of questions that courts may ask when choosing whether to adjudicate a student's legal claim against their institution.

I. INTRODUCTION

Due to the value of a strong educational background in today's job market,[1] students are becoming more likely to bring judicial challenges to academic decisions if those academic decisions compromise their chance of receiving their degrees.[2] While judicial deference to the decisions of academic institutions is the proper standard in some instances,[3] there are other instances when judicial scrutiny can add valuable insight to the evaluation of a student's claim.[4]

Student challenges of academic decisions usually focus on the grades of important exams or the granting of a degree to the student.[5] These claims are, in many instances, grounded in the Due Process Clause of the Fourteenth Amendment.[6] Due Process claims in the academic context usually concern fair procedures for students who are appealing academic decisions.[7] Claims are also commonly based on the First Amendment,[8] which the Supreme Court has used to establish a right to academic freedom.[9] In reviewing these student claims, the Supreme Court has regularly held that deference to the decisions of the academic institution is proper because the decisions relate to an evaluative process that is best used by professors and the administration.[10] However, student challenges may concern contract claims, property issues, and

1. *See* Kent Hill et al., The Value of Higher Education: Individual and Societal Benefits 11-16 (Oct. 2005) (unpublished manuscript) (on file with the Productivity and Prosperity Project at Arizona State University).

2. *See* Robert M. O'Neil, *Judicial Deference to Academic Decisions: An Outmoded Concept?*, 36 J.C. & U.L. 729, 733 (2010) (discussing the rising trend of academic challenges in the judiciary).

3. *See id.* at 732-35 (discussing the trend of judicial deference).

4. *See* Churchill v. Univ. of Colo. at Boulder, 2010 Colo. App. LEXIS 1745, 1748 (Colo. App. 2010); Kashmiri v. Regents of Univ. of Cal., 156 Cal. App. 4th 809, 812 (Cal. Ct. App. 2007); Ku v. State of Tenn., 322 F.3d 431, 440 (6th Cir. 2003).

5. *See* Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 217 (1985); Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 81 (1978); Sylvester v. Tex. Southern Univ., 957 F. Supp. 944, 947 (S.D. Tex. 1997).

6. U.S. CONST. amend. XIV, § 2.

7. *See Ewing*, 474 U.S. at 217; *Horowitz*, 435 U.S. at 81.

8. U.S. CONST. amend. I.

9. *See* Keyshian v. Bd. of Regents of Univ. of State of N.Y., 385 U.S. 589, 594 (1967); *see also* Grutter v. Bollinger, 539 U.S. 306, 312 (2003); Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 274 (1978) (discussing university's First Amendment right to make autonomous decisions).

10. *See Horowitz*, 435 U.S. at 79; *Sylvester*, 957 F. Supp. at 944.

immunity standards; areas of law where courts can use their expertise to lend valuable assistance to students and universities.[11]

When examining judicial deference in cases involving higher education institutions, one must differentiate between academic and disciplinary issues.[12] College[13] procedures for evaluating academic performance do not necessarily follow a traditional judicial adversary model.[14] The disciplinary processes on many college campuses, in contrast, bear a striking resemblance to traditional judicial systems in the United States.[15] A "full hearing" requirement often attaches to disciplinary matters, such as those concerning non-classroom related conduct or alcohol issues.[16] Evaluations of an academic nature are also more subjective and fact specific than most disciplinary processes.[17] Moreover, the Supreme Court has emphasized that "an expert evaluation of cumulative [academic] information" is not the type of decision that the Court is best equipped to make.[18] The experts that the Court referred to are professors and academic administrators who are accustomed to taking on the multi-faceted role that facilitates a personal relationship between student and educator.[19] The educator's role in the lives of students has historically made the academic evaluation process inherently non-adversarial.[20] Therefore, according to the Court, educators are best equipped to evaluate academic performance on all necessary levels.[21]

The Supreme Court, however, has gone beyond noting the differences between the disciplinary process and the academic evaluation process.[22] The Court has recognized that, in some instances, a formal hearing that would be beneficial in the disciplinary context may actually be harmful in the academic context.[23] While it is acceptable, and even

11. *See* Bd. of Regents of State Coll. v. Roth, 408 U.S. 564, 581 (1972); Churchill v. Univ. of Colo. at Boulder, 2010 Colo. App. LEXIS 1745, 1746 (Colo. App. 2010); Kashmiri v. Regents of Univ. of Cal. 156 Cal. App. 4th 809, 810 (Cal. Ct. App. 2007); Ku v. State of Tenn., 322 F.3d 431, 440 (6th Cir. 2003).

12. *See Roth*, 408 U.S. at 571.

13. The author uses the word "college" to refer generally to institutions of higher education, including, but not limited to, colleges, community colleges, and universities.

14. *See Horowitz*, 435 U.S. at 89.

15. *See id.*

16. *See id.*

17. *See id.* at 89-90 (stating that academic judgments are "by [their] nature more subjective and evaluative than the typical factual questions presented in the average disciplinary decision").

18. *See id.* at 90.

19. *See id.*

20. *See Horowitz*, 435 U.S. at 90.

21. *See id.*

22. *See id.* at 90.

23. *See id.*

expected, that the nature of disciplinary proceedings will ignite an adversarial dynamic in the student-teacher relationship, the judiciary finds it more troublesome to allow this adversarial nature to arise in instances of academic concern.[24] The Court has acknowledged its own reservations about expanding the judicial presence in higher education issues for fear of "deteriorat[ing]" the student experience and faculty authority.[25]

Because the Court has already stated that the judicial process is, in many ways, well suited to evaluate disciplinary decisions,[26] this Comment will focus solely on the academic challenges that colleges face. This Comment will argue that, in some instances, the judicial process is equally, if not better, suited to handle these challenges.[27] While the process for disciplinary decisions at colleges has been attached directly to the individual right to Due Process,[28] the legal avenues available to students in academic proceedings are not as clearly established.[29] The judiciary cannot assume that, because professors and administrators have a level of expert knowledge concerning academics, they necessarily always act in a manner that reflects sound judgment.[30] There is, indeed, merit in judicial deference to academic decisions made in an obviously non-arbitrary manner; however, in some instances, courts may be encouraging harm to students when they defer to universities without further evaluation.[31]

