IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SALVATORE FRISELLA, PAUL PATRICK DAY, and HOWARD JEFFREY HUGHES,	§	
Plaintiffs,	§	**Civil Action No. 3:24-cv-00469-D**
v.	§	
DALLAS COLLEGE,	§	
Defendant.	§	

DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT AND BRIEF IN SUPPORT

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Defendant Dallas College moves the Court to dismiss all of Plaintiffs' causes of action in their First Amended Complaint ("FAC") pursuant to Federal Rule of Civil Procedure 12(b)(6).

I. INTRODUCTION[1]

Plaintiffs are Dallas College professors, and each has a current employment contract. The Dallas College Board of Trustees recently implemented revised versions of Dallas College policies relating to the issuance of faculty employment contracts. Plaintiffs claim the old versions of these policies guaranteed them an "automatically renewable rolling 3-year contract," which acted as "a form of tenure at Dallas College," and the revised policies "eliminate" this right. (FAC ¶¶ 3.2, 3.3.) Plaintiffs assert the prior policy versions granted them a "property interest in continuing employment," and by revoking that interest through revisions to the policy language, Dallas College violated Plaintiffs' due-process rights under the Fourteenth Amendment and their freedoms guaranteed by the First Amendment. They also claim the institution's policies constitute

[1] While Dallas College disagrees with many of the factual allegations in the FAC, for purposes of this Motion only, Dallas College treats the allegations as true because—as demonstrated herein—Plaintiffs have failed to state a claim upon which relief can be granted even assuming the allegations in the FAC were true.

employment contracts, and thus the revisions amount to breach of contract—though they do not claim any breach of their actual employment contracts. Plaintiffs also claim the Board's adoption of revised policies somehow violated the Texas Open Meetings Act.

Plaintiffs' own pleadings readily demonstrate the incurable fatal deficiencies in their claims. The former version of Dallas College policies never guaranteed rolling three-year contracts or tenure. The prior language stated "faculty members ***may be employed*** for contractual periods of ***up to three years***" and ***if*** they earned an "effective" rating, they "***may be offered***" a three-year contract at the Board's discretion. (Exh. E to FAC at 2 (emphasis added).) And the policy expressly noted, "***Neither renewal of employment contracts nor other employment procedures or practices shall give rise to an expectation of continued employment beyond the term of the contract or a belief in de facto tenure***." (*Id.* at 1 (emphasis added).) This language conclusively refutes Plaintiffs' constitutional claims; there has never been a guaranteed right to tenure or a property interest in continued employment beyond the contractual term. Moreover, this Court has repeatedly rejected attempts to claim Dallas College policies create a contractual relationship with faculty members, but regardless, as the policy language demonstrates, Dallas College was never obligated to offer automatic three-year employment contracts, and thus Plaintiffs' breach-of-contract claim fails, and even if Plaintiffs could assert a viable claim under the Texas Open Meetings Act for injunctive relief (which they cannot), they are already entitled to the same contracts under the same governing principles by virtue of the revised policies as they were under the prior version of those policies.

II. STANDARD FOR DISMISSAL

Under Federal Rule of Civil Procedure 12(b)(6), dismissal is proper when a cause of action demonstrates a "failure to state a claim upon which relief can be granted." "[C]laims may be dismissed under Rule 12(b)(6) 'on the basis of a dispositive issue of law.'" *Inclusive Communities*

Project, Inc. v. Lincoln Prop. Co., 920 F.3d 890, 899 (5th Cir. 2019) (quoting *Neitzke v. Williams*, 490 U.S. 319, 326 (1989)). This Rule allows a court to eliminate actions that are fatally flawed in their legal premises and destined to fail, thus sparing the litigants the burdens of unnecessary pretrial and trial activity. *See Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999).

To survive dismissal, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The federal pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. (citing *Twombly*, 550 U.S. at 556). "[C]onclusory allegations or legal conclusions set forth as factual allegations will not prevent dismissal." *Shabazz v. Tex. Youth Comm'n*, 300 F. Supp. 2d 467, 470 (N.D. Tex. 2003). "'Determining whether a complaint states a plausible claim for relief' is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Inclusive Communities*, 920 F.3d at 899 (quoting *Iqbal*, 556 U.S. at 679). Dismissal is warranted when "even in the plaintiff's best-case scenario, the complaint does not state a plausible case for relief." *Sewell v. Monroe City Sch. Bd.,* 974 F.3d 577, 581 (5th Cir. 2020).

In determining whether a plaintiff's complaint survives a motion to dismiss, the court relies on the allegations in the complaint, including any documents attached to the complaint. *Inclusive Communities*, 920 F.3d at 900. "When a defendant attaches documents to its motion that are referenced in the complaint and are central to the plaintiff's claims, however, the court can also properly consider those documents." *Id.*; *see also Collins v. Morgan Stanley Dean Witter,* 224 F.3d 496, 498-99 (5th Cir. 2000) (noting that documents "attache[d] to a motion to dismiss are considered to be part of the pleadings, if they are referred to in the plaintiff's complaint and are

central to her claim"). "[D]ocuments are central when they are necessary to establish an element of one of the plaintiff's claims. Thus, when a plaintiff's claim is based on the terms of a contract, the documents constituting the contract are central to the plaintiff's claim." *Kaye v. Lone Star Fund V (U.S.), L.P.,* 453 B.R. 645, 662 (N.D. Tex. 2011). "In so attaching, the defendant merely assists the plaintiff in establishing the basis of the suit, and the court in making the elementary determination of whether a claim has been stated." *Inclusive Communities*, 920 F.3d at 900 (quotation omitted). All documents cited in this Motion are either (1) attached to the FAC or (2) attached to this Motion in an Appendix, referenced in the FAC, and central to Plaintiffs' claims; the Court can thus properly consider them.

