

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

MORGAN A. BETTINGER,

Plaintiff

v.

WHITTINGTON W. CLEMENT,

In his official capacity as the

Rector of the Board of Visitors of the

University of Virginia

ROBERT D. HARDIE

In his official capacity as the

Vice Rector of the Board of Visitors of the

University of Virginia

ROBERT M. BLUE,

MARK T. BOWLES,

CARLOS M. BROWN,

ELIZABETH M. CRANWELL,

THOMAS A. DEPASQUALE,

U. BERTRAM ELLIS, JR.,

**LOUIS S. HADDAD,
BABUR B. LATEEF, M.D.,
STEPHEN M. LONG, M.D.,
ANGELA HUCLES MANGANO,
JAMES B. MURRAY, JR.,
THE HONORABLE L. F. PAYNE,
AMANDA L. PILLON,
JAMES V. REYES,
DOUGLAS D. WETMORE**

**In their respective official capacities as
Members of the Board of Visitors of the
University of Virginia**

JAMES E. RYAN,

**In his official capacity as the
President of the University of Virginia**

Defendants

COMPLAINT

NATURE OF THE ACTION

1. This complaint seeks redress for the violation of the Plaintiff's

Constitutional rights by the University of Virginia (hereinafter, the “University”), a public university owned and operated by the Commonwealth of Virginia.

2. During the academic year 2020-2021, the University punished Plaintiff Morgan A. Bettinger, a fourth year undergraduate student at the University, for off-campus speech protected by the United States Constitution.
3. The University by and through the acts and omissions of its officers and agents including the Rector, Vice Rector and Members of the Board of Visitors as well as the President of the University, under color of state law, regulations, customs, and usages, deprived Ms. Bettinger, a citizen of the United States, of rights, privileges and immunities secured by the Constitution, as detailed below.

THE PARTIES

Plaintiff

4. Morgan A. Bettinger (“Ms. Bettinger”) is an individual who resides in Albemarle County, VA 22911. Ms. Bettinger was a full-time undergraduate student at the University of Virginia College

of Arts and Sciences at all times relevant to her punishment as alleged in this Complaint.

The University Defendants

5. The University of Virginia is a public university owned and operated by the government of the Commonwealth of Virginia.
6. The Rector, Vice Rector, and Members of the Board of Visitors of the University of Virginia (collectively, the “Board of Visitors Defendants”) are, and were at all times relevant to this Complaint, officials of the University of Virginia responsible for the adoption and enforcement of policies applicable to students attending the University of Virginia—including policies to ensure that students’ rights of free speech and due process are protected.
7. James E. Ryan, President of the University, is responsible for the discipline of students with the power to impose appropriate penalties including expulsion.
8. Each of the Board of Visitors Defendants and President Ryan (collectively, the “University Defendants”) is sued in his or her official capacity for injunctive and declaratory relief and for damages resulting from the acts and omissions alleged in this

Complaint.

JURISDICTION AND VENUE

9. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. §§1983.
10. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.
11. This Court has authority to award the requested damages pursuant to 28 U.S.C. §§ 1343 and 42 U.S.C. §§ 1983; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201-02; the requested injunctive relief pursuant to 28 U.S.C. § 1343, 42 U.S.C. § 1983, and Fed. R. Civ. P. 65; and costs and attorneys' fees pursuant to 42 U.S.C. § 1988(b).
12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the acts and conduct described in this Complaint occurred in this district.

STATEMENT OF FACTS

The Incident

- 13 On July 17, 2020, Morgan A. Bettinger, a rising fourth year

undergraduate student at the University, encountered an unannounced protest/demonstration blocking her right of way as she was returning home after a full day of employment.

14. Protesters occupied the public right of way in front of the Charlottesville-Albemarle Juvenile and Domestic Relations District Court located at 411 E. High Street in the downtown area of Charlottesville, VA.
15. Ms. Bettinger had departed her place of employment on 1st St. N at about 7:45 PM and entered the eastbound lane of E. High Street only three blocks from the protest.
16. A city-owned dump truck was parked across East High Street at the intersection of the 4th Street NE blocking all vehicular traffic past the court house.
17. Additionally, two civilian vehicles were parked on 4th Street NE thus preventing vehicular traffic from circumventing the protesters.
18. Ms. Bettinger did not see or encounter any law enforcement vehicles or uniformed officers anywhere along her route of travel or at the scene of the protest

19. No permit had been requested by or issued to the organizers of the protest as required by law;
20. The closure of the public right of way by the organizers of the protest violated state law.
21. City of Charlottesville officials, including those in the Charlottesville Police Department, were unaware that the protest organizers planned to close vehicular traffic along E. High Street in the vicinity of the local court house.
22. Neither the City of Charlottesville nor the protest organizers provided notice to the traveling public of any planned or expected closure of the public right of way along E. High Street.
23. Unable to proceed forward or around the protest, Ms. Bettinger parked and exited her car to investigate the nature of the protest.
24. As she approached the area of the dump truck, the driver initiated a casual conversation with her.
25. The engine of the truck was running thus requiring both the driver and Ms. Bettinger to speak loudly in order to be heard;
26. During the course of this casual conversation, she quipped to the driver, "It's good that you are here or they could become speed

bumps” or words to that effect.

