District Court City and County of Denver, Colorado 1437 Bannock Street Denver, Colorado 80202 **Plaintiff:** **Ward Churchill**, an individual, v. **Defendant(s):** **University of Colorado,** **Regents of the University of Colorado, a Colorado body corporate**	▲ **COURT USE ONLY** ▲
Attorneys for Plaintiff: David A. Lane, Atty. Reg. No. 16422 Darold Killmer, Atty. Reg. No. 16056 Qusair Mohamedbhai, Atty. Reg. No. 35390 **KILLMER, LANE & NEWMAN, L.L.P.** 1543 Champa Street, Suite 400 The Odd Fellows' Hall Denver, CO 80202 Phone Number: (303) 571-1000 Fax Number: (303) 571-1001 E-mail: dlane@killmerlane.com Robert J. Bruce, Atty. Reg. No. 17742 **LAWLIS & BRUCE, L.L.C.** 1875 Lawrence Street, Suite 750 Denver, CO 80202 Phone Number: (303) 573-5498 Fax Number: (303) 573-5537 E-mail: robertbruce@lawlisbruce.com	Case Number: 06 CV 11473 Division: 6
MOTION TO AMEND JUDGMENT PURSUANT TO C.R.C.P. RULE 59	

PLEASE TAKE NOTICE that the Plaintiff, Ward Churchill, by and through his attorneys, David A. Lane and Qusair Mohamedbhai, of the law firm KILLMER, LANE & NEWMAN, LLP, and Robert J. Bruce of the law firm Lawlis & Bruce, LLC, hereby files

the following MOTION TO AMEND JUDGMENT. The grounds for this motion are set forth fully herein:

Introduction

After one of the most closely watched jury trials in Colorado's recent history, a jury of citizens unambiguously held that the University of Colorado fired Professor Ward Churchill in retaliation for his First Amendment protected speech. Despite the jury verdict, this Court has ignored all applicable law and created new legal doctrine heretofore unknown to the English Common Law. Essentially, this Court has ruled that regardless of how egregious any Constitutional violations are by the Regents of the University of Colorado, as long as they provide a sham, kangaroo court for individuals targeted for termination and/or persecution because of their political beliefs, the courts of the State of Colorado will never interfere with any such wholesale violations of the Constitution. Form has now prevailed over substance and this country is less free as a result of this Court's holding that there is no relief to be had for violations of freedom of speech by the Regents in the justice system.

> Of the contention that the law provides no effective remedy for such a deprivation of rights affecting life and liberty, it may well be said…that it "falls with the premise." To deprive a citizen of his only effective remedy would not only be contrary to the "rudimentary demands of justice" but destructive of a constitutional guaranty specifically designed to prevent injustice.

Johnson v. Zerbst, 82 L. Ed. 1461, 1468 (1938).

This Court has simply wholly adopted the briefs filed by the University and signed them as the Court's Order. *See,* Exhibit 1. Unfortunately this Court's Order has caused incalculable damage to freedom of speech and academic freedom in this country.

This Court has simply found facts with absolutely no record support, and crafted new concepts of law never before seen in America.

This Court Has Inaccurately Defined The Stipulation In This Case

In granting quasi-judicial immunity to the Regents this Court relied almost exclusively on the stipulation between the parties. Unfortunately, the stipulation the party's arrived at bears no resemblance to the stipulation this Court believes exists. The gross misrepresentations regarding the stipulation between the parties set forth by the University and adopted by this Court is nothing short of shocking.

The relevant parts of the stipulation include:

1) The University of Colorado – an entity ordinarily not sueable under Section 1983 because of 11th Amendment immunity;
2) The Regents of the University of Colorado – also an entity and immune from an 11th Amendment perspective;
3) The Individual Regents in their official and individual capacities – enjoying 11th Amendment immunity in their official capacities and no immunity in their individual capacities.

The agreed upon purpose of the stipulation as set forth in paragraph 2 was to "simplify the pleadings," prevent unnecessary litigation and to streamline the case. The purpose of the stipulation was never to confer quasi-judicial immunity upon any entity sued in its official capacity.

Paragraph 3 of the agreement dismisses all official and individual capacity claims against the individual Regents and dismissed the non-constitutional claims.

Paragraph 4 requires that the University dismiss its pending motions to dismiss on the First Amendment retaliation claims.

