COURT'S ORDER **(By Paragraph Number)**	**CU's SUBMISSION** **(Found in either Motion for Judgment as Matter of Law, Support Reply or Supporting Sur-Reply)**
1. The Plaintiff in this matter is Professor Ward Churchill, and the Defendants are the University of Colorado and the Regents of the University of Colorado. This matter comes before the court on Defendants' Motion for Judgment as a Matter of Law and Plaintiff's Motion for Reinstatement of Employment. This Court, having heard testimony, received exhibits, and heard argument of counsel and being otherwise fully apprised in the premises, does find and order as follows:	
2. On April 2, 2009 following a four-week jury trial, the jury in this matter found in favor of Professor Churchill on his Second Claim for Relief-First Amendment Retaliation in Terminating Professor Churchill's Employment.	
3. The Defendants move this Court to enter judgment as a matter of law in their favor on Professor Churchill's Second Claim for Relief on the ground that it is barred by the doctrine of quasi-judicial immunity.	The Defendants move the Court to enter judgment as a matter of law on the Second Claim for Relief asserted in Professor Churchill's Amended Complaint. The Second Claim for Relief is barred by the doctrine of quasi-judicial immunity. **(Motion, pg. 1)**
4. Professor Churchill requests the Court order his reinstatement of employment to his former position of fully tenured professor at the University of Colorado, and to provide such further equitable relief as is necessary to vindicate his rights under the First Amendment to the United States Constitution.	
5. For the following reasons I grant Defendants'	

Motion for Judgment as a Matter of Law and deny Professor Churchill's Motion for Reinstatement of Employment.	
6. As specified in the pleadings and Trial Management Order, the University preserved the defense that it was immune from liability. The parties agreed that the University would present its immunity arguments after the jury's verdict because judicial immunities are a legal issue to be determined by a court, not a jury. See Miller v. Davis, 521 F.3d 1142, 1145 (9th Cir. 2008) (stating that "whether a public official is entitled to absolute immunity is a question of law.) Crooks v. Maynard, 913 F.2d 699, 700 (9th Cir. 1990) (stating "judicial immunity is a question of law"); Brewer v. Blackwell, 692 F.2d 387, 390 (5th Cir. 1982) (stating that "whether an official is protected by judicial immunity is a question of law and the facts found by the district judge in making that determination are to be reviewed under the 'clearly erroneous' standard").	As specified in the pleadings and Trial Management Order, the University preserved the defense that it was immune from liability. At the close of evidence, the parties agreed that the University would present its immunity arguments after the jury's verdict because judicial immunities are a legal issue to be determined by a court, not a jury. See Miller v. Davis, 521 F.3d 1142, 1145 (9th Cir. 2008) (stating that "whether a public official is entitled to absolute immunity is a question of law.) Crooks v. Maynard, 913 F.2d 699, 700 (9th Cir. 1990) (stating "judicial immunity is a question of law"); Brewer v. Blackwell, 692 F.2d 387, 390 (5th Cir. 1982) (stating that "whether an official is protected by judicial immunity is a question of law and the facts found by the district judge in making that determination are to be reviewed under the 'clearly erroneous' standard"). **(Motion, pg. 2.)**
7. Early in the lawsuit, Professor Churchill brought claims not only against the University and the Board of Regents, but also against each of the individual Regents who served in 2005 (when the University examined whether his speech was constitutionally protected) and in 2007 (when the Board of Regents dismissed him). Litigants normally file claims in this manner because public officials sued in their individual capacities cannot claim Eleventh Amendment immunity. *Kentucky v. Graham*, 473 U.S. 159, 166-67 (1985).	Early in the lawsuit, Professor Churchill brought claims not only against the University and the Board of Regents, but also against each of the individual Regents who served in 2005 (when the University examined whether his speech was constitutionally protected) and in 2007 (when the Board of Regents dismissed him). Litigants normally file claims in this manner because public officials sued in their individual capacities cannot claim Eleventh Amendment immunity. *Graham,* 473 U.S. at 166-67. (**Motion, pg. 6)**
8. Under the Colorado Governmental Immunity Act, however, the University is required to defend and indemnify the Regents for claims arising within the scope of their service. C.R.S. §24-10-103(4)(a) (stating that a "public employee" means "an officer, employee, servant, or authorized volunteer of the public entity, whether or not	Under the Colorado Governmental Immunity Act, however, the University is required to defend and indemnify the Regents for claims arising within the scope of their service. C.R.S. §24-10-103(4)(a) (stating that a "public employee" means "an officer, employee, servant, or authorized volunteer of the public entity, whether or not compensated,

compensated, elected, or appointed"); C.R.S. §24-10-110(1)(a-b) (stating that a public entity shall be responsible for the defense and payment of claims arising against public employees). Under these circumstances, allowing the case to proceed against each individual Regent would only increase the cost of the case (because each Regent could hire separate counsel) and add to the complexity of the case (because any judgment could be entered only against an individual Regent subject to reimbursement by the University). In an already complicated case, asserting Eleventh Amendment immunity would not change the parties' ultimate position, but would delay Professor Churchill's ability to have his claims resolved in a timely and efficient manner.	elected, or appointed"); C.R.S. §24-10-110(1)(a-b) (stating that a public entity shall be responsible for the defense and payment of claims arising against public employees). Under these circumstances, allowing the case to proceed against each individual Regent would only increase the cost of the case (because each Regent could hire separate counsel) and add to the complexity of the case (because any judgment could be entered only against an individual Regent subject to reimbursement by the University). In an already complicated case, asserting Eleventh Amendment immunity would not change the parties' ultimate position, but would delay Professor Churchill's ability to have his claims resolved in a timely and efficient manner. (**Motion, pg. 6)**

9. To avoid this unnecessary cost and complexity, the University agreed to waive its Eleventh Amendment immunity, thus allowing direct claims to be brought against the University and the Board of Regents. In return for the ability to bring direct claims, however, Professor Churchill agreed that the University acquired the ability to assert any defenses that would be available to individual Regents. The parties' Stipulation provides: > The University agrees and stipulates that it shall waive its immunity to claims for damages under the Eleventh Amendment to the United States Constitution to permit the same recovery from the University that might otherwise be had against any of its officials or employees acting in their official or individual capacities, reserving to the University the ability to present the same defenses that would have been applicable to any of its officials or employees acting in their official or individual capacities.	To avoid this unnecessary cost and complexity, the University agreed to waive its Eleventh Amendment immunity, thus allowing direct claims to be brought against the University and the Board of Regents. In return for the ability to bring direct claims, however, Professor Churchill agreed that the University acquired the ability to assert any defenses that would be available to individual Regents. The parties' Stipulation provides: > The University agrees and stipulates that it shall waive its immunity to claims for damages under the Eleventh Amendment to the United States Constitution to permit the same recovery from the University that might otherwise be had against any of its officials or employees acting in their official or individual capacities, <u>reserving to the University the ability to present the same defenses that would have been applicable to any of its officials or employees acting in their official or individual capacities</u>. **(Motion, pg. 7)**
10. Therefore, because quasi-judicial immunity was a "defense that would have been applicable to any of its officials or employees" it is a defense available to the University and the Board of Regents.	Because quasi-judicial immunity was a "defense that would have been applicable to any of its officials or employees" it is a defense available to the University and the Board of Regents. **(Motion, pg. 7)**
11. *Article VIII* of the Colorado Constitution creates a number of state institutions and states, "Educational, reformatory, and penal institutions as the public good may require, shall be established and supported by the state, in such manner as may be prescribed by law." *Colo. Const. Article VIII*, §1. Within this broad grant of authority, the Colorado Constitution created the University of Colorado as a state institution of higher education. *Colo. Const. Article VIII*, §V. For governance of the University of Colorado, the	*Article VIII* of the Colorado Constitution creates a number of state institutions and states, "Educational, reformatory, and penal institutions as the public good may require, shall be established and supported by the state, in such manner as may be prescribed by law." *Colo. Const. Article VIII*, §1. Within this broad grant of authority, the Colorado Constitution created the University of Colorado as a state institution of higher education. *Colo. Const. Article VIII*, §V. For governance of the University of Colorado, the

