

**IN THE
SUPREME COURT
OF THE UNITED STATES OF AMERICA**

DOCKET NO. 08-141

**SOPHIE HUBBARD, JEANINE LOPEZ, AND HECTOR BETANCOURT
PETITIONERS,**

V.

**REBECCA ANDREWS,
RESPONDENT.**

**ON WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS FOR THE AMES CIRCUIT**

JOINT APPENDIX

TABLE OF CONTENTS

Off-Limits Materials.....	ii
Complaint.....	1
Exhibit A.....	10
Exhibit B.....	11
Exhibit C.....	14
Exhibit D.....	15
Exhibit E.....	16
Exhibit F.....	17
Exhibit G.....	18
Exhibit H.....	19
Exhibit I.....	20
Exhibit J.....	23
Defendant Rebecca Andrews’ Motion for Summary Judgment.....	24
Memorandum and Order on Defendants’ Motions for Summary Judgment.....	25
Notice of Appeal.....	35
Decision on Appeal.....	36
Order Granting Petition for Writ of Certiorari.....	37

OFF-LIMITS MATERIALS

The following materials are off-limits during the Fall 2008 Ames Moot Court Final Round Competition, and no team member may cite or consult them:

- Any and all court filings, briefs, transcripts of proceedings, audio or video recordings of proceedings, attorney work product, or court records (except reported judicial decisions), or excerpts therefrom included in blogs, law review articles, or other secondary sources, from any case addressing the issues raised in this case.
- Any and all law review articles, bar journal articles, or similar publications that analyze the issues raised in this case and which are not yet publicly available through publication either in print, on Lexis or Westlaw, or on the Internet. In the event that a team or one of its members has already had access to such a publication, disclosure of the title and author of the publication and the circumstances in which it was accessed must be made to the Ames Moot Court Competition Case Writers, Julie Barton, HLS '92 (jbarton@law.harvard.edu) and Meryl Kessler, HLS '93 (merylkessler@comcast.net), and to the opposing team. In such circumstances, arrangements will be made to afford the opposing team access to the publication in question, and both teams will be required to treat the publication in question as confidential unless the author or copyright owner of the publication agrees otherwise. Publications by practitioners and students are included in this prohibition; however, no team member is required to disclose his or her own related scholarship.
- If applicable, any studies or surveys beyond those explicitly included in the Record. Nor may any team member use any material external to the record to undermine, support, or elaborate on any studies or surveys referred to in the Record.

Promptly direct any questions about this policy for Off-Limits Materials to Julie Barton and Meryl Kessler.

**UNITED STATES DISTRICT COURT
DISTRICT OF AMES**

Sophie Hubbard, Jeanine Lopez, and Hector Betancourt,)	
)	
Plaintiffs,)	
)	
v.)	Civ. No. 07-599
)	
Ames State University and Rebecca Andrews, in her Official Capacity,)	
)	
Defendants.)	
)	

COMPLAINT

Plaintiffs Sophie Hubbard and Jeanine Lopez (“Undergraduate Plaintiffs”) and Plaintiff Hector Betancourt (“Plaintiff Betancourt”) bring this action for injunctive relief pursuant to the Civil Rights Act of 1866, 42 U.S.C. § 1983, and the First and Fourteenth Amendments against Defendants Ames State University (“Ames U”) and Rebecca Andrews, Ames U’s Assistant Dean for Science and Engineering. By removing Ames U’s Cyber Consortium Online Roundtable from the Internet, Defendants violated the Plaintiffs’ right to freedom of speech guaranteed by the First and Fourteenth Amendments. Furthermore, by including stigmatizing allegations about Plaintiff Betancourt in his personnel file in the absence of a name-clearing hearing, Defendants violated Plaintiff Betancourt’s liberty interest under the Fourteenth Amendment.

JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C. §1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.
2. This Court has jurisdiction pursuant to 28 U.S.C. §1331 and 28 U.S.C. §§ 1343(a)(3).
3. Plaintiffs’ claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§2201 and 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

4. Venue is appropriate in this Court under 28 U.S.C. §1391(b) because the events giving rise to Plaintiff's claims occurred within the State of Ames.

PARTIES

5. Plaintiff Sophie Hubbard is a nineteen-year-old sophomore at Ames State University majoring in Computer Science. At all times relevant to this complaint, she resided at 20 West Street, Ames City, Ames.

6. Plaintiff Jeanine Lopez is a twenty-year-old sophomore at Ames State University majoring in Electrical Engineering. At all times relevant to this complaint, she resided at 11 Oxford Street, Ames City, Ames.

7. Plaintiff Hector Betancourt is a twenty-six-year-old graduate student in his fourth year pursuing a Ph.D. at Ames State University in the Computer Science Department. At all times relevant to this complaint, he resided at 46 Ashbrook Street, Apt 4, Ames City, Ames.

8. On information and belief, Defendant Ames State University is a public university created and operated by the State of Ames with its principal place of business located at 4 Main Street, Ames City, Ames.

9. On information and belief, Defendant Rebecca Andrews was at all times relevant to this complaint the Assistant Dean for Science and Engineering at Ames State University.

FACTUAL ALLEGATIONS

10. At all times relevant to this complaint, the Undergraduate Plaintiffs were full-time students at Ames U.

11. At all times relevant to this complaint, Plaintiff Betancourt was a graduate student and was also employed as a teaching assistant at Ames U.

12. Ames U has many registered student organizations ("RSOs") funded in part through activities fees paid by all enrolled students and then distributed among the groups. The RSOs include academic societies, entrepreneurial groups, student government, club sports teams, and student publications. A partial list of Ames U RSOs is attached hereto as Exhibit A.

13. At all times relevant to this complaint, the Plaintiffs were members of one of the RSOs: the Ames State University Cyber Consortium (“Cy-Con”). Cy-Con’s members must be undergraduate or graduate students at Ames U.

14. The student organizations are self-governed and are considered separate entities from Ames U. A true and correct copy of the Funding Guidelines & Procedures for Registered Student Organizations is attached hereto as Exhibit B.

15. Cy-Con members collaborate on a wide range of research and other projects focusing in the area of computer science and the Internet. The Undergraduate Plaintiffs are individual members of Cy-Con, but worked together on projects. A true and correct copy of the current list of the different research and other collaborations ongoing among members of Cy-Con is attached hereto as Exhibit C.

16. On information and belief, in August, 2005, Ames U experienced a breach of its computer system; specifically, an Office of Human Resources server containing sensitive personnel and benefits information, including Social Security Numbers and University I.D. numbers, was compromised.

17. The ensuing investigation uncovered neither the extent of the breach nor the individual or individuals who caused it. Without full information about what data had been accessed, and whether it had been copied for use elsewhere, Ames U was forced to offer identity recovery services to all individuals whose data was stored on that server. A true and correct copy of a news article about the breach of Ames U’s server is attached hereto as Exhibit D.