27. Ms. Bettinger then walked around the truck to investigate the nature of the protest.
28. She took several photographs of the protesters with her phone.
29. She noted signs on the court house saying “Defund the Police” and “Care, Not Cops.”
30. Ms. Bettinger is the daughter of a career law enforcement officer who had served with the Charlottesville Police Department.
31. Her father, Wayne Bettinger, passed away in August, 2014 after a six year battle with cancer;
32. Ms. Bettinger proudly displayed her support for the police with a “Thin Blue Line Flag” decal affixed to the rear window of her vehicle.
33. Unbeknownst to Ms. Bettinger, several protesters who had been positioned in the vicinity of the dump truck, overheard her reference to speed bumps.
34. These protesters spread the word on social media that Ms. Bettinger had said “the protesters would make good speed bumps.”

35. As Ms. Bettinger returned to her vehicle, many protesters began to follow her and display an unusual interest in her.
36. Ms. Bettinger immediately place a call to her mother and remained on the phone with her until she was safely back in her car with the doors locked
37. The protesters quickly surrounded her car and threatened her.
38. Ms. Bettinger immediately called the 911 operator and requested police assistance.
39. As Ms. Bettinger attempted to peacefully and carefully back away from the scene, the protesters followed her, photographed her, recorded video clips of the activity, taunted her and threatened her.
40. Ms. Bettinger backed her car a full city block until finally backing it onto 3rd Street NE to await the arrival of police;
41. Approximately six (6) minutes after phoning 911, the police arrived and positioned their unmarked vehicle on 3rd Street NE across the street and facing Ms. Bettinger's vehicle.
42. As soon as the police arrived, the protesters dispersed from around Ms. Bettinger's car.

43. Ms. Bettinger was then able safely to turn west bound along E. High Street and exit the area followed by the police.
44. Several blocks farther west on E. High Street, Ms. Bettinger stopped, checked her car for damage and gave a report to the officers.
45. Ms. Becky Elworth had been parked in her vehicle on E. High Street in the vicinity of 3rd Street NE in a position to observe the encounter between Ms. Bettinger and the protesters;
46. Ms. Elworth followed Ms. Bettinger and the police and stopped with them to report her eyewitness account to the police.

The Immediate Aftermath

47. Zyahna Bryant was a rising second year undergraduate student at the University.
48. Bryant, along with her two younger sisters, organized the protest.
49. Bryant did not personally observe Ms. Bettinger's arrival at the scene.
50. Bryant did not personally hear Ms. Bettinger's comments to the truck driver;
51. As Ms. Bettinger was backing away from the protest, Bryant

taunted her repeatedly with the pejorative phrase, “It’s a Karen.”

52. Bryant first learned of the speed bump comment from a third party;
53. Upon learning of the speed bump remark, Bryant reacted gleefully exclaiming repeatedly “Oh, you said the protesters would make good speed bumps. Is that a threat?”
54. After Ms. Bettinger exited the area, Bryant posted a photograph of her on social media with the caption, “SHARE/SPREAD THIS! TRIGGER WARNING: The woman in this truck (sic) approached protesters in Charlottesville and told us that we would make ‘good speed bumps’ mind you, a protester was killed by a man in a car in Charlottesville during the A12 rally in 2017. #BlackLivesMatter”
55. Bryant then created a fictitious narrative about the event on social media.
56. Without evidence to support her narrative, Bryant posted that;
 - a. “The police were literally blocking the road at that point;
 - b. She (Bettinger) had to go down a series of one way streets (several were completely blocked) AND,

- c. Maneuver between a public works truck and a police car that was blocking the road about two blocks down;
 - d. The cops were blocking it at that point;
 - e. Morgan intentionally maneuvered between two police barricades.”
57. Bryant also posted that “She was about 2 hrs late to the event. It was almost over.”
58. Bryant’s social media posts were intended to imply and clearly did imply that Ms. Bettinger had not encountered the protest by happenstance but rather had intentionally evaded the police and maneuvered to the scene for the purpose of harassing the protesters.
59. In response to Bryant’s social media postings, Ms. Bettinger received numerous social media threats, some of which were anonymous, against her life and physical well-being.
60. Most of the threats were posted on the same social media thread as Bryant’s and were thus a natural and probable consequence thereof.
61. Ms. Bettinger immediately reported the social media threats to

the Albemarle County Police Department.

62. On or about July 18, 2020, Bryant continued posting on social media “She has been identified as Morgan Alyse Bettinger, an undergraduate student @UVA.”
63. On or about July 19, 2020, Bryant posted the following sequence on social media:
 - a. CALL TO ACTION THREAD!!

TW: A12

Attn: @UVA

Over 200 Charlottesville community members gathered on July 17, 2020 to affirm that Black Women Matter in our community. However, this rally and march was disturbed by a UVA student Morgan Bettinger.
 - b. Morgan drove around the public works truck blocking the street that demonstrators were convened on and felt compelled to say, not just once, but twice that protesters would ‘make good speed bumps.’
 - c. EMAIL these UVA deans now to demand that Morgan face consequences for her actions and that UVA stop graduating

racists.

