IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MA'LIK RICHMOND	)	CASE NO.:
	)	
Plaintiff,	)	JUDGE:
	)	
-vs-	)	
	)	
YOUNGSTOWN STATE UNIVERSITY	)	**VERIFIED COMPLAINT**
	)	
Defendant.	)	**(Jury Trial Demanded)**
	)	
	)	
	)	

CIVIL ACTION COMPLAINT

Plaintiff Ma'lik Richmond, by and through undersigned counsel, files this Complaint against Youngstown State University in support thereof, and alleges as follows:

INTRODUCTION

1. This case arises out of biased, improper, and damaging actions taken by Defendant against Plaintiff Ma'lik Richmond ("Ma'lik"), a male student at Youngstown State University ("YSU"). These actions caused Ma'lik to suffer substantial harm in the form of demotion from the active player roster of YSU's Division I football team, the Youngstown State Penguins; the loss of one precious and irreplaceable year of NCAA eligibility; and future monetary damages and other consequences flowing from Defendant' punitive decisions. The actions of Defendant were taken arbitrarily and capriciously, without the existence of any wronged individual, without any evidence of wrongdoing or charges of misconduct, without the undertaking of any investigatory or disciplinary process, without an opportunity being provided to Ma'lik to even attempt to obtain due process, and ultimately, without any cause for discipline whatsoever.

PARTIES

2. Ma'lik Richmond resides in Steubenville, Ohio. At all times relevant herein, Ma'lik was a student at YSU.

3. Defendant YSU is a public institution within the Ohio public university system. It is headquartered in Youngstown, Ohio and has a total undergraduate enrollment of approximately 13,000 students.

4. At all times relevant to this complaint, YSU acted by and through its agents, servants, employees and representatives who were working in the course and scope of their respective agency or employment and/or in the promotion of YSU's business, mission and/or affairs.

JURISDICTION AND VENUE

5. Plaintiff invokes this Court's original jurisdiction under 42 U.S.C. § 1983 and under Title IX of the Education Act Amendments of 1972, 20 U.S.C. § 1681, et seq., (hereinafter referred to as "Title IX") and 28 U.S.C. § 1331.

6. The injunctive relief sought in this matter is authorized by 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure 57 and 65.

7. Venue in this action is proper under 28 U.S.C. § 1391. The Defendant is a resident of the State in which this district is located and a substantial part of the events or omissions giving rise to the claim occurred in this district.

8. Plaintiff also invokes this Court's jurisdiction over related state common law claims under the principles of ancillary and/or pendent jurisdiction pursuant to 28 U.S.C. § 1367.

BACKGROUND FACTS

A. Plaintiff's Decision to Attend YSU.

9. Ma'lik transferred to YSU in 2016. He pays tuition to YSU, and YSU has accepted his tuition, enrolled him in classes, and designated him a student-athlete. Ma'lik is scheduled to graduate in 2019. He chose YSU both because it was close to home and because he believed, for reasons discussed below, that its head football coach and university president might be inclined to look beyond serious mistakes he had made and paid for as a juvenile and to help him to achieve his educational goals and, perhaps, achieve his dream of playing professional football.

B. Plaintiff's Interactions with Defendant

10. Ma'lik Richmond was a high school football star while a student at Steubenville High School. He was named Eastern District Player of the Year and was selected to the All-Ohio Division IV First-Team as a linebacker. As a high school freshman, he had drawn interest from major college football programs including Ohio State University and the University of Pittsburgh. He thus had enough talent to play college football at a high level and, with continued development, had a realistic possibility of eventually playing professional football.

11. At age 16, Ma'lik was involved in a highly publicized case in which a female peer of similar age, incapacitated by alcohol, was sexually assaulted by a number of football players, including Ma'lik. He was tried as a juvenile, adjudicated "delinquent beyond reasonable doubt" (the juvenile equivalent of a guilty verdict) and sentenced to one year of juvenile detention. He was released from detention on January 5, 2014 after serving his one-year sentence. Ma'lik was genuinely remorseful and apologetic for what he did, took responsibility for it, and emerged from his detention a chastened and fully rehabilitated young man.

12. Following his release, Ma'lik returned to high school and graduated. He then attended Potomac State College of West Virginia University and California University of Pennsylvania. Ma'lik completed his time at both schools without incident. He thereafter transferred to YSU in the fall of 2016 as a sophomore.

13. Ma'lik hoped he would have the opportunity to play football at YSU. In August 2016, his legal guardians, Greg and Jennifer Agresta, initiated contact with persons they knew at YSU in order to determine whether Ma'lik might be permitted to play. Greg also attended an event at which YSU president Jim Tressel was a speaker. He introduced himself to President Tressel, gave him a business card, and indicated that they had a mutual acquaintance: Malik's high school coach, Reno Saccoccia.

14. Thereafter, Coach Saccoccia initiated a call to President Tressel on Ma'lik's behalf. President Tressel said he was fine with Ma'lik playing football for YSU, but wanted the decision to be made by YSU head football coach Bo Pellini. Greg drove to YSU to meet with Coach Pellini, who indicated that he wanted to meet Ma'lik. Thereafter, Coach Pellini was fully supportive of Ma'lik and of his wish to play for the YSU Penguins.

15. Ma'lik and his guardians were very enthused about Ma'lik's opportunity to attend and play for YSU for two reasons. First, YSU was close to home. Second, and more important, they saw YSU as a place where the coach and administrators understood the importance of second chances.

16. In August 2016, Ma'lik and his guardians met with Coach Pellini in his office. He told them that he would stand by Ma'lik "no matter what," felt that Ma'lik had served his time for his mistake in high school, and wanted Ma'lik to be on the team. He offered Ma'lik the choice of joining the team immediately as a walk-on, *i.e.*, a non-recruited, non-scholarship

player, or waiting until the beginning of the 2017 season to walk on. Coach Pellini noted, however, that it was somewhat late to be starting with the team immediately, and that Ma'lik would benefit from a delay by having time to learn the playbook, work out, and get acclimated to his new school. Moreover, Coach Pellini offered to (and did) assign assistant coach Roland Smith to work with Ma'lik in preparation for the 2017 season. Thus, Ma'lik agreed to delay his play until the following season.

17. In January 2017, Ma'lik sought a place on the YSU football team as a walk-on. He made the team, practiced with the team as a backup, excelled in the annual Spring Football Game, and was assigned some plays with the first-team players. Coach Pellini told Ma'lik that he would play a lot during the season and would be a big help to the team. Ma'lik also was accepted and well-liked by his teammates.

18. On August 4, 2017, the *Youngstown Vindicator* ran a story in which it disclosed Ma'lik's background and reported that Ma'lik had made the team. The newspaper interviewed Coach Pellini, who explained that it was his own carefully considered decision to add Ma'lik to the football team. The article stated, in part,

> Pelini said he did his own investigation of Richmond's past and the decision to bring him on was his alone. He got a tip from someone in Steubenville that Richmond was on YSU's campus as a student during the 2016 season. He called Richmond's high school coach, Reno Saccoccia, to confirm it.
>
> "[Saccoccia] told me he was [at YSU], but that Ma'lik wasn't looking to play football at the time," Pelini said.
>
> Pelini said he took some time in 2016 to vet Richmond. Some of it involved reading up on the infamous case itself. It also involved speaking with some of his Steubenville contacts from his time recruiting in the area. Not long after YSU lost to James Madison in the Football Championship Subdivison national championship game, he met Richmond face to face.
>
> "The kid is humble and he wants to put [his past] behind him," Pelini said.

> Pelini said he isn't always quick to hand out second chances.
>
> "Every case is different. You have to listen to their story to see if they are genuine," Pelini said. "Gosh, when I was at Nebraska I got rid of a lot of kids. Some of them weren't even given a second chance."
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> "He's been going to school. He's been here as a student. He's proved he can be part of the student community," Pelini said.

19. On August 5, 2017, immediately after publication of the *Younstown Vindicator* story, a female YSU student named Katelyn Davis started an online petition demanding removal of Ma'lik from the team. According to a notation on the website, the petition was to be sent to YSU President Jim Tressel and head football coach Bo Pelini. The petition (which was shared extensively on social media) stated:

> In 2012, a 16-year-old girl was brutally raped by two high school football players, one of which is now a football player for Youngstown State University. Ma'lik Richmond was convicted of the rape of an unconscious young girl, which was also caught on camera and placed on social media to brag about the rape.
>
> In 2013, Richmond was sentenced to a minimum of one year in a juvenile detention center, and ended up serving only one year; he was released in January of 2014.
>
> Now, in 2017, as YSU students prepare to return to school and spend fall nights watching their football team play, there is a huge problem. That problem is that Richmond will be on the field, playing a game. He will be representing the university and all that it stands for. President Tressel and Coach Pelini, are you more concerned with your football team's status than the disgusting rape of a young girl?
>
> For many years, athletes have constantly been given additional chances because they are athletes. What does this say about rape culture? That athletes can do no wrong; that they can get away with anything because of how they perform on the field or in the gym?
>
> Does he deserve a second chance? Yes, he does, and he is receiving that second chance by furthering his education on YSU's campus. Does he deserve the privilege of playing on a football team and representing a university? Absolutely not. Education is a right, whereas playing on a sports team is not.

> As the voice of the students of Youngstown State University, I ask that Richmond be removed from the football team, and this privilege be revoked from someone who absolutely does not deserve it. Thank you.

