

District Court, Denver County, Colorado  
1437 Bannock Street  
Denver, Colorado 80202

2007 JUL 25 PM 3:15 Δ COURT USE ONLY Δ

**Plaintiff(s):**

**Ward Churchill**, an individual,

v.

**Defendant(s):**

**University of Colorado,  
Regents of the University of Colorado, a Colorado  
body corporate, Paul Schauer in his capacity as  
Regent, Tom Lucero in his capacity as Regent, Pat  
Hayes in her capacity as Regent, Steve Bosley in his  
capacity as Regent, Cindy Carlisle in her capacity as  
Regent, Michael Carrigan in his capacity as Regent,  
Steve Ludwig, in his capacity as Regent, Kyle Hybl, in  
his capacity as Regent, Tilman Bishop in his capacity  
as Regent,**

**Attorneys for Plaintiff:**

David A. Lane, Atty. Reg. No. 16422  
**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](mailto:dlane@killmerlane.com)

Robert J. Bruce, Atty. Reg. No. 17742  
Delphine L. Farr, Atty. Reg. No. 36094  
**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](mailto:robertbruce@lawlisbruce.com)

Case No. 06 CV 11473

Div. 6

Ctrm.:

**FIRST AMENDED COMPLAINT & JURY DEMAND**

**COMES NOW** Plaintiff, Ward Churchill, by and through his attorneys, David A. Lane, of the law firm Killmer, Lane & Newman, LLP, and Robert Bruce of the law firm Lawlis & Bruce, LLC respectfully submits the following as his First Amended Complaint and Jury Demand in this action. For the reasons set forth below, and because it is in the interest of justice, the relief sought herein should be granted and judgment should enter in favor Plaintiff.

### **GENERAL ALLEGATIONS**

1. Plaintiff Ward Churchill is a citizen and resident of Boulder, Colorado.
2. Defendant University of Colorado is a Colorado State constitutional entity located and operating in Denver, Colorado. All defendants will be referred to generically as “the University.”
3. Defendant Regents of the University of Colorado is a constitutional body, a Colorado body corporate, and is the governing body of the University of Colorado.
4. Defendants Paul Schauer, Tom Lucero, Pat Hayes, Steve Bosley, Cindy Carlisle, Michael Carrigan, Steve Ludwig, Kyle Hybl, and Tilman Bishop are the University Regents and are joined herein in their official capacities.
5. The University is a state actor. Defendants shall be collectively referred to herein as the “University”.
6. Venue is proper in this Court pursuant to Rule 98 (c) of the Colorado Rules of Civil Procedure in that the University is located in the City and County of Denver.
7. This court has jurisdiction over the parties and claims set forth herein.

### **INTRODUCTORY FACTS**

8. Professor Churchill has been employed by the University of Colorado since 1978. In 1991 he was hired as a full-time associate professor, with tenure, in the Department of Ethnic Studies at the Boulder campus.
9. He was appointed at that rank because at that time he had six books in print. Subsequently he has published another fifteen books, several dozen book chapters and over one hundred articles, and given hundreds of public lectures. He has received several writing awards and as of 2001 he was the most cited scholar in his field. He has served on numerous University committees and as Department Chair, and received many awards from this University, including the President’s University Service Award, the Robert L. Stearns Alumni Award for Outstanding Service and Achievement, the Annual Umoja Award for Staff Promotion of Diversity in Higher Education, the Thomas Jefferson Award for Outstanding Service and Achievement, the Teaching Excellence Award from the College of Arts and Sciences.

10. In late January 2005 the local, and subsequently national, media launched an extensive campaign highlighting one phrase of an essay in the nature of an op-ed piece which Professor Churchill wrote as a reaction to the events of September 11, 2001. It was published on an obscure internet website on September 12, 2001 and was barely noticed for over three years.