III. ARGUMENT & AUTHORITIES

A. Plaintiffs' due-process claim fails as a matter of law.

Plaintiffs first contend Dallas College "deprived Plaintiffs of their property interests in their tenured employment without due process, in violation of the Fourteenth Amendment." (FAC ¶ 3.6.) Plaintiffs acknowledge Dallas College professors do not receive official tenure,[2] but claim they were entitled to "automatic renewal" of their three-year employment contracts, which they contend constituted "a form of tenure at Dallas College." (FAC ¶¶ 3.3, 3.5.) Plaintiffs claim prior versions of Dallas College policies guaranteed Plaintiffs "their cognizable property interest" in guaranteed rolling three-year contracts. (FAC ¶¶ 3.3-3.4, 4.8.) When Dallas College revised those policies in 2022/2023, Plaintiffs claim it eliminated their property right to guaranteed three-year rolling contracts without due process. (*See* FAC ¶¶ 3.1-3.6, 3.13.-3.23, 4.5-4.8.) The plain text of the relevant policies—both prior and current versions—as well as Plaintiffs' employment contracts, irrefutably demonstrate Plaintiffs never had a guaranteed right to automatic rolling three-

[2] Texas Education Code § 51.942(a)(4) provides a specific definition of "tenure," but as noted below in Section III.A.3, that definition is inapplicable to Dallas College.

year contracts. Plaintiffs' property interest in employment has only ever extended to the term of their current contract, nothing more.

1. Dallas College's policies never guaranteed three-year rolling contracts to Plaintiffs.

It is "an elementary requirement in employment law … that in order to bring [a due-process] claim, a plaintiff must clearly establish the existence of a property interest." *Gonzales v. Galveston Independent School Dist.*, 865 F. Supp. 1241, 1248 (S.D. Tex. 1994). "The Fourteenth Amendment's Due Process Clause does not create a property interest in government employment." *Cabrol v. Town of Youngsville*, 106 F.3d 101, 105 (5th Cir. 1997). "To enjoy a property interest in employment, an employee must 'have a legitimate claim of entitlement' created and defined 'by existing rules or understandings that stem from an independent source.'" *Gentilello v. Rege*, 627 F.3d 540, 544 (5th Cir. 2010) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)). Public employees like Plaintiffs have no property interest in continued employment beyond their contract terms. *See English v. Hairston,* 888 F.2d 1069, 1069–70 (5th Cir. 1989) ("an employee of a Texas school district under a term contract … had no property interest in employment beyond the term of the contract"). Plaintiffs contend Dallas College policies—before the latest revisions—"conferred on Plaintiffs a property interest in their ongoing employment, with automatic renewal" of three-year rolling contracts, which amounted to *de facto* tenure. (FAC ¶ 3.5.) Not so. The prior version of the very policy Plaintiffs cite in (and attach to) their FAC conclusively demonstrates Plaintiffs never had a guaranteed property interest in rolling three-year contracts and indeed expressly disclaims the notion of *de facto* tenure. Plaintiffs' due-process claim thus fails.

Plaintiffs rely on Dallas College policy DCA(LOCAL), which they say guaranteed automatic renewal of three-year rolling contracts before Dallas College revised the policy in 2023.

(FAC ¶¶ 3.19-3.21.). But the pre-2023 version of DCA(LOCAL)—which Plaintiffs attach to their FCA—irrefutably establishes that no such guarantee existed:

> Full-time faculty members ***may be employed*** for contractual periods of ***up to three years*** if the following conditions exist:
>
> 1. A faculty member has received a one-year contract for each of the first three years of faculty employment in the College District.
>
> 2. Upon completion of three consecutive years of faculty employment with the College District, a faculty member has rendered high-quality services to the College District as determined by the most recent rating obtained through the performance evaluation system established by the Chancellor.
>
> At any time after the completion of the first year of a three-year contract, ***if*** a faculty member has an "effective" performance rating, he or she ***may be offered*** a successor three-year contract at the discretion of the Board.

(Exh. E to FAC at 2 (emphasis added).) The language is permissive; there are no guarantees. If a faculty member receives an "effective" rating, they "may be offered" a three-year contract at the Board's discretion. (*Id*.) But even if those conditions are met, three-year rolling contracts are not a foregone conclusion—contractual periods for faculty are for "up to three years." (*Id.*). And lest there be any confusion about an automatic right to continued employment beyond the contractual term, DCA(LOCAL) as it existed in 2022 stated the following (which Plaintiffs conveniently ignore in the FAC): "***Neither renewal of employment contracts nor other employment procedures or practices shall give rise to an expectation of continued employment beyond the term of the contract or a belief in de facto tenure***." (*Id.* at 1 (emphasis added).) The pre-2023 version of DCA(LOCAL)—which is central to Plaintiffs' due-process claim—illustrates Plaintiffs never had a guaranteed right to automatic three-year rolling contracts, and thus Plaintiffs' asserted property interest fails as a matter of law. Plaintiffs "had no legally cognizable claim of entitlement to future employment at [Dallas] College, and therefore no property interest protected by the due process

clause." *Boles v. Navarro Coll.*, No. 3:19-CV-02367-X, 2020 WL 6273765, at *4 (N.D. Tex. Oct. 26, 2020). Plaintiff's due-process claim thus cannot survive dismissal.

2. Current versions of Dallas College's policies still protect Plaintiffs' property interest in the contractual term of their employment, and Plaintiffs' prior contracts did not create a protected interest in continued employment.

Plaintiffs vaguely assert as part of their due-process claim that policy revisions somehow "removed protections afforded to faculty." (FAC ¶ 4.6.) As noted above, the central element of this claim is Plaintiffs' unfounded assertion that prior versions of Dallas College policies guaranteed automatic three-year rolling contracts, when in reality Plaintiffs' "only property interest in employment" was for "the term of the contract." *English,* 888 F.2d at 1070. Current versions of the policies cited in the FAC highlight that Dallas College still protects Plaintiffs' property interest in the contractual term of their employment with the same due-process guarantees afforded under prior policy versions. Dallas College has not eliminated ***any*** protected property interests that Plaintiffs previously enjoyed.

