

At a Special Term of the Supreme Court of the State of New York held in and for the County of Jefferson at the Dulles State Office Building in the City of Watertown, New York on the 30th day of August, 2018

**STATE OF NEW YORK
SUPREME COURT COUNTY OF JEFFERSON**

HANCOCK ESTABROOK, LLP COUNSELORS AT LAW 1500 AXA TOWER I, 100 MADISON ST., SYRACUSE, NEW YORK 13202

In the Matter of the Petition of
JOHN DOE "1", JOHN DOE "2",
JOHN DOE "3", JOHN DOE "4",
JOHN DOE "5", JOHN DOE "6",
JOHN DOE "7", JOHN DOE "8",
JOHN DOE "9", and JOHN DOE "10",

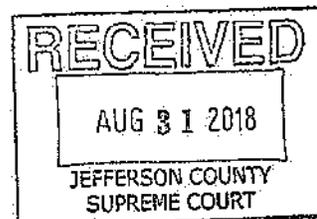
Petitioners,

v.

SYRACUSE UNIVERSITY,

Respondent.

Seeking a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules
Vacating and Annuling final determinations
rendered by Respondent on July 26, 2018.



ORDER
Index No.: 18-1865

A motion having been brought by Petitioners by Order to Show Cause submitted August 13, 2018, (the "First OTSC") seeking to vacate, annul and expunge any and all final determinations made on July 26, 2018, as a result of disciplinary proceedings by Respondent against Petitioners, and seeking: (1) a stay prohibiting Respondent from enforcing any disciplinary determinations against Petitioners pending the resolution of the action pursuant to CPLR § 7805; and (2) a Court order authorizing the Petitioners to proceed anonymously in this case, supported by a Verified Petition dated August 10, 2018, together with Exhibits "A" - "Z," and further,

HANCOCK ESTABROOK, LLP COUNSELORS AT LAW 1500 AXA TOWER 1, 100 MADISON ST., SYRACUSE, NEW YORK 13202

Respondent having cross-moved to dismiss the Verified Petition pursuant to CPLR § 3211 (a) (4) by Notice of Cross-Motion dated August 16, 2018, supported by the Affirmation of John G. Powers, Esq. dated August 16, 2018, with Exhibits "A" – "P"; and the Affidavit of Daniel French, dated August 16, 2018; and further,

Petitioners having submitted the Reply Affirmation of Karen G. Felter, Esq. dated August 20, 2018 with Exhibit "A" in opposition to Respondent's Cross-Motion to Dismiss and in further support of the First OTSC; and further,

The Court having scheduled a return date on the First OTSC for August 22, 2018, and having heard oral argument from the parties on that date, and the Court at that time having signed the First OTSC dated August 22, 2018, which: (1) granted Petitioners' request for a Court order authorizing them to proceed anonymously in this case; and (2) denied Petitioners' request for a Temporary Restraining Order staying all disciplinary actions pending a hearing for the reasons stated in the record of proceedings, which is attached hereto; and further,

The Court having also denied Respondent's Cross-Motion to dismiss the Verified Petition for the reasons stated in the record of proceedings; and further,

Petitioners having brought a motion to renew its prior application for a stay by Order to Show Cause submitted August 24, 2018 (the "Second OTSC"), prohibiting Respondent from enforcing any disciplinary determinations against Petitioners pending the resolution of the action pursuant to CPLR § 7805, supported by the Affirmation of Karen G. Felter, Esq. dated August 24, 2018, with Exhibits "A" – "G"; the Affidavit of John Doe #1 dated August 23, 2018; the Affirmation of John Doe #2 dated August 23, 2018; the Affidavit of John Doe #3; dated August 23, 2018; the Affidavit of John Doe #4 dated August 23, 2018; the Affidavit of John Doe #5 dated August 23, 2018; the Affidavit of John Doe #6 dated August 24, 2018; the Affidavit of