This Comment will proceed as follows. Part II will discuss and outline the history of academic challenges in the judiciary.[32] The cases discussed will set forth the foundation that courts have developed in deferring to the decisions of colleges in academic cases.[33] This Comment will also examine the less common areas of law that occasionally relate to academic challenges.[34] While courts have

24. *See id*.
25. *See Horowitz*, 435 U.S. at 90.
26. *See* Greenhill v. Bailey, 519 F.2d 5, 6 (8th Cir. 1975).
27. *See infra* Part III.
28. *See Greenhill*, 519 F.2d at 10.
29. *See infra* Part III.
30. *See* Atria v. Vanderbilt Univ., 142 F. App'x 246, 261 (6th Cir. 2005); Sylvester v. Tex. Southern Univ., 957 F. Supp. 944, 947 (S.D. Tex. 1997).
31. *See Atria*, 142 F. App'x at 261.
32. *See* Garcetti v. Ceballos, 547 U.S. 410, 422 (2006); Connick v. Myers, 461 U.S. 138, 145 (1983); Pickering v. Bd. of Educ., 391 U.S. 563, 565 (1968); Scallet v. Rosenblum, 911 F. Supp. 999, 1011 (W.D. Va. 1996).
33. *See* Tr. of Dartmouth Coll. v. Woodward, 17 U.S. 518, 530 (1819).
34. *See* Bd. of Regents of State Coll. v. Roth, 408 U.S. 564, 573 (1972); Ku v. State of Tenn., 322 F.3d 431, 446 (6th Cir. 2003); Churchill v. Univ. of Colo. at Boulder, 2010 Colo. App. LEXIS 1745, 1749 (Colo. App. 2010); Kashmiri v. Regents of Univ. of Cal., 156 Cal. App. 4th 809, 814 (Cal. Ct. App. 2007); *see also infra* Part III.

frequently focused on constitutional law issues, students may further ground their claims against universities and colleges in contract formation,[35] breach of contract,[36] tort law,[37] and personal liberty and property interests.[38] Part III will then articulate a number of factors that courts should consider when presented with student challenges to academic decisions. These considerations will allow the judiciary to undertake a more proactive role, where appropriate, without fear of inconsistency.[39] This Comment concludes by suggesting that the legal area of student academic challenges would greatly benefit from reevaluation. Through an analysis of the case law that can be applied to student challenges of academic decisions, the judiciary could better determine when deference to institutional decisions is appropriate and when judicial intervention would be most beneficial.

II. BACKGROUND

Perhaps the most seminal case exploring the interplay between the judiciary and higher education institutions is *Trustees of Dartmouth College v. Woodward*.[40] The case involved a dispute between the Trustees and President of Dartmouth College concerning the charter of Dartmouth and its status as a private institution.[41] In its decision, the Supreme Court deferred to the college and its perspective, upholding the sanctity of the original charter of the college that pre-dated the creation of the state.[42] The Supreme Court used this conflict to establish a zone of immunity for academic institutions and their decisions and actions.[43]

Since *Woodward*, courts have consistently deferred to colleges on their decisions concerning academic challenges and issues.[44] As Justice

35. *See* Russell v. Salve Regina Coll., 890 F.2d 484, 493 (1st Cir. 1989); Demasse v. ITT Corp., 984 P.2d 1138, 1151 (Ariz. 1999); Woolley v. Hoffmann-La Roche, Inc., 491 A.2d 1257, 1262 (N.J. 1985); Davis v. George Mason Univ., 395 F. Supp. 2d 331, 340 (E.D. Va. 2005).

36. *See* Sharick v. Southeastern Univ. of Health Sci., 780 So. 2d 136, 142 (Fla. Dist. Ct. App. 2000).

37. *See* Atria v. Vanderbilt Univ., 142 F. App'x 246, 263 (6th Cir. 2005); Doe v. Yale Univ., 748 A.2d 834, 854 (Conn. 2000); Ross v. Saint Augustine Coll., 103 F.3d 338, 342 (4th Cir. 1996).

38. *See* Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 86 (1978); Bishop v. Wood, 426 U.S. 341, 352 (1976); Bd. of Regents of State Coll. v. Roth, 408 U.S. 564, 583 (1972); Perry v. Sinderman, 408 U.S. 593, 602 (1972).

39. *See* Keyshian v. Bd. of Regents of Univ. of State of N.Y., 385 U.S. 589, 603 (1967) (citing Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 226 (1985)).

40. Tr. of Dartmouth Coll. v. Woodward, 17 U.S. 518 (1819).

41. *See id*. at 518-21.

42. *See id*. at 539.

43. *See id*.

44. *See, e.g.*, Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 225 (1985); Greenhill v. Bailey, 519 F.2d 5, 9 (8th Cir. 1975) ("It is true that courts will ordinarily

Byron White explained in *Moore v. East Cleveland*,[45] courts must defer to decisions made by other tribunals unless there is an egregious instance of arbitrariness.[46] Historically, courts have treated academic institutions as a tribunal and deferred to the institutions when dealing with academic challenges.[47] However, this "hands-off" policy does not apply when an educational institution deprives a student of a fundamental personal liberty or compromises a significant interest.[48] In instances of constitutional concern, courts will examine the decision of the college to ensure that students' constitutional rights have not been infringed.[49] In these instances, courts have also examined the legal protections that should be afforded to students.[50]

A. Judicial Deference and Due Process

Regularly, courts entertain Due Process challenges to academic decisions.[51] Students who are dissatisfied with an important academic decision often claim that they did not receive a proper hearing and that their school did not give them an adequate and fair opportunity to present their side of the issue.[52] In *Regents of the University of Michigan v. Ewing*,[53] Ewing was a student in a joint undergraduate and medical degree program at the University of Michigan.[54] When Ewing failed a required examination, a university review board unanimously dismissed him from the program.[55] Ewing challenged the university's decision in federal court on grounds of promissory estoppel and Due Process.[56] After a federal trial court in Michigan rejected both of Ewing's claims, the U.S. Court of Appeals for the Sixth Circuit reversed in Ewing's favor, holding that a student has a constitutionally protected right to continued enrollment in an academic program.[57] However, on appeal, the Supreme Court held that, where a university engages in regular evaluations of a student's academic status and exercises professional

defer to the broad discretion bested in school officials and will rarely review an education institution's evaluation of the academic performance of its students.").