As demonstrated above, DCA(LOCAL) never guaranteed Plaintiffs three-year rolling contracts, or any other form of continued employment or tenure beyond the contractual term. The same is true under the current version of DCA(LOCAL): "Neither renewal of employment contracts nor other employment procedures or practices shall give rise to an expectation of continued employment beyond the term of the contract or a belief in de facto tenure." (Exh. F to FAC at 1.) Plaintiffs are still subject to performance evaluations and they still "may be offered a multi-year contract, for a term of up to three years." (*Id.* at 2.) At Dallas College's discretion, Plaintiffs are also still eligible for successor contracts. (*Id.*)

Dallas College—like any other employer—has the right to revise its policies. Plaintiffs' own contracts from 2019-2022 expressly noted Dallas College policies are "from time to time amended" by the institution. (App. 001 (Plaintiff Frisella); App. 004 (Plaintiff Day) App. 007

(Plaintiff Hughes).) *See Kellermann v. Avaya, Inc*., 530 F. App'x 384, 389 (5th Cir. 2013) (holding employer has authority to exercise "the right to amend, change, or even cancel its … policies" when so stated in an employment contract); *Drake v. Wilson N. Jones Med. Ctr*., 259 S.W.3d 386, 390 (Tex. App.—Dallas 2008, pet. denied) (holding employer policies "could be altered, amended, modified, or terminated at any time"). Plaintiffs' current employment contracts also specifically state the Board may adopt new or amended policies during the term of the contract, and Plaintiffs agree to abide by those policies, including "any changes or modifications, thereto." (App. 010-011 (Plaintiff Frisella); App. 016-017 (Plaintiff Day); App. 023 (Plaintiff Hughes).)

Plaintiffs' only protected property interest is in the term of their contractual employment. *See Ray v. Nash*, 438 F. App'x 332, 335 (5th Cir. 2011) ("a teacher does not have a property interest in a contract beyond its term" (quotation omitted)). Accordingly, and as Plaintiffs acknowledge, policy DMAA(LOCAL) provides proper due-process protections if Dallas College terminates a faculty member's employment mid-contract. (*See* FAC at 9 n.5.) Identical due-process protections apply to mid-contract terminations under both the prior and current versions of DMAA(LOCAL). (*Id.*; Exh. D to FAC.) Moreover, as Plaintiffs acknowledge, the new version of policy DMAB(LOCAL) also provides certain protections for Plaintiffs if Dallas College decides not to renew their contracts after the term expires. (FAC ¶¶ 3.22-23.) While the full protections of DMAA(LOCAL) do not apply (and are not required to apply) to nonrenewals—because nonrenewal decisions do not implicate a property interest in the contractual term of employment—Plaintiffs are still entitled to file a grievance regarding the nonrenewal decision, and a conference on such grievance "shall normally be scheduled within seven working days." (Exh. B to FAC at 1.) Plaintiffs improperly assert a due-process claim because non-renewals following the completion of the full contractual term do not receive the same policy protections as contracts terminated before the completion of the contractual term. Non-renewals do not implicate a

protected property interest; mid-term contract terminations do.

Plaintiffs' pre-2023 employment contracts further refute their claim of a property interest in continued employment beyond the contractual term. For example, each Plaintiff had a three-year contract specifically for the limited term of the 2019-2022 academic years. (App. 001-003 (Plaintiff Frisella); App. 004-006 (Plaintiff Day); App. 007-009 (Plaintiff Hughes).) Those contracts expressly note Plaintiffs' employment is only for "the period indicated" in the contract. (App.001, 004, 007.) Nothing in those contracts indicates an automatic right to a renewed contract or continued employment beyond the contractual term—in the form of three-year rolling contracts or otherwise. *See Tompkins v. Amarillo Coll*., No. 2:19-CV-27-Z-BR, 2021 WL 4796916, at *20 (N.D. Tex. May 14, 2021) (holding no property interest in continued employment when "employment contracts were for very defined terms"). Plaintiffs thus "could not expect continued employment based on [their] terms or any of the previous contracts." *Yul Chu v. Mississippi State Univ*., 592 F. App'x 260, 267 (5th Cir. 2014). Plaintiffs' prior employment contracts demonstrate Plaintiffs' only property interest has always been in the contractual term of their employment—which Dallas College policies continue to protect—and thus their due-process claim fails. Even now that the revised policies are in place, Plaintiffs have all received renewed contracts under which they are currently employed. (*See* FAC ¶ 3.24.) Indeed, Plaintiffs complain that the revised policies deprive them of three-year contracts, but Plaintiff Day freely acknowledges that ***he currently has a new three-year contract***. (*Id.*)

3. The Texas Education Code does not require Dallas College to give Plaintiffs tenure.

Finally, Plaintiffs attempt to establish a property interest in continued employment beyond their contractual terms by relying on Texas Education Code § 51.942, which addresses "faculty tenure." Plaintiffs claim Dallas College "is now bound by the legislative definition of tenure and

must accord full due process before 'dismissing' any of the Plaintiffs or claiming to 'nonrenew' any of the Plaintiffs." (FAC ¶ 3.3.) The section of the Texas Education Code—including the definition of tenure—on which Plaintiffs rely is inapplicable to community colleges like Dallas College, and in any event, Dallas College has not violated the statute.

Texas Education Code § 51.942(a)(4) defines "tenure" as "the entitlement of a faculty member of an institution of higher education to continue in the faculty member's academic position unless dismissed by the institution for good cause in accordance with the policies and procedures adopted by the institution under Subsection (c-1)." According to Plaintiffs, this statute means "Plaintiffs cannot be dismissed without a showing of good cause, after procedural due process has been afforded." (FAC ¶ 3.3.) The statute dictates otherwise. "Tenure" only applies to faculty members of an "institution of higher education," which the statute defines as "a general academic teaching institution,[3] medical and dental unit,[4] or other agency of higher education,[5] as

[3]Tex. Educ. Code § 61.003(3): "'General academic teaching institution' means The University of Texas at Austin; The University of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A&M University, Main University; The University of Texas at Arlington; Tarleton State University; Prairie View A&M University; Texas Maritime Academy; Texas Tech University; University of North Texas; Lamar University; Lamar State College--Orange; Lamar State College--Port Arthur; Texas A&M University--Kingsville; Texas A&M University--Corpus Christi; Texas Woman's University; Texas Southern University; Midwestern State University; University of Houston; The University of Texas Rio Grande Valley; Texas A&M University--Commerce; Sam Houston State University; Texas State University; West Texas A&M University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; The University of Texas at Tyler; and any other college, university, or institution so classified as provided in this chapter or created and so classified, expressly or impliedly, by law."