HAIRCOCK ESTABROOK, LLP. COUNSELORS AT LAW 1500 AXA TOWER I, 100 MADISON ST., SYRACUSE, NEW YORK 13202

John Doe #7 dated August 23, 2018; the Affidavit of John Doe #8 dated August 23, 2018; the Affidavit of John Doe #9 dated August 23, 2018; and the Affidavit of John Doe #10 dated August 23, 2018; and further,

This Court having subsequently signed the Second OTSC dated August 27, 2018, granting Petitioners' renewed request for a stay prohibiting Respondent from enforcing any disciplinary determinations against Petitioners pursuant to CPLR § 7805; and further,

Respondent having then brought a motion by Order to Show Cause submitted August 28, 2018 (the "Third OTSC"), for: (1) leave to appeal to the Appellate Division, Fourth Department, from the Second OTSC; and (2) leave to reargue the First OTSC, and reinstating the First OTSC, supported by the Affirmation of John G. Powers, Esq. dated August 27, 2018; and further,

Petitioners having submitted the Affirmation of Karen G. Felter, Esq. dated August 27, 2018; in opposition to the Third OTSC; and further,

The Court having scheduled a return date on the Third OTSC for August 30, 2018, and having heard oral argument from the parties on that date, and due deliberation having been had; it is hereby

ORDERED that Respondent's motion for: (1) leave to appeal to the Appellate Division, Fourth Department, from the Second OTSC signed August 27, 2018 is **GRANTED** pursuant to CPLR § 5701(c); and (2) leave to reargue the First OTSC is **DENIED**; and it is further

ORDERED that Respondent's Cross-Motion to dismiss the Petition pursuant to CPLR § 3211(a) (4) is **DENIED** for the reasons set forth in the transcript of proceedings from August 22, 2018 attached hereto.

Dated: August 31, 2018

ENTER:

James P. McClusky, J.S.C.

{H3413241.1}

ORDER	
	2018-00001865 08/31/2018 12:23 PM
Gizelle J Meeks, Jefferson County Clerk	Clerk: AP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF NEW YORK
SUPREME COURT : COUNTY OF JEFFERSON

In the Matter of the Petition of : RJI #22-18-0762
Index #2018-1865
JOHN DOE "1", JOHN DOE "2", :
JOHN DOE "3", JOHN DOE "4", :
JOHN DOE "5", JOHN DOE "6", :
JOHN DOE "7", JOHN DOE "8", :
JOHN DOE "9", and JOHN DOE "10", :
Petitioners, :
-vs- :
SYRACUSE UNIVERSITY, :
Respondent. : Motion and
Decision

Dulles State Office Building
317 Washington Street
Watertown, New York 13601
August 22, 2018

B E F O R E:

HON. JAMES P. McCLUSKY,
Supreme Court Justice

A P P E A R A N C E S:

SMITH, SOVIK, KENDRICK & SUGNET, PC
KAREN GUYDER FELTER, ESQ.
250 South Clinton Street, Suite 600
Syracuse, New York 13202
On behalf of the Petitioners
HANCOCK & ESTABROOK, LLP
JOHN G. POWERS, ESQ.
1500 AXA Tower 1, 100 Madison Street
Syracuse, New York 13202
On behalf of the Respondent

Carrie L. Sorensen, RMR
Senior Court Reporter

John Doe 1, et al vs. Syracuse University

2

1 THE COURT: The Court's considered all the papers
2 submitted to this date, which includes the verified
3 petition, the memorandum of law, affirmation of Attorney
4 Felter from August 20th, and the memorandum of law from
5 August 10th and the 20th, the notice of cross motion, the
6 affirmation of Attorney Powers from August 16th, Daniel
7 French August 16th, and the memorandum of law, together with
8 the oral arguments heard here today.

9 The Court will take the motion to dismiss first.
10 The motion to dismiss, the petition is denied. Respondent
11 must make prima facie showing of entitlement to summary
12 judgment, at this point they failed to do.

13 The courts do give wide latitude to the schools in
14 their disciplinary proceedings; however, they must follow
15 their own rules and enforce their rules. I believe the
16 Petitioners have raised a triable issue on this.

