IN THE STUDENT SUPREME COURT
IN AND FOR THE FLORIDA STATE UNIVERSITY

JACK D. DENTON

Plaintiff,

v. Case No. 2020-CA-1

AHMAD O. DARALDIK, President, Student Body Senate,

Defendant.

_____/

*Ducey, CJ. and Ohl, J. delivered the opinion of the Court.*

**SYLLABUS**

This action was brought before this Court in a complaint filed by Jack D. Denton ("Plaintiff"), former duly elected President of the Student Body Senate ("Senate"), who had been removed from his position by the Senate Body in a vote of no-confidence, held in response to his private statements expressing his sincerely held religious beliefs. Plaintiff submitted a complaint against Ahmad O. Daraldik, in his official capacity as Senate President Pro-Tempore and the presiding officer over the no-confidence vote ("Defendant"), seeking declaratory judgment that his removal was improper under the Florida State University Student Body Constitution ("FSU SBC") and Student Body Statutes ("SBS") and constituted a violation of his rights under the Freedom of Speech and Free Exercise clauses of the First Amendment to the United States Constitution, and a writ of mandamus ordering Plaintiff's reinstatement as President of the Student Body Senate.

**ISSUES**

The issues presented in this case require this Court to determine whether Defendant, acting in his capacity as Senate President Pro-Tempore and presiding officer over the Senate's vote of no-confidence against Plaintiff, can be found responsible for the Senate's alleged violation of the Student Government Association's ("SGA") Ethics Code and Anti-Discrimination Policy defined in SBS § 205 and 206; whether the vote of no-confidence held by the Florida State University Student Body Senate against Plaintiff, resulting in his removal from his position as Senate President, was conducted in violation of Plaintiff's rights under the First Amendment of the United States Constitution; and whether Plaintiff is entitled to the relief he seeks from this Court.

**HOLDING**

This Court answers each of the foregoing questions in the affirmative and enters judgment in favor of Plaintiff.

## FACTUAL AND PROCEDURAL HISTORY

The relevant facts of the case are undisputed as the contents of the meeting in which the events underlying this controversy took place are contained in publicly-available video recordings.[1] Plaintiff is a student at Florida State University and a member of FSU's Student Government Association ("SGA"). Prior to June 5, 2020, Plaintiff served as President of the SGA Student Senate. Plaintiff is also a member of the Catholic Church and shares his faith with fellow students as a member of FSU's Catholic Student Union ("CSU"). Students in CSU shared a GroupMe message thread created by members of the organization.

On June 3, 2020, members of the CSU group chat discussed issues of police brutality and civil rights and their reactions to events occurring around the Unites States at the time. One student shared a list of organizations purported to raise funds to combat the aforementioned issues. Plaintiff responded to the message, stating, ""[t]he various funds on that list are fine causes as far as I know, but everyone should be aware that BlackLivesMatter.com, Reclaim the Block, and the ACLU all advocate for things that are explicitly anti-Catholic." When students in the CSU group chat inquired further as to what he meant, Plaintiff responded:

> BlackLivesMatter.com fosters "a queer-affirming network" and defends transgenderism. The ACLU defends laws protecting abortion facilities and sued states that restrict access to abortion. Reclaim the Block claims less police will make our communities safer and advocates for cutting PDs' budgets. This is a little less explicit, but I think it's contrary to the Church's teaching on the common good. I don't mean to anger anyone – I know this is a very emotional topic. However, it is important to know what you're supporting when you're Catholic. If I stay silent while my brothers and sisters may be supporting an organization that promotes grave evils, I have sinned through my silence. I love you all, and I want us all to be aware of the truth. As far as it's a religious issue or not, there isn't an aspect of our lives that isn't religious, because God wants our whole lives and everything we do to be oriented around him!<3.

Within hours, students had taken screenshots of the conversation, shared them with others, and posted them to

[1] Pertinent to this case, links to all video recordings referenced are located in the June 3, 2020, June 5, 2020 and September, 23, 2020 meeting minutes of the 72nd Student Senate, available at SGA website: https://sga.fsu.edu/senate-documents.shtml

social media. Later that same day, the Senate held a meeting via Zoom. During the meeting, one Senator introduced screenshots of these messages from the private group chat, of which she was not a member, and moved for the Senate to hold a vote of no-confidence against Plaintiff in his position as Senate President. Pursuant to Senate Rule of Procedure 1.8, Defendant, as Senate President Pro-Tempore, became the presiding officer over the body. To support removal of Plaintiff, one Senator argued, "Although we are granted freedom of speech, when you are in a public office you are public property. And that means you must say things that won't necessarily offend other people." Another Senator echoed this statement, claiming:

> Everyone is entitled to have their own opinion, and while I totally agree with that, I also think that we should remember that we live and die by our choices. And, to say your opinion, to say your belief, in such a public setting, with such strong wording as 'grave evils' … you also should be held responsible for those choices.

Although the vote ultimately failed, the messages expressed by Plaintiff quickly became the subject of public discussion, as word spread of the Senate's inability to succeed in its first no-confidence vote. In response, a public petition, calling for Plaintiff's removal, was started.