Constitution provides, "There shall be nine regents of the University of Colorado who shall be elected in the manner prescribed by law for terms of six years each." *Colo. Const Article IX*, §12. The Board of Regents, as a constitutional body that is not part of the legislative or executive branches, occupies a unique position in Colorado's governmental structure. *Subryan v. Regents of the University of Colorado*, 698 P.2d 1383, (Colo. App. 1984).	Constitution provides, "There shall be nine regents of the University of Colorado who shall be elected in the manner prescribed by law for terms of six years each." *Colo. Const Article IX*, §12. The Board of Regents, as a constitutional body that is not part of the legislative or executive branches, occupies a unique position in Colorado's governmental structure. *Subryan v. Regents of the University of Colorado*, 698 P.2d 1383, (Colo. App. 1984). (**Motion, pg. 3)**
12. Among the Constitutional powers vested in the Board of Regents is the power "to enact laws for the government of the University." *Subryan*, 698 P.2d at 1383. Acting pursuant to this authority, the Board of Regents enacted *Laws of the Regents*. These laws define both the grounds and the process for dismissing a tenured member of the of the University's faculty. Specifically *Article 5.C.1* of the *Laws of the Regents* states: A faculty member may be dismissed when, in the judgment of the Board of Regents and subject to the Board of Regents' constitutional and statutory authority, the good of the University requires such action. The grounds for dismissal shall be demonstrable professional incompetence, neglect of duty, insubordination, conviction of a felony or any offense involving moral turpitude upon a plea or verdict of guilty or following a plea of nolo contendere, or sexual harassment or other conduct which falls below minimum standards of professional integrity.	Among the Constitutional powers vested in the Board of Regents is the power "to enact laws for the government of the University." *Subryan*, 698 P.2d at 1383. Acting pursuant to this authority, the Board of Regents enacted *Laws of the Regents*. These laws define both the grounds and the process for dismissing a tenured member of the of the University's faculty. Specifically *Article 5.C.1* of the *Laws of the Regents* states: A faculty member may be dismissed when, in the judgment of the Board of Regents and subject to the Board of Regents' constitutional and statutory authority, the good of the University requires such action. The grounds for dismissal shall be demonstrable professional incompetence, neglect of duty, insubordination, conviction of a felony or any offense involving moral turpitude upon a plea or verdict of guilty or following a plea of nolo contendere, or sexual harassment or other conduct which falls below minimum standards of professional integrity. **(Motion, pg. 4)**
13. *Article 5.C.2.(A)(1)* of the *Laws of the Regents* specifies that "no member of the faculty shall be dismissed except for cause and after being given	*Article 5.C.2.(A)(1)* of the *Laws of the Regents* specifies that "no member of the faculty shall be dismissed except for cause and after being given

an opportunity to be heard…" If the University's administration contemplates that it will dismiss a faculty member, the faculty member may request a hearing before the Faculty Senate Committee on Privilege and Tenure. *Laws of the Regents, Article 5.C.2.(B).* At any such hearing, the faculty member "shall be permitted to have counsel and the opportunity to question witnesses . . . [and] the burden of proof shall be on the University administration." *Laws of the Regents, Article 5.C.2.(B).* After the Faculty Senate Committee on Privilege and Tenure makes its findings, the President of the University issues a recommendation and transmits it to the Board of Regents for final action. *Laws of the Regents, Article 5.C.2.(C).*	an opportunity to be heard…" If the University's administration contemplates that it will dismiss a faculty member, the faculty member may request a hearing before the Faculty Senate Committee on Privilege and Tenure. *Laws of the Regents, Article 5.C.2.(B).* At any such hearing, the faculty member "shall be permitted to have counsel and the opportunity to question witnesses . . . [and] the burden of proof shall be on the University administration." *Laws of the Regents, Article 5.C.2.(B).* After the Faculty Senate Committee on Privilege and Tenure makes its findings, the President of the University issues a recommendation and transmits it to the Board of Regents for final action. *Laws of the Regents, Article 5.C.2.(C).* **(Motion, pgs. 4-5)**
14. To implement the Laws of the Regents' requirement that no faculty member be dismissed "except for cause and after being given and an opportunity to be heard," as well as the faculty member's right to a hearing before the Faculty Senate Committee on Privilege and Tenure, the Regents enacted *Regent Policy 5-I.* The University followed *Regent Policy 5-I* in the weeks and months preceding its dismissal of Professor Churchill.	To implement the Laws of the Regents' requirement that no faculty member be dismissed "except for cause and after being given and an opportunity to be heard," as well as the faculty member's right to a hearing before the Faculty Senate Committee on Privilege and Tenure, the Regents enacted *Regent Policy 5-I.* The University followed *Regent Policy 5-I* in the weeks and months preceding its dismissal of Professor Churchill. **(Motion, pg. 5)**
15. *Regent Policy 5-I, §III(A)(a)* allows the Chancellor of University of Colorado at Boulder to initiate the dismissal for cause process by issuing a written notice of intent to dismiss. On June 26, 2006, Interim Chancellor Philip DiStefano issued a Notice of Intent to Dismiss informing Professor Churchill that the University intended to dismiss him as a tenured faculty member. The Notice of Intent to Dismiss occurred after the University of Colorado at Boulder's Standing Committee on Research Misconduct concluded that Professor Churchill violated the University's Administrative Policy Statement on Misconduct in Research and Authorship. Chancellor DiStefano informed Professor Churchill that his "pattern of serious, repeated and deliberate research misconduct fall	*Regent Policy 5-I, §III(A)(a)* allows the Chancellor of University of Colorado at Boulder to initiate the dismissal for cause process by issuing a written notice of intent to dismiss. On June 26, 2006, Interim Chancellor Philip DiStefano issued a Notice of Intent to Dismiss informing Professor Churchill that the University intended to dismiss him as a tenured faculty member. The Notice of Intent to Dismiss occurred after the University of Colorado at Boulder's Standing Committee on Research Misconduct concluded that Professor Churchill violated the University's Administrative Policy Statement on Misconduct in Research and Authorship. Chancellor DiStefano informed Professor Churchill that his "pattern of serious, repeated and deliberate research misconduct fall

below minimum standards of professional integrity expected of University faculty and warrants your dismissal from the University of Colorado.”	below minimum standards of professional integrity expected of University faculty and warrants your dismissal from the University of Colorado.” **(Motion, pgs. 5-6)**

16. As permitted by *Regent Policy 5-I*, Professor Churchill requested a formal hearing before a five-member panel of the Faculty Senate Committee on Privilege and Tenure. *Regent Policy 5-I, §III(B)(2)(b)* allowed Professor Churchill to object to any of the panel members, but he did not do so. Although *5-I, §III(B)(2)(f-g)* normally contemplates that a dismissal hearing will last no more than two days, Professor Churchill had months to prepare for his hearing, which began on January 8, 2007, and lasted for seven full days. Pursuant to *Regent Policy 5-I*, *§III(B)(2)(l)*, a professional court reporter, as well as a professional videographer, made a complete record of the proceedings.	As permitted by *Regent Policy 5-I*, Professor Churchill requested a formal hearing before a five-member panel of the Faculty Senate Committee on Privilege and Tenure. *Regent Policy 5-I, §III(B)(2)(b)* allowed Professor Churchill to object to any of the panel members, but he did not do so. Although *5-I, §III(B)(2)(f-g)* normally contemplates that a dismissal hearing will last no more than two days, Professor Churchill had months to prepare for his hearing, which began on January 8, 2007, and lasted for seven full days. Pursuant to *Regent Policy 5-I*, *§III(B)(2)(l)*, a professional court reporter, as well as a professional videographer, made a complete record of the proceedings. **(Motion, pg. 6)**
17. At the hearing, *Regent Policy 5-I, §III(B)(2)(k)* requires the administration to establish grounds for dismissal by clear and convincing evidence. *Regent Policy 5-I, §III(B)(1)(b)(2)(i)* allowed Professor Churchill to be represented by counsel. *Regent Policy 5-I, §III(B)(2)(o)* allowed Professor Churchill and his counsel the right to examine each of the University administration's witnesses and the right to present his own witnesses. *Regent Policy 5-I, §III(B)(2)(r)* allowed Professor Churchill and his counsel to present opening statements. *Regent Policy 5-I*, *§III(B)(2)(r)* also allowed Professor Churchill to make both oral and written closing arguments to the panel. Professor Churchill availed himself of each of these opportunities during the seven-day hearing.	At the hearing, *Regent Policy 5-I, §III(B)(2)(k)* required the administration to establish grounds for dismissal by clear and convincing evidence. *Regent Policy 5-I, §III(B)(1)(b)(2)(i)* allowed Professor Churchill to be represented by counsel. *Regent Policy 5-I, §III(B)(2)(o)* allowed Professor Churchill and his counsel the right to examine each of the University administration's witnesses and the right to present his own witnesses. *Regent Policy 5-I, §III(B)(2)(r)* allowed Professor Churchill and his counsel to present opening statements. *Regent Policy 5-I*, *§III(B)(2)(r)* also allowed Professor Churchill to make both oral and written closing arguments to the panel. Professor Churchill availed himself of each of these opportunities during the seven-day hearing. **(Motion, pg. 7)**
18. After the conclusion of the hearing, the panel members reached a determination. The panel was "unanimous in finding that Professor Churchill has demonstrated conduct which falls below minimum standards of professional integrity, and that this conduct requires severe sanctions." The panel split on what sanction it would recommend - - two members recommended dismissal, while three panel members recommended a suspension coupled with demotion. *Regent Policy 5-I,*	After the conclusion of the hearing, the panel members reached a determination. The panel was "unanimous in finding that Professor Churchill has demonstrated conduct which falls below minimum standards of professional integrity, and that this conduct requires severe sanctions." The panel split on what sanction it would recommend - - two members recommended dismissal, while three panel members recommended a suspension coupled with demotion. *Regent Policy 5-I,*

