

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

BENJAMIN M. MULLER,	*	
	*	
Plaintiff and class representative,	*	NO. LAACL137295
	*	
v.	*	
	*	
UNIVERSITY OF IOWA and	*	
JAMES B. HARRELD,	*	FIRST AMENDED PETITION AT LAW
	*	AND JURY DEMAND
Defendantss.	*	

COMES NOW the plaintiff and sets forth his claims for relief and states:

INTRODUCTION

1. This is a class action proceeding brought by Plaintiff Benjamin M. Muller pursuant to Rule 1.261 *et seq.* of the Iowa Rules of Civil Procedure. Plaintiff asserts that Defendants have unconstitutionally deprived him and the putative class of scholarships to attend the University of Iowa that Plaintiff and the putative class had been offered by defendant University of Iowa and accepted. Plaintiff brings this case for himself and on behalf of other similarly situated current or incoming University of Iowa students to recover the value of their revoked scholarships, as well as attorney fees and expenses, under 42 U.S.C. § 1983.

PARTIES AND JURISDICTION

- 2. Plaintiff Benjamin M. Muller is a resident of Des Moines, Polk County, Iowa.
- 3. Defendant University of Iowa is a fully accredited four-year state university, governed by the state board of regents, doing business in Johnson County, Iowa and Polk

County, Iowa, among other counties. Defendant University of Iowa's actions are the same as and constitute actions by the State of Iowa or an agency of the State of Iowa.

4. Defendant James B. Harreld is the president of defendant University of Iowa. Plaintiff brings the following claims on Plaintiff's behalf and on behalf of the putative class against defendant James B. Harreld in defendant Harreld's individual capacity, not his official capacity as the president of the University of Iowa. There is a causal link between defendant James B. Harreld's conduct, and he is directly responsible for, the deprivation of the constitutional rights described below.

5. The events personal to Plaintiff that form the basis for his claim occurred at least partially in Des Moines, Polk County, Iowa. Venue is proper in Polk County in that Defendants' actions partially occurred or resulted in damages to Plaintiff and some members of the putative collective or class in Polk County. This court has jurisdiction over Plaintiff's claim under 42 U.S.C. § 1983. *E.g., Haywood v. Drown*, 556 U.S. 729 (2009).

FACTUAL ALLEGATIONS

6. At all times material, Plaintiff and the putative class were current or incoming students at the University of Iowa for the 2017-18 academic year who were offered a scholarship by defendant University of Iowa and accepted the scholarship. Defendants then revoked those scholarship offers to Plaintiff and the putative class without warning, without due process, and without just compensation.

CLASS ALLEGATIONS

7. Plaintiff brings this putative class action pursuant Rule 1.261 *et seq.* of the Iowa Rules of Civil Procedure on his behalf and on behalf of a class consisting of all current or

incoming students at the University of Iowa for the 2017-18 academic year who were offered a scholarship by defendant University of Iowa and accepted that scholarship, which scholarship was then revoked by Defendants without warning, without due process, and without just compensation.

8. The proposed class is so numerous that joinder of all members is impracticable and would involve many plaintiffs. While the exact number of putative class members is presently unknown to Plaintiff and can only be ascertained through appropriate discovery, Plaintiff believes that there are approximately 3,000 potential class members.

9. There are questions of law and/or fact common to the class that relate to and affect the rights of each member of the class. The relief sought is common to the entire class. The common questions of law and/or fact predominate over questions, if any, that may affect only individual members of the putative class because, among other reasons, Defendants have acted on grounds generally applicable to the entire class. Common questions include, but are not limited to:

- a. Whether, upon acceptance of the aforesaid scholarship offers from defendant University of Iowa, Plaintiff and the putative class obtained a vested property interest in their scholarships such that Defendants cannot deprive them of their scholarships without due process of law and/or just compensation.
- b. Whether Defendants provided Plaintiff and the putative class with due process before revoking their scholarships.
- c. Whether Defendants provided just compensation to Plaintiff and the putative class after revoking their scholarships.