Over the next two days, the petition garnered over 7,000 signatures. Senators called for a special session in response to the public outcry to initiate a second vote of no confidence against Plaintiff. On June 5, 2020, the Senate convened a special session, and another vote of no confidence was held. Again, Defendant assumed his role as presiding officer of the Senate. This second vote of no confidence resulted in a final vote of 38-3, well over the two-thirds threshold, and Plaintiff was no longer Senate President.

Student Senators stated they were voting to remove Plaintiff from his position as Senate President because, had they not, they would be "effectively enabling bigotry," and because his views were "abhorrent." Another Senator stated, "Despite his First Amendment Right to free speech… what he said was demeaning and hurtful to many members of our Student Body… [The Student Body's] response shows how they felt and I … can't disappoint them twice [by voting to keep Plaintiff in his position again]."

On June 18, 2020, Plaintiff filed an original jurisdiction complaint with this Court, alleging that the vote of no-confidence, resulting in his removal as Senate President, violated his rights under the First Amendment, SBS §206.1 of the University's Anti-Discrimination policy, and SBS § 205.3(F) of the SGA Ethics Code, and thus was beyond the scope of authority vested in the Student

Senate by the Student Body Constitution. On October 19, 2020, this court heard arguments from each of the parties.

This Court has original jurisdiction over Plaintiffs claims pursuant to Article IV § 3 of the Student Body Constitution, which grants this Court jurisdiction over cases and controversies involving questions of the constitutionality of actions by student governing groups, organizations and their representatives, as well as jurisdiction over violations of the Student Body Constitution and Statutes. FSU Const. art. IV § 4. Further, this Court is the proper forum to decide cases and controversies involving student conduct.

**OPINION**

Plaintiff brings claims under provisions of the Florida State University Anti-Discrimination policy and the Student Government Association Ethics Code, defined in sections 205 and 206 of the Student Body Statutes, respectively. SBS §§ 205, 206. Section §206.1 describes the standards of conduct to be held by SGA officers and employees. It provides:

> "No Student Government Association officer, employee, branch, agency, affiliated project, recognized student organization, or any entity which receives any Student Government Association funding will practice discrimination … Discrimination will be defined as the denial of due process or the infringement of the substantive rights of any student guaranteed by the Florida State University Student Government Association Constitution and Statutes, or organization bylaws, University Rights and Responsibilities, and State and Federal Constitutions." SBS §206.1.

The SGA Ethics Code in §205.3(F)(1) further states, "No officer or employee will practice any discrimination as defined in the Student Government Association Anti-Discrimination Policy. No officer or employee will deny any student rights guaranteed by the Federal and State Constitution, or the Florida State University Student Body Constitution and Statutes." SBS § 206.1. And Senate Rule of Procedure 1.10 strictly forbids motions of no-confidence "that would result in violations of the [SGA] Conduct Code". SRP 1.10.

Because the rights guaranteed by the United States Constitution are incorporated into FSU's own body of laws, the essential question for this Court is whether a violation of Plaintiffs Constitutional rights has taken place. We hold that it has.

I.

Plaintiff's Constitutional claims assert violations under the Freedom of Speech and Free Exercise Clauses of the First Amendment. Plaintiff contends that his removal as Senate President was improper because the vote of no-confidence was based on unconstitutional

retaliation for his private statements in the Catholic Student Union group chat, expressing his religious beliefs, and thus was in violation of his First Amendment rights to Freedom of Speech and Expression.

The First Amendment 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." U.S. Const. amend. I.

Prior to even applying some form of Constitutional scrutiny, a number of threshold issues must first be settled. The initial steps in any First Amendment analysis require us to determine the identity of the actors involved and whether the proper party has been named as Defendant in this action. Next we will address Plaintiffs claim under the First Amendment to determine whether a Constitutional violation has occurred.

A.

The first element Plaintiff must show to succeed on his First Amendment claim is that the alleged infringement of his Constitutional rights is fairly attributable to action taken by the State. *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982). The Fourteenth Amendment's Equal Protection only inhibits acts fairly attributable to the states, a principle "firmly embedded" in constitutional theory. *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948). Thus the question of whether an individual even has a First Amendment right to assert depends on whether there has been state action. We conclude that there has.

As a general matter, when the Student Government acts, it does so under the color of state law. *Ala. Student Party*, 867 F.2d at 1345. In recent decisions, Courts have simply assumed Student Government Association officer's to be "state actor's subject to the same constitutional restrictions as the University itself," with little to no further discussion. *See Id*. at 1349.

In this case, the Student Government Association at Florida State University, as well as at all other public universities in Florida, was created by statute as "a part of the university at which it is established." *See* Fla. Stat. § 1004.26(1). In the limited context within Florida State's University structure, the Senate is a governing body under the Legislative Branch of the Student Government Association. *See* FSU Const. art. II. The confluence of issues that arise in a federal action and the ones which arise under this Court's jurisdiction are not crucial to our determination in this case. Because the elements of a Constitutional claim are the same under federal law and the laws of our institution, the controlling factor is that the Senate Body is a creation of the Student

Government Association, which is a creation of Florida Statute and thus acts only under the authority granted to it by the State of Florida.