20. When Ma'lik learned of the petition, he became disheartened and wanted to quit school. But Ma'lik's coaches met with Ma'lik and offered encouragement. A number of his teammates also reached out to support him. Meanwhile, his guardians drove to Youngstown and met with YSU's Nicole Kent-Strollo, Director of Student Outreach and Support and wife of athletic director Ron Strollo. Ms. Strollo indicated that a satisfactory resolution to the public pressure might be for Ma'lik to have counseling and to do community outreach by speaking about sexual assault, a suggestion that ignored the fact that Ma'lik had not violated any YSU conduct rule and had not been implicated in sexual assault while at YSU.

21. On or around August 9, 2017, Coach Pellini called Greg Agresta and advised him that there was a lot of pressure being exerted by the university Board of Trustees and that President Tressel was proposing that Ma'lik be restricted to participating as a practice player and wait until the following year to play in games. This suggestion greatly upset Greg, who said it was unfair to do that to Ma'lik and was not what Ma'lik, the Agrestas, and Coach Pellini had agreed to. Jen Agresta also was angered by the suggestion, rejected it, and insisted that she wanted to speak to President Tressel. She thereafter did meet with him and Ron Strollo and they suggested that Ma'lik be a "developmental redshirt," despite the fact that Ma'lik could not technically be redshirted (*i.e.,* held back from playing for a year without losing a year of eligibility) and did not require "development." Indeed, the Agrestas spoke with Coach Pellini later that day and he informed them that Ma'lik was practicing and performing better than ever and probably would be a starter at some point.

22. That day, just a few days after Katelyn Davis had published her petition to have Ma'lik removed from the team, Defendant YSU – without bothering to inform Coach Pellini, Ma'lik, or the Agrestas – released the following official statement ("the Statement") which was published campus-wide over the YSU email network:

> Youngstown State University takes the matter of sexual assault very seriously and continues to educate everyone within the campus community about the impact and prevention of sexual assault.
>
> The University is fully aware of the gravity of the situation and of petitions that are circulating on social media in protest and support of one of our students, Ma'lik Richmond. We value the input of the entire YSU community and are committed to providing a safe learning environment and growth opportunities for all students, faculty and staff.
>
> Ma'lik Richmond transferred to Youngstown State University in good standing from his prior institution for Fall 2016. After matriculating at YSU, he expressed a desire to try out for the football program. Ma'lik was advised by the coaching staff that if he integrated himself within the campus community academically and socially and completed the fall semester in good standing, further discussions could occur.
>
> In January, Ma'lik again inquired about trying out for the team. At this time, he was permitted to participate on a tryout basis with the team, for winter workouts. At the conclusion of winter workouts, he was permitted to practice with the team as a walk-on from February to April. Ma'lik Richmond earned a spot on the 105-man roster on August 2 as a walk-on and is not receiving an athletic scholarship. He continues to be in good standing on the YSU campus.
>
> YSU does not restrict any student's ability to take part in extracurricular activities as long as they are in good standing with the institution. YSU believes that extracurricular activities assist in a student's ability to succeed.
>
> For the Fall 2017 football season, Ma'lik will not be permitted to compete in any games, but will continue to be a part of the football program as a practice player, forfeiting a year of eligibility. He will be given the opportunity to benefit from group participation, the lessons of hard work and discipline, as well as the camaraderie and guidance of the staff and teammates. He will also continue to work with the University's director of student outreach and support who assists young men and women in becoming successful students and YSU graduates.
>
> As a state university, YSU is fully committed to complying with Title IX of the Education Amendments of 1972 which prohibits gender discrimination in

> education programs and activities, including sexual assault. The University has increased its efforts in the past years to inform, educate and prevent sexual assault and to provide services to victims of sexual assault. YSU is committed to eradicating sexual assault and educating our students beyond the classroom in order to be productive members of society.

23. Upon learning of the email that had been broadcast to the entire campus, Ma'lik became despondent, packed a bag, announced to his guardians that he was quitting, and walked out. Jen Agresta called Coach Pellini and Ron Strollo, angrily castigating them for letting Ma'lik down and expressing her concern about his immediate well-being.

24. On August 10, 2017, when Ma'lik expressed unwillingness to return to practice, Jen called Coach Pellini who, together with Coach Roland Smith and three of Ma'lik's teammates, jumped in a car and drove to Steubenville to talk to Ma'lik. Coach Pellini apologized to Ma'lik for the situation and told him that he felt Ma'lik had the skill to play in the NFL if he applied himself, comparing Ma'lik's ability to that of a YSU player who had just been drafted by the New England Patriots.

25. In releasing the Statement and enacting the restrictions announced therein, YSU humiliated and penalized Ma'lik Richmond (who had committed no sanctionable offense) and capitulated to the petition of Katelyn Davis, a female student who, without ever having had contact with Ma'lik and without alleging any conduct violation by him, demanded that he be sanctioned by YSU. [1] While Ms. Davis undoubtedly was entitled to exercise her right of free speech, YSU as a state university had no right to respond to her informal expression of opinion (or even the opinions of a group of unknown citizens) by penalizing Ma'lik in violation of his federal civil rights and state common law rights.

[1] While other persons purported to sign her petition and echo her demands, their existence and names were not vetted or confirmed and thus the only known and verified complainant was Ms. Davis.

26. YSU and its administration were extremely sensitive to the criticisms being leveled against them, to the point that, to shield themselves and the University from accusations that they had failed to adequately respond to victims of sexual assault by supporting rape culture on campus, they discriminated against Ma'lik.

27. YSU, through its wrongful exercise of state action, also has violated 42 U.S.C. § 1983 by depriving Ma'lik of his right to procedural due process as guaranteed by the 14th amendment to the Constitution; violated Title IX by depriving Ma'lik, on the basis of his sex, of his right to participate in and derive benefit from an education program or activity; breached an enforceable contract between Ma'lik and the university; and/or caused Ma'lik other damage for which YSU is liable.

C. YSU's Policies and Procedures Governing General Student Misconduct Matters

28. The general code of conduct applicable to the YSU student body is called *The Student Code of Conduct* ("the Code"). (A copy of the Code is attached hereto as Exhibit A.) Article II, Section A of the Code describes the "*Jurisdiction of The Student Code of Conduct*" and indicates that "students are responsible for their conduct *from the time of application for admission through the actual awarding of a degree*." (Emphasis added.) Thus, Ma'lik's actions during high school were not within the jurisdiction of the Code and could not form a proper ground for discipline by YSU.

29. Article III of the Code sets forth a wide variety of behaviors that will result in disciplinary action, ranging from Academic Dishonesty to Hazing to Violation of Law. Among the many sanctionable behaviors is Sexual Misconduct. However, Ma'lik has neither engaged in sexual misconduct at YSU nor been accused by Katelyn Davis or anyone else of engaging in sexual misconduct in violation of the Code.

30. In fact, Ma'lik has not been accused by anyone of engaging in *any* misconduct in violation of the Code. Moreover, YSU admitted in the Statement, "He continues to be in good standing on the YSU campus."

31. The Code, in Article IV *Student Conduct Procedures*, sets forth an extensive system of charging, notice, opportunity to be heard, sanctioning guidelines, and appeal procedures. However, none of these due process safeguards was made available to Ma'lik, nor were they intended to apply to him since he was sanctioned without any complaint being lodged against him or any allegation that he had engaged in behavior identified as sanctionable under Article III of the Code.

D. YSU's Policies and Procedures Governing Student-Athletes

32. Rules, regulations, policies, and procedures pertaining specifically to student-athletes are set forth in the *Intercollegiate Athletics Department Student-Athlete Handbook* ("the Handbook"). (A copy of the Handbook is attached as Exhibit "B.")

33. The Handbook makes clear that YSU deems participation in intercollegiate athletics to be part of the student-athlete's education. The section titled *Philosophy of Intercollegiate Athletics* sets forth a Mission Statement that reads in part: "A. The mission of the Department of Intercollegiate Athletics at Youngstown is to support the University's mission in nurturing *educational* and personal success of student-athletes through competitive athletic opportunities in a climate of mutual respect, integrity, and personal accountability." Under the section titled "*Student-Athlete Affairs,*" YSU also states: "YSU and the NCAA missions are to maintain *intercollegiate athletics as an integral part of our campus educational program* and the athlete as an integral part of the student body." (Emphasis added.) Thus, according to these unambiguous representations, YSU deems participation in intercollegiate athletics to be "an

integral part of[its] campus educational program," meaning that a wrongful denial of Ma'lik's participation was also a wrongful denial or restriction upon his right to an education.

34. The Handbook contains a section titled, "*Student-Athlete's Rights and Responsibilities*." Section III, *Infraction of Rules*, states in part: "Failure to comply with any of the athletic responsibilities may subject the student-athlete to disciplinary action imposed by the coach or athletic department. These sanctions may include, but are not limited to, being denied the privilege of participation in varsity competition…." Thus, being demoted from the active squad and denied the ability to play in varsity competition is deemed a sanction, and such sanction is understood to constitute discipline meted out to a student-athlete who commits a rules infraction.

35. Ma'lik has never been accused of any rules infraction. Indeed, on August 9, 2017, Coach Pellini was quoted in a *Dayton Daily News* article as stating, "I gave him some stipulations and some things he had to be able to do, and if he lived up to them, he'd be able to come out and see if he could be a member of our football team. He did those things and continues to do those things right now, and he's done a nice job for us." Thus, Ma'lik clearly has been subjected to a sanction in the form of being denied the privilege of participation in varsity competition, but as can be inferred from the words of his head coach, this sanction was not the result of any failure by Ma'lik to comply with athletic responsibilities.

36. The Handbook makes clear that the Intercollegiate Athletics Department and personnel will follow rules and regulations of the university. Under the general section titled *Philosophy of Intercollegiate Athletics,* in a subsection identifying "*Critical Issues,*" the Handbook states, "K. **Ethical Integrity**-Intercollegiate Athletics is committed to the highest

ethical standards and *will always conduct activities in compliance with the rules and regulations of the University*, member conferences, and the NCAA." (Emphasis added.)