Dean David A Sauerwein - Assistant Dean of Students

Dean Allen Groves - Associate Vice President and University
Dean of Students

Dean Ian B. Baucom - Dean of the College of Arts and
Sciences

- d. Please continue to put pressure on the university to stand with the Black community members AND STUDENTS who were directly threatened by Morgan Alyse Bettinger's actions.
64. The office of the Dean of Students was inundated with phone calls and e-mails demanding action against Ms. Bettinger.
 65. On July 19, 2020, the University posted the following statement on social media:

"The University strongly condemns any threat directed at other members of our community. We are aware of the allegations on social media about a student's conduct with respect to a protest in the city and are actively investigating the matter."
 66. Bryant's postings inflamed public and student opinion against Ms.

Bettinger requiring her to undertake certain measures for self-protection:

- a. She changed the license tag on her vehicle to avoid identification on the streets and lessen the possibility of being stalked or followed to her residence;
 - b. Over the course of the entire 2020-2021 school year, she avoided unescorted presence on grounds after dark;
 - c. She maintained a low profile, rarely if ever engaged with other students, minimized her participation in classes (even where class participation was a significant part of the final grade) and carefully censored her comments when she did choose to speak.
67. One professor was forced to divide his class into two separate sections due to the overt hostility toward Ms. Bettinger by some other students.

The Dean of Students

68. At that time, Allen W. Groves (UVA Law 1990) held the position as Associate Vice President and University Dean of Students (DoS).

69. In response to the foregoing deluge of social media demands, he immediately convened the Threat Assessment Team (TAT) to investigate the matter.
70. Groves asked Ms. Bettinger to provide a statement of her account.
71. Ms. Bettinger fully complied with all requests for information and provided Groves with not only a personal statement of facts from her perspective but also considerable photographic and other evidence on her behalf.
72. Members of the TAT were also in contact with the CPD which conducted an independent investigation.
73. The CPD had already interviewed the driver of the dump truck who largely confirmed Bettinger's version of events regarding her conduct.
74. The driver claimed, however, that due to the noise of his engine, he did not hear the remark about speed bumps.
75. On August 3, 2020, Ms. Bettinger, by counsel, argued that, even in the light most favorable to Bryant, she neither communicated a verbal threat nor engaged in any behavior suggesting an intent to harm anyone.

76. She further argued that based on the merits of the evidence, a referral to the University Judiciary Committee (UJC) would be unjustified.
77. The UJC is the student-run judiciary body of the University of Virginia and is authorized to investigate and adjudicate alleged violations of the University's Standards of Conduct.
78. On August 31, 2020, Groves responded by letter to Ms. Bettinger and her counsel.
79. Without disclosing the deliberations or records of the TAT, he declined to impose an interim suspension, thus implying a conclusion that Ms Bettinger did not pose an ongoing threat to the University community.
80. Nonetheless he elected to refer the matter to the UJC to resolve two issues of fact; to wit, (1) did Bettinger at any time drive or position her car in such a way as to place one or more of the attendees at risk of harm, and (2) did Bettinger make a statement that rally attendees "would make good speed bumps" which statement had the effect of causing a person who heard it to be intimidated and reasonably placed in fear of bodily harm.

81. The referral to UJC alleged a violation of Standard of Conduct #2; to wit, “Conduct which intentionally or recklessly threatens the health or safety of any person on University-owned or leased property, at a University sanctioned function, at the permanent or temporary local residence of a University student, faculty member, employee or visitor, or in the city of Charlottesville or Albemarle County.”
82. Groves specifically stated that the events of August 12, 2017 in the same downtown area were relevant to his first amendment true threat analysis.
83. On September 1, 2020, Ms. Bettinger, by her counsel, objected to Groves’ actions on two grounds:
 - a. Bryant had already filed charges against Ms. Bettinger with the UJC on the same set of facts and bore the burden of proof; thus, a separate referral from the Dean of Students would be perceived as an intervention by the University administration on behalf of Bryant to the detriment of Bettinger’s right to a fair and impartial trial.
 - b. Groves’ legal analysis of the free speech issue was wrong as

a matter of law raising both substantive and procedural questions that UJC was neither professionally trained nor procedurally equipped to resolve.

84. On September 12, 2020, Groves agreed to dismiss his complaint but only after *ex parte* consultations with UJC leadership.
85. A copy of Groves' written complaint has never been provided to Ms. Bettinger.
86. Ms. Bettinger had chosen Alex Pisciarino, a 3rd year law student at the UVA School of Law, to represent her at her UJC trial.
87. Prior to the UJC trial, Pisciarino recorded an interview with Groves regarding the evidence supporting his referral.
88. Groves read portions of his written complaint to Pisciarino.
89. Groves essentially admitted to Pisciarino that he had no credible evidence to support a good faith belief that Bettinger had ever attempted to drive around the public works truck or maneuvered her car in such a manner as to threaten anyone.
90. Thus, Groves knew or should have known that the sole issue before UJC was whether Bettinger's utterance of the words "speed bumps" in proper context could be deemed a true threat under

federal law.