18. Having read extensively about threats to university computer systems, including the security breach at Ames U, and interested in the issue of computer vulnerabilities to attacks by hackers in general, the Undergraduate Plaintiffs decided, in the spring of 2006, to collaborate on independent research about potential vulnerabilities in the security of Ames U’s Information Technology (“IT”) system as part of their Cy-Con membership. The Undergraduate Plaintiffs undertook this research with the hope that they would be able to publish their final paper.

19. Through investigation of other comparable IT systems, interviews with IT professionals, and other research, the Undergraduate Plaintiffs were able to conclude that additional security vulnerabilities existed

beyond those that had been fixed after the 2005 breach. The Undergraduate Plaintiffs were also able to demonstrate ways in which hackers could take advantage of those flaws to cause serious disruption to Ames U: from sending large numbers of SPAM emails that would shut down the email system to gaining access to student grading databases to crippling all administrative and security functions at the University.

20. The Undergraduate Plaintiffs' research did not require them to obtain access in any way to the Ames U IT system beyond that allowed to all Ames U students.

21. As a result of their research, the Undergraduate Plaintiffs were able to devise various security fixes for the kind of security gaps they had found in the Ames U system.

22. On or about November 5, 2006, Cy-Con announced its 12th Annual Undergraduate Student Research Paper Competition in Computer Science and Electrical Engineering (the "Competition"), open to students from around the country. Cy-Con publicized the Competition through its website and through various other online methods. A true and correct copy of Cy-Con's Call for Papers is attached hereto as Exhibit D.

23. Under the Competition rules, the Competition Committee, consisting of Ames U Professors Harry Ling, Martha Rose, and James Abrahams, would make the final decisions regarding the winners. The process would be "blind" in that the Cy-Con Competition Committee would not know the university or other affiliation of any of the paper authors.

24. The Cy-Con Online Roundtable is a long-standing forum for discussion and debate on computer science and electrical engineering topics. The top three student papers would be published on the Cy-Con Online Roundtable webpage.

25. In their roles as members of the Competition Committee, Professors Ling, Rose, and Abrahams were acting as volunteers outside of their official duties as Ames U faculty.

26. On information and belief, all RSO websites and related web content are stored on an Ames U server controlled by the Ames U IT Department.

27. Plaintiff Betancourt, a graduate student member of Cy-Con, was chosen by Cy-Con members as the Chairman of the Competition. In that role, he was responsible for all of the administrative tasks involved

in running the Competition, including publicizing the Competition, communicating with the Competition Committee, tracking and organizing the student submissions, and posting the winning entries on the Cy-Con Online Roundtable webpage.

28. Plaintiff Betancourt is also the editor of the Cy-Con website and the Cy-Con Online Roundtable webpage.

29. During the 2005-2006 and 2006-2007 academic years, Betancourt was also a teaching assistant for an undergraduate course, Computer Science 101: Introduction to Computing. In this capacity, he was paid \$2500 per semester.

30. On or about January 14, 2007, Plaintiffs submitted their research paper to the Cy-Con Competition. A true and correct copy of the abstract of their paper is attached hereto as Exhibit E.

31. The Cy-Con Competition Committee chose the Undergraduate Plaintiffs' paper as one of the top three submissions.

32. On or about March 14, 2007, Plaintiff Betancourt published the three papers on the Cy-Con Online Roundtable webpage and added a link to the papers on the Cy-Con website home page.

33. On information and belief, Ms. Helena Worthington is an administrative assistant in the Student Life Center where many student organizations, including Cy-Con, are housed. Having seen the publicity for the Competition, she accessed the Online Roundtable webpage in order to read the winning papers.

34. On information and belief, Ms. Worthington, particularly sensitive to computer threats after the events of the prior year at Ames U, was upset by the content of the Undergraduate Plaintiffs' paper.

35. On information and belief, on or about March 20, 2007, she notified Defendant Andrews, Ames U's Assistant Dean for Science and Engineering, that the Cy-Con Online Roundtable page contained information that could present a threat to Ames U's IT system.

36. On information and belief, Defendant Andrews read the Undergraduate Plaintiffs' paper and ordered the Ames U IT department to access the server and take down the Cy-Con Online Roundtable webpage until further notice.

37. When Plaintiff Betancourt realized that the Cy-Con Online Roundtable webpage had been removed from the web, and how it had been removed, he requested that Ames U immediately reinstate the page. Defendant Andrews refused to do so until the Undergraduate Plaintiffs' paper had been deleted from the rest of the Cy-Con Online Roundtable content.

38. Defendant Andrews also said that from that point forward, Cy-Con would have to provide the Ames U administration with the option to review any student paper or other student content intended to be included on the Cy-Con Online Roundtable webpage.

39. Plaintiff Betancourt refused to remove the Undergraduate Plaintiffs' paper from the Online Roundtable webpage content. As a result, the Cy-Con Online Roundtable webpage has not been reposted to the Cy-Con website.

40. On May 1, 2007, Plaintiff Betancourt was informed by letter from Defendant Andrews that his appointment as a teaching assistant would not be renewed for the 2007-2008 academic year. Plaintiff Betancourt received no official explanation for this non-renewal.

41. Pursuant to Ames U's Teaching Assistant Policies, reappointment of teaching assistants is not automatic, but rather depends on a number of factors. A true and correct copy of the relevant section of the Teaching Assistant Policies is attached hereto as Exhibit H.

42. Because he received no explanation for the non-renewal of this teaching appointment, Plaintiff Betancourt asked Ames U's Human Resources Department to provide him the opportunity to review his personnel file. Ames U's Privacy Practices Regulations provide that the personnel files of university employees are available to the person about whom the records are maintained or that person's designated representative. A true and correct copy of relevant sections of Ames U's Privacy Practices Regulations is attached hereto as Exhibit I.

43. On or about May 15, 2007, Plaintiff reviewed his personnel file and discovered that it contained a memo written by Defendant Andrews asserting that he had acted insubordinately as a university employee by failing to remove the Undergraduate Plaintiffs' paper from the Online Roundtable webpage content. In the memo, Defendant Andrews referenced an earlier incident, dating from November 2005, in which Dean

Andrews had requested that Plaintiff Betancourt stop criticizing the amount of stipend paid to Ames U Teaching Assistants in front of the undergraduate students in his class. Plaintiff Betancourt has not engaged in open criticism of the stipends since this time, and has received no other disciplinary communications from Ames U regarding his employment as a Teaching Assistant. A true and correct copy of the Andrews memo is attached hereto as Exhibit J.

44. Upon seeing Defendant Andrews's memo, Plaintiff Betancourt demanded that Ames U disclose all charges against him, all witnesses and evidence being relied upon to justify its adverse employment decision, and a hearing which would provide him an opportunity to respond and cross-examine the evidence—which demands have all been denied.