37. Under the section of the Handbook titled, "*Student-Athlete's Rights and Responsibilities*," subsection "*II Student-Athlete Responsibilities*" states, "All coaches are expected to be respectful, professional, and fair in enforcing the communicated policies that guide our program's objectives. With that responsibility, the head coach has the discretion and ultimate authority to determine if a team or department policy has been violated and impose related penalties. **Every student-athlete must agree to and accept the authority the head coach holds and be willing to abide by disciplinary decisions that are made by him/her."** (Emphasis in original). The above provision indicates that the head coach may determine if a team or department policy was violated and impose related penalties, and that the student-athlete agrees to accept the coach's authority and abide by his "disciplinary decisions." But even though Coach Pellini enforced a sanction on Ma'lik, he did not do so in conjunction with any disciplinary decision, nor was there any violation by Ma'lik of a team or department policy. Thus, the sanction apparently was not imposed by the coach at all, but was instead imposed by Defendant, without cause or any process. The head coach merely was compelled by Defendant to effectuate it.

E. Defendant's Gender-Based Response to the Student Petitions

38. As previously alleged, an online petition commenced by Katelyn Davis on August 5, 2017 demanded that Plaintiff be prohibited from playing football because of a sexual assault he had committed as a juvenile five years earlier, for which assault he had served twelve months in a juvenile detention facility. On August 6, 2017, a counter-petition was commenced online in support of permitting Ma'lik to play football. The petition stated,

> This petition is to show support for Ma'lik Richmond, a current football player on the Youngstown State University football roster. Back in 2012 Ma'lik was involved in and found guilty in a sexual assault case while in high school. Ma'lik was convicted and has served his punishment and has since earned the right to attend Youngstown State and participate on the football team. Being that he has accepted his punishment and has served his time we are in full support of Youngstown State University giving this young man a chance to have an impact on society. We would like Ma'lik Richmond to remain on the Youngstown State Football team! Once our goal is reached we will present this to School President Jim Tressel and the YSU athletic department.

39. The news media correctly reported that the dueling petitions were emblematic of a "heated debate" among YSU students as to whether Ma'lik should be barred from playing or instead be given a second chance. Thus, the views of the student body as to this issue were hardly monolithic. More important, however, they were mere opinions and were in no way grounds for Defendant to take deleterious action against Ma'lik.

40. In subjecting Ma'lik to what the Handbook describes as a sanction, Defendant was persuaded by the demand of a female student, Katelyn Davis, and chose to appease Ms. Davis and those who espoused her views while ignoring the views of those who supported Ma'lik's right to play football. But more important, Defendant gave insufficient weight to the fact that Ma'lik was a student and student-athlete in good standing, choosing instead to unreasonably subject him to discipline due to a female student's insistence that he was a rapist who had not been sufficiently punished.

41. In imposing the penalty without any rule violation by Plaintiff and without any form of due process being afforded to him, Defendant deferred without justification to the demand of a woman who identified herself in her petition as "the voice of the students of Youngstown State University," when in fact there was no single voice of the YSU students and no single view that Ma'lik should be penalized.

42. In acting against Ma'lik, YSU elevated an informal rebuke by a female student to a disciplinary level complaint. Defendant acted with bias against Ma'lik, a male student in good standing, because a female student publically criticized the university, President Tressel, and Coach Pellini for supporting a "rape culture" in which "athletes have constantly been given additional chances because they are athletes," who "can do no wrong," and "can get away with anything." The unstated but clear implication was that she was referring solely to male athletes.

43. In taking unfair, unjust, and indefensible action against a male student who had not violated any rule or policy at YSU, Defendant was infected by an anti-male bias that has swept across America's universities and colleges and is only now being identified and challenged. This bias flows from years of criticism directed at colleges for purportedly being too lax in punishing sexual assault.

44. Colleges and universities are relying on Title IX to crack down on alleged perpetrators of sexual assault. Unfortunately, this crackdown has resulted in a reduction of reasonableness and fairness in the treatment of those accused. It has led to problems such as *de facto* presumption of guilt on the part of accused male students, pursuant to which the accused students are required to prove they had consent while the accusers are not required to prove they were assaulted, and findings of guilt are being based on the very lowest standard of proof – preponderance of the evidence.

45. On April 11, 2011, the U.S. Education Department's Office of Civil Rights sent a "Dear Colleague Letter" to colleges and universities. The Letter indicated that, in order to comply with Title IX, colleges and universities were required to have transparent, prompt procedures to investigate and resolve complaints of sexual misconduct. The Letter purported to provide guidance to schools regarding the unique issues that arise in sexual misconduct cases. In

reality, however, the Letter has encouraged schools to operate sexual misconduct proceedings in a more victim-centered manner by, for example, affording both parties the right to appeal decisions (leading to a form of double jeopardy), encouraging schools to utilize the lowest standard of proof ("more likely than not") for the complainant, and rushing timelines for investigation and adjudication.

46. The Dear Colleague Letter was a step in the increased enforcement of Title IX on college and university campuses. NPR, in an August 12, 2014 report titled *How Campus Sexual Assaults Came to Command New Attentio*n, described the Dear Colleague Letter as the government's "first warning shot."

47. In May 2014, the federal Department of Education disclosed for the first time the names of colleges under investigation for possibly violating federal rules aimed at stopping sexual harassment. The Washington Post reported in March 2015 that the Office of Civil Rights was seeking to hire up to 200 more investigators. At that time, the federal government was investigating well over 100 schools for possible Title IX violations, including many of the top private and state universities in the country.

48. In February 2014, Catherine E. Lhamon, the assistant secretary of education who headed the department's Office for Civil Rights, told college officials attending a conference at the University of Virginia that schools needed to make "radical" change. According to the publication "Chronicle of Higher Education," college presidents suggested afterwards that there were "crisp marching orders from Washington." (*Colleges Are Reminded of Federal Eye on Handling of Sexual-assault Cases,* Chronicle of Higher Education, February 11, 2014.)

49. Universities and colleges now fear being investigated or sanctioned by the Department of Education Office of Civil Rights. The federal government has created a

significant amount of pressure on these institutions to treat all those accused of sexual misconduct with a presumption of guilt. The Chronicle of Higher Education noted that "colleges face increasing pressure from survivors and the federal government to improve the campus climate." (Source: *Presumed Guilty: College men accused of rape said the scales are tipped against them*, Chronicle of Higher Education, September 1, 2014.) In the same article, the Chronicle noted that different standards were applied to men and women. "Under current interpretation of colleges' legal responsibilities, if a female student alleges sexual assault by a male student after heavy drinking, he may be suspended or expelled, even if she appeared to be a willing participant and never said no. That is because in heterosexual cases, colleges typically see the male student as the one physically able to initiate sex, and therefore responsible for gaining the woman's consent."

50. Lhamon told a national conference at Dartmouth in the summer of 2014, "I will go to enforcement, and I am prepared to withhold federal funds." (Source: *How Campus Sexual Assault Came to Command New Attention*, NPR, August 12, 2014). In the same story, Anne Neal of the American Council of Trustees and Alumni was quoted as stating, "There is a certain hysteria in the air on this topic… . It's really a surreal situation, I think." Neal explained that schools are running so scared of violating the civil rights of alleged victims that they end up violating the due process rights of the accused instead.

51. In June 2014, Lhamon told a Senate Committee, "This Administration is committed to using all its tools to ensure that all schools comply with Title IX…" She further told the Committee, "If OCR cannot secure voluntary compliance from the recipient, OCR may initiate an administrative action to terminate and/or refuse to grant federal funds or refer the case to the DOJ to file a lawsuit against the school. To revoke federal funds – the ultimate penalty – is

a powerful tool because institutions receive billions of dollars a year from the federal government for student financial aid, academic resources and many other functions of higher education."

52. Robert Dana, dean of students at the University of Maine, told NPR that some rush to judgment is inevitable. "'I expect that that can't help but be true,' he says. 'Colleges and universities are getting very jittery about it.'" (Source: *Accused of Sexual Assaults on Campus Say System Works Against Them,* NPR, September 3, 2014.)

53. Against this backdrop, in which colleges and universities have generally become hyper-sensitive, defensive, and deferential to female accusers, Ma'lik Richmond might have been at risk of being subjected to gender bias even if he had been formally accused of sexual misconduct and provided with some form of due process. However, Ma'lik -- who received no procedural due process whatever -- was punished in response to a complaint by a female *non-victim* who demanded that he be penalized for sexual misconduct occurring four years earlier, when he had been a juvenile and was well outside the physical and temporal jurisdiction of YSU.

54. Defendant's actions were the result of unwarranted deference to female-led advocacy that amounted to little more than opinionated debate. In responding to the controversy instigated by Katelyn Davis, Defendant literally left no doubt that its actions were motivated by misplaced Title IX concerns that ironically resulted in gender-biased punitive actions against an innocent male student. A university covered by Title IX is not excused from liability for discrimination because the discriminatory motivation is a desire to avoid practical disadvantages that might result from unbiased action. A covered University that adopts, even temporarily, the policy of bias favoring one sex over the other in a disciplinary dispute, doing so in order to avoid liability or bad publicity, has practiced sex discrimination, even if the motive for the

discrimination did not come from ingrained or permanent bias against that particular sex. (See, *Doe v. Columbia Univer*sity, 831 F.3d 46 (2d Cir., 2016))

55. The Statement issued by Defendant indicated that YSU "takes the matter of sexual assault very seriously and continues to educate everyone within the campus community about the impact and prevention of sexual assault," although no sexual assault had occurred. The Statement further noted that "the University is fully aware of the gravity of the situation and of petitions that are circulating on social media in protest and support of one of our students," although there was no situation of gravity beyond the fact that persons were debating a philosophical issue on social media concerning a topic about which universities have become (in the aforementioned words of Robert Dana, dean of students at the University of Maine) "very jittery." Most important, Defendant felt compelled to declare its commitment to Title IX in a non-Title IX circumstance, declaring:

> As a state university, YSU is fully committed to complying with Title IX of the Education Amendments of 1972 which prohibits gender discrimination in education programs and activities, including sexual assault. The University has increased its efforts in the past years to inform, educate and prevent sexual assault and to provide services to victims of sexual assault. YSU is committed to eradicating sexual assault and educating our students beyond the classroom in order to be productive members of society.