45. Moore v. East Cleveland, 431 U.S. 494 (1977).
46. *See id.* at 543-44.
47. *See Greenhill*, 519 F.2d at 6.
48. *See id.*
49. *See id.*
50. *See id.*
51. *See* Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 227 (1985); Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 79 (1978).
52. *See Ewing*, 474 U.S. at 227.
53. Regents of Univ. of Mich. v. Ewing, 474 U.S. 214 (1985).
54. *See id.* at 215.
55. *See id.* at 216.
56. *See id.* at 217.
57. *See id.* at 222.

judgment in a fair and impartial manner, the Court has no authority to overturn an academic decision.[58] Therefore, while a student does have a right to continued enrollment, such a right is not unlimited.[59]

The Supreme Court based its decision in *Ewing* on the reasoning articulated in *Board of Curators of the University of Missouri v. Horowitz*.[60] In *Horowitz*, the Court deferred to the professional academic judgment of the university when a student challenged her dismissal from medical school.[61] The University of Missouri dismissed Horowitz in her final year of the program because she failed to meet the program's standards.[62] Horowitz asserted a deprivation of Due Process claim against the University of Missouri and contended that her dismissal proceedings were fundamentally unfair.[63] The Court rejected her argument and noted that, not only was Horowitz afforded full disclosure concerning the nature of her dismissal, she was also allowed multiple opportunities to appeal and present her case to various authorities.[64] Based on these findings, the Court held that the University of Missouri had provided sufficient Due Process, and, therefore, deference to the decision of the University was warranted.[65]

The *Horowitz* Court strongly emphasized that the decisions made by universities and their faculty are of a special nature.[66] Moreover, the Supreme Court noted that courts are "ill-equipped" in making decisions concerning academic performance or even in adequately evaluating decisions of an academic nature.[67] Furthermore, the Court in *Horowitz* emphasized that colleges, in order to function as self-determining institutions of higher learning, require a basic level of discretion in judging academic merits of their students' qualifications.[68]

B. Judicial Deference and Academic Freedom

In *Keyshian v. Board of Regents*,[69] the Supreme Court further expressed concern about the judiciary infringing on the academic

58. *See id.* at 227-28.
59. *Ewing*, 474 U.S. at 227-28.
60. Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78 (1977).
61. *See id.* at 79.
62. *See id.*
63. *See id.* at 82.
64. *See id.* at 85.
65. *Horowitz*, 435 U.S. at 91.
66. *See id.* at 89-90 (noting that academic decisions warrant "an expert evaluation of cumulative information and [are] not readily adapted to the procedural tools of judicial or administrative decision making.").
67. *See id.* at 92.
68. *See id.* at 96.
69. Keyshian v. Bd. of Regents of Univ. of State of N.Y., 385 U.S. 589 (1967).

institution's right of academic freedom.[70] The Supreme Court has developed the concept of academic freedom as part of First Amendment jurisprudence and has since closely guarded this freedom.[71] Academic freedom is the constitutional doctrine of autonomy for educational institutions.[72]

The Supreme Court has emphasized the importance of academic freedom by stating that this freedom not only allows for a free flow of ideas in the classroom and research setting but also protects universities and colleges from the potentially overbearing influence of the public.[73] While professors and higher education administrators can still be held responsible for their actions, academic freedom affords a heightened level of First Amendment protection and allows for some leeway when unpopular or controversial decisions need to be made.[74] The Court in *Keyshian* acknowledged the state's interest in protecting its educational system but noted that the interests of the state cannot be held as paramount to the interests of academic freedom.[75] The State's actions must be limited to the narrowest scope possible to preserve fundamental personal liberties.[76] Because academic freedom is a fundamental constitutional right,[77] restrictions on it are subject to strict judicial scrutiny.[78]

The Supreme Court further noted that academic freedom, as a personal liberty, is a concern for all people that our nation is committed to safeguarding as an essential aspect of the American college

70. *See id*. at 603.

71. *See* Judith Areen, *Government as Educator: A New Understanding of First Amendment Protection of Academic Freedom and Governance*, 97 GEO. L.J. 945, 953-62 (2009).

72. *See id*.

73. *See id*.

74. *See id*.

75. *See Keyshian*, 385 U.S. at 602.

76. *See id*. at 602 ("[E]ven though the governmental purpose may be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.").

77. United States v. Carolene Prods., 304 U.S. 144, 152 n.4 (1938) (introduced the idea that fundamental rights are examined under various levels of scrutiny).

78. *See Carolene Prods.*, 304 U.S. at 152 n.4 (1938); Korematsu v. United States, 323 U.S. 214, 216 (1944); Loving v. Virginia, 388 U.S. 1, 11 (1967). The Supreme Court has developed various levels of scrutiny when analyzing some types of constitutional questions, the highest of which is strict scrutiny. Strict scrutiny was first applied in 1994 to racial categorizations when the Court made a determination concerning Japanese-American internments during WWII. Strict scrutiny is a three-level test that begins with an examination of whether a fundamental constitutional right is at risk. If a fundamental right is at risk, there must be sufficient justification for the government's infringement on that right, meaning that the government must demonstrate that the infringement is both narrowly tailored and necessary to a compelling governmental interest.

community.[79] In *Grutter v. Bollinger*,[80] the Court acknowledged that certain determinations promote a school's interest in autonomy and are expressly protected by the First Amendment.[81] Although the judiciary has a strongly rooted historical tendency to defer to academic institutions when dealing with academic challenges, this "hands-off" policy can be superseded when an institution acts to either deprive a student of a fundamental personal liberty or threaten a significant academic interest.[82] In fact, the Court has held that a student's fundamental rights are more valuable than some interests of the state and higher education institutions, and it is vital that the judiciary protect these fundamental rights.[83]