91. Groves knew or should have known that student members of the UJC were not professionally trained to resolve complex Constitutional issues involving Ms. Bettinger's right to free speech.
92. Groves knew or should have known that his referral to UJC carried with it an imprimatur of institutional authority likely to prejudice UJC against Ms. Bettinger even before any evidence had been presented at trial.
93. As an official with professional training in the law, Groves knew or should have known that the events of August 2017 in Charlottesville were not relevant to the Constitutional issue involving free speech, specifically whether Ms. Bettinger's utterance of the words "speed bumps," in proper context (during a public protest involving hotly contested political issues), could be construed as a true threat within the meaning of Constitutional law.
94. Groves knew or should have known that *ex parte* communications by a complaining witness with the UJC was manifestly improper

and prejudicial to Bettinger's right to a fair and impartial trial.

University Judiciary Committee

95. On or about August 22, 2020, Bryant filed a complaint with the UJC alleging that Morgan had said the protesters would "make good speed bumps" thus violating the Student Standard of Conduct 2; to wit, *Conduct which intentionally or recklessly threatens the health or safety of any person on University-owned or leased property, at a University sanctioned function, at the permanent or temporary local residence of a University student, faculty member, employee or visitor, or in the city of Charlottesville or Albemarle County.*
96. The complaint was based solely on Ms. Bettinger's speech; specifically, that Ms. Bettinger said the protesters "would make good speed bumps."
97. Bryant did not allege that Bettinger attempted to drive her car around the dump truck or maneuver her car in a manner that threatened any of the rally participants.
98. On September 25/26, 2020, Ms. Bettinger was tried before a five-person panel of the UJC.

99. All members of the trial panel were full time students.
100. Ms. Bettinger testified on her own behalf, explained that she encountered the road block by happenstance as she was driving home from work.
101. She admitted speaking to the dump truck driver.
102. She testified as follows:

"I said in the realm of 'It's a good thing you're here otherwise they could be made speed bumps,' or 'they'd be speed bumps.' I only ever said that one time. It was never intended as a threat..."
103. She acknowledged that she did not recall her exact words but the foregoing testimony fairly represented the relevant portion of her comments.
104. She denied ever threatening or intending to threaten anyone.
105. She argued, by counsel, that no reasonable person could have construed her comment to the driver as a specific threat to inflict harm on anyone.
106. At the conclusion of the evidence and argument of counsel, UJC found her guilty of violating Student Standard of Conduct 2.
107. UJC explained their finding as follows:

“We the judges of this trial panel find that your actions on July 17th were shameful and put members of the community at risk. You yourself acknowledged saying “it’s a good thing you are here because, otherwise, these people would have been speed bumps.” Given the tragic events of August 12 and the context in which you uttered these words, you disregarded Charlottesville’s violent history. A history you should have been cognizant of as a UVA student and resident of Charlottesville. During these proceedings you have shown no understanding of the risk this statement posed.”

108. The forgoing finding reveals the full scope of UJC reasoning; specifically,
 - a. UJC credited Ms. Bettinger with her own language which included the prefatory phrase, “it’s good that you are here,” thus acknowledging that her statement was directed to the driver rather than any of the protesters and uttered in the context of a political arena;
 - b. UJC found her guilty based solely on speech, not conduct;
 - c. UJC considered the prior history of Charlottesville as the

single most relevant contextual factor in arriving at their guilty verdict;

- d. UJC did not find that Ms. Bettinger either actually threatened or intended to threaten physical harm to Bryant or any of the protesters, only that her words posed a risk;
- e. UJC failed to explain how the law (free speech vs true threat) applied to facts as found above.

109. On September 28/29, 2020, at the conclusion of a separate trial for sanctions, UJC punished Ms. Bettinger as follows:

- a. Conduct 3 meetings with Professor Brian Williams in which you will discuss the history of police community relations to broaden your understanding.
- b. 50 hours of community service to be completed by May 1. These hours will be completed with an organization that will help you better understand the context of Social Justice in America. You will be contacted by 2 weeks from today to discuss potential organizations to partner with for the completion of service.
- c. Write an apology letter to Ms. Bryant acknowledging the

harm your actions posed to both her and to the UVA community.

d. We sanction you to expulsion in abeyance if you return to the UJC and are found guilty of a second standard 2 charge.

110. Ms. Bettinger was required to complete all sanctions to the satisfaction of the UJC prior to her expected graduation.

111. If Ms. Bettinger failed to complete the aforementioned sanctions, the University would withhold her degree to which she otherwise would be entitled.

112. Ms. Bettinger appealed the decision of the UJC to the Judicial Review Board (JRB).

Judicial Review Board

113. On November 10, 2020, Ms. Bettinger submitted a Request for Appeal to the Judicial Review Board (JRB) from her conviction and punishment for having been found in violation of Standard of Conduct 2.

114. The purpose of the University JRB is to ensure fairness in student disciplinary proceedings consistent with **due process of law.** **(emphasis added).**

115. However, the grounds for appeal from a decision of the UJC is limited by the UJC constitution to the following:

- a. A procedural error occurred in the course of the UJC Trial, causing the Appellant to be deprived of the procedural protections afforded by Article IV of the UJC Constitution, and such error very likely affected the outcome of the UJC Trial; or
- b. The Appellant has obtained new evidence, the existence of which would very likely have affected the outcome of the UJC Trial. For purposes hereof, "new evidence" means evidence of which the Appellant was unaware, and could not reasonably have been aware through the exercise of reasonable diligence, prior to the conclusion of the UJC Trial; or
- c. The sanction imposed by the UJC was unduly harsh, clearly excessive, or grossly inappropriate to the relevant offense.