Thus, Defendant expressed its commitment to prohibiting gender discrimination in the form of sexual assault and providing services to victims of sexual assault by punishing -- without due process -- a male student who had *not* violated any YSU rule concerning sexual assault.

F. Defendant's Arbitrary Denial of Procedural Due Process

56. A majority of case law interpreting whether the U.S. Constitution requires that procedural due process be afforded by a state university to a student who has been denied the right to participate in school athletics or extracurricular activities holds that such denial does not

implicate the Due Process Clause. However, a minority of courts hold that the opposite is true, and the United States Supreme Court has not taken a definitive position. Plaintiff contends that the majority view is incorrect and its reasoning is outdated in a society in which college and university athletic conferences serve as developmental leagues and feeders to professional sports associations. Plaintiff intends to pursue a definitive ruling constituting a change, modification or extension of the law.

57. As is well-documented above, investigatory and adjudicative procedures at YSU are limited to matters involving violations of campus or student-athlete rules and policies. Due process, or at least a semblance thereof, generally is reserved for an accuser or victim who alleges that wrongdoing has occurred and for the person alleged to be the wrongdoer.

58. Ma'lik Richmond was subjected to what the Handbook describes as a sanction. However, he was not given notice of the charges against him because there were none. He was not given notice of the sanction he faced because there were no charges. He was not given access to information that would be used against him during the "conduct" process because there was no process. He was not given the right to confront witnesses because there were no witnesses.

59. YSU acted unilaterally and without any notice to Ma'lik or his guardians. Ma'lik was afforded no right of appeal.

60. In summary, without any wrongdoing on his part, and without notice to him or input from him, he was removed from the varsity football active player roster, deprived of one year of NCAA eligibility, and required to either practice with the team without hope of playing for at least a year or to refuse to practice and quit the team. In the annals of collegiate sanctions meted out to a student or student-athlete, Ma'lik Richmond was subjected to the purest form of procedural due process denial one might imagine.

G. Defendant's Failure to Abide by Promises and Representations

61. When Ma'lik Richmond agreed to and did pay tuition to YSU and YSU accepted that tuition and admitted Ma'lik as a student, the parties entered into a contract, pursuant to which, among other things, Ma'lik expressly and impliedly agreed to be bound by and adhere to the rules, policies, and procedures governing the behavior of students and student-athletes and YSU agreed to be bound by and to fairly and reasonably enforce such rules, policies, and procedures.

62. In enforcing against Ma'lik a penalty that the Handbook explicitly describes as a sanction, despite the fact that Ma'lik had engaged in no sanctionable conduct, YSU breached its contract with Ma'lik. In the Statement released to both the YSU community and the world-at-large, Defendant expressly described its obligation and admitted the fact that it breached that obligation, stating:

> Ma'lik Richmond earned a spot on the 105-man roster on August 2 as a walk-on and is not receiving an athletic scholarship. He continues to be in good standing on the YSU campus.
>
> YSU does not restrict any student's ability to take part in extracurricular activities as long as they are in good standing with the institution. YSU believes that extracurricular activities assist in a student's ability to succeed.
>
> For the Fall 2017 football season, Ma'lik will not be permitted to compete in any games, but will continue to be a part of the football program as a practice player, forfeiting a year of eligibility.

In the incredible statement above, YSU declares that Ma'lik "earned a spot on the 105-man roster." YSU further confirms that Ma'lik is "in good standing on the YSU campus" and advises that "YSU does not restrict any student's ability to take part in extracurricular activities *as long as they are in good standing with the institution*." Thus, YSU admits that because Ma'lik was in good standing, it should not have been free to "restrict Ma'lik's ability to take part in

extracurricular activities." Yet, YSU then confesses that it **has** restricted Ma'lik's ability to take part, announcing that he "will not be permitted to compete in any games," will be demoted to the position of "a practice player," and will be made to "forfeit[ ] a year of eligibility." Clearly, YSU has breached the contract between itself and Ma'lik Richmond. Moreover, the failure to provide Ma'lik with any notice or fair opportunity to be heard before subjecting him to a sanction or punishment is a breach of express and/or implied terms of that agreement.

63. To the extent YSU might argue that it did not breach a written contract, it nonetheless cannot deny that it breached an oral contract.

64. Before agreeing to attempt to play football for YSU as a walk-on, Ma'lik sought and received assurances from both Coach Pellini and President Tressel that despite his sexual misconduct as a juvenile, he would be permitted to play football if he earned a place on the team and remained in good standing as a student and student-athlete. Both Coach Pellini and President Tressel assured him this was so. They further indicated that since he had served his time, they believed he was entitled to play as long as he remained in good standing both academically and from a conduct perspective, regardless of whether or not members of the public objected. Coach Pellini represented that he would stand by Ma'lik no matter what.

65. Ma'lik practiced with the team, succeeded in earning a position as a walk-on, and remained in good standing in all respects as a student and student-athlete. Thus, he performed his duties and obligations under the verbal agreement.

66. YSU failed to keep its commitments under the verbal agreement and refused to allow Ma'lik to remain on the team as promised. YSU thus breached the agreement.

H. Plaintiff Will Suffer Immediate and Irreparable Harm Absent Injunctive Relief.

67. The Youngstown State University Penguins play an 11-game regular season schedule, with a possibility of additional post-season games. The regular season schedule is as follows:

Sep 2 @Pittsburgh
Sep 9 Robert Morris
Sep 16 Central Conn. St.
Sep 30 South Dakota St.
Oct 7 @South Dakota
Oct 14 N. Dakota St.
Oct 21 @N. Iowa
Oct 28 Illinois St.
Nov 4 @Indiana St.
Nov 11 @S. Illinois
Nov 18 Missouri St.

68. Varsity football players have a limited period of NCAA amateur eligibility in their brief collegiate careers. Eligibility lost, in whole or part, is irreplaceable and the harm is irreparable. Varsity football players have the opportunity to play in only a small, finite number of games in their brief collegiate careers. Each game missed by a healthy player is irreplaceable and the harm is irreparable. Varsity football players such as Ma'lik Richmond, who are potentially good enough to play at the highest level of their sport, have a very limited opportunity to demonstrate and hone their skills so as to engender interest by professional football teams. Every game in which Ma'lik is barred from playing causes him irreparable harm by diminishing the performance data upon which professional football teams rely in deciding which players to draft or sign as free agents.

69. As a result of Defendant's wrongful actions as described above, Ma'lik already has lost the opportunity to play in two games and is at immediate risk of being barred from

playing in the upcoming game against Central Connecticut State on September 16, 2017, as well as additional games.

70. Unless Defendant is immediately enjoined from enforcing its ban on Ma'lik's ability to participate on the active player roster pending adjudication of Plaintiff's claims, Ma'lik will miss the September 16, 2017 game and, with further delay, will miss additional games.

CAUSES OF ACTION

Count I
(Title IX: Erroneous Outcome and/or Selective Enforcement)

71. Plaintiff repeats and incorporates all the preceding allegations of this Complaint, as if fully set forth herein.

72. Title IX provides, in relevant part, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

73. Title IX is enforceable through an implied right of action affording to an individual discriminated against due to his or her gender pecuniary damages and equitable relief.

74. YSU receives federal financial assistance in various forms.

75. YSU's conduct, as described above, constituted discrimination against Plaintiff on the basis of his sex. Plaintiff alleges that YSU violated Title IX under both the "erroneous outcome" and "selective enforcement" standards. In imposing punishment on Plaintiff – to wit, excluding him from participation in and denying him the benefits of intercollegiate athletics – Defendant deferred to the informal complaint and expression of opinions by a female student that unless the university, President Tressel, and Coach Pellini punished Plaintiff for sexual misconduct in which he engaged as a 16-year old high school student, they would be supporting

a "rape culture" on campus. Defendant's act of disciplining Plaintiff without cause and failing to provide him with a hearing or right of appeal violated Title IX.

76. YSU has failed to remediate its discriminatory actions against Plaintiff.

77. As a result of YSU's acts and omissions as described above, Plaintiff has suffered multiple forms of damage, including diminished earning capacity, lost career and business opportunities, litigation expenses including attorneys' fees, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress, and other compensatory damages, in an amount to be determined by a jury and the Court.

Count II
(42 U.S.C. §1983 -- Violation of Rights to Due Process)

78. Plaintiff repeats and incorporates all the preceding allegations of this Complaint, as if fully set forth herein.

79. Defendant has acted under color of law in violating the plaintiff's rights under the Fifth and Fourteenth Amendments to the United States Constitution.

80. The Fifth Amendment to the United States Constitution, made applicable to the State of Ohio by the Fourteenth Amendment, provides that no person shall "be deprived of life, liberty, or property, without due process of law." The Fourteenth Amendment to the United States Constitution provides that no state shall deprive "any person of life, liberty, or property, without due process of law."

81. Sec. 16, Article I, Ohio Constitution, guarantees that every person injured in his lands, goods, person or reputation shall have remedy by "due course of law."