Due to the importance of academic freedom, the Supreme Court has expressed concern about the lack of a clear standard on which to operate when evaluating academic decisions.[84] The Court noted any action without a clear, underlying standard would unquestionably compromise academic freedom in the United States, which the Court termed a "special concern of the First Amendment."[85] The Court summarized its position on academic freedom and judicial review by stating that "precision of regulation must be the touchstone in an area so closely touching our most precious freedoms."[86]

III. LEGAL ANALYSIS BEYOND DEFERENCE

As noted above, courts generally defer to academic decisions of institutions unless the decision in question is arbitrary and capricious.[87] Courts have repeatedly refused to become involved in an evaluation of academic performance.[88] However, the judiciary has explicitly stated that not all considerations of academic performance and evaluation are beyond the scope of judicial review.[89] Courts traditionally view challenges to academic decisions as based in the Due Process Clause of the Fourteenth Amendment or the First Amendment.[90] Accordingly, regulations that appear reasonable on their face may not necessarily preclude a court from examining an action by a college to determine

79. *See Keyshian*, 385 U.S. at 603.
80. *See* Grutter v. Bollinger, 539 U.S. 306, 308 (2003).
81. *See id.*
82. *See* Greenhill v. Bailey, 519 F.2d 5, 6 (8th Cir. 1975).
83. *See id.*
84. *See Keyshian*, 385 U.S. at 603.
85. *See id.*
86. *See id.* (citing NAACP v. Button, 371 U.S. 415, 438 (1963)).
87. *See In re* Susan M. v. N.Y. Law Sch., 556 N.E.2d 1104, 1107 (N.Y. 1990).
88. *See id.*
89. *See id.*
90. *See* Dixon v. Ala. State Bd. of Educ., 294 F.2d 150, 157 (5th Cir. 1961).

whether the action was arbitrary.[91] The issues involved in many academic challenges are not substantially different from those in other cases which courts adjudicate on a regular basis.[92] Therefore, courts should not necessarily defer to institutions based on the notion that they are not well suited for evaluating academic decisions.[93]

In many instances, the college may not be an "expert" in terms of making determinations that impact a student's academic future.[94] An academic institution may be clouded by its own interests and therefore have a difficult time considering the impact that its decision will have on the student.[95]

In *Atria v. Vanderbilt University*,[96] for example, a medical student sued his university after being found guilty of cheating on an exam and subsequently suspended from the upcoming summer session.[97] The student alleged that his professor had unfairly redistributed the exams and, as a result, exposed him to the risk of his exam being altered.[98] The U.S. Court of Appeals for the Sixth Circuit held that a jury could reasonably conclude that the professor's methods put the student at a higher risk of being charged with an honor code violation.[99] While the university had argued on behalf of its tenured professor for summary judgment, the court found that the harm suffered by the student as a result of the academic sanctions was much more severe than the university acknowledged, thus warranting judicial examination.[100] The university chose to favor its professor unfairly and, thus, did not follow the rules set forth by its Honor Council.[101] Moreover, the university had risked the student's academic future and record to preserve its own interests.[102]

Cases like *Atria* demonstrate that deference to the institution may not be appropriate in certain instances.[103] Inevitably, an academic institution has a stake in the outcome of academic decisions and,

91. *See id.*
92. *See* Perry v. Sinderman, 408 U.S. 593, 598 (1972); Atria v. Vanderbilt Univ., 142 F. App'x 246, 248 (6th Cir. 2005).
93. *See* Ross v. Saint Augustine Coll., 103 F.3d 338, 341 (4th Cir. 1996); Woolley v. Hoffmann-La Roche, Inc., 491 A.2d 1257, 1262 (N.J. 1985).
94. *See* Sylvester v. Tex. Southern Univ., 957 F. Supp. 944, 953 (S.D. Tex. 1997); *Atria*, 142 F. App'x at 247.
95. *See Atria*, 142 F. App'x at 249.
96. Atria v. Vanderbilt Univ., 142 F. App'x 246 (6th Cir. 2005).
97. *See id.* at 249.
98. *See id.* at 251.
99. *See id.* at 253.
100. *See id.* at 254.
101. *See id.*
102. *Atria*, 142 F. App'x at 252.
103. *See* Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 90 (1978).

therefore, university employees may not be truly impartial evaluators.[104] Due to potential biases, courts should not be so tentative in assuming the role of academic evaluator.[105]

The Supreme Court directly addressed the issue of the court as an academic decision maker in *Cannon v. University of Chicago*.[106] The parties had raised the issue of whether the threat of litigation would have a negative impact on institutions of higher education.[107] The Court in *Cannon* dispelled the idea that litigation concerning academic decisions would be overly burdensome or harmful to a college.[108] The Court explained that the legal system has a great impact on society as it progresses.[109] Throughout history, there has not been an area of litigation too costly for the court system to handle, thus negating any claims that allowing some academic challenges into the court system would be overly burdensome.[110]

To move beyond their reservations about interfering in academia, courts need guidance in evaluating those academic claims that come before them.[111] From the various cases that courts have chosen to evaluate despite their academic nature, one can recognize several helpful questions that the judiciary should consider before deciding whether to evaluate the merits of a case. These questions include:

- Does the case involve an intricacy of law that requires judicial expertise?[112]
- Does the case present an inherent bias for the college?[113]
- Is the basis for litigation highly controversial?[114]
- Would the case benefit from examination by a jury?[115]
- Does the case involve a fundamental interest that the judiciary is designed to protect?[116]

In the following sections,[117] this Comment will discuss areas of law that, when applied to academic decisions, produce the above criteria that

104. *See* Parate v. Isibor, 868 F.2d 821, 822 (6th Cir. 1989).
105. *See Horowitz*, 435 U.S. at 91.
106. Canon v. Univ. of Chi., 441 U.S. 677 (1979).
107. *See id.* at 709-10.
108. *See id.* at 709.
109. *See id.*
110. *See id*.
111. *See* Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 90 (1978).
112. *See infra* Part III.A.
113. *See infra* Part III.B.
114. *See infra* Part III.C.
115. *See infra* Part III.D.
116. *See infra* Part III.E.
117. *See infra* Parts III.A-E.

courts should consider when determining whether to defer to the academic institution's judgment. This Comment will conclude by noting the merits of these questions and by discussing why courts should consider them in order to protect students' rights while still affording a level of academic autonomy to colleges.