Not included in the filed stipulation was the fact that the University was waiving any and all claims of 11th Amendment immunity and that the University was able to stand

precisely in the shoes of the dismissed Regents sued in their individual and official capacities. *At no time did Plaintiff agree to insulate the University from official capacity liability or dismiss any official capacity claims*. The agreement was simply that just as the Regents were sued in their individual and official capacities, any immunity *and liability* attached to them would then be transferred to the entity of the University.

This Court has *completely and totally ignored* the point that quasi-judicial immunity *does not **ever** apply to official capacity suits*. This is an individual and official capacity suit. Not *once* in its Order dismissing this case does this Court even make an effort to address this absolutely most critical issue in the entire case. This is because the University has never addressed this point in any pleading and when this Court adopted the brief of the University as its Order, there was no mention of this issue. *At no time did Professor Churchill **ever** waive official capacity status attached to any party to this law suit.* Even if this Court believes that the Regents in their individual capacities enjoy quasi-judicial immunity, which Plaintiff obviously believes to be error, even the University agrees that quasi-judicial immunity does not attach to an official capacity claim. This case is an individual and official capacity lawsuit.

The Order of Dismissal Is Replete With Factual And Legal Errors

Quasi Judicial Immunity

Paragraph 9 of the Order states, incompletely, that "Professor Churchill agreed that the University acquired the ability to assert any defenses that would be available to individual Regents." That is true as far as it goes, however the parties never agreed that official capacity claims were no longer pleaded or where a part of this case. Indeed, even this Court states that the stipulation says that "The University agrees and stipulates that

…[it will]…permit the same recovery from the Universtiy that might otherwise be had against any of its officials or employees ***acting in their official*** or individual capacities…" Clearly, the defendant University was standing in precisely the shoes previously occupied by the Regents in their individual and official capacities, which was the intent of the stipulation. Quasi-judicial immunity, as countless courts have concluded, is *never* conferred in an official capacity law suit. In *Moss v. Kopp*, 559 F.3d 1155, 1166 (10th Cir. 2009) the Tenth Circuit held:

> Municipal entities and local governing bodies are not entitled to the traditional common law immunities for § 1983 claims. *Whitesel*, 222 F.3d at 870. That is, unlike various government officials, municipalities (e.g., local officials in their official capacity and counties, among others) do not enjoy absolute immunity from suit under § 1983. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 165-66 (1993).

This applies to quasi-judicial immunity as well as other forms of immunity. Indeed, the case Defendants' rely upon most heavily is *Hulen v. Yates*, 322 F.3d 1229, 1236 (10th Cir. Colo. 2003). In that case the court acknowledged that the district court had granted President Yates "…quasi-judicial immunity for claims against him in his *individual capacity*…" (emphasis added) but there was never any quasi-judicial immunity granted to any party in an official capacity or institutional capacity.

The notion that quasi-judicial immunity does not apply to any party other than individuals being sued in their individual capacities has been reiterated time and again. In a case outlining the historical underpinnings of the notion that quasi-judicial immunity does not apply to governmental entities but only to individuals, the Eighth Circuit held in *VanHorn v. Oelschlager*, 502 F.3d 775, 779 (8th Cir. 2007):

> We have previously indicated that immunity only extends to claims against government employees sued in their individual capacities. *Johnson v. Outboard Marine Corp*., 172 F.3d 531, 535 (8th Cir. 1999)("Qualified immunity is not a

