UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LYNN A. HANDSOME, individually and on behalf of all others similarly situated,	:	CIVIL ACTION NO. 78-143 Judge Herbert J. Stern
Plaintiffs,	:	
-vs-	:	
RUTGERS UNIVERSITY, THE STATE UNIVERSITY OF NEW JERSEY, EDWARD BLOUSTEIN, individually and in his capacity as President of Rutgers University, DORICE ORNSTEIN, individually and in her capacity as supervisor of student loans for Rutgers University,	:	Civil Action
Defendants.	:	

PLAINTIFF'S BRIEF IN SUPPORT OF
CONSOLIDATED MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION

JONATHAN I. EPSTEIN, ESQ.
ESSEX-NEWARK LEGAL SERVICES
449 Central Avenue
Newark, New Jersey 07107
(201) 484-4010

Attorney for Plaintiff

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HERBERT J. STERN
U.S.D.J.

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STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On January 24, 1978 plaintiff, who was granted leave to proceed in forma pauperis, presented the Court with a Verified Complaint, on behalf of herself and all others similarly situated, seeking among other things to enjoin Rutgers University from refusing to register her or release her transcripts pursuant to Rutgers' policy of denying registrationa and transcripts to anyone who has failed to pay alleged debts which were discharged in bankruptcy. Plaintiff's Complaint alleges that the challenged policy of Rutgers is invalid under the Supremacy Clause of the Constitution since it frustrates the purposes of the Bankruptcy Act. Plaintiff also alleges that defendants' actions violate §14(f) of Bankruptcy Act, which enjoins creditors from continuing any action or employing any process to collect a discharged debt. The complaint also seeks redress under the Civil Rights Act, 42 U.S.C. §1983, for violations of plaintiff's Fourteenth Amendment Rights.

At the time the complaint was filed, plaintiff also filed a motion for a temporary restraining order and a motion for a preliminary injunction.

On January 24, 1978 a temporary restraining order was issued enjoining Rutgers from refusing to register plaintiff for the spring semester of this year. The Court also ordered, with counsels' consent, consolidation of the determination of the preliminary injunction with the disposition of the merits of this matter, pursuant to Federal Rule of Procedure 65(a)(2). The attorneys for the parties agreed to present the Court with a

stipulation of facts and a briefing schedule was established.

On January 27, 1978 plaintiff filed an Amended Verified Complaint which added two additional defendants and set forth the same causes of action.

Upon agreement of counsel, the temporary restraining order is to continue until February 17, 1978, at which time a decision is to be rendered on the consolidated matter.

This brief is submitted in support of plaintiff's motion for a preliminary injunction and also in support of the declaratory and injunctive relief requested in plaintiff's complaint.

STATEMENT OF FACTS

Although a stipulation of facts has been submitted by the parties, only the following facts are relevant to a resolution of this legal controversy.

During 1968 Plaintiff began her education at Rutgers University. She attended classes at a division of Rutgers known as the Newark College of Arts and Sciences during the years 1968 through 1974. Plaintiff experienced health problems which interfered with her academic work and she periodically withdrew from college.

Plaintiff did not have the financial means to pay for her education so she applied for and received financial aid including National Defense Student Loans. These loans were made pursuant to the National Defense Education Act. 20 U.S.C. §421 et seq. The purpose of such loans is to assist needy men and women in obtaining an education. 45 C.F.R. §144.1. One pertinent regulation promulgated pursuant to the applicable federal student loan program provides:

> §114.49 Bankruptcy of borrower
>
> An institution shall refrain from collection activity with respect to a loan in the event the borrower is adjudicated a bankrupt and such loan has been discharged...

In January of 1975 plaintiff was dismissed from Rutgers because of academic difficulties. Nine months later plaintiff's loan payments became due. At this time, plaintiff was heavily in debt and she defaulted on her loan payments because she was

financially unable to make her payments. Rutgers then accelerated the balance due on the loans and demanded payment of the total amount of loans. Thereafter, Rutgers instituted a suit against plaintiff on her National Defense Student Loans and on July 16, 1976 recovered a judgment in the Superior Court of New Jersey for $4,991.75 plus interest and costs.

In April 1977 plaintiff filed a bankruptcy petition in the U.S. District Court for the District of New Jersey. At the time the petition was filed, plaintiff owed more than $25,000 to creditors, including approximately $7,000 for medical bills, and she had assets of only $386.25. The bankruptcy petition listed Rutgers as a creditor for plaintiff's National Defense Student Loans and for a debt which plaintiff allegedly owed to the Rutgers University bookstore. Rutgers did not file a complaint objecting to discharge of the obligations listed in plaintiff's bankruptcy petition and on June 13, 1977 Bankruptcy Judge Vincent J. Commisa issued an order of discharge releasing plaintiff from liability for all proveable debts listed in her bankruptcy petition pursuant to §17 of the Bankruptcy Act, 11 U.S.C. §35.