The Student Senate, therefore, constitutes a state actor and is prohibited from infringing upon any right guaranteed to students at the Florida State University by the United States Constitution or from denying to any student equal protection thereof.

B.

For Plaintiff's claim to succeed, he must have named the proper party as Defendant in this action. Defendant Ahmad O. Daraldik currently holds the position of Senate President, as Plaintiff's replacement. At the time of Plaintiff's removal, Defendant was the Senate President Pro-Tempore and assumed the position of presiding officer over each of the votes of no-confidence against him. Plaintiff argues that, in his role as the President Pro-Tempore and presiding officer over the vote, Defendant exercised power over the actions of the Senate Body, including the vote, and failed in his statutory duty to ensure that University policies, as well as federal laws, were followed, even after claims of Constitutional violations were brought to his attention. Thus, Plaintiff asserts that Defendant can be held responsible for an act by the Senate as a whole that results in a violation of Constitutional rights. We agree, however, we feel it important to provide the distinction that must be made between the circumstances in which a Student Body officer may be held responsible for the acts of the organization as a whole, and when an action must be brought against the individuals responsible for the specific act which caused the violation.

1.

First, Plaintiff's allegations state that, "[t]he *Senate's* decision to remove [him]…" was, "…beyond the scope of its own authority" because the Senate "…acted in breach of its own rules". (*emphasis added*). University official sued in their official capacity are accountable for university actions. See *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Likewise, Student Government Officials sued in their official capacity are accountable for Student Government actions.

Insofar as this claim concerns the "constitutionality of actions by student governing groups, organizations and their representatives," this is essentially an action against the Senate as a whole. FSU Const. Art IV § 3(C)(1). The relief Plaintiff requests, a writ of mandamus, is a petition to a court asking it to order a government officer to perform a duty. *Marbury v. Madison*, 5 U.S. 137, 169 (1803). As Defendant serves as Senate President currently, he is the properly named representative of the Student Senate in the complaint, as any writ issued by this Court in response would be directed to

the SGA officer charged with giving it effect. In this case, that is Defendant Daraldik, in his official capacity as Senate President.

However, there is a distinction to be made as to when an SGA officer is a properly named Defendant procedurally, and when such officer may be found responsible for a violation by the organization which he represents. A finding of unconstitutional action by the Senate does not, by itself, establish responsibility for such action on behalf of the Senate's presiding officer. To be found in violation of a provision of the University's Ethics Code, Anti-Discrimination Policy, or other provisions of the Student Body Statutes and Constitution for the act of an organization as a whole, we hold that the alleged violation must be properly attributable to action by the presiding officer or representative.

What this means is that the SGA officer or representative must have exercised obvious and substantial control over the meeting or event in which the violation occurred and, during that same meeting or event, must have been put on notice of the alleged violation and failed to investigate the claim. The first requirement is measured by an objective standard and requires an evaluation of whether it would be obvious to a reasonable person participating in the meeting or event that the officer or representative was exercising substantial control over the substance of the meeting. The second requirement is also an objective standard, measured by what it would take a reasonable person to be made aware that a violation has occurred and requires that the officer investigate, to a reasonable degree, the merit of the allegation. However, this does not require the officer to find that the violation in question did, in fact, occur. It is expected only that he acknowledges the claim and makes a good faith determination as to its validity.

2.

We now turn to the facts in the present case.

Senate Rules of Procedure outline the process through which an SGA officer can be removed by vote of no-confidence. SRP 1.8. Rule 1.8 describes the duty of the Senate President Pro-Tempore to assume the chair as the presiding officer over the vote. In relevant part, Rule 1.8 provides, "At no time shall the presiding officer allow any debate that involves personal attacks or slander against the Senate President, although pertinent debate related to character and suitability for office shall be permitted." *Id*. Rule 1.10 further states that motions of no-confidence "may not be abused for purposes that would result in violations of the Senate Conduct Code." SRP 1.10 The Senate Conduct Code, like the SGA Ethics

Code, contains an Anti-Discrimination provision[2].

As the presiding officer, Defendant exercised obvious and substantial control over the June 5th meeting in which the vote of no-confidence, removing Plaintiff, took place. When the motion was made, Defendant took over the reins. In his new role, Defendant had considerable authority over the Senate Body.

It was within the sole authority of the officer presiding over the Senates June 5th vote of no-confidence to allow the motion to proceed. SRP 1.8. Any Senator wishing to speak at the meeting was required to raise their hand and wait to be recognized by the presiding officer. *See* SRP 11.4. Only then, would the Senator be allowed to speak on the Senate floor. SRP 11.5. The presiding officer then oversees the Senate's debate on the vote, ensuring that it comports with the Senate's rules governing debate structure. SRP 11. At the conclusion of the debate, it is the authority of the presiding officer, and his authority alone, to declare the vote. SRP 11.11.

