

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

PHILLIP BEVERLY, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case No. 1:14-CV-04970
	)	
v.	)	Judge Joan B. Gottschall
	)	
WAYNE D. WATSON, <i>et al.</i> ,	)	Magistrate Judge Sheila Finnegan
	)	
Defendants.	)	

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**PLAINTIFFS’ SUPPLEMENT TO  
MOTION FOR PRELIMINARY INJUNCTION**

In response to this Court’s Minute Entry (Dkt. 70), Plaintiffs hereby provide supplemental information supporting their Motion for Preliminary Injunction – specifically, additional details on the ongoing chilling effect of Defendants’ actions to restrict their speech.

**INTRODUCTION**

Where Chicago State University (“CSU”) policies are shown to be in violation of the First Amendment, as Plaintiffs have demonstrated here, irreparable harm is *presumed*. *See, e.g., Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011) (citing, *inter alia*, *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Plaintiffs respectfully submit that they have put forth evidence of Defendants’ policies and actions that amply demonstrate why Plaintiff’s speech continues to be chilled since the Complaint was filed, such that a preliminary injunction should issue. *See, e.g., Pl. Reply to Opp. to Mot. for Prelim. Inj.* (Dkt. 67) §§ II.B & C. As further illustrated herein and in the attached Supplemental Declarations, a climate of fear persists at CSU that prevents the full and free exercise of First Amendment rights, and will continue unless Defendants are enjoined.

As the Supplemental Declarations of Phillip Beverly (“Beverly Supp. Decl.”) and Robert Bionaz (“Bionaz Supp. Decl.”) explain, operation of the *CSU Faculty Voice* blog has been adversely affected due to fear of reprisal from Defendants. The number and frequency of outside

contributors to the blog has significantly declined since Watson and other officials in the CSU Administration took steps to retaliate against the Plaintiffs. Additionally, the Plaintiffs have limited their own postings out of concern about possible reprisals against them and against their sources of information.

## DISCUSSION

### I. Impact on Other Blog Contributors

The *CSU Faculty Voice* has seen a significant drop-off in contributors and commenters after the Defendants took actions to restrict the blog. Overall, since its inception, approximately 750 posts have appeared on the *CSU Faculty Voice*. Since the CSU administration's concerted efforts targeting the *Voice* came to light with the filing of this lawsuit, the number of posts by authors other than Plaintiffs Beverly and Bionaz has dropped by more than 60 percent. Beverly Supp. Decl. ¶ 9. The number of contributors to the *Voice* has been cut in half, leaving only three authors apart from the Plaintiffs. *Id.* ¶¶ 5-7.

More specifically, from 2009 to July 1, 2014, 242 of 565 posts, nearly 43 percent, came from bloggers other than the Plaintiffs. Since July 1, 2014, only 30 of 179 blog entries – just 17 percent – have come from others. In 2015, that percentage has declined further, with only 10 of 66 posts, or 15.2 percent, contributed by persons other than the Plaintiffs. And even among those who have hung in despite the specter of punishment by the administration, their posts have been made less frequently, and two of these three contributors have not posted for the last several months. *Id.* ¶ 8.

Secondary posts (*i.e.*, those “commenting” or otherwise supplementing what the primary authors post) have declined to a similar degree during this period. *Id.* ¶ 9. Since the administration's publicly acknowledged effort to attack the blog in November 2013, secondary

postings dropped off significantly. It was once the case that nearly half of all postings were secondary comments or postings to supplement blog articles. Prior to 2014, 214 out of 441 posts – or 48.5 percent – were secondary postings. However, blog readers have grown increasingly reluctant to post comments on articles. From 2014 through the present date in 2015, only 19.1 percent (58 out of 303 posts) were secondary postings. *Id.*

Defendants assert they have no idea why contributions to the blog may have dropped off since they initiated various disciplinary actions against the Plaintiffs. As Defendants' counsel said at the hearing, "For all we know, other people aren't participating because they don't want to be associated potentially with the professors, or maybe they're bored with the blog. We don't know why." Tr. 41:22-24. But such speculation hardly seems likely, as interest in what Professors Beverly and Bionaz have to say has greatly increased during this same period. From 2010 through September 2013, the blog received an average of 3,545 page views per month. However, beginning in October 2013, when the blog revealed misrepresentations on the resumes of various administrators closely associated with Defendant Watson, blog readership increased 630 percent, to more than 22,350 page views per month. Since then, blog readership consistently has continued to increase, and in 2015 has averaged 23,874 page views per month.<sup>1</sup>

Defendants' statement that they don't know why contributors to the blog have declined after their acknowledged disciplinary actions (but while readership is booming) is an admission that they have failed to meet their burden of proof in opposing Plaintiffs' motion for injunctive relief. Once a censorial motivation is shown, the burden shifts to the Defendants to prove that

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<sup>1</sup> Beverly Supp. Decl. ¶ 12. The fact that readership of the *CSU Faculty Voice* has increased in recent years is not inconsistent with the idea that readers of the blog have been warned against viewing it on university computers. PI Mot., Beverly Decl. (Dkt. 45) ¶ 10.

the plaintiff's speech *did not* trigger any adverse actions to restrict it.<sup>2</sup> Here, the blog statistics tell the story of "whether the alleged conduct by the defendants would likely deter a person of ordinary firmness from continuing to engage in protected activity." *Surita*, 665 F.3d at 878. Moreover, the Defendants' claim that "[n]othing has happened recently," Tr. 23:8 (which presumably means that no additional retaliatory acts are currently planned), merely acknowledges that past actions have been more than sufficient to silence those "of ordinary firmness." *Id.* See *Bridges v. Gilbert*, 557 F.3d 541, 555 (7th Cir. 2009). And it has also had a chilling effect on Plaintiffs' speech, as discussed next.