> defense available to governmental entities, but only to government employees sued in their individual capacity."); *Davis v. Hall*, 375 F.3d 703, 710 n.3 (8th Cir. 2004) (approving of the district court's conclusion that neither qualified immunity nor absolute immunity was available to a government employee sued in his official capacity). Furthermore, the Supreme Court has specifically stated that "[t]he only immunities that can be claimed in an official-capacity action are forms of sovereign immunity that the entity, *qua* entity, may possess, such as the Eleventh Amendment." *Graham*, 473 U.S. at 167.
>
> Case law from our sister circuits also supports the conclusion that absolute, quasi-judicial immunity only extends to claims against defendants sued in their individual--not official--capacities. *See, e.g., Lonzetta Trucking & Excavating Co. v. Schan*, 144 Fed. Appx. 206, 210--211 (3d Cir. 2005) (unpublished) ("Therefore, it follows that the zoning officials . . . would be entitled to absolute immunity in their individual capacities if they were performing 'quasi-judicial' functions. However, the zoning officials in their official capacities . . . are not entitled to absolute immunity.") (emphasis in original); *Denton v. Bedinghaus*, 40 Fed. Appx. 974 (6th Cir. 2002) (unpublished) ("Of critical importance here is that plaintiffs sue defendants in only their official capacities. Yet, immunity defenses apply to individual capacity suits and they do not shield municipalities from § 1983 liability."); *Turner v. Houma Mun. Fire & Police Civil Serv. Bd.*, 229 F.3d 478, 483 (5th Cir. 2000) (rejecting municipal fire and police service board members' argument that the district court erred in not holding that the board and its members were entitled to absolute, quasi-judicial immunity in their "official capacities" because such an argument "misconstrues the distinction between immunities available for 'individual-capacity' and 'official capacity' suits under § 1983"); *Alkire v. Irving*, 330 F.3d 802, 810--11 (6th Cir. 2003) (holding that "as a result of being sued only in their official capacities, Sheriff Zimmerly and Judge Irving cannot claim any personal immunities, such as quasi-judicial or qualified immunity, to which they might be entitled if sued in their individual or personal capacities.").
>
> We, like the Fifth Circuit, acknowledge that confusion can often arise in litigation when "[c]ourts discuss immunity defenses without clearly articulating to whom and in which capacity [immunity] defenses apply. . . ." *Turner*, 229 F.3d at 485. Nevertheless, this court's precedent, Supreme Court precedent, and case law from our sister circuits make clear that absolute, quasi-judicial immunity is not available for defendants sued in their official capacities. This court in *VanHorn I* …only extended absolute, quasi-judicial immunity to the defendants sued in their individual capacities.

VanHorn v. Oelschlager, 502 F.3d 775, 779 (8th Cir. 2007).

This Court has *ignored* the fact that at no time did Professor Churchill *ever* dismiss *any* official capacity defendants from this case, and indeed the University simply

adopted all defenses and liabilities of the Regents sued in their individual and official capacities.

In paragraph 10 of the Order, this Court makes the partially correct statement that "…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." This Court, however, makes the fatal error of failing to note that it was only available to the Regents *in their individual capacities and not in their official capacities*. Because CU received no better or worse immunity than the individual Regents, this Court's failure to address the black-letter law precluding quasi-judicial immunity to entities sued in their *official capacities* makes this entire Order a nullity. Even if this Court believes that the Regents in their *individual capacities* enjoyed quasi-judicial immunity, which is in itself error, this Court's failure to so much as address the official capacity portion of the case is inexplicable.

This Court has misstated Professor Churchill's positions in this litigation. For example, paragraph 50 of the Order alleges that Churchill "argues 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." Nowhere, however, does Plaintiff ever make this ridiculous argument. This language is taken directly from CU's brief – not from any pleading filed by Professor Churchill. Nowhere does Plaintiff conflate Eleventh Amendment immunity with quasi-judicial immunity.

This Court's Dicta Regarding Reinstatement Or Front Pay Ignored The Clear Weight Of The Credible Evidence

It is unclear why this Court even addressed the issue of reinstatement once the motion to dismiss was granted. This Court's entire crucifixion of Professor Churchill found in the Order denying reinstatement is reduced to nothing but *dicta* authored by this Court apparently for public consumption. Nevertheless, even twenty pages of *dicta* not essential to any holding of this Court are replete with errors and misstatements of the actual evidence presented in this case.

1. This Court makes unprecedented new law by ruling that reinstatement is not appropriate when only nominal damages are awarded.

The most shocking error on the reinstatement/front pay issue made by this Court is found at paragraph 82 of this Court's Order, wherein this Court marches hand-in-hand with CU's brief that equitable relief in the form of reinstatement is somehow directly tied to the amount of damages obtained as a matter of law. Citing not one single case in support of this absurd proposition, just as CU failed to cite even one such case in its liberally copied brief/order, this Court nevertheless makes unprecedented new law that somehow reinstatement is not appropriate when only nominal damages are awarded. This proposition is unique in the annals of the English common law and finds support only in this Court's Order which is wholly derived from the University's brief. Indeed, had Churchill fully mitigated any and all damages with a better-paying position on another faculty, he would similarly have obtained a one-dollar jury verdict based upon no economic loss and perhaps no emotional distress as well. This Court now finds, for the first time in the history of English common law, that no damages at law means no equitable relief, despite the cases cited by Professor Churchill to the contrary.