45. Ames U's Privacy Practices Regulations provide that personnel files of university employees may be made available, in their totality, to external public agencies at the discretion of the trial custodian, the individual responsible for the security of personnel files. However, requests by private entities or individuals for permission to see personnel files will be granted only with legal authorization or if the employee grants permission. *See* Exhibit I.

46. Plaintiff Betancourt plans to apply for academic positions upon his completion of the Ph.D. at Ames U. Under the university's Privacy Practices Regulations, potential employers are likely to see the memo containing the unsubstantiated allegation of insubordination in his file.

47. Defendants' reckless and willful decision to order the removal of the Cy-Con Online Roundtable webpage from the University web server constituted a deprivation of the Undergraduate Students and Plaintiff Betancourt's right to free speech. Moreover, Defendants' reckless and willful actions have caused Plaintiff Betancourt a deprivation of his recognized liberty interest, in addition to damaging his personal and professional reputations.

**COUNT I – FIRST AMENDMENT TO THE U.S. CONSTITUTION
RIGHT TO FREE SPEECH AND FREE EXPRESSION
[All Plaintiffs]**

48. Paragraphs one (1) through forty-seven (47) are incorporated by reference as if fully set out herein.

49. At all times relevant to this complaint, Defendants acted intentionally and under the color of state law.

50. The First Amendment to the United States Constitution states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

51. Defendants purposefully violated the Undergraduate Plaintiffs’ and Plaintiff Betancourt’s right to free speech under the First Amendment when they ordered the removal of the Cy-Con Online Roundtable webpage from the University web server.

**COUNT II – FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION
DEPRIVATION OF LIBERTY INTEREST IN REPUTATION
[Plaintiff Betancourt]**

52. Paragraphs one (1) through fifty-one (51) are incorporated by reference as if fully set out herein.

53. The Due Process Clause of the Fourteenth Amendment of the United States Constitution protects against deprivations of “life, liberty, or property without due process of law.”

54. Plaintiff Betancourt has a constitutionally protected liberty right, under the Fourteenth Amendment to the United States Constitution, in his professional reputation as an educator.

55. Defendants’ actions in placing untrue allegations of insubordination in Plaintiff Betancourt’s personnel file and denying Plaintiff Betancourt a name-clearing hearing has placed Plaintiff Betancourt in a false light, has wrongly stigmatized Plaintiff Betancourt’s reputation, and has violated his liberty interest protected by the Fourteenth Amendment’s Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Sophie Hubbard, Jeanine Lopez, and Hector Betancourt pray for judgment against Defendants Ames State University and Rebecca Andrews and respectfully request that this Court:

A. Order Defendants to re-post the Online Roundtable page of the Cy-Con website and to allow publication of the Online Roundtable page in the future without prior restraint.

- B. Order Defendant to supply Plaintiff Betancourt with a name-clearing hearing.
- C. Grant all Plaintiffs attorney's fees, costs, and disbursements pursuant to 42 U.S.C. §1988.
- D. Grant Plaintiff such further relief as the Court deems necessary and proper in the public interest.

SOPHIE HUBBARD, JEANINE LOPEZ and
HECTOR BETANCOURT

By: *Henrietta Chu*
Henrietta Chu, Esq.

Dated: May 30, 2007

ACADEMIC FREEDOM
LAW CENTER

EXHIBIT A



Alphabetical Directory of Registered Student Organizations

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P |
Q | R | S | T | U | V | W | X | Y | Z

A

Advancing Democracy
Adventist Christians Together to Serve (ACTS)
African Students Association
ALANA Honor Society
Alpha Epsilon Phi
American Society of Civil Engineers
Amnesty International
Arab Students Club
Art Alliance
Asian American Student Association (AASA)

B

Big Brother/Big Sister
Biochemistry Club
Black Student Union (BSU)
BRAIN (Neuroscience Club)
Buddhist Philosophy Association

C

Cambodian Students Association
Campus Anti-War Network
Campus Crusade for Christ
Campus Design & Copy (CD&C)
Campus Underground Press
Cannabis Reform Coalition
Cape Verdean Student Alliance (CVSA)
Casa Dominicana (CASA)
Chemistry Club
Chess Club
Club Softball
Cyber Consortium

How to Join

Once you've found a group or organization that you want to join, call the Center for Student Development at **545-3600** to find out their contact information. Or visit their website (if they have one).

Please Note: Some groups do not become active until later in the semester and some groups that were active last year may not be this year.

RSO Links

If you notice that your RSO link is not correct or you want us to link to a new RSO web site, please call the CSD at 545-3600 or email us the new information and we'll update it!

EXHIBIT B



Policies & Funding Guidelines for Registered Student Organizations

INTRODUCTION. The purpose of this document is to clarify the existing relationship between the University and individual student organizations and to permit the student organizations' access to certain University services and benefits.

Organizations that are granted status as Registered Student Organizations (RSOs) are eligible for funding from Student Government Association (SGA) Finance Board. An RSO, however, is not a part of the University but exists and operates independently of the University. The University may exercise control over the RSO's activities occurring on the University's property or over matters covered by the University's honor or judicial systems, consistent with state and federal law.

The SGA makes available to RSOs funding from the Student Activities Fee, which is a non-academic fee charged to each full-time student at the University. The mission of the SGA's finance allocation process is to foster growth and excellence in the student experience at the SGA. The SGA will fund activities that comply with the following guidelines, irrespective of viewpoint of the organization, and in accordance with the Statement of Rights and Responsibilities found in the current edition of the Student Handbook. The Student Assembly will not fund activities that fail to comply with the prescribed guidelines.

PROCEDURE. In order to receive funding, RSOs are required to submit a Funding Proposal Form. Organizations are eligible for up to a maximum of \$2000 per academic year (fall and spring semesters). Organizations may only submit one funding request per event and up to three requests per semester. The SGA may only allocate up to \$1000 per request.

- Applications must be submitted at least 72 hours prior and two (2) weeks prior to the event. Finance Board meetings are on a bi-weekly basis.
- The Treasurer of the organization must attend and present the funding request to the Finance Board. The Treasurer's name must correspond with the person named on the respective semester's Organization Recognition Form.
- Incomplete applications will not be considered.
- Finance Board will adhere to the funding guidelines outlined below.