116. Bettinger advanced, inter alia, the following arguments on appeal:

- a. The panel instruction provided by the University for

assessing whether pure speech was a true threat was wrong as a matter of law;

- b. The definition of a true threat as provided in the panel instruction reflected a negligence standard which was wrong as a matter of law;
- c. Her words as spoken and found by UJC were not threatening on their face;
- d. No reasonable person could have construed her words as a true threat when considered in full and proper context;
- e. UJC's focus on prior events in Charlottesville as the sole or dominant factor in assessing context was wrong as a matter of law;
- f. Nothing in the UJC Constitution or Manual provided a procedure for students to resolve complex Constitutional issues;
- g. The University failed to provide advance notice and an opportunity to be heard on the merits of the panel instruction provided to the UJC;
- h. In view of the separate referral by and *ex parte*

communications with the Dean of Students, supra, the University failed to provide a procedure for probing the UJC panel for biases which might have influenced their capacity to decide the case solely on the relevant evidence and the law;

- i. The University, through the UJC Constitution, imposed limitations on appeal that were unwarranted and inconsistent with due process of law;
- j. The sanctions imposed were excessive and unwarranted;
- k. The requirement to write an apology letter to Bryant constituted compelled speech in violation of her right to remain silent and inconsistent with her own conscience.

117. On April 7, 2021, the JRB upheld her conviction and sanctions.

118. However, prior to addressing the merits of Bettinger's arguments, the JRB, citing the UJC Constitution, established the following limitations on their appellate powers:

“JRB review of UJC convictions is strictly limited. . . . In short, we can review UJC decisions for (1) procedural error that was not harmless, (2) consideration of newly discovered evidence that

would very likely have changed the outcome, and (3) “unduly harsh, clearly excessive, [and] grossly inappropriate” sanctions. We have no power to review, however, for mistakes of substantive law and sufficiency of the evidence. . . Our standards of review also require us to engage in a form of harmless error review. Even if we find a procedural error, for example, we cannot reverse, modify, vacate, or remand the UJC decision unless we find that “such error very likely affected the outcome of the UJC ”

119 In light the foregoing limitations, the JRB found that:

- a. Bettinger had no right to a panel instruction on the law;
- b. If the University chose to give a panel instruction, she had no right to advance notice or an opportunity to be heard on any objections;
- c. The panel instruction was a correct statement of the law;
- d. Bettinger had no right to *voir dire* the panel for possible biases against her;
- e. That her argument that her words did not constitute a true threat was a “sufficiency of the evidence” argument and thus not subject to review on appeal;

- f. That the limitations on appellate review by the JRB did not violate principles of due process of law;
 - g. That her sanctions were not “unduly harsh, clearly excessive, and grossly inappropriate.”
120. Effectively, the JRB held that, even if the panel of five untrained students erred in their application of Constitutional law, the JRB was without the power to review or reverse the error on behalf of the University.
121. With less than two months before graduation, Ms. Bettinger elected to complete her sanctions to avoid having her degree withheld by the University.

Office of Equal Opportunity and Civil Rights (EOCR)

122. On or about July 18, 2020, Bryant filed a complaint with EOCR alleging that Ms. Bettinger had harassed her and the protesters on the basis of race by saying that the protesters “would make good speed bumps” which statement she found threatening in light of the context of what occurred in Charlottesville in August 2017.
123. In her complaint, Bryant revealed her ideological intolerance of

Ms. Bettinger's political beliefs by asserting that she "had posted several 'Back the blue' and 'blue lives matter' statements on social media.

124. On July 23, 2020, EOCR notified Ms. Bettinger of a formal investigation alleging racial harassment of Bryant; to wit, that she had "targeted Complainant based on her race by stating that the protesters 'would make good speed bumps,' which statement she found threatening in light of the context of what occurred in Charlottesville in August 2017."
125. As a threshold matter, Bettinger argued that EOCR lacked both territorial and subject matter jurisdiction over the matter for two reasons:
 - a. Published harassment policy, consistent with federal law, limited harassment claims to the "workplace, academic setting or in its programs or activities." The alleged statement by Bettinger had occurred during a private political protest activity in the City of Charlottesville, more than a mile from the nearest University facility;
 - b. The policy explicitly prohibited curtailment or censorship of

constitutionally protected speech.