§III(C)(2) allowed Professor Churchill to respond in writing to the panel's report.	*§III(C)(2)* allowed Professor Churchill to respond in writing to the panel's report. **(Motion, pg. 7)**
19. The panel transmitted its report to the President of the University. President Brown, upon his review of the record, concurred with the panel's finding that Professor Churchill had engaged in conduct that served as grounds for dismissal under *Article 5.C.1* of the *Laws of the Regents* - - conduct falling below minimum standards of professional integrity. Because President Brown believed that this misconduct warranted dismissal, rather than some other sanction, President Brown returned the case to the panel for reconsideration pursuant to *Regent Policy 5-I, §III(C)(7)*. The panel did not modify its report, so President Brown transmitted his recommendation and the panel to the Board of Regents for final action.	The panel transmitted its report to the President of the University. President Brown, upon his review of the record, concurred with the panel's finding that Professor Churchill had engaged in conduct that served as grounds for dismissal under *Article 5.C.1* of the *Laws of the Regents* - - conduct falling below minimum standards of professional integrity. Because President Brown believed that this misconduct warranted dismissal, rather than some other sanction, President Brown returned the case to the panel for reconsideration pursuant to *Regent Policy 5-I, §III(C)(7)*. The panel did not modify its report, so President Brown transmitted his recommendation and the panel to the Board of Regents for final action. **(Motion, pgs. 7-8)**
20. After President Brown made his recommendation, *Regent Policy 5-I, §IV* allowed Professor Churchill to request a hearing before the Board of Regents. Before the hearing, *Regent Policy 5-I, §IV* allowed Professor Churchill to submit extensive written arguments to the Board of Regents.	After President Brown made his recommendation, *Regent Policy 5-I, §IV* allowed Professor Churchill to request a hearing before the Board of Regents. Before the hearing, *Regent Policy 5-I, §IV* allowed Professor Churchill to submit extensive written arguments to the Board of Regents. **(Motion, pg. 8)**
21. *Regent Policy 5-I, §IV* allowed the University administration and Professor Churchill to make presentations to the Board of Regents "based upon the record of the case, including the transcript of the proceedings before the [faculty committee]." After the parties' presentation and "after consideration of all of the information provided to it," the Board of Regents determined that Professor Churchill engaged in conduct that fell below minimum standards of professional integrity and dismissed him from his tenured faculty position.	*Regent Policy 5-I, §IV* allowed the University administration and Professor Churchill to make presentations to the Board of Regents "based upon the record of the case, including the transcript of the proceedings before the [faculty committee]." After the parties' presentation and "after consideration of all of the information provided to it," the Board of Regents determined that Professor Churchill engaged in conduct that fell below minimum standards of professional integrity and dismissed him from his tenured faculty position. **(Motion, pg. 8)**
22. The United States Supreme Court has	The United States Supreme Court has recognized

recognized that there are "some officials whose special functions require a full exemption from liability." *Butz v. Economou*, 438 U.S. 478, 508 (1978). In particular, judicial officers are immune from suit because "the protection essential to judicial independence would be entirely swept away" if a lawsuit against judges could proceed upon the premise "that the acts of the judge were done with partiality, or maliciously, or corruptly…" *Bradley v. Fisher*, 80 U.S. 335, 348 (1871). The court reasoned that a judge's errors "may be corrected on appeal, but he should not have to fear that unsatisfied litigants will hound him with litigation charging malice or corruption. *Pierson v. Ray*, 386 U.S. 547, 554 (1967). Stated more directly, judicial immunity prevents judges from being subject to intimidation as they perform their functions. *Pierson*, 386 U.S. at 554.	that there are "some officials whose special functions require a full exemption from liability." *Butz v. Economou*, 438 U.S. 478, 508 (1978). In particular, judicial officers are immune from suit because "the protection essential to judicial independence would be entirely swept away" if a lawsuit against judges could proceed upon the premise "that the acts of the judge were done with partiality, or maliciously, or corruptly…" *Bradley v. Fisher*, 80 U.S. 335, 348 (1871). The Court reasoned that a judge's errors "may be corrected on appeal, but he should not have to fear that unsatisfied litigants will hound him with litigation charging malice or corruption. *Pierson v. Ray*, 386 U.S. 547, 554 (1967). Stated more directly, judicial immunity prevents judges from being subject to intimidation as they perform their functions. *Pierson*, 386 U.S. at 554. **(Motion, pg. 10)**
23. Judicial immunity is not limited to judges, however, and has been extended to other participants in judicial processes, such as prosecutors and grand jurors. *Imbler v. Pachtman*, 424 U.S. 409, 423 (1976). These people perform functions that are necessary for the functioning of the judicial system, and they receive what has been termed "quasi judicial immunity." *Butz*, 438 U.S. at 512. When government officials make judgments that are "functionally comparable" to those of judges, quasi-judicial immunity creates an absolute bar to liability. *Butz*, 438 U.S. at 513. Quasi-judicial immunity exists "not because of an official's particular location within the Government but because of the special nature of [his] responsibilities." *Butz,* 438 U.S. at 511.	Judicial immunity is not limited to judges, however, and has been extended to other participants in judicial processes, such as prosecutors and grand jurors. *Imbler v. Pachtman*, 424 U.S. 409, 423 (1976). These people perform functions that are necessary for the functioning of the judicial system, and they receive what has been termed "quasi judicial immunity." *Butz*, 438 U.S. at 512. When government officials make judgments that are "functionally comparable" to those of judges, quasi-judicial immunity creates an absolute bar to liability. *Butz*, 438 U.S. at 513. Nor is quasi-judicial immunity reserved exclusively for governmental officials who serve in the judicial branch of a government. Instead, quasi-judicial immunity exists "not because of an official's particular location within the Government but because of the special nature of [his] responsibilities." *Butz,* 438 U.S. at 511. **(Motion, pgs. 10-11)**

24. In its leading case, the United States Supreme Court conferred quasi-judicial immunity upon administrative agency officials who participated in a hearing to exclude a commodity company from registration. *Butz,* 438 U.S. at 514-15. In conferring immunity, the Court took note that "the discretion which executive officials exercise with respect to the initiation of administrative proceedings might be distorted if their immunity arising form that decision was less than complete." *Butz*, 438 U.S. at 515.	In its leading case, the United States Supreme Court conferred quasi-judicial immunity upon administrative agency officials who participated in a hearing to exclude a commodity company from registration. *Butz,* 438 U.S. at 514-15. In conferring immunity, the Court took note that "the discretion which executive officials exercise with respect to the initiation of administrative proceedings might be distorted if their immunity arising from that decision was less than complete." *Butz*, 438 U.S. at 515. **(Motion, pg. 11)**
25. After *Butz,* the Tenth Circuit Court of Appeals has extended quasi-judicial immunity to officials serving on panels to determine whether to terminate a government employee or revoke a professional license, even when those officials allegedly violated the Plaintiff's constitutional rights. *Saavedra v. City of Albuquerque*, 73F.3d 1525, 1529-1530 (10th Cir. 1996); *Horwitz v. Colorado State Board of Medical Examiners*, 822 F.2d 1508, 1513-14 (10th Cir. 1987). In a case that is analogous to Professor Churchill's, the Tenth Circuit found that no liability could stem from a career service council's decision to discharge an employee, even though she claimed that the council "improperly discharged [her] in retaliation for her exercise of her right to free speech." *Atiya v. Salt Lake County*, 988 F.2d 1013, 1016-17 (10th Cir. 1993).	After *Butz,* the Tenth Circuit Court of Appeals has extended quasi-judicial immunity to officials serving on panels to determine whether to terminate a government employee or revoke a professional license, even when those officials allegedly violated the Plaintiff's constitutional rights. *Saavedra v. City of Albuquerque*, 73F.3d 1525, 1529-1530 (10th Cir. 1996); *Horwitz v. Colorado State Board of Medical Examiners*, 822 F.2d 1508, 1513-14 (10th Cir. 1987). In a case that is analogous to Professor Churchill's, the Tenth Circuit found that no liability could stem from a career service council's decision to discharge an employee, even though she claimed that the council "improperly discharged [her] in retaliation for her exercise of her right to free speech." *Atiya v. Salt Lake County*, 988 F.2d 1013, 1016-17 (10th Cir. 1993). **(Motion, pg. 11)**
26. Just as the Tenth Circuit has extended quasi-judicial immunity, the Colorado Supreme Court has also determined that a school district's termination of an employee after a contested hearing is a quasi-judicial function. *Widder v. Durango School DistrictNo. 9-R*, 85 P.3d 518, 527-28 (Colo. 2004). It explained its analysis: Thus, in determining whether a school board is performing a quasi-judicial function, our inquiry must focus on the nature of the	Just as the Tenth Circuit has extended quasi-judicial immunity, the Colorado Supreme Court has also determined that a school district's termination of an employee after a contested hearing is a quasi-judicial function. *Widder v. Durango School DistrictNo. 9-R*, 85 P.3d 518, 527-28 (Colo. 2004). It explained its analysis: Thus, in determining whether a school board is performing a quasi-judicial function, our inquiry must focus on the nature of the