FUNDING GUIDELINES. The SGA may fund activities that fall into the following categories:

- **Student Government Activities:** These are activities or initiatives sponsored by the Student Assembly or parts thereof. These include student government organizations, the individual graduate schools, and the four undergraduate classes. The activities of the Honor Council and the Judicial Council will also be considered as student governmental activities.
- **Publication Activities (Publication Council):** These are limited to university-sponsored publications under the jurisdiction of the Publications Council.
- **Conference Activities (Conference Fund):** These activities involve support for students of the College attending lectures, conferences, symposia, or similar activities.
- **Special Activity Funding:** Available to student organizations to provide financial assistance when holding activities and events. Finance Board will adhere to the funding guidelines outlined below.
- **Service Activities:** These are activities whose primary purpose is to provide volunteer service to the College community, outside the College community, or both.
- **Co-curricular Activities:** These are activities which promote, supplement, or enhance curricular activities of the students at the College. To be included in this category, the activity for which funding is requested must be clearly linked to those of academic departments, programs, or schools.
- **Cultural Activities:** These activities consist of a program that are designed to increase cultural awareness, and the activities is for the benefit of and open to the entire college community.
- **Interscholastic Activities:** These are activities which involve competitions, exchange of ideas, or simulations with students of other institutions of higher education.
- **Peer and Public Education Activities:** These are activities which promote knowledge and information within and/or outside the College Community regarding subjects of importance or interest to the community but are not of a politically partisan nature or involve religious worship ceremonies or devotional activities.
- **Humanitarian Activities:** These are activities which, through student action, promote or encourage the humane treatment of people or animals.
- **Hobby Activities:** These are activities which promote, enhance, or encourage the hobbies of students at the College.

The following activities may NOT be funded through revenue generated by the Student Activities Fee:

- Politically partisan activities in support of or in opposition to a candidate or political party are not fundable regardless of viewpoint.
- Religious worship ceremonies and devotional activities are not fundable regardless of viewpoint.

- Activities for which academic credit is received.

CRITERIA CONSIDERED IN FEE ALLOCATION. In allocating funds, the SGA shall consider the following:

- The extent to which the proposed activity is likely to foster growth and excellence among students at the University.
- The commitment of the activity sponsors to the execution of the activity.
- The history of the activity, and the projected needs of the activity for the upcoming fiscal year.
- The amount of outside funding the activity has previously received and the potential for additional funding from other sources.
- The goals of the organization's primary activities and its membership selection process.
- Any other relevant factors the committee deems appropriate.

PERMITTED USES. Student Activity Fee Funds may be used for the following: Operational budget; supplies; copying; mailings; event expenditures; honoraria for speakers (i.e. speaker's fee); rental charges; food; travel; media and publications; and convention fees and travel.

PROHIBITED USES. Bail or lawyers for individuals; partisan political activities; emergency or personal loans to individuals; salary or wages to members and/or advisors of respective organizations; private purchases.

EXHIBIT C



Ames State University Cyber Consortium List of Current Research Projects

3D Creation Made Easy Through Non-Photorealism

We are developing tools for stylized content creation, via interfaces for (1) easily sketching general free-form shapes, and then (2) directly annotating those shapes with hand-drawn strokes resembling pencil, pen, pastel, or other media. The resulting 3D scene will look much like a drawing, even as it is animated or viewed interactively. Applications of this technology include technical illustration, architecture, education, virtual reality, animation, advertising, and games.

E2E Protocol Design

The goal of this work is to make end-to-end protocols (TCP in particular) more effective. Our approach is to both investigate opportunities to improve the congestion control algorithm used by transport protocols, and to explore the use of alternative end-to-end paths across the Internet.

Incrementally Deployable Secure Inter-domain Routing

The Internet's interdomain routing system is notoriously vulnerable to malicious attacks and configuration mistakes. Proposals for a secure interdomain-routing protocol have been stymied, at least in part, by the inability to have a "flag day" on which routers throughout the Internet upgrade to the new protocol. In this project, we investigate *incrementally deployable* techniques for improving interdomain routing security, building on the Routing Control Platform (RCP) that selects routes on behalf of each router in a network, while remaining backwards compatible with the legacy equipment.

Interactive Architectural Walkthroughs

Interactive computer programs that simulate the experience of "walking" through a building interior are useful for visualization and evaluation of building models before they are constructed. The challenge is to identify the relevant portions of the model, swap them into memory and render them at interactive frame rates (at least fifteen frames per second) as the observer's viewpoint is moved under user control. This project develops systems that support interactive walkthroughs of such large, fully furnished building models.

Modularity and Secure Linking

The goal of the project is to create methods and tools that will make it easier for programmers to write software components that will function securely when linked with potentially hostile components. Our research combines research results on several topics: information hiding and language design, hierarchical modularity, dynamic linking, and access control.

Network Servers

This project focuses on techniques to improve network servers and networking software. We consider performance optimizations, improved behavior under heavy load, and more robustness to abuse. Much of this work is at the boundary between networking and operating systems.

On-the-fly programming

Using code for runtime expressive control On-the-fly programming (or live coding) is a style of programming in which the programmer/performer/composer augments and modifies the program while it is running, without stopping or restarting, in order to assert expressive, programmable control for performance, composition, and experimentation at run-time.

Last Updated: May 24, 2007

EXHIBIT D

AMESVILLEFREEPRESS.COM

Posted by Amelia Page, August 25, 2005

Hackers Evade Security at Ames State University

One of the Ames State University web servers fell victim to security violations by an unknown hacker over the summer. The server contained human resource and benefits information for all of State U's staff members. The data was compromised such that it could have been viewed and/or copied. Once it had notice of the violation, Ames U acted quickly to take the server down.

Investigation into the extent of the hacking indicated that some sensitive data, including Social Security numbers, personnel records, and financial information may have been accessed. Ames U's spokesperson, Roberta Fitch, explains the reaction of the University in this way: "Ames U's considers the protection of its data one of its highest priorities, and apologizes to all staff members whose information might have been breached. We are in the process of notifying all individuals who may have been affected. Ames U will, of course, provide free identity theft recovery services to those members of our community that may have been affected by this violation."

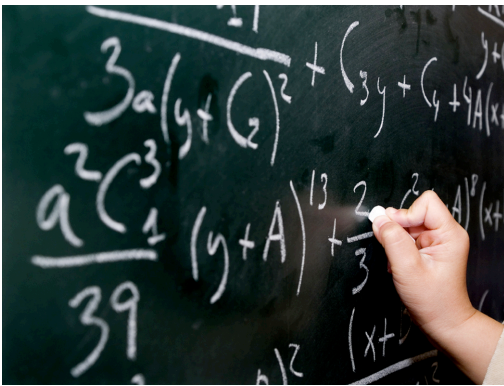
Ames U is unable to know with certainty whether or not all of the data on the server had been copied and used by the hackers. Therefore it notified all of the individuals whose data was stored on this server.

http://www.amesvillefreepress.com/main/archives/2005/08/Ames_State_University/Security_Violation/

EXHIBIT E

Ames State University Cyber Consortium

12th Undergraduate Student Research Competition in Computer Science and Electrical Engineering 2006 CALL FOR PAPERS



Competition Chair
Hector Betancourt

Competition Committee
Prof. Harry Ling
Prof. Martha Rose
Prof. James Abrahams

Important Dates
Abstract Submission Deadline: Jan. 3, 2007
Paper Submission Deadline: Jan. 14, 2007
Notification Deadline: March 14, 2007

Criteria for Entry
This paper competition is open to undergraduate university students across the country interested in submitting their research on computer science and electrical engineering topics. No subject within the fields is out of bounds.