126. EOCR overruled Bettinger's objections to jurisdiction.
127. On July 30, 2020, Bettinger appealed the jurisdictional ruling directly to University Counsel (UC).
128. By letter dated August 3, 2020, UC overruled Bettinger's objections to the jurisdiction of EOCR.
129. On the basis of the ruling by UC, Ms. Bettinger participated in the EOCR investigation and fully complied with all requests for interviews, documentation and other evidence on her behalf.
130. Ms. Bettinger also notified EOCR that the local Commonwealth's Attorney had agreed to permit their inspection of the report by CPD.
131. On August 26, 2020, Ms. Bettinger urged EOCR to dismiss the allegation on the grounds that the evidence, even in the light most favorable to Bryant, did not warrant a continuation of the investigation.
132. After providing a statement of facts and supporting documentation, including but not limited to photographic and video evidence, Ms. Bettinger wrote:

“The evidence in this case, even in the light most favorable to Ms. Bryant, proves nothing more than the fact that Ms. Bettinger uttered words which might have been construed as offensive by some but which remain ‘constitutionally protected expression.’ Moreover, the evidence in this case, even in the light most favorable to Ms. Bryant, fails to prove that Ms. Bettinger either discriminated against or harassed Ms. Bryant as those terms are defined in HRM-009. For the foregoing reasons, this EOCR complaint against Ms. Bettinger should be dismissed.”

133. Despite such evidence, EOCR continued their investigation over the next nine months and subjected Bettinger to several lengthy interviews (by Zoom video) and requests for additional documentary support effectively demanding that she prove her innocence.
134. During a recorded interview on October 6, 2020, EOCR subjected Ms. Bettinger to an extended inquisition into her views and opinions of the Black Lives Matter (BLM) movement
135. Ms. Bettinger answered all questions but, on December 9, 2020,

her counsel registered the following formal objection to the entire line of questioning:

“Morgan did not know what the protest was about when she made the comment, and clearly had much more of a beef with the time/place/manner of the protest than its content, let alone the race of the participants.

Anyone evaluating the allegations against Morgan must not consciously or unconsciously make decisions based on how closely Morgan's views on BLM (or any related topic) align with their own. The investigation must focus on the real, tangible facts of what occurred on July 17.

Moreover, the BLM movement is one of the most prominent issues in the public discourse today. People have a wide array of views on it. Questioning Morgan on her views on it chills speech since it suggests that her guilt or innocence, penalty or lack thereof, will be contingent in some way on her expressing a favored political view.

By its own terms, the PADH is ‘does not allow curtailment or censorship of constitutionally protected expression.’

Thus, because of its prejudicial and chilling effects, the BLM line of questioning seems counterproductive to the goals of the PADH at best, and procedurally unfair at worst.”

136. During a second recorded interview with the EOCR investigators on December 9, 2020, Ms. Bettinger revealed in some detail how the entire investigative process based on false and ideologically driven allegations had adversely affected her education, her safety and her mental health stating as follows:

“I did want to open up a little bit about me and how awful this has been for me . . . what this person has done has had so many consequences for me that I haven't deserved because I didn't do anything . . . Being a fourth year not only with COVID being a challenge, but not being able to go on campus because I'm scared people, if they recognize me . . . They have recognized me going to Sam's Club with my mom or recognizing my car, God forbid. That because Bryant has put out a target to say this person has labeled me as a racist and a Karen and saying all these awful and wrong things about me that I can't go on campus. I can't have a normal experience in my classes. I have to change

my name when I go into an online class because I don't want them to know my last name. I have a TA that is friends with Marley and Bryant . . . and I haven't been able to speak in class on hard topics because I don't know if they're reporting back to Bryant or going to say anything and then use that against me if they disagree with something, because Bryant already showed that she has a bias against me . . . She referenced I have a Facebook profile of me supporting a police officer because my dad was a police officer. The fact that I have sleepless nights and I've had to be prescribed medication to be able to sleep anymore and that I had to up my therapy to speak with my counselor because this had just gotten so much. It finally broke me a little bit ago. It's just not okay for someone to get away with to keep doing this. I hope you guys can see that, that how she's painted me out to be is not true by any means . . . I think it's important that just because she's claiming one thing that you guys will actually see the person I am and look at the facts and know that it's not true.”

137. On or about February 11, 2021, Ms. Bettinger, by counsel,
furnished EOCR with final comments on the evidence and the law

but also expressed grave concerns about bias and/or institutional influence as follows:

“According to Bryant’s online biography, she was appointed by Governor Ralph Northam to serve on the inaugural Virginia African American Advisory Board and by President Jim Ryan on the Council on UVA-Community Partnerships. In November 2019, she was named as one of Teen Vogue’s 21 Under 21 Young People Changing the World. She has also been featured in national media.

She currently serves on student council and, on information and belief, her photograph has appeared on the side of University transit buses.

And Bryant’s public statements on this matter have expressly urged large numbers of unrelated individuals to contact the University seeking Morgan’s expulsion.

Given Bryant’s powerful profile, loud following, and support from the highest level at the University, I must express serious concern about whether Morgan can truly get a fair and impartial hearing by any subordinate employee of the University.

I pray I am wrong.”

138. On March 31, 2021, EOCR notified Ms. Bettinger that the report of their investigation was complete and submitted for executive review.
139. Nearly two months later, the University had not yet completed the executive review leaving Ms. Bettinger again uncertain as to whether she would be permitted to graduate the following day.
140. On May 19, 2021, in response to her specific inquiry, Ms. Bettinger was informed that EOCR had not requested that her degree be withheld.
141. On May 20, 2021, Ms. Bettinger was awarded a Bachelor of Arts degree.
142. On June 4, 2021, EOCR provided Ms. Bettinger with their final report of the investigation.
143. EOCR addressed each of Bryant’s allegations and concluded that each was either unsupported by the evidence or demonstrably false.
144. Thus, the evidence failed to establish that Bettinger had subjected Bryant to racial harassment in violation of UVA policy.