[4]Tex. Educ. Code § 61.003(5): "'Medical and dental unit' means The Texas A&M University System Health Science Center and its component institutions, agencies, and programs; the Texas Tech University Health Sciences Center; the Texas Tech University Health Sciences Center at El Paso; the University of Houston College of Medicine; the Sam Houston State University College of Osteopathic Medicine; The University of Texas Medical Branch at Galveston; The University of Texas Southwestern Medical Center; The University of Texas Medical School at San Antonio; The University of Texas Dental Branch at Houston; The University of Texas M. D. Anderson Cancer Center; The University of Texas Graduate School of Biomedical Sciences at Houston; The University of Texas Dental School at San Antonio; The University of Texas Medical School at Houston; the Dell Medical School at The University of Texas at Austin; the School of Medicine at The University of Texas Rio Grande Valley; the nursing institutions of The Texas A&M University System and The University of Texas System; and The University of Texas School of Public Health at Houston; and such other medical or dental schools as may be established by statute or as provided in this chapter."

[5]Tex. Educ. Code § 61.003(6): "'Other agency of higher education' means The University of Texas System, System Administration; The University of Texas at El Paso Museum; Texas Epidemic Public Health Institute at The University of Texas Health Science Center at Houston; The Texas A&M University System, Administrative and General Offices; Texas A&M AgriLife Research; Texas A&M AgriLife Extension Service; Rodent and Predatory

those terms are defined by Section 61.003." Tex. Educ. Code § 51.942(a)(2). Because Dallas College—and other junior colleges—do not fall within the specific definition of "an institution of higher education" as used in the statute, the "tenure" definition is inapplicable and cannot create a property interest in continued employment for Plaintiffs. The Texas legislature purposely only chose to apply the "tenure" definition to "academic teaching institutions," "medical and dental units," and "other agencies of higher education," as defined by Texas Education Code § 61.003. If the legislature wanted to impose tenure requirements on junior colleges, it could have included "Public junior college"—which is another defined term under Texas Education Code § 61.003—in its definition of "institution of higher education," but it chose to exclude them.

Even if the "tenure" definition in Texas Education Code § 51.942(a)(4) applied to Dallas College (which it does not), that statute still does not support Plaintiffs' due-process claim. First, Dallas College has not "dismissed" Plaintiffs. As noted in the FAC, they are current employees under contract with Dallas College. (FAC ¶¶ 3.7 3.9, 3.11, 3.24; *see also* App. 010-015 (Frisella current contract); App. 016-021 (Day current contract); App. 022-027 (Hughes current contract).) Thus, even if Plaintiffs were entitled to "tenure," Dallas College has not violated Plaintiffs' supposed right to continued employment. Second, even if Texas Education Code § 51.942 applied to Dallas College, that statute does not require the institution to give faculty members tenure; it merely requires the Board to ***address*** the tenure issue: "Each governing board of an institution of higher education shall adopt policies and procedures regarding tenure. The policies and procedures

Animal Control Service (a part of the Texas A&M AgriLife Extension Service); Texas A&M Engineering Experiment Station (including the Texas A&M Transportation Institute); Texas A&M Engineering Extension Service; Texas A&M Forest Service; Texas Division of Emergency Management; Texas Tech University Museum; Texas State University System, System Administration; Sam Houston Memorial Muse-um; Panhandle-Plains Historical Museum; Cotton Research Committee of Texas; Texas Water Resources Institute; Texas A&M Veterinary Medical Diagnostic Laboratory; and any other unit, division, institution, or agency which shall be so designated by statute or which may be established to operate as a component part of any public senior college or university, or which may be so classified as provided in this chapter."

must: (1) address the granting of tenure….” Tex. Educ. Code § 51.942(c-1). As noted above, Dallas College has already addressed the granting of tenure in DCA(LOCAL)—both the prior and current versions—and clearly stated tenure is not available: “Neither renewal of employment contracts nor other employment procedures or practices shall give rise to an expectation of continued employment beyond the term of the contract or a belief in de facto tenure.” (Exh. E to FAC at 2; Exh. F to FAC at 1.)

Neither Dallas College policies, Plaintiffs’ pre-2023 employment contracts, nor the Texas Education Code create a property interest in continued employment or tenure beyond Plaintiffs’ contractual term. The allegations in the FAC thus fail to state an actionable due-process claim as a matter of law, and the Court should dismiss it with prejudice.

B. Plaintiffs cannot state an actionable First Amendment claim.

Plaintiffs’ next cause of action asserts a violation of their First Amendment rights:

> “The policies removing the three-year rolling contract were enacted to deprive faculty of tenure, of any protected property interest in the continuation of their contracts, in order to create a chilling effect against any faculty who would otherwise express contrary opinions, and a mechanism for the administration to rid itself of faculty seeking to organize to oppose actions by the Board and the Chancellor.”

(FAC ¶ 4.13.) They contend the policy revisions—which purportedly revoked their guaranteed right to automatic three-year rolling contracts—were a response to Plaintiffs’ involvement in activities protected by the First Amendment. (*Id.* ¶¶ 4.9-4.15.) Their claim is facially invalid because (1) Plaintiffs never had a guaranteed right to three-year rolling contracts (or tenure), and thus the policy revisions did not revoke that right, and (2) the activities in which Plaintiffs claim to have participated do not constitute conduct protected by the First Amendment.

The First Amendment only protects speech by government employees regarding matters of public concern. *See Pickering v. Board of Educ.*, 391 U.S. 563 (1968). Thus, Plaintiffs “initially

must establish that [their] speech addressed a matter of public concern." *Bakewell v. Stephen F. Austin State Univ.*, 975 F. Supp. 858, 890 (E.D. Tex. 1996), aff'd, 124 F.3d 191 (5th Cir. 1997) (citing *Connick v. Myers*, 461 U.S. 138 (1983)). They then "must demonstrate that [their] interest as a citizen in making [their] comments outweighed the governmental employer's interest as an employer in promoting efficiency." *Id.* Finally, Plaintiffs must show their protected speech caused Dallas College to take the alleged adverse action—*i.e.* revoking guaranteed three-year rolling contracts/tenure. *See Mount Healthy City Sch. Dist. v. Doyle*, 429 U.S. 274, 286–87 (1977). Because (1) the FAC allegations and the policies on which Plaintiffs rely demonstrate they were never entitled to automatic three-year rolling contracts or tenure, and (2) Plaintiffs' alleged activities do not constitute speech regarding matters of public concern, their First Amendment claim fails and the Court should dismiss it with prejudice.