Submissions
Papers should be submitted electronically to: bentancourt@amesstateu.edu. Authors are required to submit a paper title and short abstract (about 100 words) before submitting the paper.

The paper's font size should be at least 11pt. Papers should not exceed 15 letter-sized pages, with reasonable page layout; papers not conforming to these requirements may be rejected without consideration.

The paper's first page should include the title of the paper, names and affiliations of authors, a brief synopsis, and the contact author's name, address, phone number, fax number, and email address. Papers must be in English and provide sufficient detail to allow the program committee to assess their merits. They should begin with a succinct statement of the issues, a summary of the main results, and a brief explanation of their significance and relevance to the conference, all phrased for the non-specialist. Technical development directed to the specialist should follow. References and comparisons with related work should be included. The results must be unpublished and not submitted for publication elsewhere. All authors of accepted papers will be expected to sign copyright release forms.

Awards
Submissions will be judged by the Competition Committee. The Committee will conduct a "blind" evaluation of submissions. Members of the Committee act as independent judges.

Three papers will be chosen based on the following criteria: (1) the content and clarity of paper; (2) the quality of research; and (3) whether the paper offers original contribution to the field of study or generates innovative solutions to problems. The three winning entries will be posted on the Cyber

Consortium's website on its Competition page
<http://www.amesstateu.edu/cybercon/competition>.

EXHIBIT F

Undergraduate Student Research Competition in Computer Science and Electrical Engineering

Sponsored by the Cyber Consortium, Ames State University

Title: Security Vulnerabilities in a University Computer System

Contributors: Sophie Hubbard, Department of Computer Science, Ames State
University

Jeanine Lopez, Department of Electrical Engineering, Ames State
University

Abstract: As computer systems increase their dependence on networks, institutions of higher education are increasingly susceptible to crippling attacks by hackers. The 2005 violation of one of Ames State University's web servers brought with it fears of major systems failures. Based on their research into the 2005 violation, interviews with IT specialists, and analysis of State U's current computer system, the authors identify and propose fixes for additional security vulnerabilities beyond those fixed in 2005.

EXHIBIT G

**AMES STATE UNIVERSITY
50 Langdell Avenue
Amesville, Ames 55551**

May 20, 2007

Hector Betancourt
46 Ashbrook Street, Apt. 4
Ames City, Ames

RE: TEACHING ASSISTANT POSITION

Dear Hector:

Please be advised that your appointment as a Teaching Assistant in the Computer Science
Department will not be renewed for the 2007-2008 academic year.

Sincerely,

Rebecca Andrews

Rebecca Andrews
Assistant Dean for Science and Engineering



TEACHING ASSISTANT POLICIES

REAPPOINTMENT

Priority for reappointment should be given to those Graduate Teaching Assistants making good progress toward completion of the degree and performing well in their Graduate Teaching Assistantship duties. These criteria should be measured in specific ways announced in advance of reapplication:

Minimum overall GPA, and GPA for the current academic year, of at least 3.0; Report of the academic advisor; Formal evaluation by the faculty mentor supervising the work of the Graduate Teaching Assistant; Length of time on teaching assistantship; Length of time in degree program.

Reappointment is not automatic for Graduate Teaching Assistants who meet the minimum criteria. Rather, final decisions should be based on departmental needs, financial resources, and the effort to provide as many graduate students as possible with Graduate Teaching Assistantship opportunities.

Exhibit I



University Privacy Practices Regulations

Purpose

Ames State University recognizes the right of University employees to review the information included in their own personnel files. The University also recognizes that reasonable restrictions upon the disclosure of information included in individual employee personnel files is necessary to prevent the unwarranted invasion of the individual employee's personal privacy. It is the purpose of these regulations to provide guidelines for the review or release of information contained in personnel files which will protect these rights and assure compliance with applicable laws.

Definitions

"Employee," when used in this regulation, includes any individual currently or formerly employed by Ames State University.

"Personnel File" refers to a collection of employment-related information maintained by the University pertaining to an individual employee, and which consists of the types of information referred to in the section on "Content of Files" below.

"File Custodian," refers to those persons set forth in the section on "Location of Personnel Files" below, together with those persons who are authorized by the administrative head as part of their daily duties to place information into and retrieve information from the file.

Location of Personnel Files

Personnel files of record are maintained at the University's Employee Records Department. Personnel files may also be maintained by the administrative office of the department or unit where the employee is currently assigned. No other personnel files shall be kept except as permitted by this paragraph.

Contents of Files

Information that may be placed in a personnel file includes but is not limited to the following:

1. Employment application and status documents and related correspondence;
2. Documents and correspondence which relate to the employee's training and development, professional activities, etc.;
3. Documents and correspondence which relate to the employee's benefits;
4. Evaluations: Written evaluations of an employee made by an administrator or supervisor will be included in that employee's personnel file at the level the evaluation is made.
5. Any other personnel documents which are, have been, or are intended to be used in determining the employee's qualifications for employment, promotion, transfer, additional compensation, discharge, or other disciplinary action will be included in that employee's personnel file at the appropriate level.
6. Confidential Folder: If an employee desires that certain confidential recommendations or evaluations be provided on the employee's behalf with the understanding that the contents will not be disclosed to the employee but that they will be included in his or her personnel file, a signed statement to that effect must be provided by the employee. Any material so specified by the employee is to be placed in an envelope marked confidential with the employee's statement of permission attached. The envelope and its contents will be removed from the file by the appropriate administrative officer upon receipt of a written request by the employee.

103-5: Review of Employee's Own Personnel Files

1. An employee may review any document included in his or her personnel file with the exception of confidential recommendations or evaluations for that employee as provided in the preceding paragraph.
2. An employee desiring to review his or her file must visit the Employee Records Department or other department or unit where a personnel file of the employee is maintained and present proper identification. The file shall be made available for review by the employee during regular office hours as soon as possible, but in no event later than 7 working days after the employee makes the request. A file may not be removed from the office where it is maintained and may be reviewed by the employee only in the presence of the custodian of the file or his or her designee. An employee may not remove documents from the file or add documents to the file, except as permitted by this regulation. However, a copy of all or part of the file will be provided to the employee upon reimbursing the University for costs of reproducing the copies requested.
3. An employee involved in a grievance against the University may designate in writing a representative to review his or her personnel file.
 - A. The file custodian may limit file review to not more than 2 per calendar year and require that they be made at reasonable intervals.