governmental decision and the process by which that decision is reached. Quasi-judicial decision making, as it name connotes, bears similarities to the adjudicatory function performed by courts. *Widder,* 85 P.3d at 527 (internal citations omitted).	governmental decision and the process by which that decision is reached. Quasi-judicial decision making, as it name connotes, bears similarities to the adjudicatory function performed by courts. *Widder,* 85 P.3d at 527 (internal citations omitted). **(Motion, pg. 12)**
27. Specifically, where an official applies "preexisting legal standards or policy considerations to present or past facts presented to the governmental body, then one can say with reasonable certainty that the governmental body is acting in a quasi judicial capacity . . . " *Widder*, 85 P.3d at 527. This type of decision occurs when a school district decides whether it should terminate an employee who violates the district's code of conduct: A school district's decision about whether to terminate an employee who claims that he acted in good faith and in compliance with a conduct and discipline code certainly involves a determination of the rights, duties, or obligations of specific individuals on the basis of the application of presently existing standards . . . to past or present facts. *Widder*, 85 P.3d at 527.	Specifically, where an official applies "preexisting legal standards or policy considerations to present or past facts presented to the governmental body, then one can say with reasonable certainty that the governmental body is acting in a quasi judicial capacity . . . " *Widder*, 85 P.3d at 527. This type of decision occurs when a school district decides whether it should terminate an employee who violates the district's code of conduct: A school district's decision about whether to terminate an employee who claims that he acted in good faith and in compliance with a conduct and discipline code certainly involves a determination of the rights, duties, or obligations of specific individuals on the basis of the application of presently existing standards . . . to past or present facts. *Widder*, 85 P.3d at 527. **(Motion, pg. 12)**
28. In its decisions in both *Hulen v. State Board of Agriculture,* and *Gressley v. Deutsch*, the Tenth Circuit determined that University officials enjoy quasi-judicial immunity from claims brought after disciplinary proceedings.	The University is aware of two cases where trial courts in the Tenth Circuit have determined that University officials enjoy quasi-judicial immunity from claims brought after disciplinary proceedings. **(Motion, pg. 13)**
29. Professor Myron Hulen was a tenured professor at Colorado State University. After he provided evidence in an investigation, Professor Hulen alleged that CSU involuntarily transferred	Professor Myron Hulen was a tenured professor at Colorado State University. After he provided evidence in an investigation, Professor Hulen alleged that CSU involuntarily transferred him to

him to another department where he would be unable to attract research funds, publish scholarship, or receive salary increases. Professor Hulen filed suit alleging that the transfer was in retaliation for his exercise of protected speech. *Hulen v. State Board of Agriculture*, 98-B-2170, Pages 1-3 (D. Colo. 2001). CSU's faculty manual allowed Professor Hulen to challenge the transfer through a faculty grievance process, at which time CSU bore the burden of proving the propriety of the transfer. *Hulen* at Page 13. The grievance committee found that CSU's administration improperly transferred Professor Hulen, but CSU's provost reversed the grievance committee's decision. CSU's president and governing board upheld the transfer decision. *Hulen* at Page 13.	another department where he would be unable to attract research funds, publish scholarship, or receive salary increases. Professor Hulen filed suit alleging that the transfer was in retaliation for his exercise of protected speech. *Hulen v. State Board of Agriculture*, 98-B-2170, Pages 1-3 (D. Colo. 2001). CSU's faculty manual allowed Professor Hulen to challenge the transfer through a faculty grievance process, at which time CSU bore the burden of proving the propriety of the transfer. *Hulen* at Page 13. The grievance committee found that CSU's administration improperly transferred Professor Hulen, but CSU's provost reversed the grievance committee's decision. CSU's president and governing board upheld the transfer decision. *Hulen* at Page 13. **(Motion, pgs. 13-14)**
30. Professor Hulen sued CSU's provost and president in their individual capacities for their alleged violations of his constitutional rights. The United States District Court for the District of Colorado granted them quasi-judicial immunity from Professor Hulen's claims on the grounds that their judgments were "functionally comparable" to those of judges. *Hulen* at Page 19. Judge Babcock explained: > Here, the Faculty Manual provides that review of the grievance committee decision may be appealed through the administrative ranks, first to the Provost, then to the President, and finally to the State Board of Agriculture. Each of these entities is provided by the Manual with the appropriate standard of review. Each is functionally comparable to judges, as each is required to exercise a discretionary judgment. In Dr. Hulen's case, Provost Crabtree and President Yates involvement in the process was limited to this appellate function. I therefore conclude that Defendants Crabtree and Yates' involvement with the process was as quasi-judicial officers and grant them immunity	Professor Hulen sued CSU's provost and president in their individual capacities for their alleged violations of his constitutional rights. The United States District Court for the District of Colorado granted them quasi-judicial immunity from Professor Hulen's claims on the grounds that their judgments were "functionally comparable" to those of judges. *Hulen* at Page 19. Judge Babcock explained: > Here, the Faculty Manual provides that review of the grievance committee decision may be appealed through the administrative ranks, first to the Provost, then to the President, and finally to the State Board of Agriculture. Each of these entities is provided by the Manual with the appropriate standard of review. Each is functionally comparable to judges, as each is required to exercise a discretionary judgment. In Dr. Hulen's case, Provost Crabtree and President Yates involvement in the process was limited to this appellate function. I therefore conclude that Defendants Crabtree and Yates' involvement with the process was as quasi-judicial officers and grant them immunity

on that basis. *Hulen* at Page 20.	on that basis. *Hulen* at Page 20. **(Motion, pg. 14)**
31. In *Gressley*, Professor Gene Gressley was a tenured professor at the University of Wyoming. After the University of Wyoming's President transferred Professor Gressley to another department, he publicly complained. *Gressley v. Deutsch*, 890 F.Supp. 1474, 1480 (D.Wyo. 1994). A dispute then arose as to whether Professor Gressley had been insubordinate and had misused his position. *Gressley*, 890 F.Supp. at 1481.	Professor Gene Gressley was a tenured professor at the University of Wyoming. After the University of Wyoming's President transferred Professor Gressley to another department, he publicly complained. *Gressley v. Deutsch*, 890 F.Supp. 1474, 1480 (D.Wyo. 1994). A dispute then arose as to whether Professor Gressley had been insubordinate and had misused his position. *Gressley*, 890 F.Supp. at 1481. **(Motion, pg. 15)**
32. The University of Wyoming's president initiated proceedings to terminate Professor Gressley. Under the University's procedures, a Faculty Hearing Committee heard two weeks of testimony before sustaining the charges against Professor Gressley. *Gressley*, 890 F.Supp. at 1481. Professor Gressley appealed the recommendation to the University of Wyoming Board of Trustee's, which "after hearing oral arguments, reviewing the record before and findings of the Faculty Hearing Committee . . .sustained the Faculty Hearing Committee's recommendation that Dr. Gressley's employment be terminated for cause." *Gressley*, 890 F.Supp. at 1481.	The University of Wyoming's president initiated proceedings to terminate Professor Gressley. Under the University's procedures, a Faculty Hearing Committee heard two weeks of testimony before sustaining the charges against Professor Gressley. *Gressley*, 890 F.Supp. at 1481. Professor Gressley appealed the recommendation to the University of Wyoming Board of Trustee's, which "after hearing oral arguments, reviewing the record before and findings of the Faculty Hearing Committee . . .sustained the Faculty Hearing Committee's recommendation that Dr. Gressley's employment be terminated for cause." *Gressley*, 890 F.Supp. at 1481. **(Motion, pg. 15)**
33. Professor Gressley brought individual capacity claims against each of the Trustees alleging that they unconstitutionally discharged him in retaliation for his exercise of free speech. The United States District Court for the District of Wyoming granted the Trustees quasi-judicial immunity from suit on the grounds that they were serving in an adjudicatory capacity. *Gressley*, 890 F.Supp. at 1490.	Professor Gressley brought individual capacity claims against each of the Trustees alleging that they unconstitutionally discharged him in retaliation for his exercise of free speech. The United States District Court for the District of Wyoming granted the Trustees quasi-judicial immunity from suit on the grounds that they were serving in an adjudicatory capacity. *Gressley*, 890 F.Supp. at 1490. **(Motion, pg. 15)**
34. In doing so, Judge Downes construed the United States Supreme Court's and Tenth Circuit's	In doing so, Judge Downes construed the United States Supreme Court's and Tenth Circuit's

precedents and applied the following test: > The *Butz* decision granted absolute immunity to administrative officials performing functions analogous to those of judges and prosecutors if the following formula is satisfied: (a) the officials' functions must be similar to those involved in the judicial process; (b) the officials actions must be likely to result in lawsuits by disappointed parties; and (c) there must be sufficient safeguards in the regulatory framework to control unconstitutional conduct. *Gressley*, 890 F.Supp. at 1490-91.	precedents and applied the following test: > The *Butz* decision granted absolute immunity to administrative officials performing functions analogous to those of judges and prosecutors if the following formula is satisfied: (a) the officials' functions must be similar to those involved in the judicial process; (b) the officials actions must be likely to result in lawsuits by disappointed parties; and (c) there must be sufficient safeguards in the regulatory framework to control unconstitutional conduct. *Gressley*, 890 F.Supp. at 1490-91. **(Motion, pg. 16)**
35. In this case, it is clear that the Board of Regents performed a quasi-judicial function and acted in a quasi-judicial capacity when it heard Professor Churchill's case and terminated his employment.	Under Colorado law, the Regents performed a quasi-judicial function when they heard Professor Churchill's case. **(Motion, pg. 17)** The Regents have established that they acted in a quasi-judicial capacity when they heard Professor Churchill's case and terminated his employment. **(Motion, pg. 20)**
36. When a governmental body applies "preexisting legal standards or policy considerations to present or past facts presented to the governmental body, then one can say with reasonable certainty that the governmental body is acting in a quasi-judicial capacity…." *Widder*, 85 P.3d at 527. The Board of Regents determined whether grounds for dismissal existed under the *Laws of the Regents*. In doing so, The Regents "applied preexisting legal standards or policy considerations to past or present facts."	When a governmental body applies "preexisting legal standards or policy considerations to present or past facts presented to the governmental body, then one can say with reasonable certainty that the governmental body is acting in a quasi-judicial capacity…." *Widder*, 85 P.3d at 527. The Board of Regents determined whether grounds for dismissal existed under the *Laws of the Regents*. In doing so, The Regents "applied preexisting legal standards or policy considerations to past or present facts." **(Motion, pgs 17-18)**
37. Just as a judge must apply the applicable legal standards to determine "the rights, duties, or obligations of specific individuals," the *Laws of the Regents* allow the dismissal of a tenured faculty member only for very limited reasons.	Just as a judge must apply the applicable legal standards to determine "the rights, duties, or obligations of specific individuals," the *Laws of the Regents* allow the dismissal of a tenured faculty member only for very limited reasons.