At the June 5th meeting, no Senator was permitted to speak without the Defendant's permission. When debates took place, Defendant kept the time of each round and, when the clock expired, swiftly interjected the debate to mute the recognized Senator and move forward with the next round. When motions were made by Senators, it was Defendant who heard and accepted them or, in the alternative, rejected them for lack of merit, a determination also made solely by the officer presiding over the meeting. And, at the conclusion of the meeting, it was Defendant who called the final vote of no-confidence which removed Plaintiff from his position. We hold that, to any reasonable observer of the June 5, 2020 Senate meeting, Defendant was in obvious and substantial control of the no-confidence vote.

As for the second requirement, Defendant was, in this Court's opinion, without a doubt, put on notice of the alleged Constitutional violation and as such, failed to properly investigate the claim. During each of the votes of no-confidence levied by the Senate against him, Plaintiff himself, as well as other Senators, opined on the implications of this vote on his First Amendment Rights.

In response to some of the Senators' comments, Plaintiff expressed regret that his statements had upset his peers but asked that his fellow Senators respect his rights under the United States Constitution:

> I respect that not everyone in America agrees with the Catholic Churches teachings, and that is fine. We live in a country

[2] "Each member shall conduct him or herself at all times in a manner that promotes a professional environment in the Senate, free from discrimination." SRP 12.10

> that values freedom of expression and the sharing of beliefs. It protects our right to protest, conduct public demonstrations, and freely practice religion. Finally, I think it is important to recall the words written in our United Sates Constitution…the First Amendment protects against freedom of religion, speech, and freedom to associate. Each of us took an oath to defend the Constitution when we took our positions, and I appeal to each of you Senators to reflect on the significance of these rights, especially religious freedoms.

In response, one Senator countered, "Despite his First Amendment Right to free speech… what he said was demeaning and hurtful to many members of our Student Body… [The Student Body's] response shows how they felt and I … can't disappoint them twice [by voting to keep Plaintiff] in his position again." And, if that was not enough, the Senator who initiated the vote of no-confidence in both meetings, gave a final rallying call to her fellow Student Senators as she concluded her closing statements: "Freedom of speech should not come at the expense of anyone's … comfortability."

These statements provide multiple examples of moments in which Defendant should have seen red flags. Not only did Plaintiff recite the freedoms of the United States Constitution, he pleaded with his fellow Senators to respect them. In return, he was squarely rejected. What was declared in that moment by the Student Senate, was the belief that the Student Government Association at Florida State University, with its robust network of student advocates and their vast knowledge of public policy and the ever-changing mores of society, possesses such authority as to decide in which cases the United States Constitution is to apply, and in which cases it is not. Unfortunately, for Plaintiff Jack Denton, his case was one in which the Senate felt these rights did not apply.

Defendant argues that, if a Constitutional violation took place, he was unaware. We find this argument difficult to entertain, and impossible to uphold, namely, because of the Defendant's own admission at the hearing that he was uncomfortable with the first motion that was brought, based on discussions during the June 3rd vote of no-confidence against Plaintiff, and felt that it might have been improper. Despite his fear, Defendant did nothing to investigate the issue during the time between the Senate's failed first vote and the successful one days later. During both meetings, a number of Senators from either side of the vote raised Constitutional concerns. Plaintiff stated, in ways which could be made no clearer, that the vote was in violation of his rights. This is notice, and this notice is more than reasonable.

We hold that Defendant, in his role as President Pro-Tempore and presiding officer over the June 5th vote of no-confidence against Plaintiff, may be held responsible for an act by the Senate during this meeting, that resulted in a violation of Constitutional rights.

C.

This brings our discussion to the issues central to the Parties' case. Plaintiff's Constitutional claims assert violations under the Freedom of Speech and Free Exercise Clauses of the First Amendment. Plaintiff contends that his removal as Senate President was improper because the vote of no-confidence was based on unconstitutional retaliation for his private statements in the Catholic Student Union group chat, expressing his religious beliefs, and thus was in violation of his First Amendment rights to Freedom of Speech and Expression. We agree.

1.

The First Amendment 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." U.S. Const. amend. 1.

To bring a valid claim for retaliation in violation of First Amendment rights, plaintiff must establish that: (1) he engaged in constitutionally protected activity; (2) he suffered an adverse action by the defendant that would likely deter the exercise of such activity; and (3) the Defendants' retaliatory actions were because of his constitutionally protected activity. *Bennett v. Hendrix* 423 f.3d 1247, 1250 (11th Cir.); *Castle v. Appalachian Tech. Coll.*, 631 F.3d 1194, 1197 (11th Cir. 2011). In the present case, these elements are clearly met by a preponderance of the evidence.