During December 1977 plaintiff applied for readmission to the Newark College of Arts and Sciences of Rutgers University. On December 24, 1977 she received a letter dated December 22, 1977 granting her readmission.

On or about January 5, 1977 plaintiff went to the Newark Campus of Rutgers to register for the spring semester.

Plaintiff was denied registration because a "hold" had been placed on her registration and transcripts because she had not paid her National Defense Loans which were discharged in bankruptcy. Plaintiff was informed that she could not register or have her transcripts released unless the loan obligations were paid or arrangements were made to pay the alleged debt. Defendant Ornstein, who authorized the "hold" on plaintiff's registration and transcripts because of her delinquent National Defense Student Loan account, informed plaintiff that it was the policy of Rutgers University not to release such "holds" where student loans remained unpaid even though the debts had been discharged in bankruptcy.

Plaintiff desires to work in the medical field, and she has applied for admission to Physician's Assistance Programs at other educational institutions. It is essential that plaintiff submit her transcripts from Rutgers to these schools to be considered for admission.

It is the policy of Rutgers University to refuse to register students or release the transcripts of anyone who has defaulted on student loans, or has other obligations to the University greater than $100.00, that have been discharged in bankruptcy and have not been repaid. Defendants apply these stringent collection practices to people who have been released from legal liability for debts under the provisions of the Bankruptcy Act. It is this policy of Rutgers which is challenged in this case.

QUESTIONS PRESENTED

1. Does the policy of Rutgers University of refusing to register or release the transcripts of students who have failed to pay debts to the University which were discharged in bankruptcy have the effect of frustrating the purpose of the Federal Bankruptcy Act?

2. Does the action of the defendants in refusing to register plaintiff or release her transcripts unless she pays debts that were discharged in bankruptcy constitute the type of action or process which is enjoined by §14(f) of the Bankruptcy Act?

3. Does Rutgers' policy and action of refusing to register or release the transcripts of plaintiff because she has failed to pay National Defense Student Loans obligations which were properly discharged in bankruptcy rationally relate to a legitimate governmental interest? Is the policy or action arbitrary or capricious?

ARGUMENT

POINT I

THIS COURT HAS JURISDICTION OVER THIS MATTER PURSUANT TO 28 U.S.C. §1331(a) AND 28 U.S.C. §1343(3) and (4)

a. Jurisdiction is conferred by 28 U.S.C. §1331(a).

28 U.S.C. §1331(a) confers jurisdiction on this Court over civil actions arising under federal law or the U.S. Constitution where the value of the matter in controversy exceeds $10,000. Plaintiff contends that the policy of Rutgers University, pursuant to which she was denied registration and release of her transcripts, is in conflict with the federal Bankruptcy Act and is therefore invalid under the Supremacy Clause of the United States Constitution. Plaintiff also contends that defendants' actions violate specific provisions of the Bankruptcy Act. Hence, this controversy arises under the Constitution and laws of the United States.

Once such federal questions are presented, jurisdiction lies in the District Court unless it appears to a "legal certainty" that the value of the matter in controversy does not exceed $10,000. St. Paul Mercury & Indemnity Co. v. Red Cat Co., 303 U.S. 283, 289 (1938); Ostrow Pharmacies, Inc. v. Beal, 394 F. Supp. 22 (E.D. Pa. 1975) aff'd 527 F. 2d 645 (3d Cir. 1975); Stanton v. Bond, 504 F. 2d 1246, 1247 N. 25 (7th Cir. 1974); McDonald v. Patton, 240 F. 2d 424, 426 (4th Cir. 1957); Murry v. Vaughn, 300 F. Supp. 688 (D. RI. 1968).

Where one seeks declaratory and injunctive relief, the matter in controversy is to be evaluated by looking to the extent of the injury to be prevented or the value of the object to be gained. Gibbs v. Buck, 307 U.S. 66 (1939); McNutt v. GMAC, 298 U.S. 178 (1936); Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co., 239 U.S. 121 (1975); Berk v. Laird, 429 F. 2d 302, 306 (2d Cir. 1970); Marquez v. Hardin, 339 F. Supp. 1364, 1370 (N.D. Cal. 1970). The value of the object to be gained is plaintiff's right to an education and a college degree. The injury to be prevented is the disruption of her education and the loss of credit for the years plaintiff spent at Rutgers.[1] If plaintiff is not allowed to register and forced to discontinue her education by Rutgers' actions, her loss of future earnings will be likely to exceed $10,000. Moreover, the cost alone of repeating the years she spent at Rutgers in order to get a college degree from another school would be greater than $10,000, notwithstanding the loss of earnings that plaintiff would sustain if she had to spend additional years in college.