103-6: Release of Information Included in Personnel Files

1. The following entities and individuals are authorized to review personnel files as necessary and to the extent required for the performance of their responsibilities:
 - A. Ames State University's Department of Human Resources;
 - B. The fiscal officer of the account from which the particular employee is paid;
 - C. The head of the department or unit in which the particular employee is employed;
 - D. Other University departments or representatives to the extent required for the performance of their responsibilities. (The file custodian may require submission of a written explanation justifying any request for access to personnel files pursuant to this provision.)
2. Information concerning an employee that may be confirmed to external public agencies (city, state, or federal) in the absence of a written release from the employee is generally limited to information otherwise available to the public, e.g., verification that the employee works (or worked) at the university, duration of employment, the employing department or unit, the employee's job description, classification, and salary. However, further information concerning an employee may be disclosed to external public agencies at the discretion of the file custodian, in consultation with the University's Office of General Counsel as required, upon a written explanation justifying such a request.
3. Information concerning an employee may be disclosed to external private entities or individuals only when the entity or individual requesting the information can show legal authorization to obtain the information requested. Such requests should be referred to the Employee Records Department which, in consultation with the University's Office of General Counsel as required, will determine the validity of the request.
4. The employee may authorize the release or disclosure of information included in his or her personnel file to external private entities or individuals by written release which describes the entity or individual that may obtain the information.

Exhibit J

AMES STATE UNIVERSITY
Memorandum

To: Hector Betancourt Personnel File
From: Rebecca Andrews, Assistant Dean for Science and Engineering
Date: April 3, 2007

In March, 2007 I became aware of content—a paper written by two Ames U undergraduates—on the Cyber-Consortium's Online Roundtable webpage that posed a serious threat to the security of the Ames U computer system. I subsequently ordered the Ames U IT department to access the server and take down the Roundtable webpage until further notice.

When Mr. Betancourt realized that the Roundtable had been taken down, he requested that Ames U immediately reinstate the page. I declined to do so until the students' paper had been deleted from the rest of the Roundtable content. Mr. Betancourt then refused to delete the students' paper from the Roundtable content.

Given my oral request on November, 2005 that Mr. Betancourt refrain from making inappropriate comments to undergraduate students in his class, this refusal to take down the potentially threatening materials from the web establishes a pattern of unacceptable conduct and constitutes insubordination by a university employee.

Sophie Hubbard, Jeanine Lopez,
and Hector Betancourt,

Plaintiffs,

v.

Ames State University and Rebecca
Andrews, in her Official Capacity,

Defendants.

Pursuant to F.R.C.P. 56, Defendant Rebecca Andrews moves for summary judgment on Counts I and II in the above-captioned action based on the following grounds:

b. Defendant did not deprive Plaintiff Betancourt of his liberty interest under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution because the allegedly stigmatizing material in his personnel file had not yet been publicized to prospective employers.

By: Gary B. Hamm

25

)	
Sophie Hubbard, Jeanine Lopez,)	
and Hector Betancourt,)	
)	
Plaintiffs,)	
)	
v.)	Civ. No. 07-599
)	
Ames State University and Rebecca)	
Andrews, in her Official Capacity,)	
)	
Defendants.)	
)	

In their Complaint, Plaintiffs Sophie Hubbard and Jeanine Lopez (“Undergraduate Plaintiffs”) and Hector Betancourt (“Plaintiff Betancourt”) brought this action against Defendants Ames State University (“Ames U”)¹ and Rebecca Andrews (“Andrews”), Ames U Assistant Dean for Science and Engineering, seeking injunctive relief for constitutional violations under 42 U.S.C. § 1983. The Undergraduate Plaintiffs and Plaintiff Betancourt allege violation of their right to free speech under the First Amendment arising out of Defendant’s removal of part of an Ames U student organization’s website—of which Plaintiff Betancourt is the editor—containing a paper authored by the Undergraduate Plaintiffs. Plaintiff Betancourt further alleges deprivation of his liberty interest under the Due Process clause of the Fourteenth Amendment arising out of Defendants’ refusal to supply him with a name-clearing hearing.

26

Defendant Andrews now moves for summary judgment on the Undergraduate Plaintiffs' claim and Plaintiff Betancourt's claims pursuant to F.R.C.P. 56. For the reasons stated herein, we grant Defendant Andrews' motion for summary judgment.

I. Factual Background

The parties have filed a Joint Stipulation of Undisputed Fact with this court, which the court summarizes below:

Plaintiffs are undergraduate students at Ames U in Ames City. Each of them has a strong interest in computer science and decided to join the Ames State University Cyber Consortium ("Cy-Con") as one of their extracurricular activities. The members of Cy-Con conduct research and do various independent projects relating to computer science and the Internet. As one of their projects, Plaintiffs conducted research on the security vulnerabilities of the Ames U IT system. Plaintiffs were motivated in part by the security breach suffered by Ames U in August, 2005.

The Undergraduate Plaintiffs' research, including interviews with IT specialists, analysis of the Ames U system, and investigation into the 2005 incident, indicated that the Ames U system continued to be vulnerable to attack by "black hat hackers"² despite the great effort made by the University to fix the problems it had uncovered as a result of the breach. The Undergraduate Plaintiffs summarized the results of the research, including a detailed explanation of how hackers could attack the Ames U system successfully, in a paper. They also devised a series of security fixes that would allow Ames U to correct the existing vulnerabilities. The Undergraduate Plaintiffs' research did not require them to obtain access in any way to the Ames U IT system beyond that allowed to all Ames U students.

² A black hat hacker is an individual who subverts computer security without authorization or who uses technology (usually a computer or the Internet) for terrorism, vandalism (malicious destruction), credit card fraud, identity theft, intellectual property theft, or many other types of crime.

In November 2006, Cy-Con announced, on its website and through other online methods, an undergraduate student research paper competition in the field of Computer Science and Electrical Engineering (the “Competition”) open to students from around the country. The top three student papers were to be published on the Cy-Con website.

Plaintiff Betancourt, a graduate student member of Cy-Con, was responsible for administering all aspects of the Competition. Ames U Professors Harry Ling, Martha Rose, and James Abrahams—acting as independent, volunteer judges—assessed the papers and decided upon the top three. The process was “blind” in that the Competition Committee did not know the university or other affiliation of any of the paper authors.

On January 14, 2007, Plaintiffs submitted their research paper to the Cy-Con Competition. The Competition Committee chose the Undergraduate Plaintiffs’ paper as one of the top three student papers; Plaintiff Betancourt subsequently published the papers on the Cy-Con Online Roundtable page and added a link to the papers on the Cy-Con website home page. The Cy-Con Online Roundtable is a long-standing forum for discussion and debate on computer science and electrical engineering topics.