Specifically, "the grounds for dismissal shall be demonstrable professional incompetence, neglect of duty, insubordination, conviction of a felony or any offense involving moral turpitude upon a plea or verdict of guilty or following a plea of nolo contendere, or sexual harassment or other conduct which falls below minimum standards of professional integrity."	Specifically, "the grounds for dismissal shall be demonstrable professional incompetence, neglect of duty, insubordination, conviction of a felony or any offense involving moral turpitude upon a plea or verdict of guilty or following a plea of nolo contendere, or sexual harassment or other conduct which falls below minimum standards of professional integrity." **(Reply, pg. 17).**
38. "The existence of a statute or ordinance mandating notice and a hearing is evidence that the governmental decision is to be regarded as quasi-judicial." *State Farm Mutual Automobile Insurance Company v. City of Lakewood*, 788 P.2d 808, 813 (Colo. 1990). The *Laws of the Regents* fulfill this requirement as they require "no member of the faculty shall be dismissed except for cause and after being given an opportunity to be heard as provided in this section."	"The existence of a statute or ordinance mandating notice and a hearing is evidence that the governmental decision is to be regarded as quasi-judicial." *State Farm,* 788 P.2d at 813. The *Laws of the Regents* fulfill this requirement as they require "no member of the faculty shall be dismissed except for cause and after being given an opportunity to be heard as provided in this section." **(Reply, pg. 17).**
39. One of the safeguards available in the judicial system is that "the proceedings are adversary in nature." *Butz*, 438 U.S. at 513. *Horwitz*, 822 F.2d at 1514. Under the *Laws of the Regents*, "the individual concerned shall be permitted to have counsel and the opportunity to question witnesses as provided in the rules of procedure governing faculty dismissal proceedings."	One of the safeguards available in the judicial system is that "the proceedings are adversary in nature." *Butz*, 438 U.S. at 513. *Horwitz*, 822 F.2d at 1514. Under the *Laws of the Regents*, "the individual concerned shall be permitted to have counsel and the opportunity to question witnesses as provided in the rules of procedure governing faculty dismissal proceedings." **(Reply, pg. 18)**
40. Quasi-judicial immunity applies when proceedings are "conducted by a trier of facts insulated by political influence." *Butz*, 438 U.S. at 513. *Horwitz*, 822 F.2d at 1514. In this case, the Privilege and Tenure Hearings Panel of the Faculty Senate was the "trier of fact" that determined whether the grounds for dismissal had been demonstrated against Professor Churchill. That "trier of fact" unanimously determined that Professor Churchill engaged in "conduct below the minimum standards of professional integrity," which is one of the permissible grounds for dismissal.	Quasi-judicial immunity applies when proceedings are "conducted by a trier of facts insulated by political influence." *Butz*, 438 U.S. at 513. *Horwitz*, 822 F.2d at 1514. In this case, the Privilege and Tenure Hearings Panel of the Faculty Senate was the "trier of fact" that determined whether the grounds for dismissal had been demonstrated against Professor Churchill. That "trier of fact" unanimously determined that Professor Churchill engaged in "conduct below the minimum standards of professional integrity," which is one of the permissible grounds for dismissal. **(Reply, pg. 18)**

41. In civil judicial proceedings, the party seeking relief must bear a burden of proof. *Kaiser Foundational Health Plan of Colorado v. Sharp,* 741 P.2d 714, 719 (Colo. 1987). Under the *Laws of the Regents*, "the burden of proof shall be on the university administration" in dismissal proceedings.	In civil judicial proceedings, the party seeking relief must bear a burden of proof. *Kaiser Foundational Health Plan of Colorado v. Sharp,* 741 P.2d 714, 719 (Colo. 1987). Under the *Laws of the Regents*, "the burden of proof shall be on the university administration" in dismissal proceedings. **(Reply, pg. 18)**
42. In civil proceedings, the burden of proof is normally only by a preponderance of the evidence. Under *Regent Policy 5-I*, the burden of proof on the university administration is to demonstrate grounds for dismissal by clear and convincing evidence. This higher burden of proof supports a finding of quasi-judicial immunity.	In civil proceedings, the burden of proof is normally only by a preponderance of the evidence. Under *Regent Policy 5-I*, the burden of proof on the university administration is to demonstrate grounds for dismissal by clear and convincing evidence. This higher burden of proof, where a fact is only proven where the trier of fact finds it to be "highly probable" and has "no serious or substantial doubt," counsel in favor of quasi-judicial immunity. *C.J.I. 3.2.* **(Reply, pg. 18)**

43. Quasi-judicial immunity is appropriate where "a party is entitled to present his case by oral or documentary evidence." *Butz*, 438 U.S. at 513. *Horwitz*, 822 F.2d at 1514. Under the *Laws of the Regents*, the faculty member has the "opportunity to question witnesses" and present evidence. The Hearings Panel heard Professor Churchill's witnesses, received any exhibits he wished to introduce, and he had the opportunity to submit whatever written arguments he wanted.	Quasi-judicial immunity is appropriate where "a party is entitled to present his case by oral or documentary evidence." *Butz*, 438 U.S. at 513. *Horwitz*, 822 F.2d at 1514. Under the *Laws of the Regents*, the faculty member has the "opportunity to question witnesses" and present evidence. The Hearings Panel heard Professor Churchill's witnesses, received any exhibits he wished to introduce, and he had the opportunity to submit whatever written arguments he wanted. **(Reply, pg. 19)**
44. Quasi-judicial immunity is appropriate where "the transcript of testimony and exhibits together with the pleadings constitute the exclusive record for decision." *Butz*, 438 U.S. at 513. *Horwitz*, 822 F.2d at 1514. Under *Regent Policy 5-I*, "the hearing officer shall appoint a registered professional reporter to record the hearing" and "all presentations shall be based on the record in the case, including the transcript of the proceedings before the Panel." At the hearing, "the members of the Board shall have an opportunity to ask questions of the faculty member, the administration, and the hearing officer, but, ordinarily, the Board will not receive additional evidence."	Quasi-judicial immunity is appropriate where "the transcript of testimony and exhibits together with the pleadings constitute the exclusive record for decision." *Butz*, 438 U.S. at 513. *Horwitz*, 822 F.2d at 1514. Under *Regent Policy 5-I*, "the hearing officer shall appoint a registered professional reporter to record the hearing" and "all presentations shall be based on the record in the case, including the transcript of the proceedings before the Panel." At the hearing, "the members of the Board shall have an opportunity to ask questions of the faculty member, the administration, and the hearing officer, but, ordinarily, the Board will not receive additional evidence." **(Reply, pg. 19)**
45. In quasi-judicial proceedings, "the parties are entitled to know the findings and conclusions on all issues of fact, law or discretion presented on the record." *Butz*, 438 U.S. at 513. *Horwitz*, 822 F.2d at 1514. Under *Regent Policy 5-I*, the dismissal for cause panel first issues a written report containing "findings of fact, conclusions, and recommendations consistent with the policies of the Board of Regents."	In quasi-judicial proceedings, "the parties are entitled to know the findings and conclusions on all issues of fact, law or discretion presented on the record." *Butz*, 438 U.S. at 513. *Horwitz*, 822 F.2d at 1514. Under *Regent Policy 5-I*, the dismissal for cause panel first issues a written report containing "findings of fact, conclusions, and recommendations consistent with the policies of the Board of Regents." **(Reply, pg. 19)**
46. In quasi-judicial proceedings, the decision is subject to further judicial review. *Miller,* 521	In quasi-judicial proceedings, the decision is subject to further judicial review. *Miller,* 521 F.3d

F.3d at 1145; *Butz*, 438 U.S. at 513. *Horwitz*, 822 F.2d at 1514. The purpose of such a review is to determine whether the factual basis of the decision is supported by some evidence in the record…" *Miller*, 521 F.3d at 1145.	at 1145; *Butz*, 438 U.S. at 513. *Horwitz*, 822 F.2d at 1514. The purpose of such a review is to determine whether the factual basis of the decision is supported by some evidence in the record…" *Miller*, 521 F.3d at 1145. **(Reply, pg. 20)**