10. Class action treatment is the superior, if not the only, method for the fair and efficient adjudication of this controversy because, among other reasons, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single

forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender.

11. Plaintiff asserts claims that are similar to and typical of the putative class in that he is a current University of Iowa student, enrolled for the 2017-18 academic year, who was offered a scholarship by defendant University of Iowa and accepted that scholarship, which scholarship Defendants then revoked without warning, without due process, and without just compensation. The claims of Plaintiff and the putative class depend on a showing of conduct by Defendants that is common to all affected students and arises from the same operative facts. Thus, a joint and common interest exists among Plaintiff and the putative class.

12. Plaintiff will fairly and adequately protect and represent the interests of the class members. Plaintiff's interests are coincident with, and not antagonistic to, those of the putative class. Plaintiff is committed to being a class representative and understands the attendant responsibilities.

13. Plaintiff's counsel is competent and has experience in class actions and constitutional law. The undersigned firms will serve as designated counsel for Plaintiff and the putative class and will actively conduct and be responsible for the prosecution of this action. The undersigned counsel has or can acquire the financial resources to assure that the putative class will be adequately represented.

14. It is proper to certify this matter as a class action under Rule 1.261 *et seq.* of the Iowa Rules of Civil Procedure because there are common issues of law and/or fact that predominate over any individual issues.

CLAIM FOR CLASS RELIEF

15. Plaintiff asserts on behalf of himself and the putative class, as defined in paragraph 7 of this Petition, the following basic claim: (a) defendant University of Iowa offered scholarships to Plaintiff and the putative class; (b) Plaintiff and the putative class accepted those scholarships; (c) once Plaintiff and the putative class accepted defendant University of Iowa's offered scholarships, they obtained a vested property interest in retaining their scholarships (*see Brands v. Sheldon County Community Sch. Dist.*, 671 F. Supp. 627, 631 (N.D. Iowa 1987); *see also Fluitt v. Univ. of Nebraska*, 489 F. Supp. 1194, 1203 (D. Neb. 1980); *Colorado Seminary (University of Denver) v. NCAA*, 417 F. Supp. 885, 895 (D. Colo. 1976)); and (d) Defendants cannot deprive Plaintiff and the putative class of their vested property rights without due process of law and/or just compensation.

16. The Fifth Amendment to the United States Constitution, incorporated and made applicable to the States through the Fourteenth Amendment to the United States Constitution, states that "[n]o person shall be . . . deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation." The Fourteenth Amendment likewise prohibits the States and their agencies from depriving a person of property without due process of law.

17. Defendants' act of depriving Plaintiff and the putative class of their scholarships, which constituted property within the meaning of the Fifth and Fourteenth Amendments, without due process of law violated those amendments.

18. Defendants' act of depriving Plaintiff and the putative class of their scholarships, which constituted private property within the meaning of the Fifth Amendment, without just compensation violated the Fifth Amendment because Defendants canceled those scholarships

with the intention of assigning those funds instead for public use, i.e., the funding of the University of Iowa, an institution and agency of the State of Iowa.

19. Per 42 U.S.C. § 1983, “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. . . .”

20. Defendants’ aforesaid conduct violated the constitutional rights of Plaintiff and the putative class. Defendants are liable for such violations pursuant to 42 U.S.C. § 1983.

21. Plaintiff and the putative class have suffered injuries and damages as a result of Defendants’ aforesaid constitutional violations.

22. Defendants’ aforesaid constitutional violations were a substantial factor in causing the harm to Plaintiff and the putative class.

WHEREFORE, Plaintiff, on behalf of himself and the putative class, prays for judgment against Defendants in an amount sufficient to fully and fairly compensate them for their injuries and damages, together with attorney fees, expenses, and interest thereon as provided by law.

JURY DEMAND

COMES NOW the plaintiff and demands a trial by jury of all of the issues in the above cause of action.

/s/ Harley C. Erbe

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