Ms. Helena Worthington, an Ames U administrative assistant, saw the publicity for the Competition, accessed the Cy-Con Online Roundtable page in order to read the winning papers, and was alarmed by the content of the Undergraduate Plaintiffs’ paper. Ms. Worthington, particularly sensitive to computer threats after the events of the prior year at Ames U, immediately notified Defendant Andrews, Ames U’s Assistant Dean for Science and Engineering, that the Cy-Con Online Roundtable page contained information that could present a threat to Ames U’s IT system. Defendant Andrews read the paper online and ordered the Ames U IT department to access the server and take down the Cy-Con Online Roundtable page until further notice.

Plaintiff Betancourt learned that the Online Roundtable page had been removed from the web under Defendant Andrews’ order and requested that Ames U reinstate the website.

Defendant Andrews refused to do so until the Undergraduate Plaintiffs' paper had been deleted from the rest of the Online Roundtable website content. She further said that from that point forward, Cy-Con would have to provide the Ames U administration with the option to review any student paper or other content intended to be included in the Online Roundtable. Plaintiff Betancourt continued to refuse to remove the Undergraduate Plaintiffs' paper from the Online Roundtable website content and Ames U did not reinstate it on the web.

At the end of the 2006-2007 academic year, Plaintiff Betancourt was informed that his appointment as a teaching assistant at Ames U would not be renewed. He received no explanation for this action. Because reappointment of teaching fellows is not guaranteed, Plaintiff was unable to formally appeal his non-renewal.

Having received no explanation for the non-renewal of his appointment, Plaintiff Betancourt reviewed his personnel file and discovered that it contained a memo asserting that he had engaged in insubordination as a university employee when he refused to remove the Undergraduate Plaintiffs' paper from the Online Roundtable content. Plaintiff Betancourt then demanded that Ames U disclose all charges against him, all witnesses and evidence being relied upon to justify its adverse employment decision, and a hearing which would provide him an opportunity to respond and cross-examine the evidence—which demands have all been denied.

Ames U's Privacy Practices Regulations provide that personnel files of Ames U employees may be made available to external public agencies at the discretion of the file custodian, but that requests by private entities or individuals for permission to see personnel files will be granted only with legal authorization or if the employee grants permission. Because Plaintiff Betancourt plans to apply for academic and teaching positions upon his completion of the Ph.D at Ames U, he is concerned that potential employers are likely to see the memo containing the allegation in his file.

II. Conclusions of Law

A. Summary Judgment Standard

Summary judgment applies when “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and that the moving party is entitled to judgment as a matter of law.” FRCP 56(c). The court must determine whether a reasonable jury, based on the evidence at hand, could return a verdict for the non-moving party. The evidence must be construed in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby*, 477 U.S. 242, 249, 255 (1986). The burden lies with the moving party to demonstrate that no genuine issue of material fact exists, but the non-moving party is required to produce sufficient evidence in connection with any part of a claim for which it has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

B. First Amendment Freedom of Speech

The question of how to address university student first amendment rights is one of first impression for this court. Significant disagreement exists among our sister circuits as to whether to apply, in the post-secondary school setting, the standard articulated by the Supreme Court in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988) (high school principal did not violate the first amendment rights of student journalists when he prevented the publication of articles about teen pregnancy and divorce in the school-sponsored newspaper). Compare *Hosty v. Carter*, 412 F.3d 731, 735 (7th Cir. 2005) (“*Hazelwood's* framework applies to subsidized student newspapers at colleges as well as elementary and secondary schools.”) with *Student Gov’t Ass’n v. Bd. of Trustees of Univ. of Mass.*, 868 F.2d 473, 480 n. 6 (1st Cir. 1989) (“*Hazelwood*, in which the Court held that a high school newspaper whose production was part of educational curriculum was not a public forum, is not applicable to college newspapers.”); *Kincaid v. Gibson*, 236 F.3d 342, 346 n.5 (6th Cir. 2001) (“[b]ecause we find that a forum analysis requires that the yearbook

be analyzed as a limited public forum-rather than a non-public forum-we agree with the parties that *Hazelwood* has little application to this case.”)

In *Hazelwood*, the Supreme Court explicitly declined to address whether its holding should be used in the college and university setting noting: “We need not now decide whether the same degree of deference [to educators] is appropriate with respect to school-sponsored expressive activities at the college and university level.” 484 U.S. at 273-74, n. 7. We conclude, as have the Seventh, Tenth, and Eleventh circuits, that *Hazelwood* is applicable to university student speech. See *Hosty*, 412 F.3d at 735; *Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004); *Bishop v. Aronov*, 926 F.2d 1066 (11th Cir. 1991). We will now analyze whether the action taken by Ames U violated the Plaintiffs’ free speech rights under *Hazelwood*.

In *Hazelwood*, the Supreme Court distinguished for the first time between two types of student speech. The first is students’ “personal expression that happens to occur on the school premises” *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969) to which the government must give great deference unless the speech “materially and substantially [interferes] with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others.” *Id.* At 512-13. The second type of student speech in a school setting, the Court found, is speech that is part of school-sponsored publications, theatrical productions, and other expressive activities that students, parents and members of the public might reasonably perceive to bear the imprimatur of the school.” *Hazelwood*, 484 U.S. at 266. The *Hazelwood* Court considered such activities to take place in a nonpublic forum and to be part of the school curriculum as long as faculty members supervised and the intent of the activities was to teach certain skills or knowledge to student participants. *Id.* at 270-71. In censoring such speech, the Supreme Court held, schools need only show that the restriction is “reasonably related to legitimate pedagogical concerns.” *Id.* at 273.

Under *Hazelwood*, our analysis of the Plaintiffs’ First Amendment claim depends in large part on the type of forum involved. The Supreme Court has recognized three different types of

forum and articulated the restriction on speech allowed in each: traditional public forum, limited public forum, and nonpublic forum. *See Kincaid*, 236 F.3d at 348 (summarizing the three types of fora and the level of restriction on speech allowed in each). In this case, the relevant forum is the Student Paper Competition and the court finds that the Competition was a nonpublic forum. Although Cy-Con solicited papers from students from around the country, the Competition was judged by Professors Harry Ling, Martha Rose, and James Abrahams, all Ames U faculty members, and publication of the papers was limited to the top three. Also, the Undergraduate Plaintiffs were Ames U students and their scholarly research could reasonably be seen to be sponsored by Ames U. *See Pugel v. Board of Trustees of University of Illinois*, 378 F.3d 659 (“a scientific presentation is connected directly with the University’s mission of intellectual enrichment and research”). Thus, the Defendants were permitted to limit the Undergraduate Plaintiffs’ speech as long as the restriction was reasonable and legitimately related to pedagogical concerns. A concern that another security breach in the Ames U computer system could cause wide disruption to the University’s administrative and educational functions is reasonable and sufficiently pedagogical to merit the restriction on speech at issue here.

Accordingly, we find that Plaintiffs has failed to state a claim for a violation of their First Amendment rights.