11. Since then, two governors, including Colorado's former governor Bill Owens, publicly demanded that he be removed from his professorship at the University of Colorado, while three state legislatures, the University of Colorado Board of Regents and Interim Chancellor Philip DiStefano have all issued formal denunciations of his views. Additionally, there have been something on the order of hundreds, possibly close to 1,000, stories appearing regarding Professor Churchill in the local and national print media alone, and a similar number of local and national television news spots, and for months, virtually continuous "coverage" on Clear Channel radio stations—under the frequently-expressed slogan, "All Churchill, All the Time"—during a sixty-day period. Professor Churchill has appeared on the cover of the *Weekly Standard* as the subject of a feature article subtitled "The Worst Professor in America." Professor Churchill has been the target of a scathing editorial in the *Wall Street Journal*, while Fox News personality Bill O'Reilly dedicated segments of his nightly program, *The O'Reilly Factor*, to criticizing Professor Churchill on 41 consecutive nights. Coverage has abated with the passage of time, dwindling from daily attacks on the radio, television and print to mere weekly attacks in each medium.

12. Immediately after the Churchill controversy broke in late January 2005, Professor Churchill was invited to give a speech at the University Memorial Center. The University cancelled his speech and denied him access to the UMC.

13. Undersigned counsel's law firm represented Professor Churchill and filed suit in the United States District Court for the District of Colorado to enjoin this unconstitutional suppression of free speech. Literally minutes before the injunction hearing was to begin, the University backed down and let Professor Churchill speak.

14. In response to the unprecedented outcry against Ward Churchill over the 9/11 essay he wrote, the University vowed to examine every word ever written or spoken by Professor Churchill in an effort to find some excuse for terminating his employment, as the University has previously acknowledged that Professor Churchill's 9/11 essay is protected speech under the First Amendment.

15. An investigation was launched and various committees of "investigators" appointed by the University wrote reports critical of Professor Churchill on several points. It was alleged, among other things, that Professor Churchill had engaged in "academic fraud and misconduct" in some of his scholarly writings; that he had engaged in plagiarism in other writings, and that he had violated professional standards of "conduct which falls below minimum standards of professional integrity" in other writings.

16. University President, Hank Brown, took the various reports of the various

committees and on June 7, 2007 recommended to the Regents of the University of Colorado that they terminate Professor Churchill from his tenured position at the University of Colorado.

17. On July 24, 2007, the Board of Regents terminated Ward Churchill from his job, allegedly based upon the academic misconduct, fraud, plagiarism and violating professional standards, all of which are pretextual reasons for his termination.

18. It will be proven by the Plaintiff at the trial of this matter that the investigations launched by the University of Colorado were launched in retaliation for Professor Churchill's remarks surrounding his 9/11 essay.

19. It will further be proven by the Plaintiff at the trial of this matter that Professor Churchill's remarks surrounding his 9/11 essay was a motivating factor in the Defendant's decision to terminate him.

**FIRST CLAIM FOR RELIEF  
(42 U.S.C. § 1983 – FIRST AMENDMENT RETALIATION  
IN LAUNCHING THE INVESTIGATION)**

20. Professor Churchill incorporates all other paragraphs of this Amended Complaint for purposes of this claim.

21. In criticizing the actions of the United States in pursuing various policies in his 9/11 essay, Professor Churchill was engaging in the constitutionally protected activity of free speech on a political topic of international interest.

22. Professor Churchill's speech was related to matters of public concern.

23. The Defendants' acts of intimidating, threatening, and investigating Professor Churchill were motivated by Professor Churchill's exercise of constitutionally protected conduct.

24. Defendants' actions caused Professor Churchill to suffer injuries that would chill a person of ordinary firmness from continuing to engage in such constitutionally protected activity.

25. Defendants' conduct violated clearly established rights belonging to Professor Churchill of which reasonable persons in Defendants' position knew or should have known.

26. Defendants' acts were done under color of state law.

27. Defendants' engaged in the conduct described by this Complaint intentionally, knowingly, willfully, wantonly maliciously, and in reckless disregard of Professor Churchill's federally protected constitutional rights.

28. Defendants' conduct proximately caused significant injuries, damages and losses to Professor Churchill.

**SECOND CLAIM FOR RELIEF**  
**(42 U.S.C. § 1983 – FIRST AMENDMENT RETALIATION**  
**IN TERMINATING PROFESSOR CHURCHILL'S EMPLOYMENT)**

29. Professor Churchill incorporates all other paragraphs of this Amended Complaint for purposes of this claim.

30. In criticizing the actions of the United States in pursuing various policies in his 9/11 essay, Professor Churchill was engaging in the constitutionally protected activity of free speech on a political topic of international interest.