Religion, as well as religious speech, is constitutionally protected. Religious objections to gay marriage are protected views and, in some instances, protected forms of expression. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S.Ct. 1719, 1727 (2018). As the Supreme Court held in *Obergefell v. Hodges* (2015), "[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths." 135 S.Ct. 2584, 2607 (2015). And further, a State may not apply a stricter standard to the speech of its public officials than to private citizens without violating the First Amendment of the United States Constitution. *Bond v. Floyd,* 385 U.S. 116, 132-33 (1966). The central commitment of the First Amendment, stated by the Court in *New York Times v. Sullivan*, is that "debate on public issues should be uninhibited,

robust, and wide-open." 376 U.S. 254, 270 (1964).

The second requirement for a claim of First Amendment retaliation is met by showing that the Defendant's action caused an injury that would likely chill a person of "ordinary firmness" from continuing to engage in that activity. *Castle*, 631 F.3d at 1197. And, "disqualifying otherwise eligible recipients from a public benefit solely because of their religious character imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny." *Espinoza v. Mont. Dep't of Revenue*, 140 S.Ct. 2246, 2255 (2020) (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S.Ct. 2012, 2021 (2017)).

The third element of Plaintiff's claim requires this Court to determine whether Plaintiff's disqualification from his position was based solely on his religious character and religious expression. In order to establish a causal connection, it must be shown that Defendant was subjectively motivated to take adverse action against Plaintiff because of his engagement in the protected activity. *Smith v. Mosley*, 532 F.3d 1270, 1278 (11th Cir. 2008). However, once it is shown that Plaintiff's protected conduct was a motivating factor, the burden shifts to the Defendant to prove that he would have taken the same action in the absence of the protected conduct. In such a case, the Defendant cannot be held liable. *Id*. (citing *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977).

"When the government fails to act neutrally toward the free exercise of religion, it tends to run into trouble. Then the government can prevail only if it satisfies strict scrutiny, showing that its restrictions on religion both serve a compelling interest and are narrowly tailored." *Masterpiece*, 138 S.Ct. at 1734 (Gorsuch, concurring). The Court has read an antidiscrimination principle into the First Amendment through its recognition that freedom of speech requires not only that individuals can speak, but that they can do so in a public arena that is free from governmental manipulation and control. See, *Cohen v California,* 403 US 15, 24-25 (1971) (arguing that the "constitutional right of free expression … is designed and intended to remove governmental restraints from the arena of public discussion"). A restriction will be held unconstitutional if it is an effort to suppress expression merely because public officials oppose the speaker's view. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 103 (1983).

In *Bond v. Floyd*, the Supreme Court held that the Georgia General Assembly could not refuse to seat a duly elected Representative of the Georgia House because of his support of a statement strongly critical of the Vietnam War and the draft. *Bond*, 385 U.S. at 137. A petition was filed for the Representatives

removal, stating that his declarations were "repugnant to and inconsistent with the mandatory oath prescribed by the Constitution of Georgia." *Id*. at 123. Ultimately, the Court concluded that Representative's statements were advocacy of ideas protected by the First Amendment. *Id*. at 134 (citing *Woods v. Georgia*, 370 U.S. 375, 382 (1962)). The action taken by the General Assembly in *Bond* to remove the duly elected Representative was a First Amendment violation because the "State may constitutionally require from its legislators an oath to support the Constitution … [b]ut the oath gives [the State] no interest in limiting its legislators' capacity to discuss their views of local or national policy." *Id*. at 135. The *Bond* Court also found it important to point out that the purpose of the First Amendment in a representative government guarantees policy makers "the widest latitude to express their views on issues of policy." Id. at 135-36.

The government "cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices. *Masterpiece*, 138 S.Ct. at 1731. Similarly, the First Amendment protects against "indirect coercion or penalties on the free exercise of religion, not just against prohibitions." *Trinity*, 137 S.Ct. at 2022 (quoting *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988)). In *Masterpiece*, the Colorado Civil Rights Commission determined a bakery violated a state anti-discrimination policy by refusing to make a wedding cake because of his religious opposition to same-sex marriages. *Masterpiece*, 138 S.Ct. at 1723. When the Supreme Court granted certiorari of this decision, the Court ultimately held that the store owner was acting in his sincere religious beliefs and that the commissions actions were not consistent with the Free Exercise Clause. *Id*. at 1732. In *Trinity*, the Supreme Court ruled that a state policy of categorically disqualifying churches and other religious organizations from receiving grants under a playground resurfacing program was unconstitutional because it violated the Free Exercise Clause. *Trinity*, 137 S.Ct. at 2024-25. According to the *Trinity* Court, the protection provided by "[t]he Free Exercise Clause protect[s] religious observers against unequal treatment and subjects to the strictest scrutiny laws that target the religious for special disabilities based on their religious status." *Id*. at 2019 (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533, 542 (1993)) (internal quotation marks omitted). Because the State action in each of the preceding cases was subjected to the strict scrutiny standard, Defendants were unable to prove that the state action was narrowly tailored to serve a compelling government interest. *Masterpiece*, 138 S.Ct. at 1732; *Trinity*, 137 S.Ct. at 2020, 2024-25.

2.

We believe Plaintiff has established by a preponderance of the evidence, each of the elements of his First Amendment Claim. As *Masterpiece* makes clear, Plaintiff's statements, referring to the teachings of the Roman Catholic Church, fit precisely into the category of religious expression that is protected under the United States Constitution.