C. Due Process Liberty Interest

The second issue before Plaintiff Betancourt’s the court is whether Defendant Andrews, by placing allegedly stigmatizing material in Plaintiff Betancourt’s personnel file and making this material potentially available to future employers, has deprived Plaintiff of his liberty interest under the Due Process Clause of the Fourteenth Amendment. Like the free speech question considered above, this is a question of first impression for this court.

To make out this type of liberty interest claim, a plaintiff must show that the charges against him: (1) placed a stigma on his reputation; (2) were made public by the employer; (3) were made in conjunction with his termination or demotion; and (4) were false. *Sciolino v. City*

of Newport News, 480 F. 3d 642, 646 (4th Cir. 2007). There is no doubt that the Plaintiff Betancourt has made out the first and third elements of this claim. Additionally, this court finds that the Plaintiff Betancourt has also successfully made out the fourth element.

The charge of insubordination is arguably untrue since there are no facts in the record to suggest that Plaintiff Betancourt was acting as an employee of Ames U in his role as editor of the Cy-Con website. The court finds that Plaintiff Betancourt was not acting in his role as a teaching assistant when he refused to remove the Undergraduate Student Plaintiffs' paper from the Online Roundtable content. Therefore the allegation of insubordination by Dean Andrews is false.

Thus, the only question in this case is whether placement of the charges in a personnel file to which some members of the public may have access satisfies the publication requirement. This is a matter of enormous dispute among our sister circuits, which have struggled to interpret the Supreme Court's holding in *Bishop v. Wood*, 426 U.S. 341 (1976), reaching "diametrically different conclusions." *Cox v. Roskelley*, 359 F.3d 1105, 1115 (9th Cir. 2004) (Hall, J., dissenting). The First, Seventh, and—arguably—Third Circuits (along with several state appellate courts) have interpreted the publication requirement to demand *actual* publication, not merely the potential for future publication. See *Johnson v. Martin*, 943 F.2d 15, 17 (7th Cir. 1991) ("the mere existence of damaging information in [plaintiff]'s personnel file cannot give rise to a due process challenge"); *Burton v. Town of Littleton*, 426 F.3d 9, 17 (1st Cir. 2005) ("public dissemination is the sine qua non of a due process claim based on reputational harm"); *Copeland v. Philadelphia Police Department*, 840 F.2d 1139, 1148 (3d Cir. 1988) (plaintiff "must produce evidence that the reason for his termination was made public by the city"). In direct conflict, the Second, Fourth and Tenth Circuits (and several state appellate courts) have permitted claims to proceed so long as there is a *likelihood* of future dissemination to prospective employers or the public at large. *Brandt v. Board of Cooperative Educational Services*, 820 F.2d 41, 45 (2d Cir. 1987) (publication requirement is "satisfied where the stigmatizing charges are placed in the discharged employee's personnel file and are likely to be disclosed to prospective employers");

Sciolino, 480 F.3d at 650 (“an employee must allege (and ultimately prove) a likelihood that prospective employers (i.e., employers to whom he will apply) or the public at large will inspect the file”); *Bailey v. Kirk*, 777 F.2d 567, 580 n.18 (10th Cir. 1985) (“the presence of false and defamatory information in an employee's personnel file may constitute ‘publication’ if not restricted for internal use”). The Ninth and Eleventh Circuits have similarly held that charges are deemed “published” when they are placed in personnel files that are public records as a matter of state law. *Cox*, 359 F.3d at 1105; *Buxton v. Plant City*, 871 F.2d 1037, 1045 (11th Cir. 1989). The Fifth and Eighth Circuits are internally divided.

In the case at hand, Plaintiff Betancourt has proved only that the stigmatizing allegations were placed in his personnel file and that potential employers may view them. We do not believe that these facts give rise to a constitutional violation or implicate the due process clause. To rule otherwise would involve the federal courts in the micromanagement of state personnel decisions and erode federalism. Furthermore, to permit liability in the absence of actual dissemination “would penalize forthright and truthful communication between employer and employee.” *Bishop*, 426 U.S. at 349. Finally, to recognize a constitutional violation in the absence of actual publication would encourage litigation whenever a former employee disputes the basis for dismissal. Thus, we find that Plaintiff Betancourt was not deprived of his Fourteenth Amendment Due Process liberty interest.

The court holds that Defendant Andrews is entitled to summary judgment on Counts I and II of the Complaint because no reasonable jury, based on the evidence at hand, could find that the Plaintiffs were deprived of their right to free speech under the First Amendment or that Plaintiff Betancourt was deprived of his Fourteenth Amendment Due Process liberty interest.

III. Conclusion

For the foregoing reasons, the court GRANTS Defendant Andrew’s motion for summary judgment on Counts I and II of the Complaint.

SO ORDERED

Dated: November 15, 2007

Eileen Cole

Eileen Cole
United States District Judge

Sophie Hubbard, Jeanine Lopez,
and Hector Betancourt,

Plaintiffs,

v.

Rebecca Andrews,

Defendant.

Notice is hereby given that Plaintiffs Sophie Hubbard, Jeanine Lopez (together “Undergraduate Plaintiffs”) and Plaintiff Hector Betancourt appeal to the United States Court of Appeals for the Ames Circuit from a final judgment entered in this action on the 15th day of November, 2007.

The second basis for appeal is that the District Court erred in granting summary judgment to Defendant Andrews on the grounds that she had not violated Plaintiff Betancourt's Fourteenth Amendment Due Process liberty interest by placing stigmatizing charges in his personnel file without the benefit of a name-clearing hearing.

By: Henrietta Chu
Henrietta Chu, Esq.
Attorney for the Plaintiffs

36

Sophie Hubbard, Jeanine Lopez,
and Hector Betancourt,

Plaintiffs-Appellants,

v.

Rebecca Andrews,

Defendant-Appellee.

For the reasons stated in the District Court's Memorandum and Order we affirm.

DATED: April 3, 2008

**IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA**

Sophie Hubbard, Jeanine Lopez, and Hector Betancourt,)	
)	
Petitioners,)	
)	
v.)	No. 08-141
)	
Rebecca Andrews,)	
)	
Respondent.)	
)	

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

TO ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE THAT the Petition for Writ of Certiorari to the Ames Circuit in the above-captioned matter is hereby granted. Review is limited to the following two questions: (1) Whether the a public university’s removal of part of a student organization’s website to prevent on-line publication of a student-authored research paper violates the First Amendment of the U.S. Constitution; (2) Whether the Fourteenth Amendment of the U.S. Constitution provides a public university teaching assistant with a liberty interest in preventing the placement of stigmatizing information in his personnel file without a name-clearing hearing.

The parties are directed to timely submit their briefs in accordance with the schedule they have received.

IT IS SO ORDERED.

DATED: June 15, 2008