1. Prior versions of Dallas College's policies did not guarantee automatic three-year rolling contracts, and thus the revised versions did not revoke that right.

The thrust of Plaintiffs' First Amendment claim is the same as their due-process claim—policy revisions revoked their right to automatic three-year rolling contracts, which they claim was a form of tenure. (*See* FAC ¶ 4.14 ("Defendant has intentionally acted to withdraw the protection of the tenure system from its faculty….").) As demonstrated above, Plaintiffs' premise is faulty; Dallas College policies never guaranteed automatic renewal of three-year rolling contracts. The former version of DCA(LOCAL) noted "faculty members ***may be employed*** for contractual periods of ***up to three years***" and if they earned an "effective" rating, they "***may be offered***" a three-year contract at the Board's discretion. (Exh. E to FAC at 2 (emphasis added).) And the policy expressly stated, "***Neither renewal of employment contracts nor other employment procedures or practices shall give rise to an expectation of continued employment beyond the term of the contract or a belief in de facto tenure***." (*Id.* at 1 (emphasis added).) Plaintiffs never

had a guaranteed right to automatic three-year rolling contracts (or tenure). Because Plaintiffs base their First Amendment claim on policy revisions that supposedly revoked this right, their First Amendment claim fails as a matter of law and the Court should dismiss the claim with prejudice.

Plaintiffs also make unsupported subjective allegations that Dallas College "considered faculty to be virtually the enemy, and to chill academic freedom and other First Amendment rights" (FAC ¶ 4.15) Dallas College sought to remove due process from its policies (FAC ¶ 4.11), "end faculty employment mid-contract" (FAC ¶ 4.11), and "get[] rid of three-year contracts entirely (FAC at 15 n.6). But as Plaintiffs acknowledge in the FAC, Dallas College did not take any of those actions. Due process protections still apply to Plaintiffs' contractual employment terms, which prevent improper mid-term contract terminations, and three-year employment contracts still exist—***indeed, Plaintiff Day has one***. (*See* FAC at 9 n.5, ¶ 3.9, ¶ 3.24.) Accordingly, Plaintiffs' claim that Dallas College denied them constitutionally-protected rights because they participated in conduct protected by the First Amendment fails.

2. The activities in which Plaintiffs participated do not qualify as speech regarding a matter of public concern.

Even if prior policy versions guaranteed Plaintiffs rolling three-year contracts (which they did not), and even if current versions of those policies revoke that right (which they do not), Plaintiffs' First Amendment claim still fails because their alleged speech did not involve matters of public concern. To properly assert their claim, Plaintiffs must allege they spoke "predominantly as a citizen." *Dodds v. Childers*, 933 F.2d 271, 274 (5th Cir.1991) (quotation omitted). The "focus [is] on the hat worn by the employee when speaking rather [than] upon the importance of the issue." *Gillum v. City of Kerrville*, 3 F.3d 117, 121 (5th Cir.1993), cert. denied, 510 U.S. 1072 (1994). Of course, "at some level of generality almost all speech of state employees is of public concern." *Id.* But the analysis turns on whether a plaintiff spoke "as an employee principally

concerned with issues affecting his employment relationship with his governmental employer." *Vance v. Bd. of Sup'rs of S. Univ.*, 124 F.3d 191 (5th Cir. 1997).

Plaintiffs assert protected speech because unnamed faculty expressed a general lack of confidence in the Chancellor, Plaintiffs Day and Frisella attempted to establish a faculty senate, and Plaintiffs Day and Frisella—while members of the American Association of University Professors—complained of Dallas College policies regarding faculty contracts. (FAC ¶ 4.10.) Conspicuously absent from the FAC are any allegations that Plaintiff Hughes participated in ***any*** of the conduct on which Plaintiffs base their First Amendment claim. So Plaintiff Hughes undeniably fails to expressly "specify the protected speech he claims to have engaged in or assert that he spoke out on a matter of legitimate public concern." *Udeigwe v. Tex. Tech Univ.*, 733 F. App'x 788, 793 (5th Cir. 2018) (quotation omitted). And the only two activities tied to Plaintiffs Day and Frisella—attempting to establish a faculty senate and complaining about Dallas College policies pertaining to faculty and employment contracts—were taken in their "capacity as an employee." *Trudeau v. Univ. of N. Tex., By & Through its Bd. of Regents*, 861 F. App'x 604, 609 (5th Cir. 2021). Plaintiffs admit their actions were directed to "internal academic" issues. (FAC ¶ 4.10.) As disgruntled Dallas College faculty, Plaintiffs claim they were "critical of policies and actions by the Board and administration under the new 'One College' policy." (*Id.*) Plaintiffs base their claim on alleged actions they took in their roles as Dallas College employees to address employment circumstances. Therefore, even if Plaintiffs could establish Dallas College revoked their guaranteed right to three-year contracts or tenure, they have failed to properly allege protected speech to support their First Amendment claim.

C. Plaintiffs fail to state a viable claim for breach of contract.

Plaintiffs next assert a state-law cause of action for breach of contract. They claim "the policies of Dallas College were a part of each Plaintiff's employment contract" and "Dallas

College breached its own policies by its failure to issue new 3-year rolling contracts to existing, qualified faculty, including each of Plaintiffs." (FAC ¶¶ 4.16, 4.17.) "Under Texas law, 'the essential elements of a breach of contract action are: (1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained by the plaintiff as a result of the breach.'" *Seybold v. Charter Communications, Inc.*, No. 23-10104, 2023 WL 7381438, at *4 (5th Cir. Nov. 7, 2023) (quoting *Smith Int'l, Inc. v. Egle Grp., LLC*, 490 F.3d 380, 387 (5th Cir. 2007)). Dallas College policies are not contracts, and thus Plaintiffs' claim fails because it does not rely on a valid agreement. *See Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 415 (5th Cir. 2021) (affirming that in the absence of a valid agreement, a breach-of-contract claim fails as a matter of law). Moreover, the pleadings demonstrate Dallas College did not violate its policies in any event. And although Dallas College policies do not constitute a contract, Plaintiffs do have employment contracts with Dallas College, and Plaintiffs do not allege any breach of those valid agreements. These fatal pleading defects are incurable, and thus the Court should dismiss Plaintiffs' breach-of-contract claim with prejudice.