17 No doubt the actions of the Petitioners were --
18 said during questioning was rude, crude, and socially
19 unacceptable, the school does not have a rule about this,
20 nor do they have a rule that states you can't bring shame on
21 their school.

22 Arguably they -- Petitioner alleges the speech in
23 question was protected speech. At this point, the motion to
24 dismiss, the Court must assume the allegations in the
25 petition are true. The allegations are that words were

John Doe 1, et al vs. Syracuse University

3

1 spoken in skits are satire. They allege the University
2 officials investigating the incident confirmed that it was
3 satire and done in skits. They were directed at individuals
4 who did not feel harassed or threatened by the speech or by
5 the actions.

6 Later an individual, without permission,
7 broadcasted the skits to outside individuals, including the
8 school newspaper. Upon hearing the report of the skits and
9 seeing them, the people in the school community and beyond
10 were offended by the skits.

11 The school rules, as argued so far, I've seen --
12 the school rules limits speech on the basis of intent of the
13 speakers, not on the reactions those words caused.

14 The -- it was argued that the issue -- does the
15 punishment fit what I consider is -- is the punishment
16 reasonable considering the infraction, and I think as part
17 of that the Court does have to look at what the actions
18 were. If there was no violation and you punished them,
19 that's not reasonable -- arbitrary and capricious. And if
20 there was a punishment -- if they did violate it, then
21 that's -- Court will have to determine if it's arbitrary and
22 capricious for the suspensions handed down. I think there's
23 -- I mean, there's issues of fact that do have to come out
24 and may have to be fleshed out more.

25 The Respondent also argued that it should be heard

John Doe 1, et al vs. Syracuse University

4

1 in federal court. Three of the ten individuals cannot bring
2 an action in federal court. I'm not sure where that would
3 go, but I believe there is merit to having this tried in one
4 place. At this point, the Court will not dismiss on that
5 issue, but the Court will give each -- either side 30 days
6 to petition to transfer the federal action here or the state
7 action there -- or this action there. If there is an issue,
8 if they would hear it or not.

9 Petitioners also requested preliminary injunction,
10 they must show likelihood of ultimate success on the merits,
11 irreparable injury, and balancing of the equities. And --
12 or they must show each of those individually and separately.

13 And the Court finds that in irreparable injury,
14 they did not show any irreparable injury. Melvin v. Union
15 College has held a suspension from college for one or two
16 semesters is an irreparable harm. However, as that Court
17 said in that case, the Appellant had shown that, without an
18 injunction to preserve the status quo, the suspension for
19 two semesters will cause her irreparable injury for which
20 monetary compensation is not adequate.

21 I think implicit in that is an actual allegation
22 from the individuals harmed -- what harm they are having and
23 will suffer. And at this point, we don't have any of that.
24 We don't have what each individual is doing. There's been
25 some allegation that four of them are going to be attending

John Doe 1, et al vs. Syracuse University

5

1 another university or college, so based on that the Court
2 will deny that part of the preliminary injunction.

3 Court is also asked to allow the students to
4 proceed as John Does. Customarily, and -- there is
5 presumption in openness of judicial proceedings, but both
6 the federal and the state legislature has ruled that school
7 disciplinary proceedings are protected from disclosure. So
8 the legislature is telling the courts that this is a special
9 situation where we should take into account the children --
10 the students' rights.

11 During the disciplinary proceeding, the school is
12 prohibited from disclosing any personal information about
13 the students. Here it is alleged that they are incorrectly
14 punished -- the school incorrectly punished the students for
15 the actions. To enforce their rights, they are forced to
16 bring an action in court which then the school is
17 allowing -- arguing that they should be allowed to publish
18 their names now.

19 If this Court finds that the school was incorrect,
20 it should not have done what they did, the protection the
21 legislature gave these students is gone. So under these
22 circumstances, the Court will allow the students to proceed
23 as anonymously as John Does, but has indicated the attorneys
24 should exchange a list of who John Doe 1 through John Doe 10
25 are so each individual knows these students' names -- each

John Doe 1, et al vs. Syracuse University

6

1 -- that each party here know their names of the students,
2 they just don't know which one is which. So there's no harm
3 in providing the names of the student -- that the school
4 alleging which one is John Doe 1 and John Doe 3, et cetera.