2. It is inconsistent and irreconcilable with the jury's verdict that the jury found that there was no evidence of academic misconduct sufficient to justify Churchill's termination, yet this Court finds there was sufficient academic misconduct to deny reinstatement of employment.

In what may only be termed as a complete departure from the facts, at paragraph 98 this Court states that "Professor Churchill contends that the jury's verdict constitutes the jury's rejection of the P&T Committee's decision that he engaged in research misconduct…" In point of fact, Churchill's brief specifically rejects this straw-man argument concocted out of whole cloth by CU and adopted by this Court and states that the jury in fact never made any findings regarding whether or not research misconduct did or did not occur.

All we know is that the jury concluded that if there was any research misconduct, it would not have resulted in Professor Churchill's termination and all allegations of research misconduct was merely a pretext for his termination. *Verdict Form,* Question 3. Indeed, the following is directly taken from page 3 of Professor Churchill's Reply on the reinstatement issue:

> The University argues that the nominal damage award is "a complete repudiation of Professor Churchill's scholarship…" (*Response*, p. 2). The Defendants go on for pages reading (or mis-reading) the jury's collective mind and concluding that CU essentially won the case, thus neither reinstatement nor front pay should be given to Professor Churchill. Somehow missing in the CU response is any reference to the jury's finding that "when it terminated Professor Churchill's employment…a majority of the Board of Regents of the University of Colorado use[ed] Plaintiff's protected speech activity as a substantial or motivating factor in the decision to discharge the Plaintiff from employment." (Question 2 on the jury form). Defendants also ignore the next inconvenient finding by the jury that "Defendants [have not] shown by a preponderance of the evidence that the Plaintiff would have been dismissed for other reasons even in the absence of the protected speech activity…" (Question 3 on the Jury form). Despite these unequivocal pronouncements by the jury, CU continues recycle to this Court the same losing trial arguments. What is entirely overlooked by CU, however, is that whether Churchill is the best or worst scholar in the world is entirely beside the point given that the only relevant inquiry from this Court's perspective was

> resolved by the jury when it found that a) CU violated the Constitution of the United States and; b) Churchill would not have been fired but-for this Constitutional violation. This Court must now fashion an equitable remedy tailored to remedy the violation.

Nowhere does Professor Churchill argue that the jury verdict is a rejection of the P&T findings. The fact that this Court asserts it as if it were true merely illustrates the fact that this Court wholly adopted Defendants' brief in crafting its Order. *See,* Exhibit 1.

3. The Court did not apply the legal standard for reinstatement of employment in a First Amendment retaliation case.

The Court cited the case of *Carter v. Sedgwick County*, 36 F.3d 952, 957 (10th Cir. 1994) for the proposition that it has "considerable discretion" in formulating equitable remedies. *Order,* ¶ 79. The case of *Carter* is a Title VII case, not a First Amendment case, and *Carter* did not address the issue of reinstatement of employment. The Court goes on to cite the ADEA case of *Bingman v. Natkin & Co.,* 937 F.2d 553, 558 (10th Cir.1991) for the proposition that "the award of equitable relief by way of reinstatement rests in the discretion of the trial court." However, the Court appears to have not considered the next sentence of this case which states: "[t]his circuit has frequently held that reinstatement is the preferred remedy for discrimination in employment matters in all but special instances of unusual work place hostility or other aggravating circumstances which may make reinstatement impossible. *Bingman v. Natkin & Co.,* 937 F.2d 553, 558 (10th Cir.1991) citing *Anderson v. Phillips Petroleum*, 861 F.2d 631 (10th Cir. 1988); *Jackson v. City of Albuquerque,* 890 F.2d 225 (10th Cir. 1989).

By citing the Title VII case of *Carter,* and the age discrimination case of *Bingman*, the Court appears to have completely neglected the law concerning