Defendant argues, however, that because Plaintiff was a public official, his statements for which he was removed were not entitled to First Amendment protection. During the vote of no confidence, other Senators took this stance as well, arguing, "although we are granted freedom of speech, when you are in a public office you are public property. And that means you must say things that won't necessarily offend other people." We do not agree.

Defendants assertion is similar to the one made by petitioners in *Garcetti v. Ceballos*, who succeeded on their First Amendment claim when the Court held that a memo written by a public official was not protected under the First Amendment because he wrote it pursuant to his employment duties as a district attorney. 547 U.S. 410, 415 (2006). In *Ceballos*, the attorney investigated inaccuracies in an affidavit that was used to obtain a search warrant critical to a pending criminal case. *Id*. at 413. After determining the affidavit contained serious misrepresentations, the public official wrote a memo recommending dismissal of the case. *Id*. at 414. The public official was then reassigned from his position, transferred to another court, and denied a promotion. *Id*. at 415. Alleging that his memo was the cause of retaliatory employment actions, the public official brought suit, claiming petitioners violated his First Amendment rights. *Id*. The Supreme Court however, held that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communication from employer discipline." *Id*. at 421. Because the employee wrote his memo pursuant to his official duties, the Court held that he was acting in his official capacity and therefore could not bring a claim under First Amendment retaliation. *Id*.

We now turn to the facts presented in this case. It is clear with principles set forth in *Ceballos* that Plaintiff was not acting in his public capacity when he sent the messages to the Catholic Student Union's private group chat. The Court in *Ceballos* recognized that the public employee was doing the work and tasks he was paid to perform when he wrote the memo, but this important factor is missing in the present case. *Id*. at 422. An important responsibility of the Court "is to ensure that citizens are not deprived of fundamental rights by virtue of working

for the government." *Id*. at 419 (quoting *Connick v. Myers*, 461 U.S. 138, 147 (1983)).

Plaintiff was acting in his capacity as a private citizen when he made the statements for which he was removed. Plaintiff sent messages in the CSU group chat. The Catholic Student Union, while funded by SGA, operates to promote the teachings of the Catholic Church. "CSU is an organization of university students who come together to strengthen, inquire about, and share their faith."[3] In his messages, Plaintiff was speaking as a Catholic student, to fellow Catholic students, sharing his views about "the Church's teaching on the common good," stated, "it is important to know what ingyou're supporting when you're Catholic. If I stay silent while my brothers and sisters may be supporting an organization that promotes grave evils, I have sinned through my silence."

It is clear to this Court that Plaintiff made these statements pursuant to his role as a member of the Catholic Church and the Catholic Student Union, and not pursuant to any official duty in his role as Senate President. The organizations that Plaintiff expressed concern about are private organizations unaffiliated with FSU. The discussion did not mention the Senate or Student Government Association once, but, in contrast, mentioned religion and God a number of times. As a private citizen, Plaintiff was endowed the privileges guaranteed by the Constitution and thus is not barred from bringing this claim under the First Amendment.

As to the second requirement, Defendant's action removing Plaintiff from his position within Student Government for expressing his religious beliefs caused an injury that would most certainly deter reasonable persons from continuing to engage in that activity in the future. The injury in this case is not only Plaintiff's loss of employment, which was the ultimate result of the vote, but it includes also the settled principle that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1271-72 (11th Cir. 2006) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion).

Less than 72 hours passed between the time Plaintiff sent his initial comments in the CSU group chat and the June 5th vote of no-confidence that removed him. In fact, the first vote brought against him took place the very same day. The haste in which the Senate took this action, combined with the severity of the action taken against him—his loss of employment and leadership within Student Government—sends a message to all other members of Student Body: That students with religious beliefs,

[3] FSU Catholic Student Union, About, available at: https://fsucatholic.org/about.

at least the ones shared by Plaintiff, are not fit to serve in Student Government. To uphold this sentiment within the Student Government Association at FSU, this Court would be encouraging the suppression of religious ideas within our community's marketplace of ideas and discouraging students who hold such beliefs from participating in that community.

As to the Plaintiff's removal, the parties dispute the basis of the Senate's vote of no-confidence. Plaintiff maintains that the motion was brought in response to his messages in the CSU group chat. Defendant argues, however, that because the first vote of no-confidence against Plaintiff failed, the Senators who changed their votes during the second motion were not voting to remove Plaintiff because of his religious views, but because the public outcry in response to the first failed vote caused them to lose faith in Plaintiffs ability to effectively lead the Senate. Thus, Defendant asserts, the vote to remove him was not a violation of Plaintiff's religious freedoms. We reject this argument, as Defendant has not met his burden of showing any reason for which Plaintiff's removal would have been based, had he not made his comments in the CSU group chat. We hold that the overwhelming evidence from the public meeting in which Plaintiff was removed, shows that his removal was based on his expression of his sincerely held religious views, and this expression alone.