Surely, it does not appear to be a "legal certainty"

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[1]Girardier v. Webster College, 563 F. 2d 1267 (8th Cir. 1977) which is discussed infra, held that the jurisdiction requirements of 28 U.S.C. §1331(a) were satisfied in an action similar to the case sub judice, brought by a student who was merely denied transcripts which were needed for admission to graduate school.

that the value of the matter in controversy is less than $10,000.[1] Accordingly, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331(a).

b. Jurisdiction is also conferred by 28 U.S.C. §1343(3) and (4).

42 U.S.C. §1983 provides for a federal cause of action to redress the deprivation, under color of state law, of rights, privileges or immunities secured by the Constitution and laws of the United States. Under 28 U.S.C. §1343(3) and (4) this Court has jurisdiction over actions seeking relief under §1983. Lynch v. Household Finance Corp. et al, 405 U.S. 538, Reh. den. 406 U.S. 911 (1972).

28 U.S.C. §1343(3) and (4) states:

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person;
>
> xxx
>
> (3) To redress the deprivation under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of citizens or of all persons with the jurisdiction of the United States;

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[1] A number of courts have also held, particularly in injunction actions, that:

> in determining the matter in controversy, we may look to the object sought to be accomplished by plaintiff's complaint; the test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce. Ronzio v. Denver & R.G.W. Co., 116 F. 2d 604, 666 (10th Cir. 1940).

> (4) To recover damages or to require equitable relief or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

When a constitutional claim is asserted pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1343(3) and (4), the District Court has jurisdiction over the matter without regard to the amount in controversy, so long as the claim for relief is not insubstantial. Hagans v. Lavine, 415 U.S. 528 (1974). Only when such a claim is clearly "frivolous" or foreclosed by prior decisions of the United States Supreme Court can it be said that the case does not involve a federal controversy within the jurisdiction of the District Court, whatever may be the ultimate resolution on the merits. Hagan v. Lavine, 415 U.S. at 543. Since plaintiff's constitutional claims are neither frivolous nor foreclosed by a Supreme Court decision, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §1343(3) and (4).

Given a constitutional claim under 42 U.S.C. §1983 over which the Court has jurisdiction, it also has jurisdiction over the "statutory claim," ie. the claim that the policy of Rutgers is in conflict with the Bankruptcy Act and therefore invalid under the Supremacy Clause. Hagans v. Lavine, 415 U.S. at 543. Moreover, the "statutory" or Supremacy Clause questions are to be resolved by the Court before the Court addresses the Constitutional claims. Only if the statutory claims are not dispositive should the Court reach the merits of the Constitutional claims presented under 42 U.S.C. §1983. Hagans v. Lavine, 415 U.S. at 1382.

POINT II

THE POLICY OF RUTGERS UNIVERSITY OF DENYING REGISTRATION AND TRANSCRIPTS TO PLAINTIFF BECAUSE SHE HAS FAILED TO SATISFY OBLIGATIONS WHICH WERE DISCHARGED IN BANKRUPTCY FRUSTRATES THE FULL EFFECTIVENESS OF THE BANKRUPTCY ACT AND IS THEREFORE INVALID UNDER THE SUPREMACY CLAUSE.

Perez v. Campbell, 402 U.S. 637 (1971) is dispositive of this case. There the issue was the validity of the Arizona Motor Vehicle Safety Responsibility Act which specified that an unsatisfied tort judgment arising out of an automobile accident would subject the judgment debtor to suspension of his drivers' license even though the judgment had been discharged in bankruptcy.[1] The Court specifically rejected the rationale and approach of its earlier decisions in Reitz v. Mealey, 314 U.S. 33 (1941) and Kesler v. Department of Public Safety, 369 U.S. 154 (1962) and held that the Arizona law frustrated the full effectiveness of the Bankruptcy Act and was therefore invalid under the Supremacy Clause of the Constitution.[2]

Kesler and Reitz had upheld provisions in motor vehicle responsibility acts similar to the Arizona law struck down in Perez. These earlier decisions recognized that the challenged laws left debtors somewhat burdened by a discharged debt. Nevertheless, the Court in Kesler and Reitz held that these state laws were not invalid under the Supremacy Clause because the purpose

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[1]The Bankruptcy Act is 11 U.S.C. §1 et seq. (1970). Article 9, Sec. 8, clause 4 of the Constitution grants Congress the power to pass uniform laws on bankruptcy.