reinstatement of employment in the context of a First Amendment retaliation case. In First Amendment retaliation cases, the Tenth Circuit Court of Appeals has recognized that "reinstatement usually will be granted when a plaintiff prevails in a wrongful discharge case brought under Section 1983." *Jackson v. City of Albuquerque*, 890 F.2d 225, 233 (10th Cir. 1989). "Reinstatement is a basic element of the appropriate remedy in wrongful employee discharge cases and, except in extraordinary cases, is required." *Jackson*, 890 F.2d at 233; see also; *Starrett v. Wadley*, 876 F.2d 808, 824 (10th Cir. 1989); *see also James v. Sears, Roebuck & Co., 21 F.3d 989, 996-97* (10th Cir. 1994). Additionally, the Court created new law and deviated from well-settled law concerning reinstatement of employment by engaging in a balancing test when it weighed the potential harms of reinstatement against the potential benefits. *Order*, ¶¶ 109 - 115. There is no balancing test under the applicable case law. The case law clearly dictates that reinstatement is the required remedy unless there exists exceptional circumstances such as undue hostility or that a working relationship would be impossible. *Spulak v. K-Mart Corp.*, 894 F.2d 1150, 1157 (10th Cir. 1990). Such circumstances were not proven to exist at the reinstatement hearing.

4. The Court improperly denied reinstatement because the Court has the opinion that Churchill's legal burden to prove First Amendment retaliation is too low.

In First Amendment retaliation cases, an employee must show that the speech was a substantial factor or a motivating factor in the detrimental employment decision. *Deschenie v. Bd. of Educ. of Cent. Consol. Sch. Dist. No. 22*, 473 F.3d 1271, 1276 (10th Cir. 2007). However, in the *dicta* denying Churchill's request for reinstatement, in ¶ 72 of its Order, the Court noted that "I instructed the jury that it not have to find that 'the

protected speech activities were the only reason Defendants acted against the Plaintiff.' *Jury Instruction 7*." By specifically noting Jury Instruction 7, it appears the Court has in part denied Churchill's request for reinstatement based on its opinion that Churchill's burden to prove First Amendment retaliation is too low. *Jury Instruction 7* is a correct statement of the law as Professor Churchill is not required to prove that his protected activity was the "sole, dominant or even primary factor" for Defendants' termination of his employment at the University of Colorado, but that it was a motivating factor in his termination. *Johnson v. Jefferson County Bd. Of Health*, 662 P.2d 463, 476 (Colo. 1983). The Court Order suggests that it denied Churchill's request for reinstatement because it is of the Court's opinion that Churchill's legal burden at trial was too low.

5. By finding that Churchill did not suffer "actual damages", the Court disregarded the Jury's findings.

In denying reinstatement of employment, the Court found that it was "bound by the jury's implicit finding that Professor Churchill has suffered 'no actual damages' as a result of the constitutional violation." *Order*, ¶ 80. The Court found Churchill suffered "no actual damages" based on the Court's answer to a jury question. *Order*, ¶¶ 74-76.

Contrary to the Court's interpretation of its answer to a jury question, the Jury explicitly reached a verdict that the termination harmed Professor Churchill. *Verdict Form, Question 2.* However, as a major basis for denying reinstatement, the Court, without explanation, appears to have made a legal distinction between the terms "harmed" and "damaged." The Jury found that Churchill was harmed, yet the Court, based on a strained interpretation of a Jury Question and Court answer, finds that Churchill was not damaged.

"A reviewing court should not disregard the jury's verdict, which has support in the evidence, in favor of its own view of the evidence." *Lee's Mobile Wash v. Campbell*, 853 P.2d 1140, 1143 (Colo. 1993). "Rather, the court's duty is to reconcile the verdict with the evidence if at all possible." *Id.* "The evidence at trial is viewed in the light most favorable to the verdict." *Id.* By finding that Churchill was apparently not "damaged," yet the Jury clearly found he was "harmed," the Court has erred by substituting its own decision in place of the Jury's verdict. The Court has not viewed the evidence at trial in a light most favorable to the Jury's verdict that Churchill was harmed. In fact, the Court has gone out of its way to disregard the Jury's verdict[1]. The Jury's finding that Churchill was harmed, as a victim of intentional discrimination, and its award of $1.00, when viewed in a light most favorable to the verdict, does not support the Court's finding that the Jury implicitly found that Churchill suffered "no actual damages."

