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COVID-19 and University Class-Action Lawsuits

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What To Consider When COVID-19 Disrupts Campus

Our nation's universities have spent the past few decades actively promoting density and diversity as a way to bring people closer together in pursuit of their worthy social missions. This master design has obvious merits. The learning experience for all is enhanced with more access to classrooms, facilities, and each other. In the midst of a global pandemic, however, this business model, predicated on close human contact, has become a liability.

Universities responded to this challenge by rapidly shifting to remote-based learning. But although that transition was designed to protect students and faculty from contagion, universities are now facing an onslaught of litigation from disgruntled students and parents. A swath of putative class-action lawsuits has been filed over the last three months asserting that universities breached their contracts and were unjustly enriched when they moved their on-campus classes and activities online. Although these cases raise novel legal issues regarding the nature of the contract between students and universities, courts will likely consider the claims under the deferential framework they have historically applied to universities' academic judgments. Courts will also grapple with thorny class-certification questions, including whether the value of an educational experience can be calculated on a class-wide basis.

I. THE LAWSUITS

"Are you a college student who was forced to leave campus? You may be entitled to compensation," a plaintiffs' law firm announces on its website.[1] As universities have closed their campuses and moved classes online to curtail the spread of

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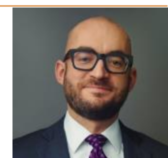

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coronavirus, putative class-action lawsuits have arisen across the country alleging that these schools are failing to offer a slew of services their students purchased, including face-to-face instruction and access to facilities.

A lawsuit against Columbia University is typical. In their complaint, plaintiffs allege that they choose to enroll specifically at Columbia because the university offered an "entirely different experience" than online learning.[2] That on-campus experience allegedly included:

- Face-to-face interaction with professors, mentors, and peers;
- Access to facilities such as computer labs, study rooms, laboratories, and libraries;
- Student governance and student unions;
- Extracurricular activities, groups, and intramurals;
- Student art, cultures, and other activities;
- Social development and independence;
- Hands-on learning and experimentation; and
- Networking and mentorship opportunities.[3]

Because Columbia moved classes online and either suspended or restricted on-campus activities, the students alleged that they "have been and will be deprived of the benefits of on-campus learning."[4] As a result, they assert that Columbia breached its contract with them because, while the students paid tuition and fees, Columbia has failed to "fully provide those services" detailed above.[5] The students also claim that Columbia has been unjustly enriched because it has retained the students' tuition and fees yet "failed to fully provide the services for which the fees were collected."[6] A similar lawsuit filed against Arizona's public-university system alleges that the university breached its contracts with students and is "profiting from this pandemic."[7] These complaints typically seek relief in the form of damages commensurate with students' tuition and fees, along with attorneys' fees and costs.

Students and/or their parents have already filed suits against dozens of universities, including American University, Arizona State University, Boston University, Brown University, Columbia University, Cornell University, DePaul University, Drexel University, George Washington University, Purdue University, Indiana University, Michigan State University, University of Arizona, University of California at Berkeley, University of Colorado, University of Michigan, University of Miami, Vanderbilt University, and many more.[8] No university with an on-campus learning component is immune.

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II. THE CLAIMS

Nearly all of the suits filed thus far have asserted two basic claims: breach-of-contract and unjust-enrichment. As described below, universities have compelling defenses to both.

A. Breach of Contract

The "basic legal relation between a student and a private university or college is contractual in nature."[9] To prevail on their contract claims, plaintiffs must establish a valid contract, a breach, and damages.[10] Plaintiffs in the recently filed complaints have asserted breaches of both express and implied contracts. While the allegations based on express contractual terms are contract-specific, the assertions about implied contractual terms face significant legal headwinds because courts give universities broad deference to conduct their own academic affairs, such as how to best teach and learn during a worldwide health crisis.

An express contract is a contract whose terms the parties have explicitly set out.[11] These terms, as alleged in some complaints, may be found in admission agreements, handbooks, bulletins, or catalogs. For instance, the students cite some of these sources in their suit against the University of Miami that alleges the university is depriving them of "services for which they have already paid, such as room, board, access to campus facilities, parking, and other opportunities."[12] These allegations might contain some merit, but through examples we detail below under unjust enrichment, universities have reacted to the pandemic in a variety of ways, and any breach-of-contract analysis here necessarily depends on independent review of the express terms and facts.