When the motion of no-confidence was made, the Senator who brought the motion stated that it was because she "[didn't] believe that any person, nor senator, nor member of our Senate leadership should ever [sic] say anything like this." She stated that she could think of "no more abhorrent thing to hear coming from our Senate leadership," and that she felt "offended and scandalized by the rhetoric that Jack Denton used."

Religious objections to gay marriage are protected views and, in some cases, protected forms of expression. *Masterpiece*, 138 S.Ct. at 1727. To describe a man's faith as "abhorrent" "rhetoric", is to disparage his religion in at least two distinct ways: by describing it as abhorrent, and also by characterizing it as merely rhetorical, something insubstantial and even insincere. *Id*. at 1729. Like *Masterpiece*, the freedoms asserted here are both the Freedom of Speech and the Free Exercise of Religion. When the Senate held the vote of no-confidence against Plaintiff, it did not do so with the religious neutrality that the Constitution requires.

The Senates treatment of Plaintiff's case violated its obligation under the First Amendment not to take action that is hostile to a religion or religious viewpoint. The Senators' during debate reveal that they were neither tolerant nor respectful of Plaintiff's religious beliefs when they held their vote of no-confidence. Here, as

in *Masterpiece*, Plaintiff was entitled to a neutral decisionmaker who would give full and fair consideration to his sincerely held religious beliefs. The Senate did not act as a neutral decisionmaker in this case.

Similarly, like the state's policy in *Trinity*, the Senate gave Plaintiff a choice: He may continue serving in his role as Senate President or freely express his religious beliefs. When the Senate elects to condition their selection of leadership in this way they are punishing the Free Exercise of Religion. "The … proposition-that the law does not interfere with free exercise because it does not directly prohibit religious activity, but merely conditions eligibility for office on its abandonment-is also squarely rejected by precedent." *McDaniel v. Paty*, 435 U.S. 618, 633 (Brennan, J., concurring in judgement). Presently, the Senate has placed a moratorium on religious beliefs similar to those held by Plaintiff. Because the condition placed on Plaintiff to maintain his role as Senate President violated his right to the Free Exercise of his religion, the Senate's vote to remove him should receive the most exacting scrutiny.

It cannot be held that the vote of no-confidence against Plaintiff was motivated by a compelling government interest and that it was narrowly tailored to serve that purpose.

Defendant asserts that the compelling government interest in this case was responding to the call of public service. When asked to describe reason for the Senate's second vote, Defendant stated that he had no choice but to hold the no-confidence vote against Plaintiff, stating, "if the students want something, we must give them what they deserve." Were it up to the Defendant, every vote in the Senate chambers would be decided by the loudest voices in the room. A proper response by the Senate to the public's disapproval of its leadership does not infringe on the rights of its members. For the foregoing reasons, we hold that the Senate's June 5th vote of no-confidence against Plaintiff, for which he was removed, violated his First Amendment rights to Freedom of Speech and Free Exercise of his Religion.

III.

A final issue for this Court to determine is whether Plaintiff is entitled to the relief he seeks. Because Plaintiff at the hearing acknowledged that his claim for lost wages, stated in Part IV (D) of Plaintiff's complaint, was already granted pursuant to the preliminary injunction granted by the Northern District of Florida, we address only his first, second, and final prayers for relief.

First from this Court, Plaintiff requests a declaratory judgment that the June 5th motion of no-confidence against him, resulting in his removal from his position as Senate President, was improper and violated his rights under

the Student Body Constitution and Statutes, and the Constitution of the United States. For the reasons noted in the foregoing opinion, the Senate is hereby enjoined from giving force or effect to the June 5th vote of no-confidence against Plaintiff Jack Denton.

Second, Plaintiff requests that this Court issue a writ of mandamus, ordering his reinstatement as Senate President. Under Article IV, Section 3 of the Student Body Constitution, this Court has the power "[t]o issue a writ of mandamus, prohibition, and quo warranto when a Student Body officer is named as a respondent, or such other rights necessary and proper to complete exercise of its jurisdiction." FSU Const. art. IV § 3. The Supreme Court in *Marbury* quoted Blackstone and stated that to issue a writ of mandamus is "to do a particular thing therein specified, which appertains to his office and duty and which the court has previously determined, or at least supposes, to be consonant to right and justice." *Marbury*, 5 U.S. at 169 (quoting 3 Blackstone at 110). When determining whether to grant Plaintiff's request, this Court found great weight in the short and long-term interests of both remedying the harm that was caused to the Plaintiff and ensuring that such injury does not occur to any student at FSU in the future. Because we believe these considerations weigh in favor of reinstating the Plaintiff, we grant the relief prayed for.

Presently, there is an overwhelming public interest in protecting Plaintiff's First Amendment freedoms that favors his reinstatement. Defendant, however, argues that returning Plaintiff to his position as Senate President would lead to chaos and tumult, serving in opposition to that interest. We do not agree.