31. Professor Churchill's speech was related to matters of public concern.

32. The Defendants' acts of intimidating, threatening, and investigating and finally terminating Professor Churchill were motivated by Professor Churchill's exercise of constitutionally protected conduct.

33. Defendants' actions caused Professor Churchill to suffer injuries that would chill a person of ordinary firmness from continuing to engage in such constitutionally protected activity.

34. Defendants' conduct violated clearly established rights belonging to Professor Churchill of which reasonable persons in Defendants' position knew or should have known.

35. Defendants' acts were done under color of state law.

36. Defendants' engaged in the conduct described by this Complaint intentionally, knowingly, willfully, wantonly maliciously, and in reckless disregard of Professor Churchill's federally protected constitutional rights.

37. Defendants' conduct proximately caused significant injuries, damages and losses to Professor Churchill.

**THIRD CLAIM FOR RELIEF**  
**(Breach of contract)**

38. Plaintiff hereby incorporates the preceding paragraphs as if stated, fully, herein.

39. Plaintiff and Defendants entered into an employment agreement whereby Plaintiff became a tenured Professor for the University of Colorado.

40. Plaintiff is a current employee of the University.

41. In connection with this employment, Defendants dismissed Professor Churchill from his tenured position at the University of Colorado.

42. Defendants have policies and procedures that are in place and have been in place during the time of the Plaintiff's employment.

43. The policies and procedures set forth the method for conducting a dismissal for cause case, such as Plaintiff's.

44. Defendants, through words and conduct, demonstrated a willingness to be bound by their policies and procedures.

45. Plaintiff has been aware of the University's policies and procedures throughout his employment.

46. Plaintiff performed as required under the parties' agreement.

47. Notwithstanding Plaintiff's performance, Defendants breached the terms of the agreement by failing to comply with the terms of the agreement.

48. Specifically, Defendants failed to perform or follow their internal procedures, rules and policies governing its dismissal for cause process.

49. Defendants failed to "contribute up to \$20,000.00 of the reasonable fee of an attorney for services directly related to the representation" of Plaintiff in his dismissal for cause case, and/or demonstrated a clear and definite intention not to perform this promise.

50. Defendants failed to take any steps to ensure that counsel would be paid in order to ensure that Professor Churchill had adequate counsel available to him.

51. As a direct and proximate result of the Defendants' breach of contract, Plaintiff has suffered damages and losses.

**THIRD CLAIM FOR RELIEF**  
(Breach of contract – good faith and fair dealing)

52. Plaintiff hereby incorporates the preceding paragraphs as if stated, fully, herein.

53. Defendants breached the express covenant of good faith and fair dealing set forth in their agreement.

54. As a direct and proximate result of the breach of contract, Plaintiff has suffered damages and losses.

**ALTERNATIVE CLAIM FOR RELIEF**  
(Breach of Contract)

55. Plaintiff hereby incorporates the preceding paragraphs as if stated, fully, herein.

56. Defendants, through their written policies, procedures, and representations, made an offer to Plaintiff to contribute up to \$20,000.00 of the reasonable fee of an attorney for services directly related to the representation of Plaintiff in his dismissal for cause case.

57. Plaintiff's performance and adherence to the University policies and procedures constituted an acceptance of and consideration for the offer.

58. Plaintiff's adherence to the University policies and procedures, and Defendants' unjust failure to abide by its own policies and procedures, directly caused Plaintiff to incur damages.

**ALTERNATIVE CLAIM FOR RELIEF**  
(Breach of Implied Contract)

59. Plaintiff hereby incorporates the preceding paragraphs as if stated, fully, herein.

60. Plaintiff was aware of the University's written policies and procedures throughout his employment.

61. Plaintiff reasonably understood that the University was offering the written policies and procedures as part of the terms and conditions of his employment, and with that understanding, he continued his employment with the University.

62. Plaintiff performed according to the University policies and procedures with the reasonable expectation that Defendants would contribute up to \$20,000.00 of the reasonable fee of an attorney for services directly related to the representation of Plaintiff in the event of a dismissal for cause case.