Aside from having substituted its own decision in place of the unambiguous Jury verdict, the Court is also incorrect in its finding that the Jury implicitly found that Churchill suffered no actual damages. Juror Bethany Newill states that "[t]he Jury did not award $1.00 because we believed that Churchill did not suffer 'actual damages.'" *Bethany Newill Affidavit* herein attached as Exhibit 2. The Jury found that Churchill did not suffer economic harm because he was paid for a year after he was fired. Exhibit 2. The Jury found it was difficult for them to put a value on Churchill's emotional distress,

[1] Indeed, the mere fact that this Court goes on for approximately 20 pages in pure *dicta* denying reinstatement to Professor Churchill *after* entering judgment for CU, coupled with this Court's tortured reading of the stipulation, the facts and the law could reasonably lead a neutral observer to the inescapable conclusion that this Court is so biased against Professor Churchill that it should recuse itself. This motion, however, is not a recusal motion but is merely noting the appearance of partiality in the record.

and in the end, listened to Churchill's testimony and hoped that the Judge would give him his job back or give him some other compensation. Exhibit 2. The Court's finding that the Jury impliedly found that Churchill suffered "no actual damages" is error as it is contrary to the evidence at trial viewed in the light most favorable to the verdict, and is contrary to the intentions of the Jury.

6. By labeling Professor Churchill as "errant or dishonest" or suggesting he engaged in academic misconduct, the Court disregarded the Jury's findings.

The Court denied Churchill's reinstatement of employment because Churchill's reinstatement "will inevitably weaken the capacity of University of Colorado faculty to hold errant or dishonest colleagues to account in future cases of academic misconduct." *Order*, ¶ 112. This ruling is contrary to the Jury's verdict. The Jury unequivocally rejected the University of Colorado's month long trial argument that Churchill was terminated for being dishonest or because he engaged in academic misconduct. *Verdict Form*, Question 3.

The Jury concluded that if there was any research misconduct, it would not have resulted in Professor Churchill's termination and all allegations of research misconduct were merely a pretext for his termination. *Verdict Form*, Question 3. It is simply inconsistent and irreconcilable with the Jury's verdict that the Jury found that there was no evidence of academic misconduct sufficient to justify Churchill's termination, yet this Court found there was sufficient academic misconduct to deny reinstatement of employment.

7. The Court erred by finding that the University of Colorado is an "innocent third party in this litigation."

The Court denied reinstatement because of the potential harm to the University of Colorado as an innocent third-party. *Order,* ¶¶ 109 - 115. To label the University of Colorado and its P&T committee as "innocent third parties" disregards the Jury's finding that the University of Colorado as an entity intentionally discriminated against Professor Churchill. The University of Colorado (which includes its P&T Committee) is an actual party in this lawsuit, therefore not a third-party. Certainly, the speculative and potential harm caused to the discriminator is not a legal reason to deny reinstatement of employment. The court in *Jackson* found that enforcement of a constitutional right and reinstatement expectedly "has disturbing consequences" and "[r]elief is not restricted to that which will be pleasing and free of irritation." *Jackson,* 890 F.2d at 234, citing *Sterzing v. Fort Bend Independent School District,* 496 F.2d 92, 94 (5th Cir. 1974).

8. The Court improperly rejected every witness and all evidenced presented by Churchill at the evidentiary hearing.

One factor in denying reinstatement is if the employer-employee relationship has been irreparably damaged by animosity caused by the lawsuit. *Anderson v. Phillips Petroleum Co.,* 861 F.2d 631, 638 (10th Cir. 1988). The Court gave no weight whatsoever to Churchill's testimony at the evidentiary hearing and in the affidavit he submitted to the Court in which he said that he holds no animosity to the University of Colorado as a result of his retaliatory termination. *Motion for Reinstatement,* Exhibit 5. Instead, the Court gave complete credence to a series of quotes in newspaper articles in which Churchill poked fun at University officials. *Order,* ¶¶ 107. Certainly, calling the University of Colorado a "glorified vo-tec" or calling the University's administrators

"unprincipled liars" (as implicitly found by the Jury, *see,* Exhibit 2) does not rise to the level of irreparable damage, necessary to deny reinstatement. The Court also gave no weight to Emma Perez's testimony, and did not mention Perez's testimony in its Order. Pérez testified at trial and at the evidentiary hearing that Churchill's reinstatement will cause little or no hostility within the Ethnic Studies Department's workplace. The Court's rejection of Churchill's and Perez's testimony, and exclusive reliance on a few newspaper quotes is contrary to the weight of the evidence presented at trial and the evidentiary hearing.

Conclusion

WHEREFORE, Plaintiff requests that the Court amend its judgment to find that the Regents are not entitled to quasi-judicial immunity and to reinstatement Professor Churchill to his former position of fully tenured professor at the University of Colorado

Respectfully submitted this 21st day of July 2009.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the Court and served via *LexisNexis File and Serve* on July 21, 2009 to the following:

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