[2]see, "Supremacy of the Bankruptcy Act: The New Standard of Perez v. Campbell," 40 Geo. Wash. L. Rev. 764 (1972).

of the laws was not to circumvent the Bankruptcy Act but to promote highway safety. see Perez v. Campbell, 402 U.S. at 650-1.

In overruling Kesler and Reitz the Supreme Court stated:

> We can no longer adhere to the aberational doctrine of Kesler and Reitz that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration. Apart from the fact that it is at odds with the approach taken in nearly all our Supremacy Clause cases, such a doctrine would enable state legislatures to nullify nearly all unwanted federal legislation by simply publishing a legislative committee report articulating some state interest or policy-other than frustration of the federal objective-that would be tangentially furthered by the proposed state law.
>
> xxx
>
> Thus, we conclude that Kesler and Reitz can have no authoritative effect to the extent they are inconsistent with the controlling principle that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause.[1] Perez v. Campbell, 402 U.S. 651-2. (emphasis added)

Thus, in deciding whether state law is invalid under the Supremacy Clause, because it conflicts with federal law, a determination must be made as to whether effect of the state law

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[1]U.S. Const., Art. VI Cl. 2 states: "This Constitution and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anythong in the Constitution or Laws of any State to the contrary notwithstanding."

frustrates the full effectiveness of objective of the federal statute. Since the Bankruptcy Act was the federal statute involved in Perez, the Court provided an ample construction of the objective of the Bankruptcy Act when it stated:

> One of the primary purposes of the Bankruptcy Act is to give the debtor a new opportunity in life and a clear field for future effort, unhampered by the pressures and discouragement of pre-existing debts. (citations omitted) Perez v. Campbell, 402 U.S. at 650. (emphasis added)

Under Perez it is clear that state law which has the effect of interfering with a bankrupt-debtor's right to "a new opportunity in life and a clear field for future effort, unhampered by the pressures and discouragement of pre-existing debts" is unconstitutional under the Supremacy Clause. Perez v. Campbell, 402 U.S. 651-2.

Subsequent to the Perez decision,[1] courts have consistently applied the test set forth in Perez in striking down state rules or policies which had the effect of interfering with the

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[1]Prior to Perez v. Campbell, Supra, the U.S. Court of Appeals for the Third Circuit declared part of the Pennsylvania Motor Vehicle Responsibility Act unconstitutional under the Supremacy Clause because it conflicted with the Bankruptcy Act in Miller v. Anckartis, 436 F. 2d 115 (3d Cir. 1970). The state law required suspension of the driver's license of one who was vicarously liable for an accident if a judgment arising out of the accident remained unsatisfied, notwithstanding a discharge in bankruptcy. Eight circuit court judges participated in the decision and six members of the Court seemed dissatisfied with the holdings of Kesler and Reitz. The Court of Appeals reached the same result as Perez prior to that decision by the Supreme Court.

fresh start theme of the Bankruptcy Act.[1] The Louisiana Court of Appeal en banc ordered a fireman reinstated to his job after he had been terminated for filing a bankruptcy petition pursuant to a policy of the fire department in Matter of Lofkin, 327 So. 2d 543 (La. App. 1976). The Court accepted the fire department's position that the policy was not adopted to frustrate the purposes of the Bankruptcy Act but was intended to discourage dishonesty by debt ridden firemen. The Court held that, regardless of its purpose, the policy was invalid under the test established by Perez since it "conflicts with, frustrates and clashes with the purposes and objectives of the federal bankruptcy law in that it effectively hampers a fireman from obtaining a new opportunity in life and a clear field for future effort." 327 So. 2d at 547.

Similarly, Rutledge v. City of Shreveport, 387 F. Supp. 1277 (W.D. La. 1975) held unconstitutional, under the Supremacy Clause, an administrative rule which rendered a policeman who filed for bankruptcy subject to dismissal. The Court recognized that the purpose of the rule was to insure a dependable and reliable police force but held that the administrative action was in contravention of the purpose of the Bankruptcy Act.