5 The proceedings will still otherwise be open to the
6 public and the Court finds that the public right to know
7 will be satisfied in that way as to how the proceeding is
8 going.

9 For the next step and return date, what are the
10 parties looking for?

11 MS. FELTER: I'm sorry, I missed the last --

12 THE COURT: What are the parties looking for
13 the next date?

14 MR. POWERS: Return date.

15 MS. FELTER: Well, I guess we have to take into
16 account the fact that the Court has directed us to switch --

17 THE COURT: Consider if either party wants to move
18 to consolidate the two actions in one court, it would be
19 30 days to decide that.

20 MS. FELTER: Right.

21 THE COURT: Obviously if you're doing that, it's
22 going to take longer than 30 days, I would imagine.

23 MS. FELTER: Yes. So, I mean, given the, you know,
24 the urgency of the matter and the fact that the students are
25 trying to get this resolved as soon as possible, I think the

John Doe 1, et al vs. Syracuse University

7

1 inclination would be to try to consolidate the state law
2 claims with this action here as additional causes of action,
3 separate and apart from the administrative review.

4 THE COURT: I won't make either party decide today.
5 I understand they have to talk to other people, clients, and
6 everything.

7 MS. FELTER: But I mean, assuming that that's what
8 we do, you know, we would have to -- we would make the
9 arrangements with the Court and then we'd like to get back
10 before your Honor as soon as possible to address the factual
11 issue that you raised regarding the irreparable harm, if
12 necessary, again, and any other issues on the merits to
13 resolve this.

14 MR. POWERS: I think, your Honor, correct me if I'm
15 wrong, I think what you were referring to was a return date
16 for the actual Article 78 itself?

17 THE COURT: Correct.

18 MR. POWERS: For decision and hearing on the
19 merits?

20 THE COURT: Right; if one is needed.

21 MR. POWERS: Yeah. And so --

22 MS. FELTER: The record is really big -- the
23 administrative record, which we don't have at this point. I
24 know it's quite extensive, so we have to get the record, we
25 have to breach to make arguments based on that.

John Doe 1, et al vs. Syracuse University

8

1 THE COURT: If we schedule a telephone conference
2 for September 19th, will that --

3 MS. FELTER: Yeah, that's fine.

4 MR. POWERS: We'll set the date on that day, your
5 Honor, for the --

6 THE COURT: Right. We can see where we're at,
7 hopefully the record is completed by then so we can proceed.
8 How's 9:00 o'clock on the 19th?

9 MS. FELTER: That a telephone --

10 THE COURT: It would be a telephone conference.
11 We'll do it as a call-in conference, Court will send out
12 directions on how to call in.

13 MR. POWERS: That works for me, your Honor.

14 THE COURT: Mr. Powers, if you could get a copy of
15 the transcript of the Court's decision --

16 MR. POWERS: Submit an order.

17 THE COURT: -- submit an order based on that.

18 MR. POWERS: I'll send it to Karen in advance.

19 THE COURT: Anything further?

20 MS. FELTER: No, your Honor, thank you.

21 MR. POWERS: Thank you, your Honor.

22 THE COURT: We are adjourned.

23 (Proceedings concluded.)

24

25

-oOo-

John Doe 1, et al vs. Syracuse University

9

1
2
3
4
5
6
7
8
9
10
11
12
13
15
16
17
18
19
20
21
22
23
24
25

I, CARRIE L. SORENSEN, Senior Court Reporter for
for the Fifth Judicial District, certify that I attended and
reported the above-entitled proceedings; that the foregoing
is a true, accurate and correct transcript of the
proceedings had therein, to the best of my knowledge and
ability.



Carrie L. Sorensen, RMR
Senior Court Reporter

DATED: 8/28/2018