A. Formation of Contract

The judiciary has long dealt with issues involving contracts between parties.[118] Notably, in the academic context, courts have stated that the relationship between an academic institution and its students is a contractual one.[119] However, the judiciary does not rigidly apply contract law to academic challenges.[120] The court system is specially equipped with the knowledge and experience necessary to handle the intricacies of contract law as it applies to the relationship between a student and college.[121]

Courts often rely on case law that interprets employment contracts when analyzing contracts between students and universities.[122] A contract that forms between a college and a student is typically characterized as implied-in-fact.[123] Absent a disclaimer, the implied contract made by a college in its brochures, website publications, and other printed materials is an enforceable contract that a student may reasonably rely on.[124] Similar to the employee and employer in an employment relationship, students and universities rely on the actions of others and have important expectations based on that reliance.[125]

118. *See* Lyons v. Salve Regina Coll., 565 F.2d 200, 206 (1st Cir. 1977); *see also* Harwood v. Johns Hopkins Univ., 747 A.2d 205, 209 (Md. Ct. Spec. App. 2000); Alden v. Georgetown Univ., 743 A.2d 110, 111 n.11 (D.C. 1999).

119. *See* Woolley v. Hoffmann-La Roche, Inc., 491 A.2d 1257, 1267 (N.J. 1985).

120. *See* Slaughter v. Brigham Young Univ., 514 F.2d 622, 644 (10th Cir. 1975); Clayton v. Tr. of Princeton Univ., 608 F. Supp. 413, 418 (D.N.J. 1985).

121. *See* Russell v. Salve Regina Coll., 890 F.2d 484, 490 (1st Cir. 1989); Davis v. George Mason Univ., 395 F. Supp. 2d 331, 357 (E.D. Va. 2005).

122. *See Woolley*, 491 A.2d at 1267; *Russell*, 890 F.2d at 490.

123. *See* Baltimore & Ohio R.R. Co. v. United States, 261 U.S. 592, 597 (1923) (As defined by the U.S. Supreme Court, "[A]n agreement 'implied in fact' . . . [is] . . . founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding."); *see also* Sharick v. Southeastern Univ. of Health Sci., 780 So. 2d 136, 140 (Fla. Dist. Ct. App. 2000).

124. *See Woolley*, 491 A.2d at 1264; *Russell*, 890 F.2d at 488; *see also* Swartley v. Hoffner, 734 A.2d 915, 919 (Pa. Super. Ct. 1999) (citing Merrow v. Goldberg, 672 F. Supp. 766, 774 (D.Vt. 1987)) ("The contract between [a college] and a student is comprised of the written guidelines, policies, and procedures as contained in the written materials distributed to the student over the course of their enrollment in the institution.").

125. *See Woolley*, 491 A.2d at 1264; *Sharick*, 780 So. 2d at 139.

Modifications to the college-student contract are held to the standards of common contract law, meaning that continued performance by a student does not constitute assent to any changes proposed or made by the college.[126]

In *Russell v. Salve Regina College*,[127] the U.S. Court of Appeals for the First Circuit applied contract law to a student's relationship with her nursing institution.[128] The court emphasized its role as an expert in contract law and as the proper tribunal for evaluations of the intricacies of contracts.[129] With this emphasis, the court denounced the college's claim that it was in a "unique" position and was solely able to evaluate Russell's claims.[130] While not previously considered by the academic evaluators, the court then applied the doctrine of substantial performance and ruled in Russell's favor, noting that the student's position was not properly considered by the college during its decision making process.[131]

In another example, *Davis v. George Mason University*,[132] the U.S. District Court for the Eastern District of Virginia held that the university had made an "unenforceable illusory contract" between itself and the plaintiff student.[133] The university was unable to effectively articulate to Davis why absolute mutuality did not bind their course listing guide.[134] As a result, the court stepped in and noted that George Mason had merely purported to promise a specific performance while, in reality, the performance was entirely optional.[135] The case illustrates that the judiciary also plays the important role of informing the academic community of proper legal standards.[136]

These cases exemplify the judiciary analyzing a specific area of law as it pertains to the college-student relationship. Accordingly, courts should first consider the following when making a determination as to whether to hear a case or defer to the academic institution: does the case involve an intricacy of law that requires judicial expertise?

Due to the complicated nature of contract formation, especially between a college and student, contract formation is an area that may require judicial expertise for interpretation.[137] Universities are

126. *See* Demasse v. ITT Corp., 984 P.2d 1138, 1142 (Ariz. 1999).
127. *See Russell*, 890 F.2d at 484.
128. *See id.* at 488.
129. *See id.* at 489.
130. *See id.*
131. *See id.*
132. Davis v. George Mason Univ., 395 F. Supp. 2d 331 (E.D. Va. 2005).
133. *See id.* at 337.
134. *See id.*
135. *See id.*
136. *See id.*
137. *See* Slaughter v. Brigham Young Univ., 514 F.2d 622, 636 (10th Cir. 1975); Clayton v. Tr. of Princeton Univ., 608 F. Supp. 413, 417 (D.N.J. 1985).

undoubtedly best suited to make determinations of a clearly academic nature and have the right to do so as part of their entitlement to academic freedom.[138] However, when academic determinations become intertwined with areas of law that require judicial expertise for interpretation, courts should not hesitate to intervene. Judicial intervention would preserve the sanctity of the relationship between the college and student and would preserve consistency within the area of law. Courts have been developing precedent and proper procedure throughout their history, and they should not hesitate to assert themselves as the best tribunal in some contexts and utilize the standards that they have previously set forth to interpret the law as it applies to students.