By contrast, the students' claim grounded in an implied contractual relationship faces serious legal hurdles. Implied contracts differ from express contracts by "the mode of manifesting assent."[13] The allegations under this claim relate to the difference between the academic experience the students or their parents were supposedly promised and the online experience they are now receiving. As the complaint against Purdue states, "University students were not offered a partial refund of tuition representing the value of the quarter of the academic year that they were forced to use online distance learning platforms . . . ."[14] The students cite a Brookings Institute study concluding that the promises of online courses are "far from fully realized."[15] Thus, in the absence of any express written contract, the students ask the courts to evaluate their current online-learning environments and determine whether they are receiving the educational experience they allegedly purchased.

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These allegations are just like others in which students have asked courts to evaluate academic judgments in a variety of cases involving grades,[16] degrees,[17] academic dismissals,[18] changes in degree requirements,[19] or program termination.[20] The common thread in all these cases is a laissez-faire attitude where courts typically defer to the university when asked to review best practices related to academics. As the Supreme Court put it, "[w]hen judges are asked to review the substance of a genuinely academic decision . . ., they should show great respect for the faculty's professional judgment"[21] The Seventh Circuit recently described this standard of review as leaving "broad discretion" to "academic institution[s]."[22] A "court may not override [the academic institution's judgment] unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment."[23]

In these recent suits, the plaintiffs' allegations fall comfortably into the universities' "genuinely academic decision" and "broad discretion" on how best to teach their students given the current environment. The universities have not substantially departed from academic norms and professional judgment by transitioning to an alternative mode of education while simultaneously seeking to keep their students safe. As New York's highest court has explained, the "essence of the implied contract is that an academic institution must act in good faith in its dealings with its students" and, when a pandemic threatens the health and well-being of its students, it seems beyond sensible that the universities would act to protect their students' health while providing the best education possible under the circumstances.[24]

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Beyond this deferential standard of review, the plaintiffs face other significant legal hurdles to prevail on their breach-of-contract claim. To begin with, as it relates to pleading a breach-of-contract claim, generalities as to implicit terms are insufficient. "The student's complaint must be specific about the source of this implied contract, the exact promises the university made to the student, and the promises the student made in return."[25] Upon our review, we have yet to see allegations about specific promises the universities made concerning on-campus learning as the exclusive means to the college students' academic experiences.

As to the substance of the complaint, what tuition buys is foremost a degree from an institution certifying that its bearer reflects the knowledge, skills, and values of that institution. The students are still able to earn that credential. The means to achieving the degree are generally never bargained for or, at least, not expressed in the complaints we reviewed. Relatedly, and second, the terms of any implied agreement can be altered through mutual agreement. In *Bleicher v. University of Cincinnati College of Medicine*,[26] the court explained that "where the contract permits, the parties may alter its terms by mutual agreement, and any additional

terms will supersede the original terms to the extent the two are contradictory."[27] Thus, if the university transitioned its program online and the student started learning that way, the university can argue that the student accepted the university's new terms.

Finally, and as our firm most recently shared in another installment of *Eimer Stahl Insights*, to the extent a cognizable contract exists, three legal arguments might excuse performance when considering the global pandemic: contractual force majeure clauses, impracticability, and frustration of purpose. Alec Solotorovsky & Sarah Catalano, *Contracts Under Quarantine: What to Consider When COVID-19 Disrupts Performance*, EimerStahl Newsletter (April 2020).[28]

B. Unjust Enrichment

Unjust enrichment is a quasi-contractual theory that allows a court to disgorge a gain obtained improperly or unjustly by a defendant.[29] The purpose of the doctrine is to remove the benefit arising from a defendant's malfeasance rather than to compensate the plaintiff.[30] Although the elements of unjust enrichment vary from state to state, "when stripped to its essence" here, the students must show that the universities received a benefit and, under the circumstances, it would be unjust for them to retain it.[31] In most jurisdictions, unjust enrichment sounds in equity and is not available when there is an adequate remedy at law, such as a breach-of-contract claim.[32]