47. Although Professor Churchill asserts that quasi-judicial immunity would leave him without a remedy, he is mistaken. The remedy available to him is the same remedy available to every litigant subject to a quasi-judicial decision. C.R.C.P. 106(a)(4)(I) allows a district court to overturn a quasi-judicial action that constitutes an "abuse of discretion." Under this standard, a district court might set aside any decision that is "clearly erroneous, without evidentiary support in the record, or contrary to law." *Leichliter v. State Liquor Licensing Authority*, 9 P.3d 1153, 1154 (Colo. App. 2000).	Although Professor Churchill asserts that quasi-judicial immunity would leave him without a remedy, he is mistaken. The remedy available to him is the same remedy available to every litigant subject to a quasi-judicial decision. C.R.C.P. 106(a)(4)(I) allows a district court to overturn a quasi-judicial action that constitutes an "abuse of discretion." Under this standard, a district court might set aside any decision that is "clearly erroneous, without evidentiary support in the record, or contrary to law." *Leichliter v. State Liquor Licensing Authority*, 9 P.3d 1153, 1154 (Colo. App. 2000). **(Reply, pg. 20)**
48. Further, this court agrees with the University that it is beyond dispute that the Board of Regents' decision would likely lead to litigation. Dismissal proceedings involve not only pecuniary interests, but also professional reputation. *Butz*, 438 U.S. at 509. This is exactly the type of quasi-judicial decision that the United States Supreme Court had in mind when it observed that "the loser in one forum will frequently seek another, charging the participants in the first with unconstitutional animus." *Butz*, 438 U.S. at 512.	It is beyond dispute that the Board of Regents' decision would likely lead to litigation. Dismissal proceedings involve not only pecuniary interests, but also professional reputation. *Butz*, 438 U.S. at 509. This is exactly the type of quasi-judicial decision that the United States Supreme Court had in mind when it observed that "the loser in one forum will frequently seek another, charging the participants in the first with unconstitutional animus." *Butz*, 438 U.S. at 512. **(Motion, pg. 18)**
49. As described above, the Board of Regents' decision occurred with sufficient procedural protections for the Court to grant quasi-judicial immunity, including: (1) the right to notice of charges; (2) the right to request a hearing before a faculty committee; (3) the right to challenge the participation of a member of the faculty committee; (4) the requirement that the University prove that grounds for dismissal exist by clear and convincing evidence; (5) the requirement that the University transcribe the hearing; (6) the right to representation by counsel; (7) the right to examine each University witness; (8) the right to present witnesses; (9) the right to present oral and	Finally, the Board of Regents' decision occurred with sufficient procedural protections for the Court to grant quasi-judicial immunity, including: (1) the right to notice of charges; (2) the right to request a hearing before a faculty committee; (3) the right to challenge the participation of a member of the faculty committee; (4) the requirement that the University prove that grounds for dismissal exist by clear and convincing evidence; (5) the requirement that the University transcribe the hearing; (6) the right to representation by counsel; (7) the right to examine each University witness; (8) the right to present witnesses; (9) the right to present oral and

written closing arguments; (10) the right to respond to the faculty committee's findings; (11) the right to request a hearing before the Board of Regents; (12) the requirement that the Board of Regents consider only the evidence in the record; (13) the requirement that the Board of Regents take final action in a public meeting; and (14) the right of judicial review of the Board of Regents' decision under C.R.C.P. 106. Professor Churchill received the full panoply of rights available in judicial proceedings.	written closing arguments; (10) the right to respond to the faculty committee's findings; (11) the right to request a hearing before the Board of Regents; (12) the requirement that the Board of Regents consider only the evidence in the record; (13) the requirement that the Board of Regents take final action in a public meeting; and (14) the right of judicial review of the Board of Regents' decision under C.R.C.P. 106. Professor Churchill received the full panoply of rights available in judicial proceedings. **(Motion, pgs. 18-19)**
50. Professor Churchill argues that the University is not entitled to quasi-judicial immunity because the University waived its Eleventh Amendment immunity, but Professor Churchill's response mistakenly assumes that Eleventh Amendment immunity is the same thing as quasi-judicial immunity. They are separate immunities.	Professor Churchill first argues that the University is not entitled to quasi-judicial immunity because the University waived its Eleventh Amendment immunity. The University concedes that it has waived its Eleventh Amendment immunity, but Professor Churchill's response mistakenly assumes that Eleventh Amendment immunity is the same thing as quasi-judicial immunity. They are separate immunities. **(Reply, pg. 2)**
51. At its core, the Eleventh Amendment proscribes who may be sued in federal court or subjected to federal claims, the answer being that "arms of the state" may claim Eleventh Amendment immunity. The entity that is the University of Colorado would generally be afforded such immunity, while suits against individual officials would be permitted. However, in the pre trial agreement the University agreed to waive its Eleventh Amendment immunity.	At its core, the Eleventh Amendment proscribes **who may be sued** in federal court or subjected to federal claims - - with the answer being that "arms of the State" enjoy Eleventh Amendment immunity. Because the University of Colorado and its Board of Regents are "arms of the State," they may claim the Eleventh Amendment's protections against federal claims. *Hartman v. Regents of the University of Colorado*, 22 P.3d 524, 527-29 (Colo. App. 2000); *Rozek v. Topolnicki*, 865 F.2d 1154, 1158 (10th Cir. 1989); *Smith v. Plati*, 258 F.3d 1167, 1171 (10th Cir. 2001). Eleventh Amendment immunity does not depend upon the nature of a governmental official's actions, it turns entirely on whether the suit is lodged against an "arm of the State." **(Reply, pg. 4)**
52. In contrast, quasi-judicial immunity examines the type of action giving rise to the claim. If the government official performs a judicial action, he	In contrast, quasi-judicial immunity examines **the type of action** giving rise to the claim. If the government official performs a judicial action, he

is immune from liability, even if he cannot claim Eleventh Amendment immunity. *See e.g. Williams v. Valencia Count Sheriff's Office* 33 Fed. Appx. 929, 2002 WL 532426, *3 (10thCir. 2002) (determining that a county court clerk was entitled to quasi-judicial immunity for carrying out duties of office); *Harrison v. Gilbert*, 148 Fed. Appx. 718, 2005 WL 2284266. *2 (10th Cir. 2005) (determining that a county attorney was entitled to claim judicial immunity); *Boyce v. County of Maricopa*, 144 Fed. Appx. 653, 2005 WL 1939919, *1(9th Cir. 2005) (determining that county probation officers preparing pretrial reports were entitled to judicial immunity).	is immune from liability, even if he cannot claim Eleventh Amendment immunity. *See e.g. Williams v. Valencia Count Sheriff's Office* 33 Fed. Appx. 929, 2002 WL 532426, *3 (10thCir. 2002) (determining that a county court clerk was entitled to quasi-judicial immunity for carrying out duties of office); *Harrison v. Gilbert*, 148 Fed. Appx. 718, 2005 WL 2284266. *2 (10th Cir. 2005) (determining that a county attorney was entitled to claim judicial immunity); *Boyce v. County of Maricopa*, 144 Fed. Appx. 653, 2005 WL 1939919, *1(9th Cir. 2005) (determining that county probation officers preparing pretrial reports were entitled to judicial immunity). **(Reply, pg. 4)**
53. Professor Churchill next argues that quasi-judicial immunity should not apply because the Regents are elected into office and subject to political pressure. In doing so, he disregards the cases extending quasi-judicial immunity to elected officials, such as *Miller v. Davis*, 521 F.3d. 1142, 1145 (9th Cir. 2008). In *Miller*, the Ninth Circuit Court of Appeals determined that the Governor of California was entitled to quasi-judicial immunity in reviewing parole decisions of inmates convicted of murder. Following the United States Supreme Court's guidance that quasi-judicial immunity "flows not from rank or title ... but from the nature of the responsibilities of the individual official," the Ninth Circuit granted the governor immunity because that function of his office was "functionally comparable" to that of a judge. *Miller,* 521 F.3d at 1145 (*citing Cleavinger v. Saxner*, 474 U.S. 192, 201 (1985)).	Professor Churchill next argues that quasi-judicial immunity should not apply because the Regents are elected into office. In doing so, he disregards the cases extending quasi-judicial immunity to elected officials, such as *Miller v. Davis*, 521 F.3d. 1142, 1145 (9th Cir. 2008). In *Miller*, the Ninth Circuit Court of Appeals determined that the Governor of California was entitled to quasi-judicial immunity in reviewing parole decisions of inmates convicted of murder. Following the United States Supreme Court's guidance that quasi-judicial immunity "flows not from rank or title ... but from the nature of the responsibilities of the individual official," the Ninth Circuit granted the governor immunity because that function of his office was "functionally comparable" to that of a judge. *Miller,* 521 F.3d at 1145 (*citing Cleavinger v. Saxner*, 474 U.S. 192, 201 (1985)). **(Reply, pg. 14)**
54. The Ninth Circuit recognized that there were some factors that potentially weighed against granting the governor quasi-judicial immunity, such as that "the Governor's review is not adversarial in nature, there is no requirement that the Governor consider precedent in making his determination, and the Governor is, by definition as an elected official, not insulated from political influence." *Miller*, 521 F.3d at 1145. Yet,	The Ninth Circuit recognized that there were some factors that potentially weighed against granting the governor quasi-judicial immunity, such as that "the Governor's review is not adversarial in nature, there is no requirement that the Governor consider precedent in making his determination, and the Governor is, by definition as an elected official, not insulated from political influence." *Miller*, 521 F.3d at 1145. Yet, notwithstanding the