1. Dallas College policies do not create a contractual relationship with Plaintiffs, but in any event, the policies never guaranteed three-year rolling contracts.

In Texas, "employee handbooks and policy manuals constitute general guidelines in the employment relationship and do not create implied contracts between the employer and employee." *Fort Worth Transp. Auth. v. Thomas*, 303 S.W.3d 850, 863 n.17 (Tex. App.—Fort Worth 2009, pet. denied) (citations omitted); *see also Seals v. City of Dallas*, 249 S.W.3d 750, 757 (Tex. App.—Dallas 2008, no. pet.) ("written policies and personnel procedure manuals are not considered contractual absent express language clearly indicating contractual intent"). "Under Texas law … a statement of company policy, unaccompanied by an express agreement, does not create contractual rights." *Day Zimmermann Inc. v. Hatridge*, 831 S.W.2d 65, 69 (Tex. App.—

Texarkana 1992, writ denied). "General statements about working conditions, disciplinary procedures, or termination rights are not sufficient to change the at-will employment relationship; rather, the employer must expressly, clearly, and specifically agree to modify the employee's at-will status." *Durckel v. St. Joseph Hosp*., 78 S.W.3d 576, 582 (Tex. App.—Houston [14th Dist.] 2002, no pet.). Plaintiffs' breach-of-contract claim fails as a matter of law because Plaintiffs cannot allege any facts that plausibly allow a finding that Dallas College expressly, clearly, and specifically agreed to create a contractual relationship with Plaintiffs through its policies.

Other Dallas College employees—represented by the same counsel who now represent Plaintiffs—have previously asserted this identical breach-of-contract claim, alleging Dallas College policies constitute part of an employment contract. *See, e.g., Robinson v. Dallas Cnty. Cmty. Coll. Dist.*, No. 3:14-CV-4187-D, 2015 WL 1879798, at *1 (N.D. Tex. Apr. 24, 2015) (Fitzwater, J.) ("In attempting to state such a claim, Robinson alleges that the District had policies and procedures that formed part of his employment contract, and that the District breached its contract with him by violating these policies and procedures."). This Court has consistently dismissed those claims previously, and it should do the same now. *Id.* (Fitzwater, J.) ("the court dismisses his breach of contract claim"); *Black v. Dallas Cnty. Cmty. Coll. Dist*., No. 3:15-CV-3761-D, 2016 WL 915731, at *6 (N.D. Tex. Mar. 10, 2016) (Fitzwater, J.) (dismissing breach-of-contract claim based on the plaintiff's "allegation that DCCCD's policies were part of his employment contract and that DCCCD breached such contract"); *see also Edrich v. Dallas Coll.,* No. 3:21-CV-02963-E, 2023 WL 8606816, at *8 (N.D. Tex. Dec. 12, 2023) (granting summary judgment on breach-of-contract claim alleging Dallas College violated its own policies because "there is no evidence that Dallas College intended to be bound to its grievance policies as a part of the employment contract"); *Kelly v. Dallas Cnty. Cmty. Coll. Dist*., No. 3:16-CV-0871-C, 2017 WL 6450960, at *6 (N.D. Tex. July 28, 2017) (granting summary judgment on breach-of-contract

claim that alleged "Defendant violated its own employment policies").

Even if Dallas College's policies created a contractual relationship with Plaintiffs (which they do not), those very policies demonstrate Dallas College has not violated their terms. Plaintiffs assert a breach of contract based on Dallas College's supposed revocation of automatic three-year rolling contracts, which Plaintiffs contend were guaranteed under the prior versions of relevant policies. But as demonstrated above, no such guarantee ever existed. The policies merely noted "faculty members ***may be employed*** for contractual periods of ***up to three years***" and if they earned an "effective" rating, they "***may be offered***" a three-year contract at the Board's discretion. (Exh. E to FAC at 2 (emphasis added).) The policy expressly stated—and still states—nothing "***shall give rise to an expectation of continued employment beyond the term of the contract or a belief in de facto tenure***." (*Id.* at 1 (emphasis added).) Thus, "failure to issue new 3-year rolling contracts" in no way violates the policy terms, and any breach-of-contract claim based on that allegation necessarily and obviously fails. (FAC ¶ 4.17.)

Ignoring the unambiguous meaning of the language used in the prior version of the DCA(LOCAL) policy—*i.e.* three-year contracts and contract renewals "may be offered" but were not automatic, and "[n]either renewal of employment contracts nor other employment procedures or practices shall give rise to an expectation of continued employment beyond the term of the contract or a belief in de facto tenure"—Plaintiffs nevertheless claim the prior policy language guaranteed rolling three-year contracts and automatic tenure merely because some Dallas College employees supposedly described the policy in a way that might be construed as indicating such an understanding. (FAC ¶ 4.17.) Plaintiffs' claim fails because such extrinsic evidence—even if accurate—"cannot be employed to make the language say what it unambiguously does not say or to show that the parties probably meant, or could have meant, something other than what their agreement stated." *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 483 (Tex.

2019) (quotations omitted). Plaintiffs cannot rely on individual conversations or practices to "contradict or vary the meaning of the explicit language of the parties' written agreement." *National Union Fire Insurance of Pittsburgh v. CBI Industries, Inc.*, 907 S.W.2d 517, 521 (Tex. 1995).

Plaintiffs' reliance on a slide supposedly used in 2021 by Dallas College's associate general counsel in a committee meeting highlights the fatal flaws in Plaintiffs' attempt to assert the prior version of DCA(LOCAL) guaranteed employment beyond the contractual term. (*See* FAC ¶ 4.17.) Merely because the slide notes the "***concept*** of a rolling contract constitutes 'quasi tenure'" and the permissive policy language regarding the option of offering successor three-year contracts had existed since at least 1987, Plaintiffs conclude the slide demonstrates "the protected property right had been established at Dallas College at least since 1987." (FAC ¶ 4.17 (emphasis added).) Plaintiffs improperly stretch the meaning of a three-year-old slide to support an interpretation that directly contradicts the plain policy language—language which Plaintiffs conveniently fail to reference. Thus, even if Dallas College policies constituted a contract with Plaintiffs (which they do not), "the contract must be enforced as written" and Plaintiffs cannot show the denial of automatic three-year contracts or tenure violated the policy language. *Guidry v. Am. Pub. Life Ins. Co.*, 512 F.3d 177, 181 (5th Cir. 2007) (quotation omitted).