B. Breach of Contract Claims

Beyond simply being the proper tribunal to evaluate the details of academic contracts, courts are also better suited to evaluate damages when the academic contract is breached.[139] Because of the obvious interests that a college holds in any suit against it, most academic institutions are likely to overlook many of the more abstract damages concepts that may be applicable to students' claims.[140]

In *Sharick v. Southeastern University of the Health Sciences, Inc.*,[141] for example, the Third District Court of Appeals in Florida evaluated the damages awarded to a student based on his breach of implied-in-fact contract claim.[142] The purpose of awarding damages when a contract is breached is an attempt to place the injured party in the position they were in before the breach of contract took place.[143] In this case, the university believed that only reimbursement of tuition was appropriate, but the court found that there was cause to consider the possibility of lost future earnings and damage to professional reputation resulting from Sharick's inability to enroll in a suitable program.[144] While the university was unable, or unwilling, to consider the possibility of damages beyond that of tuition, the court used its contract law expertise to shed new light on the academic issue.[145]

138. *See* Keyshian v. Bd. of Regents of Univ. of State of N.Y., 385 U.S. 589, 601 (1967).

139. *See* Sharick v. Southeastern Univ. of Health Sci., 780 So. 2d 136, 147 (Fla. Dist. Ct. App. 2000).

140. *See id.* at 140.

141. Sharick v. Southeastern Univ. of Health Sci., 780 So. 2d 136 (Fla. Dist. Ct. App. 2000).

142. *See id.* at 138.

143. *See* 17 FLA. JUR. 2D DAMAGES § 18 (1997).

144. *See* 780 So. 2d at 140.

145. *See* Miller v. Allstate Ins. Co., 573 So. 2d 24, 28 n.4 (Fla. Dist. Ct. App. 1990) (quoting C. MCCORMICK, DAMAGES § 27, at 101-02 (1935)).

Generally, courts are in the best position to evaluate when the college or the student has breached the contract between them.[146] This notion leads to the second consideration that courts should make when determining whether to defer an academic decision: does the case present an inherent bias for the college?

When a student states a contract claim against his or her college concerning an academic decision, the institution immediately takes a defensive position. Inevitably, this defensive position places the college in a position of bias in favor of its own interests. While the college and the student have a complex and intricate relationship,[147] the institution also has its own interests that it will seek to protect. While seeking to protect its interests, a college may overlook and ignore the needs of a student.[148] The judiciary is the proper tribunal to address this bias, serve as a neutral third party, and provide a forum where the interests of both the academic institution and the student can be met and preserved.

C. Tort Law: Retaliation and Emotional Distress

The judiciary is also the proper tribunal to evaluate student tort claims against their college.[149] In *Ross v. Saint Augustine's College*,[150] the U.S. Court of Appeals for the Fourth Circuit examined retaliation claims made by a student against her college.[151] Ross, a senior with an impeccable academic record, testified in a reverse discrimination case against Saint Augustine University; afterwards, she experienced severe emotional distress when her grades and other accomplishments were drastically minimized.[152] In cases concerning the torts of retaliation and intentional infliction of emotional distress, witness testimony is paramount.[153] In *Ross*, the court evaluated claims by the university that

146. *See* Russell v. Salve Regina Coll., 890 F.2d 484, 489 (1st Cir. 1989); Davis v. George Mason Univ, 395 F. Supp. 2d 331, 337 (E.D. Va. 2005); *see also* Johnson v. Schmitz, 119 F. Supp. 2d 90, 94 (D. Conn. 2000); Bittle v. Okla. City Univ., 6 P.3d 509, 515 (Okla. Civ. App. 2000); Swartley v. Hoffner, 734 A.2d 915, 920 (Pa. Super. Ct. 1999).

147. *See* Slaughter v. Brigham Young Univ., 514 F.2d 622, 624 (10th Cir. 1975); Clayton v. Tr. of Princeton Univ., 608 F. Supp. 413, 422 (D.N.J. 1985).

148. *See* Sylvester v. Tex Southern Univ., 957 F. Supp. 944, 956 (S.D. Tex. 1997); *In re* Susan M. v. N.Y. Law Sch., 556 N.E.2d 1104, 1107 (N.Y. 1990).

149. *See* Atria v. Vanderbilt Univ., 142 F. App'x 246, 255 (6th Cir. 2005); Ross v. St. Augustine Coll., 103 F.3d 338, 349 (4th Cir. 1996); Doe v. Yale Univ., 748 A.2d 834, 847 (Conn. 2000).

150. Ross v. Saint Augustine's Coll., 103 F.3d 338 (4th Cir. 1996).

151. *See id.*

152. *See id.* at 339.

153. *See* Crawford v. Wash., 541 U.S. 36, 42 (2004); Shoucair v. Brown Univ., 917 A.2d 418, 423 (R.I. 2007).

Ross was exaggerating the effects of the university's actions.[154] While the university claimed that Ross had been unfairly favored and should not have been allowed to bring her challenge to court, the Fourth Circuit found that Ross had indeed suffered when Saint Augustine retaliated against her.[155] The court further noted that St. Augustine demonstrated reckless indifference toward Ross and violated the special legal relationship that had formed between the two parties.[156]

The judicial evaluation in *Ross* is a prime example of an instance where a college is not able to properly evaluate and interpret the interests of its student because of the level of controversy at issue in the litigation.[157] In cases such as *Ross*, when the court makes determinations concerning the adequacy of witness testimony and the potential for the jury to make a reasonable determination concerning the amount of harm suffered by the injured party, the judiciary is qualified to make determinations about tort liability.[158] Furthermore, because of the personal nature of tort law,[159] courts are most likely the only tribunal that can competently evaluate liability.[160] This personal nature is what leads to the third consideration that courts should consider when determining whether to accept an academic challenge: is the basis for litigation highly controversial?

Although litigation always involves a conflict, some cases are more impassionate than others. Where the injury to a student or the claim against a college extends beyond simple determinations of academic performance, further review may be necessary to provide adequate outside perspective and to avoid emotion-based decisions.