The unjust enrichment claims here seek recompense for three broad categories: tuition, room-and-board, and student-services fees. The most challenging of these three for the plaintiffs is tuition. Courts are properly reluctant to allow students to recover tuition payments from a university when students "received educational services in exchange for each semester for which Plaintiffs paid tuition."[33] Even in cases where a student pays tuition but does not earn a degree, courts have declined to allow tuition-payment recovery under unjust enrichment.[34] The two key considerations courts use to evaluate tuition-based unjust-enrichment claims are whether the university held classes[35] and awarded academic credit for them.[36]

Because unjust enrichment sounds in equity, courts should also weigh equitable considerations for the universities. There is no question that the "[c]oronavirus pandemic [has brought] staggering losses to colleges and universities."[37] And in the midst of these staggering losses, many universities have invested considerable time and money in developing online-learning options. They also continue to pay salaries and other fixed costs that, unlike marginal costs, cannot be reduced by abridged use. Under these circumstances, it is difficult to conceive how universities reaped the sort of windfall that unjust-enrichment claims are designed to remedy.

The other two categories of payments made to universities, room-and-board and student services, might be more successful in an unjust-enrichment claim. As part of the shutdown to their brick-and-mortar facilities, many universities have closed their residential and dining halls, with some complaints characterizing this reaction as a "constructive eviction."[38] The unenviable decision to close these facilities to protect students comes with the additional burden of substantial financial losses. Smith University, for example, collected $40.4 million in residence and dining fees in 2018, which represented about 16.5 percent of the school's total operating revenue.[39] Likewise, some services for which students paid fees also closed. These services range from mental-health services to intramurals to wellness services.

Any analysis of these allegations remains fact specific. Some schools, for instance, have opted to refund some of these fees.[40] Other schools, such as Northwestern University, have decided that most fees will remain in place, reasoning that student-government programming and activities and health services remain available for student use.[41] Consequently, the stronger a university's showing that it is continuing to provide services, particularly by shifting to remote provision, the weaker a potential claim for unjust enrichment.

C. Class Actions

Aside from the merits, these lawsuits present interesting issues of first impression related to class actions and universities. Before now, courts have never considered whether the value of an educational experience differs from student to student or is common to a whole class of students.

A class action under Federal Rule of Civil Procedure 23, is a procedural device that permits the students to prosecute a lawsuit on behalf of a larger group or "class." To proceed as a class action under Rule 23, the plaintiffs must establish numerosity, commonality, typicality, and adequacy of representation.[42]

Generally speaking, as described in the complaint against Columbia, the proposed classes include "all students who enrolled at [the university] for the 2020 Spring semester, and who paid tuition, mandatory fees, or voluntary fees for services and privileges that [the university] has failed to fully provide, and whose tuition and/or fees have not been refunded."[43] Parents have also filed a suit against The George Washington University defining its proposed class as "[a]ll people paying."[44]

One difficulty the plaintiffs face is establishing "that the class members have suffered the same injury" and not merely violations of "the same provision of the law."[45] The plaintiffs complain that they are receiving an "entirely difference experience" through online learning. This assertion necessarily depends on each proposed class member's perception of the value the university is providing as it

relates to his or her tuition. Yet it is unclear how personalized value-based perceptions are conducive to class-wide resolution. Just as important, and equally "demanding," is that "questions of law or fact common to class members [must] predominate over any questions affecting only individual members" under Rule 23(b)(3).[46] For similar reasons, students and parents alleging that they are all equally deprived of the same collegiate experiences may face an uphill fight.

Consider, for example, the lawsuit against Purdue. The named plaintiff is a senior studying engineering who says that because Purdue shutdown, he is "unable to finish his senior year engineering project," which is "constructing an airplane," and "no online course can simulate" that project.[47] He then says that the requirements of Rule 23 are satisfied because the question of "value between online distance learning and live in-person instruction" is a common question that predominates over individual ones.[48] But the value of the on-campus experience to a senior who planned to construct an airplane is likely far different than the value of the on-campus experience to a sophomore taking creative-writing classes. One might require in-person instruction in an airplane hangar while the other need not take place in the classroom. And even within the same engineering program, not every student is similarly situated. Perhaps the foundations to build an aircraft begin with classroom instruction in calculus and structural engineering which could be taught online. The same conclusion follows for any degree and any college year; it cannot be the case that each individual student is deprived of the same value when instruction moves from in-person to online. At the very least, serious scrutiny over degrees, majors, and years would seem necessary to satisfy the Supreme Court's requirement that courts take a "close look" at the predominance and superiority criteria before certifying the class.[49]