## II. Impact on the Plaintiffs

Plaintiffs provided evidence that past disciplinary actions and warnings of future sanctions have deterred them from posting additional information on the *CSU Faculty Voice*. In particular, Professor Bionaz explained that he has declined to post certain reports of malfeasance or misbehavior by CSU personnel where his source would be identifiable and very likely subject to retaliation. PI Mot. (Dkt. 46), Bionaz Decl. ¶¶ 6-7, 23. With this supplemental filing, Professor Bionaz provides specific examples of materials he was deterred from posting.

For example, the *CSU Faculty Voice* recently received an audio recording that would help expose malfeasance perpetrated by the school's administration, but declined to post the audio due to fear of reprisal by the Defendants. Bionaz Supp. Decl. ¶¶ 10-11 & Ex. I. The recording captured a conversation between Defendant CSU President Wayne Watson and former student Jokari Miller, in which Watson pressured Miller to cease his own activism, and to drop

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<sup>2</sup> *Surita v. Hyde*, 665 F.3d 860, 874 (7th Cir. 2011). Although Defendants offer various explanations for their efforts to discipline the Plaintiffs, they fall far short of their burden to prove the absence of a retaliatory motive. *E.g.*, *Valentino v. Village of S. Chi. Heights*, 575 F.3d 664, 671 (7th Cir. 2009) ("Defendants confuse their stated reason for firing Valentino (photocopying of the sign-in sheets) with her speech as a whole.").

his support of CSU students Willie Preston and Brittany Bailey. Preston and Bailey have alleged constitutional violations by the CSU administration in another case pending before this court. *Preston v. Watson*, No. 1:14-cv-03423 (N.D. Ill.) (Gottschall, J.). Their case also involves claims of false disciplinary charges brought by Watson and the CSU administration to squelch political opposition. Bionaz Supp. Decl. ¶ 10.

However, the *CSU Faculty Voice* refrained from posting the recording – or even discussing it – when it was first received, out of fear of reprisal by Defendants and potential application of the Cyberbullying and/or Computer Usage Policies. *Id.* ¶ 11. Only after a press release issued making the recording’s existence and content public did the *Voice* feel comfortable even discussing the recording, *id.* ¶ 11 – and even then, the recording itself was not posted and the blog did little more than repost the press release. *See id.* Ex. J.

The *CSU Faculty Voice* continues to have to forgo, or be oblique about, even more general, less incendiary content, notwithstanding the filing of this action. Plaintiffs continue to refrain from publishing material if its contents might point to particular sources for fear such persons will face retaliation from the administration. *See id.* ¶¶ 6-8. This has sometimes led to the posting of articles missing key specificity or details, *id.* ¶¶ 8, 11, and in some cases, information being withheld altogether. *See id.* ¶¶ 7, 11. This has continued to happen as recently as this month. *Id.*

On April 12, 2015, Professor Bionaz posted a blog entry describing the failure of the CSU administration to adhere to both contractual and policy obligations to notify in a timely manner probationary faculty going through the tenure process – an issue of considerable public concern to the University community. *Id.* Ex. G, *How the Watson Administration Treats Chicago State’s Tenure-Track Faculty: Use Them Then Screw Them* (April 12, 2015). However,

the post refrained from providing names of persons affected, or even the specific number of persons to whom the post referred, out of concern that more specificity would enable the administration to determine the sources of the information and to retaliate against them. *Id.* ¶ 8.

Just before posting the *Tenure-Track Faculty* item, Professor Bionaz met with another tenured CSU professor, Dr. Janet Halpin, who asked to speak to him in his capacity as a member of the Faculty Senate Executive Committee. Dr. Halpin produced substantial documentation that detailed irregularities in the creation of a CSU degree program and expressed concern about potential financial violations. Given CSU's current provisional status for financial aid due to previous violations of Title IV, this revealed dishonesty, gross negligence, and incompetence on the part of the Watson administration. However, the *CSU Faculty Voice* refrained from publishing this story out of concern that it could lead to retaliation against its source, Dr. Halpin. Dr. Halpin was instead invited to write a blog post about the issue. After taking some time for further conversation and careful consideration, Dr. Halpin's post appeared on the blog, but even then left out certain details. *Id.* ¶ 9.

## CONCLUSION

Plaintiffs have shown past actions by Defendants to directly target the *CSU Faculty Voice* and to otherwise silence criticism of the Watson administration. They have submitted evidence that Defendants and others specifically conspired to find ways to stifle the CSU Faculty Voice and to punish the Plaintiffs. This is exactly the type of harassment and retribution that chills the exercise of First Amendment rights. And, now, they have demonstrated that this chilling effect, which is reasonably felt by Plaintiffs and others who would speak against Dr. Watson and the administration, continues even to this date. This is the kind of First Amendment violation that *Elrod* and its progeny presume, and is precisely why a preliminary injunction should be granted.

DATED: April 22, 2015

Respectfully submitted,

/s/ Robert Corn-Revere

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Supplement to Motion for Preliminary Injunction, and all exhibits thereto, were served upon all counsel of record on this 22nd day of April 2015 via use of the Court's ECF system. A disk of an audio recording, Exhibit I to Supplemental Declaration of Robert Bionaz in Support of Motion for Preliminary Injunction, was served on this 22nd day of April 2015 by overnight mail on the following:

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/s/ Robert Corn-Revere  
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