In essence, Plaintiffs claim that notwithstanding the unambiguous policy or contractual language, they have relied on statements from Dallas College employees to support the position that guaranteed contracts/tenure existed under the old policies. Rather than assert a contract claim, Plaintiffs are thus really trying to assert a quasi-contract or estoppel claim, but because Dallas College is a Texas political subdivision of higher education, immunity shields it from such claims. *Crook v. Galaviz*, No. EP-14-CV-193-KC, 2015 WL 502305, at *11-12 (W.D. Tex. Feb. 5, 2015), aff'd, 616 F. App'x 747 (5th Cir. 2015) (collecting several cases) (holding that "governmental

immunity protects political subdivisions of the State, including school districts" from "promissory estoppel claims"); *Jackson v. Tex. S. Univ.*, 997 F. Supp. 2d 613, 648 (S.D. Tex. 2014) (holding that because TSU is "an arm of the state of Texas, sovereign immunity from suit also bars any … quasi-contract claims such as promissory estoppel and quantum meruit"). Even if the statements attributed to Dallas College employees in the FAC were true, Plaintiffs cannot rely on them to bring an estoppel claim against Dallas College—even if Plaintiffs were to plead such a claim.

2. Plaintiffs' employment contracts do not guarantee continued employment beyond the contract term, and Plaintiffs have not stated an actionable breach.

Plaintiffs improperly focus their breach-of-contract claim on Dallas College policies, which, as shown above—and confirmed by this Court in several prior cases—do not create a contractual relationship with Plaintiffs. Of course, Plaintiffs ***do*** have employment contracts with Dallas College, but Plaintiffs do not—and cannot—allege any actionable breach of those agreements.

Plaintiffs are current employees under contract with Dallas College. (FAC ¶¶ 3.7 3.9, 3.11, 3.24; *see also* App. 010-015 (Frisella current contract); App. 016-021 (Day current contract); App. 022-027 (Hughes current contract).) Those contracts are for specified terms, and each expressly notes, "The College Board of Trustees has not adopted any policy, rule, regulation, law or practice providing for tenure. This Contract does not grant or create any contractual right, obligation, property right or other expectancy of continued employment or claim of entitlement beyond the term of this Contract." (App. 010 (Frisella); App. 016 (Day); App. 022 (Hughes).) Thus, Plaintiffs' "contract expressly forecloses any property interest in future employment beyond the contract term." *Boles*, 2020 WL 6273765, at *4. Dallas College's decision not to guarantee automatic three-year rolling contracts is in perfect harmony with the terms of Plaintiffs' employment contracts. Plaintiffs therefore cannot assert a viable breach-of-contract claim.

D. Plaintiffs do not have an actionable claim under the Texas Open Meetings Act.

Finally, Plaintiffs assert a violation of the Texas Open Meetings Act ("TOMA"). Specifically, Plaintiffs claim Board members met "individually or in groups in a furtive manner" in violation of TOMA's "prohibition on a quorum of the Board meeting in private to deliberate over public business." (FAC ¶ 4.25.) They claim these secret meetings resulted in the Board passing updated versions of Dallas College policies, which Plaintiffs contend eliminated their right to automatic three-year rolling contracts. "Plaintiffs seek injunctive relief prohibiting Dallas College from enforcing the changes to policies … and requiring Dallas College to restore the former versions of each such policy." (FAC ¶ 4.28.)

"The purpose of the Texas Open Meetings Act is to protect the public's interest in knowing the workings of its governmental bodies." *Cox Enterprises, Inc. v. Board of Trustees of Austin I.S.D.*, 706 S.W.2d 956, 960 (Tex. 1986). TOMA requires that "[e]very regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter." Tex. Gov't Code § 551.002. "An interested person … may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body." Tex. Gov't Code § 551.142(a). "The court may assess costs of litigation and reasonable attorney fees incurred by a plaintiff ***or defendant*** who substantially prevails" in such an action. Tex. Gov't Code § 551.142(b) (emphasis added).

Plaintiffs' TOMA claim fails because (1) they rely on allegations that either do not constitute TOMA violations or are too vague to satisfy the federal pleading standard, and (2) the remedy they now seek will not provide them any rights to which they are not already currently entitled. The Court should thus dismiss Plaintiffs' TOMA claim and award Dallas College its costs and fees pursuant to Tex. Gov't Code § 551.142(b).

1. Plaintiffs' TOMA allegations are legally insufficient to survive dismissal.

Plaintiffs assert in conclusory fashion the changes to Dallas College policies "were the result of violations of the Texas Open Meetings Act." (FAC ¶ 4.21.) Plaintiffs allege "Board members met individually or in groups in a furtive manner" (FAC ¶ 4.25) during unspecified executive sessions or other private meetings where the supposed "real decision-making process took place" (FAC ¶ 4.27) without any "real notice to the public" (FAC ¶ 4.26). Such claims are legally insufficient to state a TOMA violation.

Plaintiffs claim a TOMA violation because "changes to policies … were discussed in executive sessions … but the public had no notice, and no ability to be heard on the issue." (FAC ¶ 4.22.) Plaintiffs do not specify when or where these executive sessions or other alleged secret "private consultations" supposedly occurred, how many such meetings occurred, who attended, or what exactly they discussed. (FAC ¶ 4.23.) To survive a motion to dismiss, "factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. A "sheer possibility that the defendant has acted unlawfully" is insufficient. *Iqbal*, 556 U.S. at 678. Plaintiffs' TOMA allegations are a quintessential "unadorned, the-defendant-unlawfully-harmed-me accusation," which is legally insufficient to avoid dismissal. *Iqbal*, 556 U.S. at 678.[6]

In an attempt to meet the federal pleading standard, Plaintiffs claim the supposed secret meetings resulting in TOMA violations occurred sometime "in 2021"—***three years*** before they brought this suit for injunctive relief. "Injunctive relief is an equitable remedy and the complaining party must come into court with clean hands and must have acted promptly to enforce its right." *Matagorda Cnty. Hosp. Dist. v. City of Palacios*, 47 S.W.3d 96, 103 (Tex. App.—Corpus Christi–Edinburg 2001, no pet.) (citations omitted). "Relief of an equitable nature is granted only to those