145. Most significantly and relevant to this action, EOOCR specifically found the following:

*“EOOCR concluded that a reasonable person in the same circumstances as Bryant would not view your single comment directed to the city dump truck driver to be sufficiently severe to create a hostile environment. **Your comment was not clearly threatening on its face.** You were not speaking to or about Bryant, nor did Bryant overhear your comment. Evidence in the record indicated that you could not have continued traveling eastbound on E. High Street and potentially strike protestors with your vehicle, as a city dump truck and other civilian vehicles were blocking your route of travel. **In addition, there is no evidence to show that you attempted to strike Bryant or any other rally attendee with your vehicle.** Evidence in the record established that you reversed your vehicle away from the rally, away from the protestors who approached your vehicle on more than one occasion and remained parked on 3rd Street NE until police arrived on the scene. Furthermore, it is undisputed that Bryant has had no interactions with you since the July 17 rally*

aside from the University Judiciary Committee (“UJC”) hearings related to this matter.” (emphasis added)

146. After subjecting Bettinger to a ten-month, time consuming and highly stressful investigation, EOCR arrived at a conclusion that should have been obvious from the face of Bryant’s allegations in the beginning; namely, that her comment to the truck driver about speed bumps was not threatening on its face and was thus speech protected by the Constitution.
147. Thus, EOCR, despite their lengthy *ultra vires* investigation, found facts that conclusively support Ms. Bettinger’s claim that UJC had punished her for speech protected by the Constitution.

President of the University

148. The duties of the President of the University are detailed in the Manual for the Board of Visitors.
149. The President shall be responsible for the discipline of students with the power to impose appropriate penalties including expulsion. Manual of the Board of Visitors, Sect. 4.22, para. 9.
150. On June 30, 2021, citing the inconsistent and irreconcilable conclusions of two subordinate institutions within the University,

Ms. Bettinger, by counsel, appealed to the President of the University to correct this grave injustice praying that he order the expungement of all records related to her UJC proceedings including but not limited to her conviction and sanctions.

151. Specifically, Ms. Bettinger, by counsel, wrote:

“Morgan Bettinger was unfairly punished by the University Judiciary Committee (UJC) for speaking words protected by the Constitution. However, because UJC appeals are limited to process, not substance, the Judicial Review Board (JRB) concluded that the UJC decision whether erroneous or not was unreviewable.

The UJC decision was inconsistent with the findings of a parallel investigation by the Office of Equal Opportunity and Civil Rights (EOCR) on the same material facts, the same witnesses and the same documented evidence. EOCR exonerated Morgan of any wrongdoing.

The University granted Morgan her undergraduate degree in May 2021. But going forward, Morgan must disclose this UJC sanction for misconduct on her record in graduate or law school applications and possibly on employment applications as well.”

152. Ms. Bettinger, by counsel, addressed the scope of the President’s

authority to act on her behalf as follows:

“The question of whether Morgan’s words to the truck driver constituted a true threat presented a mixed question of law and fact that should never have been delegated to inexperienced students for a resolution.

On this Constitutional issue and on the same set of material facts, the judgment of the students on the UJC was totally inconsistent with that of the adults at EOCR.

*As a double Hoo and former Professor of Naval Science, I appreciate the unique role and value of student self government in preparing students to become responsible citizens in our self-governing republic. **However, the University can never delegate the responsibility for ensuring that the UJC students, in exercising their delegated authority, comply with the law of the land.***

(Emphasis added)

The United States Supreme Court has recently held that schools have an interest in protecting even unpopular speech, especially when

the expression takes place off campus. See Mahanoy Area School District V. B. L., a minor, by and through her father, Levy, et al., No. 20-255, decided June 23, 2021.

In this case, the University, by and through the UJC, punished Morgan for words spoken off-grounds in violation of her right to free speech as protected by the Constitution.

Although Morgan completed her UJC sanctions and has received her degree, her conviction for misconduct remains a permanent part of her academic record at the University. Such a record will undoubtedly have a deleterious impact on future employment or educational opportunities.”

153. Thus, Ms. Bettinger, by counsel, had notified the President of the University that a failure to expunge her records would not only perpetuate a grave injustice to an innocent student and cause her immeasurable long-term harm but potentially expose the University to liability for violating her constitutional rights and causing the harm

154. Nonetheless, on August 10, 2021, President Ryan denied relied by claiming he lacked authority to do so; to wit,

“The University's rules and procedures entrust enforcement and appellate review of violations of the Standards of Conduct to the members of the University community. This practice makes the University unique and contributes to the community of trust enjoyed by our students. Our system of student self-governance gives this important authority to students, who apply facts to law in the course of adjudicating allegations of misconduct. The President of the University does not have the authority to reverse the final outcome of the disciplinary process, and there is no precedent for the President claiming this authority.”

155. Nothing in the University rules and procedures, including a tradition of student self government, permit the President to absolve himself of his responsibility for ensuring that the discipline of students complies with the law of the land.