Cases with sensitive issues at their core often turn on witness testimony, which is best evaluated by a court of law.[161] Furthermore, cases involving controversial subject matter and the college-student relationship will likely require testimony from both college administrators and students. Controversial cases necessitate some type of judicial intervention to maintain and properly evaluate the issue. While courts have attempted to avoid creating an adversarial relationship

154. *See* 103 F.3d at 441.
155. *See id.* at 343.
156. *See id.*
157. *See id.*
158. *See id.*
159. Tort law addresses harm to a plaintiff, examining the elements of a prima facie case for physical or emotional harm as well as apportioning liability and defining concepts such as intent, damages, and risk. *See* RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM (2010).
160. *See Ross*, 103 F.3d at 441.
161. *See* Crawford v. Wash., 541 U.S. 36, 42 (2004); Shoucair v. Brown Univ., 917 A.2d 418, 423 (R.I. 2007).

between the college and student when the issue is academic,[162] oppositional characteristics are unavoidable in some instances, thereby making a judicial presence appropriate.

D. Tort Law: Negligence

Negligence is another area of tort law that students commonly use to challenge the academic treatment they receive from their college.[163] When examining negligence in the academic environment, these claims must be distinguished from those of educational malpractice, which the majority of courts have held is not a cognizable claim.[164] Claims of educational malpractice are based on allegations by a plaintiff that the educational services that he or she received from his or her college were not adequate.[165] In contrast, negligence claims[166] are based on the idea that the college or its actors conducted the class or the educational program in a way that proximately caused injury to the plaintiff student.[167] Claims of negligence in an educational setting can still be grounded, in part, on educational inadequacy as long as the result of the inadequacy is some recognized type of actual harm, not just an inadequate education in general.[168] Most courts are unwilling to recognize general claims of inadequate education because no viable claim exists for a legal duty as a matter of public policy.[169] Although the distinction[170] between educational malpractice claims and negligence claims in the educational setting may be slight, this distinction is a prime

162. *See* Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 90 (1978).

163. *See* Atria v. Vanderbilt Univ., 142 F. App'x 246, 271 (6th Cir. 2005); Doe v. Yale Univ., 748 A.2d 834, 854 (Conn. 2000).

164. *See* Ross v. Creighton Univ., 957 F.2d 410, 414 (7th Cir. 1992).

165. *See* Hutchings v. Vanderbilt Univ., 55 F. App'x 308, 310 (6th Cir. 2003) (unpublished) (citing *Ross*, 957 F.2d at 414).

166. When claiming negligence on the part of his or her university, a student must make out the prima facie case for negligence by proving (1) that a duty of care was owed by the university to the student, (2) there was a breach of that duty, (3) an injury occurred, and (4) the university was the proximate legal causation of that injury. *See Atria*, 142 F. App'x at 251 (citing Camper v. Minor, 915 S.W.2d 437, 446 (Tenn. 1996)).

167. *See Atria*, 142 F. App'x at 251.

168. *See Doe*, 748 A.2d at 849; Gupta v. New Britain Gen. Hosp., 687 A.2d 834, 845 (Conn. 1996).

169. *See Doe*, 748 A.2d at 849.

170. "The distinction lies in the duty that is alleged to have been breached. If the duty alleged to have been breached is the duty to educate effectively, the claim is not cognizable. If the duty alleged to have been breached is the common-law duty not to cause [harm] by negligent conduct, such a claim is, of course, cognizable." *Doe*, 748 A.2d at 846 (citing *Gupta*, 687 A.2d at 845; Kirchner v. Yale Univ., 192 A.2d 641, 646 (Conn. 1963)).

illustration of the fine line that the judiciary walks when examining challenges to academic decisions.[171]

Courts have been reluctant to entertain negligence claims by students because of various difficulties in determining the appropriate standard of care for professors, administrators, and universities in general when it comes to academic concerns.[172] However, even when the court finds it difficult to establish a "precise criteria" to evaluate a defendant's actions, they have held that a defendant still owes a duty of care.[173] A college and its agents owe everyone—students included—a duty[174] to avoid conduct that would pose an unreasonable and foreseeable risk of harm.[175] A court will find a risk unreasonable when the foreseeable probability and severity of harm posed by the defendant's conduct outweighs any burden on the defendant that engaging in alterative, harm avoiding, conduct would have created.[176]

Cases like *Atria* illustrate the important role of the judiciary in academic challenges where interpretation of the facts is vital to the outcome.[177] In *Atria v. Vanderbilt University*,[178] a student based his claim against his university in negligence, asserting that the manner in which his professor returned exams had left him and other students vulnerable to serious consequences at the hands of Vanderbilt's Honor Council.[179] The court found that the record supported that Atria's professor was aware of the risks posed by his exam redistribution system and had actually taken measures to combat these risks, although the methods he chose were not nearly sufficient to offset the level of harm that the students were exposed to.[180]

The need for a detailed and unbiased interpretation of the facts leads to the fourth question that courts should consider when deciding whether to defer in cases of academic challenges: would the case benefit from examination by a jury?

While academic institutions may have tribunals established to examine the issues that their students present, these tribunals likely do not deliver the same level of due process as that provided by a jury

171. *See Atria*, 142 F. App'x at 251; *Doe*, 748 A.2d. at 846.
172. *See Atria*, 142 F. App'x at 251.
173. *See* Stehn v. Bernarr Macfadden Found., Inc., 434 F.2d 811, 815 (6th Cir. 1970).
174. *See* Burroughs v. Magee, 118 S.W.3d 323, 329 (Tenn. 2003) ("Duty is the legal obligation that a defendant owes a plaintiff to conform to a reasonable person standard of care in order to protect against unreasonable risks.").
175. *See Atria*, 142 F. App'x at 251.
176. *See id.*
177. *See id.*
178. Atria v. Vanderbilt Univ., 142 F. App'x 246 (6th Cir. 2005).
179. *See id.* at 250.
180. *See id.*

decision.[181] Students do not lose their fundamental rights when they enter an academic environment.[182] Therefore, when a student presents a case that would greatly benefit from a jury trial—even if the basis for litigation is academic in nature—the court system should provide one.