notwithstanding the governor's "almost uniform denials of parole," quasi-judicial immunity was proper because the governor's review of parole decisions "shares enough of the characteristics of the judicial process" to be considered judicial in nature. *Miller*, 521 F.3d at 1145 (*citing Butz*, 438 U.S. at 513). The proper focus is upon the function that the governmental official performs, not the means by which he acquired his office.	governor's "almost uniform denials of parole," quasi-judicial immunity was proper because the governor's review of parole decisions "shares enough of the characteristics of the judicial process" to be considered judicial in nature. *Miller*, 521 F.3d at 1145 (*citing Butz*, 438 U.S. at 513). The proper focus is upon the function that the governmental official performs, not the means by which he acquired his office. **(Reply, pg. 15)**
55. Further, judges are elected in many states. Those judges must campaign for office and must subsequently make decisions in high profile cases, but are nonetheless entitled to judicial immunity. *See Brown v. Greisenauer*, 970 F.2d 431, 439 (8th Cir. 1992) (stating that "for purposes of immunity analysis, the insulation-frompolitical-influence factor does not refer to the independence of the governmental official from the political or electoral process.") Indeed, even judges in the State of Colorado are subject to retention elections, but these elections do not cause them to lose judicial immunity. Further, the Regents function in several capacities, including interacting with their constituents. Mr. Churchill's dismissal was a function that was judicial in nature.	Finally, Professor Churchill's argument mistakenly assumes that everyone performing a judicial function is free from any sort of political pressure. Certainly, this would not be true of elected judges, such as those in many states, who campaign for office and must subsequently make decisions in high profile cases, but are nonetheless entitled to judicial immunity. *See Brown v. Greisenauer*, 970 F.2d 431, 439 (8th Cir. 1992) (stating that "for purposes of immunity analysis, the insulation-frompolitical-influence factor does not refer to the independence of the governmental official from the political or electoral process.") Indeed, even judges in the State of Colorado are subject to retention elections, but these elections do not cause them to lose judicial immunity. Further, the Regents function in several capacities, including interacting with their constituents. Mr. Churchill's dismissal was a function that was judicial in nature. **(Reply, pg. 16)**
56. Professor Churchill cites *Tonkovich v. Kansas Board of Regents*, 1996 U.S. Dist. Lexis 18323 (D. Kan. 1996), for the proposition that Boards of Regents should not enjoy quasi-judicial immunity.	Professor Churchill cites a single case, *Tonkovich v. Kansas Board of Regents*, 1996 U.S. Dist. Lexis 18323 (D. Kan. 1996), for the proposition that Boards of Regents should not enjoy quasi-judicial immunity. **(Reply to Sur-Reply, pg. 8)**
57. Professor Churchill correctly notes that *Tonkovich* denied quasi-judicial immunity to the University of Kansas' Board of Regents because the Kansas legislature had not "specifically delegated [its] quasi-judicial role by statute" and "the Kansas Legislature did not provide the	Professor Churchill correctly notes that *Tonkovich* denied quasi-judicial immunity to the University of Kansas' Board of Regents because the Kansas legislature had not "specifically delegated [its] quasi-judicial role by statute" and "the Kansas Legislature did not provide the Kansas Board of

Kansas Board of Regents with "the same explicit delegation of quasi-judicial functions [that it afforded administrative agencies]." *Tonkovich*, 1996 U.S. Dist. Lexis 18323 at *40-41. In its two-page discussion of the Kansas Regents beginning on Page *39, *Tonkovich* denied quasi-judicial immunity solely because the Kansas legislature had not statutorily conferred quasi-judicial powers upon the Regents. *Tonkovich* never analyzed whether the Kansas Regents engaged in a form of judicial activity.	Regents with "the same explicit delegation of quasi-judicial functions [that it afforded administrative agencies]." *Tonkovich*, 1996 U.S. Dist. Lexis 18323 at *40-41. In its two-page discussion of the Kansas Regents beginning on Page *39, *Tonkovich* denied quasi-judicial immunity <u>solely</u> because the Kansas legislature had not statutorily conferred quasi-judicial powers upon the Regents. *Tonkovich* <u>never</u> analyzed whether the Kansas Regents engaged in a form of judicial activity. **(Reply to Sur-Reply, pg. 9)**
58. Professor Churchill suggests that "there is absolutely no meaningful distinction between the Kansas Regents and the University of Colorado's Board of Regents," but he is mistaken. The Kansas Board of Regents receives its powers only through express legislative delegations. *Article 2, §6* of the Kansas Constitution provides: The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public institutions of higher education shall include universities and colleges granting baccalaureate or postbaccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law.	Professor Churchill suggests that "there is absolutely no meaningful distinction between the Kansas Regents and the University of Colorado's Board of Regents," but he is mistaken. The Kansas Board of Regents receives its powers only through express legislative delegations. *Article 2, §6* of the Kansas Constitution provides: The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public institutions of higher education shall include universities and colleges granting baccalaureate or postbaccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law. (emphasis added) **(Reply to Sur-Reply, pgs. 9-10)**
59. The University of Colorado's Board of Regents is not limited to "such other duties as may be prescribed by law" and does not depend upon Colorado's General Assembly to grant it quasi-judicial authority. *Article IX, §13* of the Colorado Constitution first created the Board of Regents without any further legislative action. Not only does the Colorado Constitution create the Board of Regents independently of any legislative action, the Constitution also grants the Regents broad	The University of Colorado's Board of Regents is not limited to "such other duties as may be prescribed by law" and does not depend upon Colorado's General Assembly to grant it quasi-judicial authority. *Article IX, §13* of the Colorado Constitution first created the Board of Regents without any further legislative action. It states: There shall be nine regents of the university of Colorado who shall be elected in the

constitutional authority to manage the University's affairs. In contrast to the Kansas Constitution, which limits its Board of Regents to "such other duties as may be prescribed by law," Colorado's Constitution affirmatively states that the Board of Regents "shall have the general supervision of their respective institutions . . . unless otherwise provided by law." The difference is significant because the Kansas Regents can act only where the legislature has expressly conferred a certain power, but the Colorado Regents possess constitutional authority to act unless the General Assembly has properly acted to remove its exclusive powers to govern the University.	manner prescribed by law for terms of six years each. Said regents shall constitute a body corporate to be known by the name and style of "The Regents of the University of Colorado". Not only does the Colorado Constitution create the Board of Regents independently of any legislative action, the Constitution also grants the Regents broad constitutional authority to manage the University's affairs. *Article VIII, § 5*of the *Colorado Constitution* states: The governing boards of the state institutions of higher education, whether established by this constitution or by law, shall have the general supervision of their respective institutions and the exclusive control and direction of all funds of and appropriations to their respective institutions, unless otherwise provided by law. (emphasis added) In contrast to the Kansas Constitution, which limits its Board of Regents to "such other duties as may be prescribed by law," Colorado's Constitution affirmatively states that the Board "shall have the general supervision of their respective institutions…unless otherwise provided by law." The difference is significant because the Kansas Regents can act only where the legislature has expressly conferred a certain power, but the Colorado Regents possess constitutional authority to act unless the General Assembly has properly acted to remove its exclusive powers to govern the University. **(Reply to Sur-Reply, pgs. 9-11)**
60. Further, C.R.S. §23-20-112 states that the Board of Regents "shall remove any officer connected with the university when in its judgment the good of the institution requires it." Therefore, the University of Colorado's Board of Regents actually possesses both constitutional and statutory powers that Kansas Board of Regents lacked. As a result *Tonkovich* sheds no light on the issues	Finally, to the extent that the Court believes the Board of Regents would need the General Assembly's permission to act in a quasi-judicial capacity, it already exists. C.R.S. §23-20-112 states that the Board of Regents "shall remove any officer connected with the university when in its judgment the good of the institution requires it." (emphasis added) Because the University of