III. CONCLUSION

Our colleges and universities face an additional challenge to managing their COVID-19 responses as students and parents claim breach of contract and unjust enrichment when their schools moved on-campus activities online. These lawsuits present matters of first impression related to pandemics and learning. Still, courts will almost certainly consider these claims under their well-established framework in which they generally defer academic judgments to the broad discretion of the colleges and universities. Going forward, colleges and universities should strive to articulate the value their students and parents are continuing to receive, despite having to learn online under the strange and challenging circumstances COVID-19 presents.

This article is for informational purposes only and is not legal advice or a substitute for legal counsel. This article may constitute attorney advertising.

[1] Anastopoulo Law Firm, http://www.collegerefund2020.com.
[2] Complaint, *Bennett v. Columbia Univ.*, No. 1:20-cv-03227, Dkt. 1 ¶ 16 (S.D.N.Y. Apr. 23, 2020).
[3] *Id.*
[4] *Id.* ¶ 27.
[5] *Id.* ¶ 50.
[6] *Id.* ¶ 57.
[7] Complaint, *Rosenkrantz v. Ariz. Board of Regents*, No. 2:20-cv-00613, Dkt. 1 ¶ 3 (D. Ariz. Mar. 27, 2020).
[8] *See, e.g.*, *Shaffer v. The George Washington Univ.*, No. 1:20-cv-01145, Dkt. 1 (D.D.C. May 1, 2020); *Rickenbaker v. Drexel Univ.*, No. 2:20-cv-1358, Dkt. 1 (D.S.C. Apr. 8, 2020); *Church v. Purdue Univ.*, No. 4:20-cv-00025, Dkt. 1 (N.D. Ind. Apr. 9, 2020); *Carpey v. University of Colo. Boulder*, No. 1:20-cv-01064 (D. Colo. Apr. 15, 2020); *Bennett v. Columbia Univ.*, No. 1:20-cv-03227, Dkt. 1 ¶ 16 (S.D.N.Y. Apr. 23, 2020); *Rosenkrantz v. Ariz. Bd. of Regents*, No. 2:20-cv-00613, Dkt. 1 (D. Ariz. Mar. 27, 2020); *Student A v. Liberty Univ.*, No. 6:20-cv-00023, Dkt. 1 (W.D. Va. Apr. 13, 2020); *Dixon v. Univ. of Miami*, No. 2:20-cv-1348, Dkt. 1 (D.S.C. Apr. 8, 2020); *Chavez v. DePaul Univ.,* No. 1:20-cv-02865, Dkt. 1 (N.D. Ill. May 12, 2020); *Hernandez v. Illinois Inst. Of Tech.*, No. 1:20-cv-03010, Dkt. 1 (N.D. Ill. May 20, 2020).
[9] *Bissessur v. Ind. Univ. Bd. of Trs.*, 581 F.3d 599, 601 (7th Cir. 2009) (citation omitted).
[10] Restatement (First) of Contracts § 312 (Oct. 2019).
[11] Restatement (Second) of Contracts § 4 (Oct. 2019).
[12] *Dixon v. Univ. of Miami*, No. 2:20-cv-1348, Dkt. 1 ¶ 26 (D.S.C. Apr. 8, 2020).
[13] Restatement (Second) of Contracts § 4 (Oct. 2019).
[14] *Church v. Purdue Univ.*, No. 4:20-cv-00025, Dkt. 1 ¶ 32 (N.D. Ind. Apr. 9, 2020).
[15] *Id.* ¶ 34 (citing Eric Bettinger & Susanna Loeb, *Promises and pitfalls of online education*, Brookings Institute (June 9, 2017) (describing the negative effect of online course taking relative to in-person course taking), https://www.brookings.edu/research/promises-and-pitfalls-of-online-education/).
[16] *See e.g.*, *Davis v. Regis Coll.*, 830 P.2d 1098, 1100 (Colo. Ct. App. 1991) ("Most courts have long refrained from interfering with the authority vested in school officials concerning matters of academic evaluation, including the awarding of grades and establishment of academic standards.").
[17] *See, e.g.*, *Dinu v. President and Fellows of Harvard Coll.*, 56 F. Supp. 2d 129 (D. Mass. 1999) (upholding Harvard's decision to withhold the degree of students found guilty of stealing money under judicial deference); *Olsson v. Bd. of Higher Educ. of the City of N.Y.*, 402 N.E.2d 1150, 1153 (N.Y. 1980) (holding that the "judicial reluctance to intervene in controversies involving academic standards is founded upon sound considerations of public policy" and citing those reasons).
[18] *See, e.g.*, *Betts v. Rector & Visitors of Univ. of Va.*, 191 F.3d 447 (4th Cir. 1999); *Love v. Duke Univ.*, 776 F. Supp. 1070, 1075 (M.D.N.C. 1991), *aff'd*, 959 F.2d 231 (4th Cir. 1991) ("Since academic dismissals are wholly discretionary, great deference must be given to these decisions."); *Pham v. Case W. Reserve Univ.*, No. 71083, 1997 WL 156689 (Ohio App. Ct. Apr. 3, 1997) (upholding dismissal of dental student months away from graduation because the student's academic and clinical performance was less than satisfactory according to the university).