82. The Due Process Clauses of the Ohio and United States Constitutions are implicated by higher education disciplinary decisions. YSU has a constitutional obligation to provide a fundamentally fair and reliable hearing process. Plaintiff was entitled under the

constitutions of Ohio and the United States to the opportunity to be heard in a meaningful manner before being subjected to what was deemed a sanction under the Handbook.

83. The Plaintiff's interests and the results of such a hearing are significant. Dismissal from the active playing roster of the Youngstown State Penguins football team and loss of a year of playing eligibility has deprived Plaintiff of an opportunity to participate in what YSU deems a function of his education process. It further has deprived him of the opportunity to improve and showcase his talent and to potentially earn a scholarship that would assist him in paying the costs of his education, and by diminishing his chances of being drafted by an NFL team and successfully pursuing an extremely lucrative career in professional football.

84. Defendant has violated Plaintiff's due process rights by sanctioning him in the above-described manner without jurisdiction or cause and without any procedure by which he can be heard to oppose or appeal the sanction.

85. As a direct and proximate result of the Defendant's violations of the Plaintiff's constitutional rights, Plaintiff has suffered severe and substantial damages. These damages include diminished earning capacity, lost career and business opportunities, litigation expenses including attorneys' fees, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress and other compensatory damages, in an amount to be determined by a jury and the Court.

86. Pursuant to 42 U.S.C. §1983, Defendant is liable to the Plaintiff for Plaintiff's damages, and Plaintiff is entitled to recover his attorneys fees and costs incurred in bringing this action.

Count III
(Breach of Contract)

87. Plaintiff repeats and incorporates all the preceding allegations of this Complaint, as if fully set forth herein.

88. At all times relevant hereto, a contractual relationship, both express and implied, existed and continues to exist between Defendant and Plaintiff through the Code, the Handbook, and Plaintiff's payment of tuition.

89. Defendant, in penalizing, sanctioning, or punishing students and student-athletes with respect to their conduct, was contractually required to act in accordance with the explicit conduct rules, regulations, and procedures set forth in the Code and the Handbook, and Plaintiff was required to both comply with and receive the protections of such rules, regulations, and procedures in the Code and Handbook. Moreover, the contract impliedly afforded Plaintiff the right to be free of sanction or penalty by Defendant as long as he complied with requirements of the Code, the Handbook, and applicable laws and remained a student and student-athlete in good standing. Plaintiff, by Defendant's own public admission, was in good standing at all times material to this Complaint and he remains in good standing today.

90. By removing Plaintiff from the varsity football active player roster, depriving him of one year of NCAA eligibility, and requiring him to either practice with the team without hope of playing for at least a year or to refuse to practice and quit the team, all without any cause or procedural recourse, Defendant has materially breached its contract with Plaintiff.

91. As a direct and foreseeable consequence of Defendant's material breach, Plaintiff has sustained significant damages including, but not limited to, diminished earning capacity, lost career and business opportunities, litigation expenses including attorneys' fees, and other compensatory damages, in an amount to be determined by a jury and the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ma'lik Richmond seeks the following relief from the Court:

a) A temporary restraining order and/or injunction prohibiting YSU during the pendency of this case from either (i) removing Plaintiff from the active player roster of its football team or (ii) forbidding Plaintiff to play in games, unless such actions result from legitimate coaching decisions based solely upon criteria the coach would apply in evaluating other members of the team in good standing;

b) An award of attorneys' fees, expenses, and costs; and,

c) Monetary damages in an amount to be proven at trial; and

d) Any further relief that the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

/s/ Susan C. Stone
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Counsel for Plaintiff

VERIFICATION

I, Ma'lik Richmond, being duly sworn, state that I have reviewed the factual allegations contained in this Verified Complaint. All of the factual allegations in the Verified Complaint are true and accurate to the best of my knowledge.

Sworn to before me and subscribed in my presence this 13 day of September, 2017.

PAULA S. BALUT
Notary Public - State of Ohio
My Commission Expires Nov. 29, 2018

NOTARY PUBLIC

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Ma'Lik Richmond,	:	
Plaintiff,	:	Case No. 4:17-cv-01927
vs.	:	Judge Benita Y. Pearson
Youngstown State University,	:	
Defendant.	:	

DEFENDANT'S MEMORANDUM CONTRA PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

NOW COMES Defendant, Youngstown State University, by and through counsel, and respectfully requests this Honorable Court to deny Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction (ECF# 3). A Memorandum in Support is attached hereto and incorporated herein by reference.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Ohio Attorney General

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Counsel for Defendant

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Proving the old adage that no good deed goes unpunished, Youngstown State University (hereinafter "YSU") has been hauled into court by a student that YSU has bent over backward to assist, support and provide a second chance when no one else would. The rest of the world had written Plaintiff off as an unrepentent rapist, but YSU encouraged him and integrated him as "part of the student community." (Brief in Supp. of Mot. for TRO, ECF #3-1, pg. 6). In fact, when Plaintiff quit school and said he would not return to football, YSU representatives went to his home and encouraged him to stay in the program. Id., pg. 10.

Plaintiff, however, in becoming part of a "student community," must take the good with the bad. YSU has a responsibility – not just to Plaintiff – but to the whole student population and the community at large. In this case, the student population voiced its concern that YSU's welcoming and sympathetic treatment of Plaintiff would send a message to the University community that if one is an athlete, one does not really have to pay much of a price for being found responsible for sexual assault, whether on campus or off. In balancing those interests, as any good university administration must, a decision was made to continue to encourage Plaintiff's participation but also to send a message that sexual assault is taken seriously at YSU. As such, Plaintiff stayed on the active roster of the football team but will not be playing this year. Simply put, this was a

decision in the sound discretion of the YSU Athletic Department, made after consultation with University administration and the coaching staff. (Affidavit of YSU Athletic Director, Ronald Strollo, Exhibit A). It also bears noting that Plaintiff, himself, was receiving serious threats of harm if he followed through on his intention to play football this season. Id.

Plaintiff has now filed a Complaint alleging that he has been discriminated against on the basis of his gender in violation of Title IX, that YSU has violated his constitutional right to due process[1] and that YSU has breached some sort of contractual relationship with Plaintiff. (Compl., ECF #1, pgs. 24-27). Plaintiff has also moved for a TRO stating that "[i]n the absence of a temporary restraining order, [he] will be denied participation in the YSU football game scheduled for September 16, 2017." (Brief in Supp. of Mot. for TRO, pg. 10). As more fully detailed below, not only is Plaintiff not entitled to injunctive relief, his Complaint is subject to dismissal.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 65 (b) permits a party to seek injunctive relief to prevent immediate and irreparable injury. *Marshall v. Ohio Univ.*, 2015 WL 1179955, *4

[1] It bears noting that Plaintiff's Motion for TRO breathes not a word about his 42 U.S.C. § 1983 claim alleging violation of his constitutional right to due process and, further, makes no argument that the due process claim has any likelihood of success, let alone a strong likelihood of success. This is for good reason. Courts have consistently held that students have no protected property interest in participating in collegiate athletics. See, e.g., *Karmanos v. Baker*, 617 F. Supp. 809, 815 (E.D. Mich 1985) aff'd 816 F. 2d 258 (6th Cir. 1987); *Awrey v. Gilbertson*, 833 F. Supp. 2d 738 (E.D. Mich. 2011); *Conrad v. University of Washington*, 834 P. 2d 17, 22 (Wash. 1992); *Fluitt v. University of Nebraska*, 489 F. Supp. 1194 (D. Neb. 1980); *Brands v. Sheldon Comm. Sch.*, 871 F. Supp. 627 (N.D. Iowa 1987). Further any "interest in . . . [a] future professional [athletic] career" is "speculative and not of constitutional dimensions." *Justice v. NCAA*, 577 F. Supp. 356, 374 (D. Arizona 1983)(Citations omitted).

(S.D. Ohio March 13, 2015). "A temporary restraining order is an extraordinary remedy whose purpose is to preserve the status quo." Id., citing *Procter & Gamble Co. v. Bankers Trust Co.,* 78 F. 3d 219, 226 (6th Cir. 1996). It is the burden of the Plaintiff to prove that the circumstances "clearly demand" such an extraordinary remedy and that burden must be met by reaching the standard of clear and convincing evidence. *Overstreet v. Lexington-Fayette Urban Cnty. Gov't,* 305 F.3d 566, 573 (6th Cir. 2002).

The following elements must be considered by the Court: 1.) Strong likelihood of success on the merits of Plaintiff's claims; 2.) Irreparable injury to Plaintiff if the injunctive relief is not granted; 3.) The absence of substantial harm to others[2]; and 4.) The public interest is "best served" by granting the injunction. *Chabad of S.Ohio & Congregation Lubavitch v. City of Cincinnati,* 363 F. 3d 427, 432 (6th Cir. 2004). For the reasons set forth below, Plaintiff is not entitled to this extraordinary remedy.

III. LAW AND ARGUMENT

A. Plaintiff has no Likelihood of Success on the Merits of his Claims.

1. Title IX.

Plaintiff's Title IX claim has no likelihood of success. In fact, it is subject to dismissal because it fails to state a claim. In the context of recent claims by male students alleging gender bias prohibited by Title IX, district courts are revisiting the pleading standards set forth by the Supreme Court in *Twombly* and *Iqbal.* In *Doe v. Univ. of*

[2] Plaintiff's Brief refers to this element as "lack of substantial harm to *defendants.*" (Brf. in Supp., pg. 10). This is not the correct standard, although that may be a consideration for the Court.