If this Court was merely considering the short-term interest in the present case it is possible that the public interest in maintaining order within the branches of Student Government may outweigh reinstating the Plaintiff. During the vote of no-confidence against Plaintiff, Senators made remarks stating they "do not feel comfortable developing a professional relationship further [with Plaintiff]." We do not overlook the fact that some Senators may still feel this way. And we recognize that, while resolving conflict between students is a goal of this Court, that goal cannot be achieved by allowing the Senators' objections to Plaintiff's beliefs, to dictate his participation in Student Government. A Senator who uses his influence in Student Government to silence the message of a fellow student, simply because of his disagreement with that message, offends the very principles upon which our Republic was founded, as well as those enshrined in FSU's Constitution by the Student Body which he purports to serve. Such was not the authority granted to the junior politicians under the Federal, State, or University laws which govern them.

Student government is "an educational tool—a means to educate students on principles of representative government, parliamentary procedure, political compromise, and leadership." *Flint v. Dennison*, 488 F.3d 816, 827 (9th Cir. 2007). In reinstating Plaintiff in his position, Senators should reflect on the important purpose that SGA is meant to serve, and the values it is meant to promote throughout its membership. Since his removal, Plaintiff has remained an acting Senator and continues to work cordially with his colleagues in the Senate to this day. In fact, since the June 5th vote of no-confidence, some Senators who offered the most passionate of speeches in favor of Plaintiff's removal, have since made public comments apologizing for not considering Plaintiff's views. ("Senator Denton…I wanted to apologize for not considering your opinion heavily enough. And for not considering your perspective of Christianity, especially where I invalidated your perspective of Christianity in comparison to my perspective of Christianity… I … pray that you forgive me."). Even Defendant, present at this meeting, was visibly moved by this exchange.

In determining Plaintiff's reinstatement, we found the long-term interest in protecting the values of the First Amendment to be undeniable. If Plaintiff is not reinstated to his position by this Court, the message this sends on behalf of our Student Government Association, as well as our University, is that some views are okay to share, and some are not. We refuse to uphold this sentiment in our University's SGA. To deny Plaintiff's reinstatement would not only deter participation in our Student Government, but it would require this Court to sign off on an action by the Student Senate that was a clear violation of the United States Constitution, thus permitting an occurrence such as this in the future. That is something we refuse do. Future First Amendment violations will be deterred by reinstating Plaintiff.

Defendant also argues that because the remaining term of the current Senate is about to expire, Plaintiff's term of office, if reinstated, would be unsubstantial. We disagree. The harm inflicted on both Plaintiff and the integrity of our entire Student Government Association continues to this day. The University and all of its actors have a duty to make sure the Student Senate does not violate the rights of students. Plaintiff has been penalized for nearly five months. The only remedy he seeks is to return to the position to which he was duly elected by his peers. We do not think that any right guaranteed by the Constitution of the United States is unsubstantial. For these reasons we grant Plaintiff the relief he seeks.

Finally, we address Plaintiff's final request for: "Any other such relief the Court may deem appropriate under SBS § 206.2(E)." Section 206.2(E) of the Anti-

Discrimination Policy allows this Court to make "recommendations [we] deem appropriate for the corresponding severity of the violation," and allows the Court to "pursu[e] all types of relief allowable under university policies, state law, and federal law." Given that we have provided Plaintiff the relief he seeks, we find no need to impose penalty, or provide further relief.

The purpose of the SGA Ethics Code is to "strengthen the faith and confidence of the Student Body in the Student Government Association." SBS § 205.1. Section 205.6 of the Ethics Code grants this Court the power to assign penalties including "suspension, or recommendation to begin impeachment proceedings…" SBS § 205.6. This Court does not determine that suspension of the Defendant is necessary under the present circumstance. Although this Court has determined that Defendant may be held responsible for this Ethics Code violation, we do not so hold in the present case.

We understand the imperative need to instill order in the Senate and do not intend to hinder the ability of our Student Government Association to function. This critical moment in the Senate provides a unique educational opportunity for FSU's Student Senators to learn to work across the aisle, despite their differing personal beliefs, and work for the interest of the student body, instead of rushing to judgment on the validity of others beliefs. Perhaps the unfortunate circumstances which led to this case will teach the members of our SGA to reevaluate their positions and the oath they swore to uphold and learn to accept that different beliefs are not wrong beliefs. We urge the members of the Student Senate to take seriously the legal issues presented here; and to take this Court's leniency in assessing penalties as an opportunity to create a new environment in the Senate, one in which discriminatory remarks will not be tolerated, so that such a case as this does come again before this Court.

We hold that any further penalty placed on Defendant would hinder the educational purpose that SGA is created to serve. By encouraging the Senate to implement robust public debate, coalition-building, and compromise, we believe that faith and confidence of the Student Body in SGA will strengthen, as all views, including those less commonly held, will be welcomed and accepted.

**CONCLUSION**

We hereby hold in favor of Plaintiff and grant the relief requested in the form of a declaratory judgment that the Senate's June 5th vote of no-confidence removing Plaintiff as Senate President violated his Constitutional rights under the First Amendment; and a writ of mandamus ordering his reinstatement as Senate President.

*It is so ordered.*