[19] *See, e.g.*, *Mendez v. Reynolds*, 681 N.Y.S.2d 494, 497 (N.Y. App. Div. 1998) ("[I]t would contravene public policy to force an institution of higher learning to award degrees where the students had not demonstrated the requisite degree of academic achievement" by allowing a court to tell the university how to conduct its program."); *Bruner v. Petersen*, 944 P.2d 43, 48 (Alaska 1997) ("The faculty is in the best position to determine how to help the student to succeed and must have the discretion necessary to maintain the integrity of the curriculum and the degree.").
[20] *See, e.g.*, *Beukas v. Farleigh Dickinson Univ.*, 605 A.2d 776 (N.J. Super. Ct. Law Div. 1991), *aff'd*, 605 A.2d 708 (N.J. Super. Ct. App. Div. 1992) (applying judicial deference to terminate a program based upon a financial exigency because the university showed good faith).
[21] *Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985); *see also Davis*, 830 P.2d at 1100 (noting that, for private universities, courts intervene in academic decisions only when the decision "was arbitrary, capricious, and made in bad faith.").
[22] *Khan v. Midwestern Univ.*, 879 F.3d 838, 844 (7th Cir. 2018).
[23] *Id.* (brackets in original and quotation marks omitted) (citing *Ewing*, 474 U.S. at 225).
[24] *Olsson v. Bd. of Higher Educ*. 402 N.E.2d 1150, 1153 (N.Y. 1980).
[25] *Charleston v. Bd. of Trs. of Univ. of Ill. at Chi.*, 741 F.3d 769, 773 (7th Cir. 2013).
[26] 604 N.E. 2d 783 (Ohio App. Ct. 1992).
[27] *Id.* at 787.
[28] https://www.eimerstahl.com/media/publication/29_Eimer%20Insights%20-%20Contracts%20Under%20Quarantine.pdf.
[29] *E.g.*, *In re Flonase Antitrust Litig.*, 692 F. Supp. 2d 524, 541 (E.D. Pa. 2010).
[30] *Id.*
[31] *E.g.*, *In re Automotive Parts Antitrust Litig.*, 29 F. Supp. 3d 982, 1014 (E.D. Mich. 2014).
[32] *E.g.*, *Reid v. Unilever U.S., Inc.*, 964 F. Supp. 2d 893, 922 (N.D. Ill. 2013) ("In Illinois, unjust enrichment is an equitable remedy that is available when no adequate remedy at law exists. . . . In general, the remedy of unjust enrichment is not available when a specific contract governs the parties' relationship."); *but see, e.g.*, *In re Light Cigarettes Mktg. Sales Practices Litig.*, 751 F. Supp. 2d 183, 188 (D. Me. 2010) (suggesting that "unjust enrichment claims sound at law pursuant to federal law") (internal quotation marks omitted); *see also Davis*, 830 P.2d at 1100 ("[T]he relationship between a student and a university is grounded in contract, indicating some type of a reciprocal relationship.").
[33] *Wright v. Capella Univ.*, 378 F. Supp. 3d 760, 775 (D. Minn. 2019).
[34] *E.g.*, *Xu Feng v. Univ. of Del.*, 785 F. App'x 53, 57 (3d Cir. 2019) ("A university is not unjustly enriched when a student pays tuition to attend but ultimately does not receive a degree."); *accord, e.g.*, *Gokool v. Okla. City Univ.*, 716 F. App'x 815, 819 (10th Cir. 2017); *Wright*, 378 F. Supp. 3d at 775; *Zinter v. Univ. of Minn.*, 799 N.W.2d 243, 247 (Minn. Ct. App. 2011); *Bleiler v. Coll. of Holy Cross*, No. CIV.A. 11-11541-DJC, 2013 WL 4714340, at *18 (D. Mass. Aug. 26, 2013).
[35] *E.g.*, *Bradshaw v. Penn. State Univ.*, No. CIV.A. 10-4839, 2011 WL 1288681, at *2 (E.D. Pa. Apr. 5, 2011).