E. Personal Liberty and Property Interests

Personal liberty and property interests in non-tangible assets are often considered simultaneously by courts.[183] When examining personal liberty and property interests, courts are interpreting individual constitutional rights[184] and making determinations about the required extent of procedural Due Process.[185] The Supreme Court has held that procedural Due Process protects property interests beyond actual ownership of real property[186] and has required protection from a broad range of personal liberty deprivations.[187]

In tenure disputes, the Supreme Court has held that an individual does not have a property interest in his potential tenure position with a college.[188] While it is possible for a court to find that a student seeking a degree is analogous to a professor seeking tenure, it is more likely that a court would find that the student is gaining ownership of his or her education by paying for it.[189] In the past, courts have held that a student is purchasing his or her education from a college.[190] Through that purchase, the student has a legitimate property interest in completing an

181. *See id.*

182. *See* Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969).

183. *See* Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 83 (1978); Bishop v. Wood, 426 U.S. 341, 360 (1976); Bd. of Regents of State Coll. v. Roth, 408 U.S. 564, 577 (1972); Perry v. Sinderman, 408 U.S. 593, 604 (1972); Beitzell v. Jeffrey, 643 F.2d 870, 876 (1st Cir. 1981); Trimble v. W. Va. Bd. of Dir., 549 S.E.2d 294, 301 (W. Va. 2001).

184. *See Roth*, 408 U.S. at 568.

185. *See Trimble*, 549 S.E.2d at 302. Courts consider three factors when determining the extent of procedural due process necessary: (1) the private interest that will be affected by the official action, (2) the risk of erroneous deprivation of a property interest through the procedures used along with the probable value of additional or substitute safeguards, and (3) the government's interest, including the fiscal and administrative burdens that the requirements would entail. *Id.*

186. *See, e.g.*, Connell v. Higginbotham, 403 U.S. 207, 208 (1971); Goldberg v. Kelly, 397 U.S. 254, 263 (1970).

187. Bolling v. Sharpe, 347 U.S. 497, 499 (1954) ("Although the Court has not assumed to define 'liberty' . . . with any great precision, that term is not confined to mere freedom from bodily restraint.").

188. *See Beitzell*, 643 F.2d at 870.

189. *See* Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 89 (1978); Dixon v. Ala. State Bd. of Educ., 294 F.2d 150, 161 (5th Cir. 1961); Prairie View A&M Univ. v. Mitchell, 27 S.W.3d 323, 325 (Tex. Ct. App. 2000).

190. *See Dixon*, 294 F.2d at 153.

academic program.[191] Where a college attempts to rescind the final product of the purchase agreement between the student and the institution, the judiciary should intervene.[192]

A student, through his or her time at an academic institution, gains more than an abstract need or desire for his or her degree and more than a unilateral expectation of it.[193] Instead, a student has a legitimate claim of entitlement to receipt of his or her degree upon satisfactory completion of the academic program.[194] If the level of satisfaction concerning a student's work is in question, an outside review is needed to protect the student's investment.[195]

Where personal liberty interests are concerned, courts examine whether the actions of an institution compromise the personal interest that a person has in his good name, which in turn translates into his standing and associations within the educational and professional community.[196] When determining whether an institutional action compromises personal liberty interests, courts examine factors such as whether a plaintiff was accused of dishonesty or immorality and whether his or her honor or integrity was at stake.[197] If an institution's actions may foreclose an individual's chance to take advantage of or pursue professional or academic opportunities, courts have held that the student is entitled to a heightened level of judicial review beyond mere deference to the college tribunal.[198]

Students are entitled to basic rights that courts cannot ignore[199] even when an issue arises in an academic setting concerning an academic decision. Preservation of basic liberties should be at the forefront when courts consider the fifth and final question concerning whether to defer or hear an academic challenge: does the case involve a fundamental interest that the judiciary is meant to protect?

Primarily, the judiciary is the branch of government meant to interpret the law to ensure that basic rights and freedoms are not lost.[200] Universities and other academic institutions are not qualified nor vested

191. *See id.*
192. *See id.*
193. *See* Bd. of Regents of State Coll. v. Roth, 408 U.S. 564, 577 (1972).
194. *See Roth*, 408 U.S. at 577; *Dixon*, 294 F.2d at 154.
195. *See Dixon*, 294 F.2d at 154.
196. *See Roth*, 408 U.S. at 573.
197. *See id.*
198. *See Roth*, 408 U.S. at 574; Schware v. Bd. of Bar Exam'rs, 353 U.S. 232, 237 (1957).
199. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969) ("It can hardly be argued that either students or teachers shed their constitutional right . . . at the schoolhouse gate.").
200. *See* Marbury v. Madison, 5 U.S. (1 Cranch) 137, 164 (1803) (establishing the power of judicial review).

with the power to make determinations concerning the fundamental rights to which their students are entitled. Thus, when the judiciary makes determinations concerning the fundamental academic liberties of students, courts must also interpret those rights and adjudicate academic decisions that may challenge or threaten those rights.

IV. CONCLUSION

Precedent establishes a predisposition for courts to defer to the academic decisions of institutions.[201] Although this deference is appropriate in certain instances,[202] it may be harmful to students in others. In deferring to colleges on all academic decisions, the judiciary is also disregarding its role as a legal evaluator.[203]

By expanding judicial examination of academic decisions beyond constitutional law to areas of contract law, tort law, and property law, courts would take a more active role in higher education. Such an approach would be desirable in setting clearer standards for evaluating academic decisions. Indeed, there are nuances and interpretations in the law that only a court is suited to make.[204] The standard questions[205] proposed in this Comment would allow courts to put aside their reservations about involvement in academic decisions by clarifying a standard for when deferring to educational institutions is appropriate.

To address the needs of higher education institutions and students, courts should take a more proactive role in the reevaluation of certain academic decisions. Doing so would not overstep the bounds of academic freedom or expand the role of the judiciary and instead would allow courts to engage in the type of evaluation for which they are best suited.

201. *See* Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 217 (1985); Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 81 (1978).

202. *See Horowitz*, 435 U.S. at 86.

203. *See* Sylvester v. Tex. Southern Univ., 957 F. Supp. 944, 961 (S.D. Tex. 1997); Atria v. Vanderbilt Univ., 142 F. App'x 246, 253 (6th Cir. 2005).

204. *See, e.g.*, Russell v. Salve Regina Coll., 890 F.2d 484, 499 (1st Cir. 1989).

205. *See supra* Parts III.A-E.