

SUPREME COURT OF ARKANSAS

Philip Palade, Gregory Borse, and J. Thomas Sullivan, on Behalf of Themselves and All Others Similarly Situated v. Board of Trustees of the University of Arkansas System; Ed Fryar, Ph.D., in His Official Capacity as Trustee; Steve Cox, in His Official Capacity as Trustee; Tommy Boyer, in His Official Capacity as Trustee; Sheffield Nelson, in His Official Capacity as Trustee; C.C. Gibson, in His Official Capacity as Trustee; Stephen Broughton, M.D., in His Official Capacity as Trustee; Kelly Eichler, in Her Official Capacity as Trustee; Morril Harriman, in His Official Capacity as Trustee; Mark Waldrip, in His Official Capacity as Trustee; and John Goodson, in His Official Capacity as Trustee

Philip Palade, Gregory Borse, and J. Thomas Sullivan, on Behalf of Themselves and All Others Similarly Situated v. Board of Trustees of the University of Arkansas System, 2022 Ark. 119 (2022) · No. CV-21-624 · Decided June 2, 2022

SUMMARY

The Supreme Court of Arkansas affirmed dismissal without prejudice of tenured faculty members' claims challenging revisions to the University of Arkansas System's faculty tenure and termination policy. The court held that the appellants lacked a present, actual, and justiciable controversy because their alleged contractual and free-speech injuries were speculative and they did not allege threatened enforcement or specific conduct affected by the revised policy. The court did not reach the Board's alternative collateral-estoppel argument, while concurring opinions addressed sovereign immunity and potential recourse before the Arkansas Claims Commission.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Courtney Rae Hudson, Associate Justice
JURISDICTION	Arkansas
DECIDED	June 2, 2022
DOCKET	CV-21-624

DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting judgment on the pleadings and dismissing without prejudice a declaratory-judgment class action for lack of standing and because the claims were unripe and nonjusticiable.
STANDARD OF REVIEW	A grant of judgment on the pleadings is reviewed for abuse of discretion, with the facts alleged in the complaint viewed as true and in the light most favorable to the party seeking relief. Issues of law, including standing and justiciability, are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Arkansas
PARTIES	Philip Palade, Gregory Borse, J. Thomas Sullivan, on behalf of themselves and all others similarly situated v. Board of Trustees of the University of Arkansas System, Ed Fryar, Ph.D., in his official capacity as trustee, Steve Cox, in his official capacity as trustee, Tommy Boyer, in his official capacity as trustee, Sheffield Nelson, in his official capacity as trustee, C.C. Gibson, in his official capacity as trustee, Stephen Broughton, M.D., in his official capacity as trustee, Kelly Eichler, in her official capacity as trustee, Morril Harriman, in his official capacity as trustee, Mark Waldrip, in his official capacity as trustee, John Goodson, in his official capacity as trustee

TOPICS

standing ripeness motion for judgment on the pleadings constitutional law contracts

PRACTICE AREAS

constitutional law contracts civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the appellants had standing and presented a justiciable controversy sufficient to obtain declaratory relief concerning the revised tenure policy.
2. Whether the appellants' contract claims were ripe when they alleged only that the revised policy might be applied in the future to unspecified conduct.
3. Whether the appellants' Arkansas constitutional free-communication claim was justiciable based on alleged chilling effects without identifying restricted speech, threatened enforcement, or disciplinary action.
4. Whether the Supreme Court should reach the Board's alternative collateral-estoppel argument.

HOLDINGS

1. The appellants' contract claims were nonjusticiable because the alleged injury depended on uncertain, hypothetical, and speculative future enforcement of the revised policy; they therefore failed to establish the present actual controversy and ripeness required for declaratory relief.
2. The appellants' free-communication claim was nonjusticiable because generalized allegations of a chilling effect, without identifying speech they had refrained from making, protected speech prohibited by the policy, or threatened enforcement, did not establish an actual, present controversy or injury in fact.
3. The court declined to address collateral estoppel because it affirmed on the same standing and justiciability grounds relied on by the circuit court.

KEY QUOTATIONS

“It does not undertake to decide the legal effect of laws upon a state of facts which is future, contingent or uncertain.” (at 7)

“Appellants have made only vague, speculative, and hypothetical allegations with regard to how their constitutional rights have been violated by the Revised Policy, and they have failed to plead facts sufficient to establish an actual, present controversy.” (at 11)

FACTUAL BACKGROUND

The appellants were tenured faculty members of the University of Arkansas System. In 2018, the Board revised Policy 405.1, which governs faculty promotion, tenure, annual reviews, and termination for cause, adding broader and more detailed grounds for discipline or dismissal. The appellants alleged that the revisions unilaterally impaired their contractual tenure rights and chilled constitutionally protected academic speech, but they did not allege that they had engaged in conduct subject to discipline under the revised policy, intended to engage in such conduct, or had been threatened with discipline or termination.

PROCEDURAL HISTORY

The plaintiffs first filed federal claims concerning the University's revised tenure policy in the Eastern District of Arkansas. The federal court dismissed the state-law claims on Eleventh Amendment grounds and the federal claims as unripe and nonjusticiable; the Eighth Circuit summarily affirmed, and the Supreme Court denied certiorari. Plaintiffs then filed substantially similar state-law claims in Pulaski County Circuit Court, which granted the Board's motion for judgment on the pleadings and dismissed without prejudice. The Arkansas Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Monsanto Co. v. Ark. State Plant Bd., 2021 Ark. 103, 622 S.W.3d 166
- Baptist Health Sys. v. Rutledge, 2016 Ark. 121, 488 S.W.3d 507

- Nelson v. Ark. Rural Med. Practice Loan & Scholarship Bd., 2011 Ark. 491, 385 S.W.3d 762
- Palade v. Bd. of Trustees of the Univ. of Ark., No. 4:19CV379-JM (E.D. Ark. Mar. 16, 2020)
- Palade v. Bd. of Trustees of the Univ. of Ark., 830 Fed. Appx. 171 (8th Cir. 2020)
- Jegley v. Picado, 349 Ark. 600, 80 S.W.3d 332 (2002)
- Maytag Corp. v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., 687 F.3d 1076 (8th Cir. 2012)
- Advantage Media, LLC v. City of Eden Prairie, 456 F.3d 793 (8th Cir. 2006)
- Get Outdoors II, LLC v. City of San Diego, 506 F.3d 886 (9th Cir. 2007)
- Thurston v. League of Women Voters of Ark., 2022 Ark. 32, 639 S.W.3d 319
- Arkansas Tech University v. Link, 341 Ark. 495, 17 S.W.3d 809 (2000)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/arkansas-supreme-court-of-arkansas/2022/philip-palade-gregory-borse-and-j-thomas-sullivan-on-behalf-1tzj3a1w>