[36] *E.g.*, *Bleiler*, 2013 WL 4714340, at *18; *David v. Neumann Univ.*, 177 F. Supp. 3d 920, 927 (E.D. Pa. 2016); *Roe v. Loyola Univ. New Orleans*, No. CIV.A. 07-1828, 2007 WL 4219174, at *3 (E.D. La. Nov. 26, 2007) (holding that a student cannot recover tuition payments on an unjust enrichment theory when he "received full credit for the courses he took" and "was able to graduate and sit for the bar, on time, something to which he ascribes value"); *Phillips v. DePaul Univ.*, 19 N.E.3d 1019, 1032 (Ill. App. Ct. 2014) ("[P]laintiffs received from DePaul exactly what they paid for and were promised. . . . Plaintiffs alleged they all completed their legal education and obtained J.D. degrees from DePaul and their law licenses, enabling them to practice law. Plaintiffs point to no promises made to them by DePaul regarding the outcome of their subsequent job searches, or guaranteeing them full-time legal employment or a set salary. . . . [P]laintiffs completed their legal education at DePaul and received their J.D. degrees, which was all that was promised to them in return for the tuition paid . . . .").
[37] Andy Fies and James Hill, *Coronavirus pandemic brings staggering losses to colleges and universities*, ABC News (Apr. 28, 2020), https://abcnews.go.com/Business/coronavirus-pandemic-brings-staggering-losses-colleges-universities/story?id=70359686.
[38] Complaint, *Rosenkrantz et al. v. Ariz. Bd. of Regents*, No. 2:20-cv-00613, Dkt. 1 ¶ 3 (D. Ariz. Mar. 27, 2020).
[39] Emma Whitford, *Coronavirus Closures Pose Refund Quandary*, Inside Higher Ed (Mar. 13, 2020), https://www.insidehighered.com/news/2020/03/13/students-may-want-room-and-board-back-after-coronavirus-closures-refunds-would-take.
[40] *E.g.*, University of Colorado, *Modified Student Fees for Summer 2020*, https://www.colorado.edu/bursar/covid-19-info/modified-student-fees-summer-2020; University of Baltimore, *COVID-19 Spring 2020 Fee Adjustment*, http://www.ubalt.edu/finance-and-records/covid_fee_adjustment.cfm.
[41] Northwestern University, *Student Finances* (Apr. 30, 2020), https://www.northwestern.edu/coronavirus-covid-19-updates/frequently-asked-questions/student-finances.html ("Undergraduates will all receive a refund on the athletic fee for the quarter ($19). The other fees will remain in place, as Associated Student Government continues to provide programming and activities and because the Health Service continues to be available for students' use.").
[42] Fed. R. Civ. P. 23(a).
[43] *See, e.g.*, Complaint, *Bennett v. Columbia Univ.*, No. 1:20-cv-03227, Dkt. 1 ¶ 32 (S.D.N.Y. Apr. 23, 2020).
[44] Complaint, *Shaffer v. The George Washington Univ.*, No. 1:20-cv-01145, Dkt. 1 ¶ 52 (D.D.C. May 1, 2020).
[45] *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011
[46] *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013).
[47] Complaint. *Church v. Purdue Univ.*, No. 4:20-cv-00025, Dkt. 1 ¶¶ 9, 11 (N.D. Ind. Apr. 9, 2020).
[48] *Id.* ¶ 52.
[49] *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997).