before this Court.	Colorado's Board of Regents actually possesses both constitutional and statutory powers that Kansas Board of Regents lacked, *Tonkovich* sheds no light on the issues before this Court. **(Reply to Sur-Reply, pg. 12)**
61. Professor Churchill argues that the Board of Regents did not act in a quasi-judicial capacity because it did not reach the same result as the faculty panel. However, the faculty panel found unanimously that Professor Churchill engaged in conduct that met the grounds for dismissal. Moreover, the faculty panel split 3-2 as to whether dismissal was the appropriate remedy. Under those circumstances, the Board of Regents engaged in an entirely judicial function when it reviewed the record and applied "discretionary judgment." *Hulen*, 98-B-2170 at Page 20.	Professor Churchill finally argues that the Board of Regents did not act in a quasi-judicial capacity because it did not reach the same result as the faculty panel. Perhaps this argument might be interesting (even if not legally correct) where the faculty panel was unanimous in finding no grounds for discipline or no basis for dismissal, but the faculty panel found unanimously that Professor Churchill engaged in conduct that met the grounds for dismissal. Moreover, the faculty panel split 3-2 as to whether dismissal was the appropriate remedy. Under those circumstances, the Board of Regents engaged in an entirely judicial function when it reviewed the record and applied "discretionary judgment." *Hulen*, 98-B-2170 at Page 20. **(Reply, pg. 22)**
62. Professor Churchill argues that the Board of Regents did not act as an appellate body. However, the Board of Regents acted in a nearly identical procedural manner as the university administrators or trustees in *Hulen* and *Gressley* when it reviewed the reports and recommendations generated during weeks of adversarial hearings without taking additional evidence. Further, there is nothing that limits quasi-judicial immunity to officials acting in a purely appellate role. *See Horwitz*, 822 F.2d at 1511; *Butz*, 438 U.S. at 513.	Professor Churchill first argues that the Board of Regents did not act as an appellate body. In doing so, he disregards the procedural posture of both *Hulen* and *Gressley.* In each cases, the university administrators or trustees reviewed the decisions of faculty panels. The Board Regents acted in a nearly identical manner when it reviewed the reports and recommendations generated during weeks of adversarial hearings without taking additional evidence. Even more significantly, however, there is nothing that limits quasi-judicial immunity to officials acting in a purely appellate role. If Professor Churchill was correct, the Tenth Circuit could not have granted immunity to the Colorado Board of Medical Examiners, which "refers the [disciplinary] matter to an appopinted hearing officer for an evidentiary hearing, subject to the hear panel's review." H*orwitz*, 822 F.2d at 1511. Of course, Professor Churchill's argument is also

	contrary to the fact that quasi-judicial immunity protects all types of officials who perform judicial functions, not just appellate functions. *See Butz*, 438 U.S. at 513 (applying quasi-judicial immunity to a hearing officer and noting that "those who complain or error in such proceedings must seek agency or judicial review"). **(Reply, pgs. 21-22)**
63. Finally, Professor Churchill argues that the 1996 Amendment to 42 U.S.C. §1983, limiting the availability of equitable relief against judicial officers, does not apply to quasi-judicial officers, such as Regents acting in a quasi-judicial capacity. I disagree.	
64. The substantive right to seek remedial measures for a state official's past constitutional violation exists only pursuant to the federal statute under which Professor Churchill asserted his claims, 42 U.S.C. §1983. *See Arpin v. Santa Clara Valley Transportation Agency*, 261 F.3d 912, 925 (9th Cir. 2001) (stating that "a litigant complaining of a violation of constitutional right does not have a direct cause of action under the United States Constitution but must use 42 U.S.C. §1983") As it existed before 1996, §1983 stated: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . Interpreting this language, the United States Supreme Court determined that "Congress plainly authorized the federal courts to issue injunctions in §1983 actions, by expressly authorizing a 'suit in	What *Ex Parte Young* did not create, however, was a substantive right to seek remedial measures for a state official's past constitutional violation. That right of action only exists pursuant to the federal statute under which Professor Churchill asserted his claims, 42 U.S.C. §1983. *See Arpin v. Santa Clara Valley Transportation Agency*, 261 F.3d 912, 925 (9th Cir. 2001) (stating that "a litigant complaining of a violation of constitutional right does not have a direct cause of action under the United States Constitution but must use 42 U.S.C. §1983") As it existed before 1996, §1983 stated: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . Interpreting this language, the United States Supreme Court determined that "Congress plainly authorized the federal courts to issue injunctions in

equity.' *Mitchum v. Foster*, 407 U.S. 225, 242 (1972). The Supreme Court later determined that judicial officers could not raise judicial immunity as a means of avoiding prospective relief awarded under §1983, even if judges were immune from claims for monetary damages. *Pulliam v. Allen*, 466 U.S. 522, 538-540 (1984). In doing so, the Supreme Court determined that "nothing in the legislative history of §1983 or in this Court's subsequent interpretations of that statute supports a conclusion that Congress intended to insulate judges from prospective collateral injunctive relief." *Pulliam*, 466 U.S. at 540.	§1983 actions, by expressly authorizing a 'suit in equity.' *Mitchum v. Foster*, 407 U.S. 225, 242 (1972). The Supreme Court later determined that judicial officers could not raise judicial immunity as a means of avoiding prospective relief awarded under §1983, even if judges were immune from claims for monetary damages. *Pulliam v. Allen*, 466 U.S. 522, 538-540 (1984). In doing so, the Supreme Court determined that "nothing in the legislative history of §1983 or in this Court's subsequent interpretations of that statute supports a conclusion that Congress intended to insulate judges from prospective collateral injunctive relief." *Pulliam*, 466 U.S. at 540. With *Pulliam* as guidance, the lower courts decided each of the cases that Professor Churchill cited for the propositions that judicial immunity does not prevent prospective equitable relief. **Reply, pgs. 8-9.**
65. However, Congress amended 42 U.S.C. §1983 in 1996 to modify the availability of prospective relief available to successful litigants. As amended, the statute now reads: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. . .	What Professor Churchill overlooks, however, is that Congress amended 42 U.S.C. §1983 in 1996 to modify the availability of prospective relief available to successful litigants. As amended, the statute now reads: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, <u>except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable</u>. . . **(Reply, pgs. 9-10)**

66. The 1996 amendment to 42 U.S.C. §1983 applies to "actions against a judicial officer," which includes officers, such as Regents, acting in a quasi- judicial capacity: > Although neither the Supreme Court nor the First Circuit have addressed whether the statute protects quasi-judicial actors . . .performing tasks functionally equivalent to judges from actions for injunctive relief, circuit and district courts in the Second, Sixth, Seventh, Ninth, and District of Columbia have answered in the affirmative. *Pelletier v. Rhode Island*, 2008 WL 5062162, *5-*6 (D. R.I. 2008). *See also Montero v. Travis*, 171 F.3d 757, 761 (2nd Cir. 1999) (applying the 1996 amendments when dismissing claims for prospective relief against quasi-judicial officers); *Roth v. King*, 449 F.3d 1272, 1286-87 (D.C. Cir. 2006) (stating that attorneys acting on administrative panels are entitled to immunity because "there is no reason to believe that the Federal Courts Improvement Act of 1996 is restricted to 'judges'") In *Pelletier*, Judge Smith surveyed all of the cases applying the 1996 amendment to quasi-judicial officers and found only one, *Simmons v. Fabian*, 743 N.W. 2d. 281 (Minn.App.2007), did not grant immunity for prospective relief, but observed that the court in Simmons: (1) failed to acknowledge the legislative history demonstrating that the amendment was intended to apply to quasi-judicial officers; and (2) was contrary to the existing body of law on the subject. *Pelletier*, 2008 WL 5062162 at *6.	Finally, the 1996 amendment to 42 U.S.C. §1983 applies to "actions against a judicial officer," which includes officers, such as Regents, acting in a quasi-judicial capacity. That argument has, however, been soundly rejected by the federal courts: > Although neither the Supreme Court nor the First Circuit have addressed whether the statute protects quasi-judicial actors . . .performing tasks functionally equivalent to judges from actions for injunctive relief, circuit and district courts in the Second, Sixth, Seventh, Ninth, and District of Columbia have answered in the affirmative. *Pelletier v. Rhode Island*, 2008 WL 5062162, *5-*6 (D. R.I. 2008). *See also Montero v. Travis*, 171 F.3d 757, 761 (2nd Cir. 1999) (applying the 1996 amendments when dismissing claims for prospective relief against quasi-judicial officers); *Roth v. King*, 449 F.3d 1272, 1286-87 (D.C. Cir. 2006) (stating that attorneys acting on administrative panels are entitled to immunity because "there is no reason to believe that the Federal Courts Improvement Act of 1996 is restricted to 'judges'"). In ruling, Judge Smith surveyed all of the cases applying the 1998 amendment to quasi-judicial officers and found only one did not grant immunity for prospective relief, but observed that this case: (1) failed to acknowledge the legislative history demonstrating that the amendment was intended to apply to quasi-judicial officers; and (2) was contrary to the existing body of law on the subject. *Pelletier*, 2008 WL 5062162 at *6. Professor Churchill provides no reason why the Court should not adopt the reasoning of the courts that regularly apply the 1996 amendment to quasi-judicial officers. **(Reply, pg. 11)**
68. Moreover, C.R.C.P. 106 allows an action in the district court "where any governmental body or officer or any lower judicial body exercising	Moreover, C.R.C.P. 106 allows an action in the district court "where any governmental body or officer or any lower judicial body exercising

judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law." Where these avenues were available to him, the plain language of 42 U.S.C. §1983 now prohibits the form of relief that Professor Churchill seeks to obtain from the University.	judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law." Where these avenues were available to him, the plain language of 42 U.S.C. §1983 now prohibits the form of relief that Professor Churchill seeks to obtain from the University. **(Reply, pg. 10)**
69. Based on the foregoing, it is hereby ORDERED that Defendants are GRANTED quasi-judicial immunity as a matter of law from Professor Churchill's Second Claim for Relief. As a result, the jury's verdict in this matter is hereby VACATED, and judgment is hereby entered in favor of Defendants on Professor Churchill's Second Claim for Relief.	