Colorado-Boulder, 2017 WL 2311209 (D. Colo. May 26, 2017), the Court refused to recognize what it considered to be a lesser standard of pleading accepted in the Second Circuit case of *Doe v. Columbia Univ.,* 831 F.3d 46 (2d Cir. 2016). [3] The *Univ. of Colorado* Court refused to accept as plausible blanket allegations that internal or external criticism of a university creates an inference of gender bias in adjudications of claims of sexual assault, stating, "The Court disagrees with cases that continue to accept conclusory allegations of gender bias. *Twombly* and *Iqbal* plainly disallow such acceptance." Id., at * 21-24. Here, Plaintiff's allegations in support of the Title IX claim are nothing more than supposition upon speculation, supported by no facts which could plausibly result in a viable claim. The gist of Plaintiff's claim is that entities outside of the University, in urging colleges and universities nationwide to take seriously allegations of sexual assault on college campuses, as well as students who were also enrolled at YSU, coerced or compelled YSU to engage in gender discrimination against Plaintiff. One, however, does not plausibly beget the other. Urging institutions of higher learning to take sexual assaults seriously does not plausibly lead to the conclusion that those institutions would, in response, rampantly engage in invidious gender discrimination against male students.

Title IX of the Education Amendments of 1972 is a federal statute which prohibits sexual discrimination and harassment in educational institutions receiving federal funding. It provides as follows: "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to

[3] Plaintiff heavily relied on this case in his Motion for TRO.

discrimination under any educational program or activity receiving Federal financial assistance." 20 U.S.C. § 1681 (a). Because there exists no "disparate impact" theory of liability available under Title IX, the plaintiff in such a case must demonstrate intentional discrimination. *Alexander v. Sandoval,* 532 U.S. 275, 280 (2001); *Marshall v. Ohio Univ.,* 2015 WL 7254213, *5 (S.D. Ohio Nov. 17, 2015).

The Sixth Circuit has recognized two potential causes of action pursuant to Title IX with respect to claims of gender discrimination arising from university disciplinary proceedings: erroneous outcome and selective enforcement. *Mallory v. Ohio Univ.,* 76 F. App'x 634, 638 (2003). See also, *Sahm v. Miami Univ.,* 2015 WL 246065, *4 (S.D. Ohio May 20, 2015); *Marshall v. Ohio Univ.,* 2015 WL 7254231, *5 (S.D. Ohio November 17, 2015). To state an "erroneous outcome" claim, the plaintiff must demonstrate that he or she was wrongly found to have committed a disciplinary offense on the basis of gender. *Sahm,* 2015 WL 2406065 at *3. To state a "selective enforcement" claim, a male plaintiff must demonstrate that "a female [student] was in circumstances sufficiently similar to his own and was treated more favorably . . . ." *Mallory,* 76 F.App'x at 641. Plaintiff can demonstrate neither.

a. Erroneous Outcome.

Erroneous outcome cases allege that the plaintiff was innocent and wrongly found to have committed an offense.[4] *Yusuf v. Vassar College*, 35 F.3d 709, 715 (2d Cir. 1994). To prevail on an erroneous outcome theory, Plaintiff must also prove that YSU's conduct

[4] Frankly, Plaintiff attempts to place a square peg in a round hole. He makes no allegation that he was wrongly accused of sexual misconduct or wrongly convicted. There is no viable erroneous outcome

was motivated by gender bias. *Doe v. Univ. of the South,* 687 F. Supp.2d 744, 756 (E.D. Tenn.2009) (citing *Mallory v. Ohio Univ.*, 76 Fed. App'x. 634, 638 (6th Cir. 2003)). Specifically, he must allege "particular facts sufficient to cast some articulable doubt on the accuracy of the outcome of the disciplinary hearing as well as a causal connection between the flawed outcome and gender bias." *Yusuf*, 35 F.3d at 715. A "plaintiff must thus also allege particular circumstances suggesting that gender bias was a motivating factor behind the erroneous finding." Id. Examples of these circumstances include "statements by members of the disciplinary tribunal, statements by pertinent university officials, or patterns of decision-making that also tend to show the influence of gender." Id. But allegations of an erroneous outcome "combined with a conclusory allegation of gender discrimination is not sufficient to survive a motion to dismiss." Id.

Plaintiff's Complaint is entirely devoid of any factual allegations tying this case to his gender. Plaintiff has not pointed to any statements by members of university administration showing gender bias. Instead, he makes conclusory and entirely speculative allegations in an attempt to support his claim of gender bias, claiming that YSU has been pressured by the student body, the media and the U.S. Department of Education to adopt a gender-biased stance. (Brf. in Supp., pg. 11-12).

With respect to Plaintiff's "pressure on the University" allegations, even if those claims are interpreted most favorably to him, his allegations reflect a bias against people accused of sexual misconduct (regardless of gender) and in favor of victims and indicate nothing about gender discrimination. See *Haley v. Virginia Com. University*, 948 F.Supp.

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claim under these facts.

573, 578-79 (E.D. Va. 1996); *King v. Depauw Univ.*, 2014 WL 4197507 at *10 (S.D. Ind. Aug. 22, 2014) (emphasis added). ("But DePauw is not responsible for the gender makeup of those who are accused *by other students* of sexual misconduct, and the fact that a vast majority of those accused were found liable might suggest a bias against accused students, but says nothing about gender.") As noted by another court, "it is possible that OSU was biased in favor of the alleged victims of sexual assault cases and against the alleged perpetrators, but courts have held that this is not the same as demonstrating bias against male students." *Doe v. The Ohio State University,* 2017 WL 951464. FN 11 (S.D. Ohio March 10, 2017)(citing *Bleiler v. Coll. of Holy Cross,* 2014 U.S. Dist. LEXIS 127775 (D. Mass. Aug. 26, 2013); *King v. DePauw,* supra; *Haley v. Va. Commonwealth,* supra.) See also, *Doe v. Baum,* 2017 WL 57241, *23-27 (E.D. Mich. Jan. 5, 2017)(holding that the allegations of pro-victim bias do not equate to anti-male bias and such allegations in the context of a Title IX claim cannot avoid a motion to dismiss); *Doe v. Univ. of Cincinnati,* 173 F. Supp. 3d 586, 606-08 (S.D. Ohio 2016)(same); *Ludlow v. Northwestern Univ.,* 125 F. Supp. 3d 783, 791-93 (N.D. Ill. 2015)(same); *Yu v. Vassar Coll.,* 97 F. Supp. 3d 448, 461-81 (S.D.N.Y. 2015)(same).

In *Doe v. Univ. of Colorado-Boulder,* 2017 WL 2311209 (D. Colo. May 26, 2017), the district court dismissed the male student's claims of gender bias where he claimed that a Department of Education investigation and the "Dear Colleague Letter" resulted in pressure on the university to violate Title IX. As stated by the Court:

> Considering all of [plaintiff's allegations of external pressure on the university] together, the Court finds

> no inference of gender bias that rises to the level of "plausible." [P]ressure from the federal government to investigate sexual assault allegations more aggressively – either general pressure exerted by the Dear Colleague Letter or specific pressure exerted by an investigation directed at the University, or both – says nothing about the University's alleged desire to find men responsible because they are men.

Id. at *24.

Plaintiff's allegations here, similarly, create no plausible inference that "external pressure" or pressure by the student body resulted in YSU engaging in intentional gender discrimination. See also *Doe v. Denison Univ.*, 2017 U.S. Dist. LEXIS 53168 (S.D. Ohio March 30, 2017) (dismissing erroneous outcome Title IX claim, on a motion to dismiss, because gender bias could not be inferred from allegations of external pressure); *Doe v. Western New England Univ.,* 228 F. Supp. 3d 154, 190 (D. Mass. 2017); *Sahm v. Miami Univ.*, 110 F. Supp. 3d 774, 778-80 (S.D. Ohio 2015) (dismissing plaintiff's Title IX claim because the complaint failed to allege any statements of members of the disciplinary body or university officials or any patterns of conduct that permitted the court to infer bias against male students); *Doe v. University of Mass. – Amherst*, 2015 WL 4306520 at *8 (D. Mass. July 14. 2015); (dismissing plaintiff's Title IX claim because he failed to cite any statements that plausibly suggested the university's gender bias and because his unsupported claim that the university discriminated against males accused of sexual misconduct was insufficient); *Harris v. St. Joseph's Univ.,* 2014 WL 1910242, at *4 (E.D. Pa. May 13, 2014) (dismissing plaintiff's Title IX claim due to his failure to allege sufficient facts to support his claim that gender bias was a motivating factor in the

university's decision). As such, Plaintiff cannot meet the high burden of demonstrating that there is a strong likelihood of success on his "erroneous outcome" Title IX claim.

b. Selective Enforcement.

To maintain a "selective enforcement" Title IX claim, Plaintiff must demonstrate that he has been treated differently than *female* athletes in similar situations. *Mallory,* 76 F.App'x at 641. Plaintiff does not even attempt to allege that he has been treated differently than similarly-situated female students or athletes. Plaintiff simply states that "other student athletes with a prior record of juvenile or sexual misconduct" have been allowed to "participate fully" in YSU athletics. (Brf. in Supp., pg. 17). Plaintiff does not identify those athletes as female. As such, his selective enforcement allegations are subject to a motion to dismiss for failure to state a claim and certainly do not begin to rise to the level of demonstrating a substantial likelihood of success.

2. Breach of Contract.

There is no contract which applies to the circumstances of this case. Plaintiff's reliance on YSU handbooks and code of conduct is misplaced. Plaintiff was not cited for any rules violations under any YSU policy, and makes no allegation that he was. Plaintiff cites various sections of the YSU Student Code of Conduct and the Intercollegiate Athletics Department Student-Athlete Handbook . (Brf. in Supp., pgs. 19-23). None of the actions taken by YSU in this case, however, were taken pursuant to any provision in any YSU handbook or policy. (See Affidavit of YSU Athletic Director Ronald Strollo, Exhibit A). While Plaintiff argues that the action with respect to his

participation was a "sanction," it was not, and no "sanction" was imposed on him per any of the conduct policies promulgated by the University. Id.