[6] Plaintiffs also claim Tex. Gov't Code § 551.143 prevents the alleged vague conduct, but that section of TOMA governs criminal misdemeanors—not civil claims—and thus it is inapplicable to this case. (*See* FAC ¶ 4.27.)

who manifest reasonable diligence in asserting their rights and demanding equitable protection." *Seaboard Fin. Co. v. Martin*, 210 F. Supp. 121, 124 (E.D. La. 1962). "It would be contrary to equity and good conscience to enforce such rights when a defendant has been led to suppose by the word or silence or conduct of the plaintiff that there was no objection to his operations. Diligence is an essential prerequisite to equitable relief of this nature." *Shawnee Partners, LLC v. City of Gulfport, MS*, No. CIV.A. 1:00CV280RG, 2002 WL 32101205, at *7 (S.D. Miss. Feb. 20, 2002), aff'd sub nom. *Shawnee v. City of Gulfport*, 67 F. App'x 252 (5th Cir. 2003) (quotation omitted). Plaintiffs claim TOMA violations from 2021, and yet they are just now seeking an injunction. Equitable principles dictate dismissal is appropriate on this independent basis.

Moreover, even if Plaintiffs' TOMA allegations contained sufficient factual detail to meet the federal pleading standard, they still do not state a claim upon which relief can be granted. Plaintiffs complain that the Board "discussed in executive session" the policy changes. (FAC ¶ 4.22.) TOMA "contemplates that some deliberations may occur in executive session." *Tex. State Bd. of Pub. Accountancy v. Bass*, 366 S.W.3d 751, 762 (Tex. App.—Austin 2012, no pet.). "TOMA does not prohibit the Board members in an executive session from expressing their opinions on an issue or announcing how they expect to vote on the issue in the open meeting, so long as the actual vote or decision is made in the open session." *Id* (quotation omitted). "Preventing a governmental body's members from expressing their opinions on an issue, including how they expect to vote, would unreasonably limit governmental bodies from permissible deliberations in executive sessions." *Id.* at 762 n.10. In the FAC, Plaintiffs merely complain that Board members discussed policy changes outside of public view—even supposedly sharing with each other how they would vote. (FAC ¶¶ 4.22-4.26.) But even Plaintiffs admit that the actual votes on the policy changes occurred during public Board meetings. (FAC ¶¶ 4.21, 4.26.) As such, TOMA's purposes were "fully served." *Bass*, 366 S.W.3d at 762 n.10.

Plaintiffs also complain that Board agendas failed to provide "real notice to the public" of the policy changes being discussed. (FAC ¶ 4.26.) They allege the public was notified that policy language and issues pertaining to "rolling three year contracts" were being deliberated, but issues ancillary to those deliberations—such as shared governance and academic freedom—were not specifically listed on public agendas. (FAC ¶ 4.24.) Such allegations do not constitute TOMA violations. "TOMA does not require that a notice state all of the consequences that may necessarily flow from the consideration of an agenda item." *Arlington v. City of Arlington*, No. 02-23-00288-CV, 2024 WL 2760415, at *10 (Tex. App.—Fort Worth May 30, 2024, no pet. h.). Even accepting Plaintiffs' allegations as true, the Board notified the public that policy changes were on the public agenda and the "final action, decision, or vote" occurred in public as TOMA requires. Tex. Gov't Code § 551.102.

2. Plaintiffs already enjoy the rights and benefits they now seek as a remedy.

To succeed on their request for injunctive relief, Plaintiffs will ultimately need to "establish (1) success on the merits; (2) that a failure to grant the injunction will result in irreparable injury; (3) that said injury outweighs any damage that the injunction will cause the opposing party; and (4) that the injunction will not disserve the public interest." *Stevens v. St. Tammany Par. Gov't*, 17 F.4th 563, 576 (5th Cir. 2021) (quotation omitted). Even if Plaintiffs' TOMA claim satisfied the federal pleading standard, the Court should still dismiss the cause of action because Plaintiffs cannot show failure to grant the injunction will result in irreparable injury. The remedy they seek—the ability to receive three-year contracts—is available now, just as it was under the prior versions of Dallas College policies, and thus an injunction is not required to prevent irreparable injury.

In their TOMA claim, Plaintiffs ask the Court to "restore the former versions" of Dallas College policies. (FAC ¶ 4.28.) If successful, the policies would again state, "faculty members ***may be employed*** for contractual periods of ***up to three years***" and if they earned an "effective"

rating, they "***may be offered***" a three-year contract at the Board's discretion. (Exh. E to FAC at 2 (emphasis added).) Of course those policies would also contain the language expressly noting that nothing "***shall give rise to an expectation of continued employment beyond the term of the contract or a belief in de facto tenure***." (*Id.* at 1 (emphasis added).) But those options—and restrictions—also exist under the current policy. Plaintiffs are currently subject to performance evaluations and they still "may be offered a multi-year contract, for a term of up to three years." (Exh. F to FAC at 2.) Dallas College still has discretion to renew those contracts. (*Id.*) Indeed, under the current policies Plaintiff Day actually received a new three-year employment contract. (FAC ¶ 3.9; App. 016-021.) The policy revisions have not harmed Plaintiffs—much less caused "irreparable injury." "While [Plaintiffs] ha[ve] requested injunctive relief, there was no action detrimental to [them] taken by the [Dallas College] Board which could be enjoined." *Turk v. Somervell Cnty. Hosp. Dist.*, No. W-15-CV-231, 2016 WL 11810446, at *6 (W.D. Tex. May 4, 2016). Because Plaintiffs are not entitled to injunctive relief on their TOMA claim, the Court should dismiss that cause of action with prejudice.

IV. CONCLUSION AND REQUESTED RELIEF

For the reasons stated above, Plaintiffs' FAC—like their Original Complaint—fails to state any actionable claim against Dallas College. Plaintiffs have already amended their claims once, thus demonstrating the fatal pleading deficiencies are incurable. Dallas College respectfully requests that the Court dismiss Plaintiffs' FAC under Rule 12(b)(6) with prejudice, order an award to Dallas College for its costs and attorneys' fees under Texas Government Code § 551.142(b), and award Dallas College any other relief the Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 2, 2024, the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will transmit a Notice of Electronic Filing to all counsel of record.

/s/ *Gavin S. Martinson*
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