63. The University requested and accepted Plaintiff's performance expecting to contribute \$20,000.00, or under such circumstances that it reasonably should have known that Plaintiff was expecting a contribution of up to \$20,000.00 of the reasonable fee of an attorney.

64. Defendants failed to contribute any sums towards the reasonable fee of an attorney and to comply with its policies and procedures, and directly caused Plaintiff to incur damages as a result.

**ALTERNATIVE CLAIM FOR RELIEF**  
(Promissory estoppel)

65. Plaintiff hereby incorporates the preceding paragraphs as if stated, fully, herein.

66. The University published, circulated, and distributed its written policies, including its claim that it would contribute up to \$20,000.00 of the reasonable fee of an attorney for services directly related to the representation of Plaintiff in his dismissal for cause case.

67. The University was aware of its publications; however, Plaintiff had no reason to know that the University would apply certain provisions of its policies and procedures, without applying other provisions.

68. Plaintiff has reasonably relied on the promises made by the University to his detriment, and under circumstances that make it unfair and unjust not to enforce the University's promise.

69. Plaintiff has relied on the promises made by the University, and it would be manifestly unjust not to enforce the University's promise.

#### **FOURTH CLAIM FOR RELIEF**

(§ 42 U.S.C. 1983 – Denial of Due Process–Procedural)

70. Plaintiff hereby incorporates the preceding paragraphs as if stated, fully, herein.

71. Plaintiff has a constitutionally protected property and/or liberty interest arising from each term, actual or implied, of his employment or other contract(s) with the University, as set forth in, or evidenced by, the parties' acts and words, the rules and policies of the University of Colorado, its employee handbooks and manuals, the Laws of Regents, and the Bylaws and publications of the Faculty Senate.

72. The University established policies and procedures in connection with its dismissal for cause proceedings, which were more stringent in favor of its professors, such as Plaintiff, than due process would otherwise require.

73. The University failed to comply with these policies and procedures.

74. The University denied Plaintiff a reasonable chance of succeeding if and when Plaintiff avails himself of the opportunity to defend himself at the dismissal for cause proceeding.

75. Defendants deprived Plaintiff of life, liberty or property without due process of law in violation of the Colorado Constitution and U.S. Constitution.

#### **FIFTH CLAIM FOR RELIEF**

(§ 42 U.S.C. 1983- Due Process-Substantive)

76. Plaintiff hereby incorporates the preceding paragraphs as if stated, fully, herein.

77. Defendants deprived Plaintiff of his property arbitrarily, so as to offend notions of



fairness and due process in violation of the Colorado Constitution and U.S. Constitution.

**A JURY TRIAL IS DEMANDED**

**WHEREFORE**, Plaintiff demands judgment against Defendants, and relief including:

- A. Damages in an amount to be proven at trial;
- B. Prejudgment and postjudgment interest;
- C. Attorneys' fees pursuant to Colorado Law and § 42 U.S.C. 1988;
- D. Costs; and
- E. Such other and further relief as this court deems just and proper.

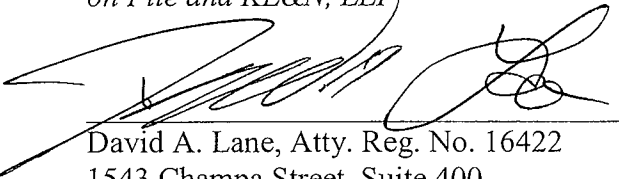
DATED this 25<sup>th</sup> day of July, 2007.

Plaintiff's Address:  
1489 Wicklaw Street  
Boulder, CO 80303

**KILLMER, LANE & NEWMAN, L.L.P.**

*Filed via JusticeLink*

*Original signature of David A. Lane  
on File and KL&N, LLP*



David A. Lane, Atty. Reg. No. 16422  
1543 Champa Street, Suite 400  
The Odd Fellows' Hall  
Denver, CO 80202

**LAWLIS & BRUCE, LLC**

*Filed via JusticeLink*

*Original signature of Robert J. Bruce  
on File and Lawlis & Bruce, LLC*



Robert J. Bruce, Atty. Reg. No. 17742  
1875 Lawrence Street, Suite 750  
Denver, CO 80202