In addition, if Plaintiff truly believed that this situation is controlled by University handbook policy and procedures, he has available a contractual remedy to address this situation. The Student –Athlete Handbook, at pages 33 and 34, contains a detailed "Student-Athlete Grievance Procedure." (See Student-Athlete Handbook, ECF #3-2, Page ID #186-87). Plaintiff has failed to take advantage of the grievance procedure in the "contract" he claims applies to this case. Courts in similar contexts have held that a plaintiff may not pursue a claim in federal court where he has failed to exhaust contractual grievance remedies. *Wilson v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO*, 83 F.3d 747, 752 (6th Cir. 1996); see also, *Wagner v. General Dynamics,* 905 F.2d 126, 127 (6th Cir. 1990). Such "exhaustion" requirements have also held to apply to students claiming a school breached internal policy or procedure requirements. See, e.g., *McAlpin v. Burnett,* 185 F. Supp. 2d 730 (W.D. Ky. 2001)(Affirming state court dismissal of student "unfair grading" claim for failure to exhaust university grievance procedures).

Because there is not a single word or phrase in any University policy which prohibits or even refers to the situation here, there can be no breach of contract. Further, "[A] breach of contract claim will not arise from the failure to fulfill as statement of goals or ideals." *Ullmo exrel.Ullmo v. Gilmour Acad.,* 273 F. 3d 671, 676-77 (6th Cir. 2001). "Not all terms in a student handbook are enforceable contractual obligations, however,

and courts will only enforce terms that are 'specific and concrete'" *Knelman v. Middlebury Coll.*, 2010 WL 4481470, * 8-9 (D. Vt. Sept. 28, 2012) and "[n]ot every dispute between a student and a university is amenable to a breach of contract claim . . . ." *Gally v. Columbia Univ.*, 22 F. Supp. 2d 199, 206 (S.D.N.Y. 1998). "[C]ourts have taken a flexible approach to the scope of contractual promises between students and universities: [H]ornbook rules cannot be applied mechanically where the principal is an educational institution and the result would be to override an [educational] determination." *Sung Park v. Ind Univ Sch. of Dentistry,* 692 F 3d 828, 831 (7th Cir. 2012). "[C]ourts quite properly exercised the utmost restraint in applying traditional legal rules to disputes within the academic community, noting that literal adherence to internal rules will not be required where the dismissal rests upon expert judgments as to academic or professional standards." Id. Courts will not "second-guess" educational decisions absent some evidence of bad faith. Id. The Court is "required to defer to academic decisions of the college unless it perceived '. . . such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment . . . .'" *Bleicher v. Univ. of Cincinnati Coll. of Medicine,* 78 Ohio App. 3d 302, 308 (10th Dist. 1992)(quoting *Regents of Univ. of Mich. v. Ewing,* 474 U.S. 214, 225 (1985). Lastly, the "standard of review is not merely whether the court would have decided the matter differently but, rather, whether the faculty action was arbitrary or capricious." Id. (Citations omitted).

As outlined in the Affidavit of YSU Athletic Director Ronald Strollo, there was no action taken here pursuant to any policy, rule or regulation of the University. Instead, the action was taken in consultation with the YSU Athletic Department, Administration and Coaching Staff for the purposes of addressing the concerns raised by students regarding whether the University is committed to taking sexual assaults seriously. (Ex. A). Such a situation is neither contemplated in nor prohibited by the handbooks which Plaintiff claims YSU had breached. Plaintiff cannot demonstrate a likelihood of success on the merits of his breach of contract claim.

B. There is no Irreparable Harm.

Plaintiff has moved for a TRO claiming that every football game he fails to play at YSU diminishes "the performance data upon which professional football teams rely" and, therefore, diminishes his potential to be drafted by the NFL. (Brf. in Supp., pg. 24). Plaintiff provides not a scintilla of factual or legal support for this claim. The law is clear that claims of irreparable harm cannot rest on the thin reed of speculation and conjecture. *Abney v. Amgen, Inc.*, 443 F. 3d 540, 552 (6th Cir. 2006)(No irreparable injury where alleged harm is "speculative or unsubstantiated.") "In order to substantiate a claim that irreparable injury is likely to occur, a movant must provide some evidence that the harm has occurred in the past and is likely to occur again." *Michigan Coal. of Radioactive Material Users, Inc. v. Griepentrog,* 945 F. 2d 150, 154 (6th Cir. 1991). Numerous courts have rejected claims by collegiate athletes against schools alleging that they were unfairly prevented from playing sports and thus denied subsequent earnings or

opportunities as professional athletes because such claims are too speculative and hypothetical. *McAdoo v. Univ. of N. Carolina at Chapel Hill*, 2013 WL 149694 (N.C. Ct. App. Jan. 15, 2013); *Justice v. NCAA*, 577 F. Supp. 356, 374 (D. Arizona 1983); *Colorado Seminary v. NCAA*, 417 F. Supp. 885, 895 (D. Colo. 1976).

To be certain, the elevation of a college athlete to a professional sports team is not a foregone conclusion. According to the NCAA, only 1.5% of college football players go on to be drafted by the NFL. (NCAA analysis, Exhibit B). In addition, Plaintiff provides no support for his claim that being unable to play football for one (1) year during a total of three (3) years of eligibility would affect his prospects of being drafted by the NFL in the first place. As stated in the Affidavit of Athletic Director Strollo, if Plaintiff plays football at YSU during his remaining two years of eligibility (after this year), his chances of being drafted by the NFL as a professional football player are the same as if he played this year as well. Ex. A. Therefore, there exists no irreparable harm.

As an additional consideration, Plaintiff's claim that this matter has created the pendency of immediate and irreparable harm is belied by his failure to take immediate action to address it. Plaintiff admits that he learned of the University action on August 9, 2017. (Brf. in Supp., pgs. 8-9). He did not, however, take any action on his claim of immediate and irreparable harm *until nearly 6 weeks later,* when he filed his lawsuit and motion for TRO. Plaintiff provides no explanation as to why this matter is currently so urgent or how missing playing time in the third game

of the season is more important or immediate than missing the first two games. Parties who "sleep" on their rights and wait to advance what they claim are emergency claims are not entitled to immediate injunctive relief. *Libertarian Party of Ohio v. Husted,* 2014 WL 12647018, *2 (S.D. Ohio Sept. 24, 2014); *Advocacy Org. for Patients and Providers v. Mercy Health Svcs.,* 987 F. Supp. 967, 969 (E.D. Mich. 1997)("Eleventh hour" TRO filings are disfavored.).

C. There is Harm to the University and Others if the TRO is Granted.

As outlined above, there is a long history of judicial restraint when courts address decisions made by college and university administrators. "A university is not a court of law, and it is neither practical nor desirable it be one." *Flaim v. Med. Coll. of Ohio*, 418 F.3d 629, 635 n.1 (6th Cir. 2005) (quoting *Gomes v. Univ. of Maine Sys.*, 365 F.Supp.2d 6, 16 (D. Me. 2005)). "[C]ourts should refrain from second-guessing the . . . decisions made by school administrators." *Davis v. Monroe Cnty. Bd. of Educ.,* 526 U.S. 629, 648 (1999). Universities must be allowed to make educational decisions which are, in their estimation, in the best interests of the university community and the students themselves. It is, in fact, harmful to the university to have its decisions – which were made with much deliberation and consideration – be reversed in situations such as this where there are competing interests within the student body and community. Of note, one of the interests here is the protection of Plaintiff, himself, who was receiving serious threats of harm if he played football this season. (Ex. A).

D. The Public Interest is Not Served by Granting Injunctive Relief.

The public is clearly interested in this case. A petition drive garnered over 6,000 signatures seeking to dismiss Plaintiff from the YSU football team. (Brf. in Supp., pgs. 6-7). There is no other evidence on this matter that has been presented by Plaintiff. The only evidence presented in this case is that the public interest would be served only if the decision of YSU administrators is upheld.

IV. CONCLUSION.

Plaintiff has wholly failed to meet his burden to demonstrate entitlement to the extraordinary remedies which he seeks. As such, his Motion for TRO and Preliminary Injunction must be denied.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Ohio Attorney General

/s/ Christina L. Corl
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2017, I filed the foregoing with the Clerk of Court which will send notification of such service and subsequent filing to all counsel via the Court's Electronic Filing System.

/s/ Christina L. Corl
Christina L. Corl (0067869)

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MA'LIK RICHMOND,

Plaintiff,

-vs-

YOUNGSTOWN STATE UNIVERSITY,

Defendant.

CASE NO.: 4:17-cv-1927

JUDGE BENITA PEARSON

PLAINTIFF'S REPLY BRIEF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Due to time constraints inherent in the TRO process, Plaintiff only has time to make a few obvious points in response to Defendant's opposition brief.

1. YSU begins by defensively casting itself as the victim, declaring that no good deed goes unpunished. In fact, YSU did no favors to Ma'lik Richmond. The university encouraged him to emerge from relative anonymity in order to play football for the school, promised to stand behind him in the event of controversy, and assured him that if he remained in good standing and earned his place on the team, he would be permitted to play if his coaches felt he was good enough to do so. YSU instead responded to public protest by breaking its promises, subjecting him to some sort of secret trial in absentia, publically humiliating him through publication without notice of a campus-wide sentence of sanction that referred to campus safety and Title IX sexual misconduct (as if those things had anything to do with Ma'lik's conduct as a YSU student), and severely penalized him with cause. YSU was not the victim.