COUNT I

**DEPRIVATION OF FIRST AMENDMENT RIGHT OF FREE
SPEECH IN VIOLATION OF 42 U.S.C. § 1983**

156. Ms. Bettinger hereby incorporates by reference the allegations contained in Paragraphs 1 through 155 of this Complaint.

157. Ms. Bettinger's comment as specifically found by UJC, namely *"it's a good thing you are here because, otherwise, these people would have been speed bumps,"* was not a true threat and was thus speech protected by the Constitution.

- a. True threats are statements made by a speaker who "means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group." *Virginia v. Black*, 538U.S. 343, 359, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003).
- b. Ms. Bettinger's remark was not threatening on its face.
- c. Ms. Bettinger's speech was uttered in a public place and in the context of a public protest involving contested political issues.
- d. The protesters responded to Ms. Bettinger's remark with hostility and aggression, not fear.

- e. At its heart, Ms. Bettinger's speech was itself political.
 - f. At worst, Ms. Bettinger was expressing disgust for a protest movement that flouted the law, crowded a public right of way without a permit, shut down traffic without notice and blocked law-abiding citizens from going about their way.
 - g. Thus, at worst, Ms. Bettinger's remark constituted political hyperbole protected by the Constitution. See *Watts v. United States*, 394 U.S. 705, 705-08, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969).
 - h. At best, her comment was an acknowledgment that the police, who were the target of the protest, still cared enough about the safety of the protesters to position a dump truck to block the road and protect the illegal protesters from harm (not necessarily from her).
158. Bryant knew that Ms. Bettinger disagreed with her political position to defund the police.
159. Bryant sought to retaliate against Ms. Bettinger for her political views by creating a social media firestorm with false facts and

unfounded opinions, enlisting other students and University officials in her (Bryant's) false claims of racism and invoking processes within the University to punish Ms. Bettinger, suppress her speech and expel her from the University.

160. The University, by and through the Dean of Students, the UJC, the JRB and EOCR, facilitated, allowed and perpetuated the retaliation against Ms. Bettinger for her unpopular political expression.

161. The University, by and through the JRB and the President, upheld the retaliation against Ms. Bettinger for her unpopular but constitutionally protected political expression.

162. The retaliatory actions by the Defendants adversely affected Ms. Bettinger's constitutionally protected speech and materially degraded her ability to participate meaningfully in the educational programs and activities at the University.

162. Although Bryant initiated the process of retaliation through her social media postings and formal complaints with EOCR and UJC, the active and ongoing actions of the Defendants chilled her speech, adversely impacted her personal safety and

emotional/mental health, upheld her punishment and caused the long-term harm to her reputation.

COUNT II

DEPRIVATION OF FOURTEENTH AMENDMENT RIGHT OF DUE PROCESS IN VIOLATION OF 42 U.S.C. § 1983

163. Ms. Bettinger hereby incorporates by reference the allegations contained in Paragraphs 1 through 162 of this Complaint.
164. The Supreme Court has held that an appellate court considering First Amendment issues must “make an independent examination of the whole record” to ensure that “the judgment does not constitute a forbidden intrusion on the field of free expression.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 285 (1964) (quoting *Edwards v. South Carolina*, 372 U.S. 229, 232 (1963)); see also *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984).
165. The Fourth Circuit Court of Appeals has specifically held that this constitutional fact doctrine applies to true threat analysis. *United States v. Bly*, 510 F.3d 453, 457-58 (4th Cir. 2007).
166. Ms. Bettinger possessed a Constitutionally protected liberty

interest in her good name, reputation, honor, and integrity.

167. The Defendants have caused an unconstitutional conviction for misconduct to become a permanent part of Ms. Bettinger's academic record.
168. The permanent record of her disciplinary violation will interfere with her later opportunities for higher education and employment.
169. By failing to provide for a *de novo* review of the clearly erroneous judgment of the UJC, Ms. Bettinger's conviction and punishment were effectuated without a constitutionally sufficient process.
170. The Defendants imposed limitations on appeal that were unwarranted and inconsistent with due process of law
171. James E. Ryan, as the President of the University, the one named Defendant with both the power and responsibility to exercise discretionary judgment to correct the legal errors of his subordinates and to ensure discipline of students in compliance with the law, was negligent in the performance of his duties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Morgan Alyse Bettinger prays that the Court:

- a. Order the Defendants to expunge and destroy all records of her UJC trial, conviction and sanctions including her appeal and the denial thereof;
- b. Order the Defendants to issue a letter of apology to Ms. Bettinger for the harms perpetrated upon her by violating her rights to free speech as guaranteed by the Constitution of the United States
- c. Order the Defendants to revise the procedures and limitations of appellate review of UJC convictions to comply with constitutional due process standards
- d. Award compensatory damages in favor of Ms. Bettinger for harm to personal and professional reputation, pain and suffering and out-of-pocket expenses against the Defendants in an amount to be determined by the jury;
- e. Award Ms. Bettinger costs and attorneys' fees against the Defendants,
- f. Award Ms. Bettinger such other and further relief as this Court deems just and proper under the circumstances.

JURY TRIAL DEMANDED

Ms. Bettinger hereby demands trial by jury of all issues so triable.