2. Defendant makes much of the fact that Plaintiff has not pointed to any statements by members of the administration showing gender bias. There is only one statement that matters

here, and that is the public statement issued by YSU. The reason that is the only statement that matters now, in this pre-discovery stage, is that this case is not like any of the other cases on which YSU hopes to hang its defense. In this case, unlike the others, YSU punished a student by treating him as if he had engaged in sexual conduct when, in fact, he had not. And in this case, unlike the others, YSU decided to sanction the student in secret and without any hearing in which members of the administration could have made statements that would serve as evidence. If covered Title IX covered universities could avoid any risk of injunction or liability by entirely denying due process and then using the resulting "radio silence" as evidence of a lack of gender bias, they all would be strongly incentivized to follow the horrendously unjust model used here.

3. YSU ignores this statement in *Doe v. The Ohio State University*, 2017 WL 951464 (SD Ohio March 10, 2017):

> There is a strong possibility, as alleged by Plaintiff, that these lawsuits could have impacted John Doe's disciplinary process. Therefore, based on all of the above referenced allegations, at this stage in the proceeding, plaintiff has made sufficient general allegations of gender bias in cases similar to his to suggest there is discrimination in the investigation and hearing process of sexual misconduct cases.

4. It is ludicrous for YSU to claim that what it did to Ma'lik Richmond was not a sanction when its Student-Athlete Handbook directly contradicts that claim. The Handbook contains a section titled, "*Student-Athlete's Rights and Responsibilities*." Section III, *Infraction of Rules*, states in part: **"Failure to comply with any of the athletic responsibilities may subject the student-athlete to disciplinary action imposed by the coach or athletic department. These sanctions may include, but are not limited to, being denied the privilege of participation in varsity competition…."** Thus, being demoted from the active squad and denied the ability to play in varsity competition is explicitly deemed a sanction, and such

sanction is understood to constitute discipline meted out to a student-athlete who commits a rules infraction.

5. It is disingenuous of Defendant to argue that Ma'lik failed to take advantage of the grievance procedure in the Student-Athlete Handbook. The Student-Athlete Grievance and/or Harassment Procedure describes its purpose as follows:

> All student-athletes have the right to secure, equitable and expedient resolutions to complaints about their sport environment. Such complaints may be related, but not limited to, abusive behavior, harassment (including sexual), or hazing by a coach, athletic department staff member, or other student-athlete. Sexual harassment represents unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

Obviously, the above procedure is designed to provide a student-athlete with relief from harassment by another athlete or a coach. It is not a procedure by which Ma'lik would have sought or obtained relief from a ban handed down by the YSU administration itself, based on events having nothing to do with such harassment. Moreover, the punishment had already been exacted and Ma'lik was incurring immediate harmful consequences that could not have been avoided by his seeking review from the Administrative Sport Supervisor, Senior Woman Administrator, or the Faculty Athletics Representative.

6. The assertion that Ma'lik is not incurring irrevocable harm is simply nonsense. Even if Defendant is correct about the damage that continued exile from games will cause to Ma'lik's professional prospects (and they are not correct), the loss of games and of eligibility are serious harms in themselves. YSU simply skates past that reality.

7. Finally, as evidenced by the attached affidavit of Jen Agresta, YSU is inventing the threats against Ma'lik Richmond. (Please see Affidavit of Jennifer Agresta attached hereto as Exhibit A).

CONCLUSION

Plaintiff has met his burden such that he is entitled to the remedy he seeks. As such, he respectfully requests that this Honorable Court grant his Motion for Temporary Restraining Order.

Respectfully submitted,

/s/ Susan C. Stone
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Susan C. Stone

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MA'LIK RICHMOND,	)	CASE NO.: 4:17-cv-1927
Plaintiff,	)	
	)	JUDGE BENITA Y. PEARSON
v.	)	
	)	**AFFIDAVIT OF JENNIFER AGRESTA**
YOUNGSTOWN STATE UNIVERSITY,	)	
	)	
Defendant.	)	
	)	

I, Jennifer Agresta, being first duly sworn according to law, depose and state as follows:

1. I am the legal guardian of Ma'lik Richmond.
2. I have a close relationship with Ma'lik and speak with him four to five times a day.
3. I monitor Ma'lik's email account daily.
4. At least one time per week, I travel to Youngstown to visit Ma'lik.
5. I am unaware of Ma'lik receiving serious threats of harm if he played football at Youngstown State University this season.
6. I spoke with Ma'lik at 11:00 AM on September 14, 2017 and confirmed that he too was unaware of any serious threats of harm against him if he played football.

AFFIANT FURTHER SAYETH NAUGHT.

Jennifer Agresta

Jennifer Agresta

EXHIBIT A

NOTARY PUBLIC

Sworn to and subscribed before me, a notary public for the State of Ohio, County of Jefferson, this 14th day of September, 2017.

Notary Public

NOTARIAL SEAL STATE OF OHIO

EMANUELA AGRESTA, Attorney At Law
Notary Public, State of Ohio
Non-Expiring Commission, Section 147.03 R.C.

STATE OF OHIO }
} SS: **AFFIDAVIT**
COUNTY OF MAHONING }

I, Ronald A. Strollo, being first duly sworn, depose and state as follow:

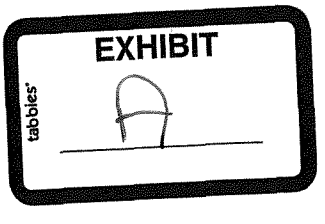
1. I am competent to testify as to the facts stated herein and I have personal knowledge of the facts stated herein.

2. I have been employed at Youngstown State University ("YSU") for 22 years. For the past 16 years I have been Executive Director of Intercollegiate Athletics for YSU.

3. I played football at YSU from 1988-1991 and was named captain of the football team in 1991. I earned my bachelor's degree in accounting from YSU in June 1993 and worked for three years at Hill Barth & King in Youngstown, where I became a CPA.

4. I have served in various capacities with the Horizon League, including chair of the strategic planning committee, chair of the executive council, chair of the finance committee, chair of the television committee, and liaison for men's basketball. I have served on the NCAA Division I Football Championship Selection ("FCS") Committee, was on the NCAA Division I Football Issues Committee, served as the Central Region Chair of the NCAA Regional Advisory Committee, and served four (4) years on the NCAA Championship and Competition Cabinet. In addition to my duties at YSU and various committee assignments, I currently serve as a member of the Board of Trustees for The Public Library of Youngstown and Mahoning County.

5. Since being named Executive Director of Intercollegiate Athletics at YSU in July 2001, I am aware of only two (2) football players that have been drafted by a team in the National Football League ("NFL") and only a handful of others that have made active rosters on NFL teams.



6. In my opinion, based upon my years of experience playing at YSU and in administration at YSU, the chances of a college football player being drafted by an NFL team, or otherwise making an NFL team roster, are speculative.

7. I am familiar with Ma'lik Richmond. Mr. Richmond, following high school, attended Potomac State College of West Virginia University and California University of Pennsylvania during the 2015-2016 academic year. Mr. Richmond transferred and enrolled at YSU in August 2016. Under applicable NCAA eligibility rules, because Mr. Richmond was enrolled at Potomac State College of West Virginia University and California University of Pennsylvania during the 2015-2016 academic year, Fall 2015 began his five (5) year clock. For eligibility purposes, Mr. Richmond could participate in intercollegiate athletics at an NCAA Division I school in the 2016-2017, 2017-2018, 2018-2019 and 2019-2020 academic years. In short, per NCAA rules and absent certain legislative exceptions, a student-athlete has a five (5) year period (10 semesters or 15 quarters) to complete four seasons of competition with the five (5) year clock commencing when the student-athlete first enrolls as a full-time student at any college. As a result, Mr. Richmond, following the 2017-2018 academic year, has two (2) years of eligibility to participate in intercollegiate athletics.

8. Assuming Mr. Richmond has the athletic ability to be drafted by an NFL team or otherwise make an NFL team roster, the two (2) years of eligibility to participate in intercollegiate athletics provides more than ample opportunity to showcase his talents for professional scouts.

9. I am not aware of any contractual agreement between Mr. Richmond and YSU relating to the facts of this particular case. The decision that Mr. Richmond would not

be permitted to compete in any football games on behalf of YSU in the 2017-2018 academic year was not premised upon the YSU Student Code of Conduct or the Intercollegiate Athletics Department Student-Athlete Handbook. The YSU administration became aware that threats had been made towards Mr. Richmond if he was competing in football games. The decision that Mr. Richmond would not be permitted to compete in any football games on behalf of YSU in the 2017-2018 academic year was not a "sanction" imposed on Mr. Richmond as defined by or otherwise governed by the YSU Student Code of Conduct or the Intercollegiate Athletics Department Student-Athlete Handbook. The decision that Mr. Richmond would not be permitted to compete in any football games on behalf of YSU in the 2017-2018 academic year was in the sound discretion of the YSU administration after consultation with the football coaching staff for the purposes of addressing concerns raised as to Mr. Richmond competing on behalf of YSU in the 2017- 2018 academic year.

10. I first became aware approximately one week before YSU's first football game, scheduled for September 2, 2017, that Mr. Richmond was considering legal action against YSU relative to the decision that Mr. Richmond would not be permitted to compete in any football games on behalf of YSU in the 2017-2018 academic year.

Further Affiant sayeth naught.

Ronald A. Strollo

SWORN TO BEFORE ME and subscribed in my presence, this 14th day of September, 2017.

NOTARY PUBLIC

MARGARITA BAILEY
Notary Public
In and for the State of Ohio
My Commission Expires