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[1] The recent case of Girardier v. Webster College, 563 F. 2d 1267 (8th Cir. 1977) concluded that a private college could enact policies which appeared to be in conflict with the purposes of the Bankruptcy Act without running afoul of the Supremacy Clause. The Court held that a purely private college can withhold the transcripts of students, who have graduated from the college, because student loans, which were discharged in bankruptcy, remained unpaid. The decision hinged on the distinction between private action and state or local action which conflicts with the purpose of the federal law. Girardier v. Webster College, 563 F. 2d at 1273-4. It appears that the Court would have reached a different result if it had been a state university withholding the transcripts. see Girardier v. Webster, 563 F. 2d at 1277 (concurring opinion of Judge Bright). Accordingly,

In Grimes v. Hochler, 525 P. 2d 65 (Cal. 1974) the California Supreme Court declared unconstitutional a regulation which allowed for the suspension or revocation of the license of a contractor who failed to pay debts which were discharged in bankruptcy. Although the purpose of the regulation was to protect the public against the consequences of incompetent workmanship and deception, the Court stressed that under Perez it is the effect of the regulation which is important. The opinion states: "Although a state statute is not expressly designed to promote the collection of debts, it may still offend the purpose of Congress if its effect is to deny to debtors the benefits of the Bankruptcy Act." 526 P. 2d at 70. The Court concluded that the action of the state's Contractor Licensing Board was in conflict with the intent of Congress to provide bankrupt-debtors a new opportunity in life.

In the instant case the issue is whether the effect of the challenged policy of Rutgers University "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in enacting the Bankruptcy Act. Perez v. Campbell, 402 U.S. at 649 quoting Hines v. Davidowitz, 312 U.S. 52,67 (1941). More specifically, the question is whether defendants' policy interferes with plaintiff's right to a fresh start, unhampered by the pressures of debts which were alleged debts discharged in bankruptcy. Rutgers has barred plaintiff

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cont'd

the Webster College decision is not inconsistent with plaintiff's position since Rutgers University is an instrumentality of the State of New Jersey. see Rutgers v. Piluso, 60 N.J. 142, 153-7 (1971); N.J.S.A. 18A:65-1 et seq.

plaintiff because she has not paid a debt which she is not legally obligated to pay because of her discharge,[1] constitutes the type of powerful weapon for collection of a debt which the Supreme Court found clearly objectionable in Perez. This policy "puts 'the bankrupt xxx at the creditor's mercy,' with the results that '[i]n practical effect the bankrupt may be in as bad, or even worse, a position than if the state had made it possible for a creditor to attach his future wages' and that '[b]ankruptcy xxx [was not] the sanctuary for hapless debtors which Congress intended.'" Perez v. Campbell, 402 U.S. at 651 quoting Mr. Justice Douglas' dissent in Reitz v. Mealey, Supra. Clearly, the policy of Rutgers frustrates the full effectiveness of the objective of the Bankruptcy Act and should therefore be declared invalid under the Supremacy Clause.

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[1]see Zavelo v. Reeves, 227 U.S. 625 (1913)

from readmission to the school by refusing to register her despite the fact that her application for readmission has been granted. Rutgers has also refused to release or certify a copy of plaintiff's transcripts which she needs to be able to transfer to another college. The sole reason for defendants' actions is that plaintiff has failed to pay a debt to the University which was properly discharged in bankruptcy. In effect Rutgers is saying to plaintiff: You cannot continue your education because of your debt to the University, unless you repay the debt, even though you have been released from any obligation to pay the debt by federal law. Plaintiff cannot continue her education because she cannot go to Rutgers and she cannot transfer without certified copies of her transcripts.

Regardless of how the policy of Rutgers is construed, the effect of the policy unquestionably frustrates the full effectiveness of the policy of the Bankruptcy Act. The discharge provision is to encourage the debtor to be productive in the future by preventing past failures and misfortunes from sapping his ambitions. MacLachlan, Handbook of the Law of Bankruptcy §100 (1956). The burden and pressure Rutgers is placing on plaintiff is exactly what the Bankruptcy Act seeks to avoid by providing debtors with a new opportunity in life and a clear field for future effort unhampered by the pressure and discouragement of pre-existing debt.

Rutgers is presently punishing Ms. Handsome for exercising her rights under the federal Bankruptcy Act. The only way she can get relief from this punishment is by paying the discharged debt. To invoke such coercive measures against

POINT III

REFUSING TO REGISTER PLAINTIFF OR RELEASE HER TRANSCRIPTS UNLESS SHE PAYS DEBTS WHICH WERE DISCHARGED, VIOLATES THE PROVISION OF THE BANKRUPTCY ACT WHICH PROHIBITS CREDITORS FROM INSTITUTING OR CONTINUING ANY ACTION OR EMPLOYING ANY PROCESS TO COLLECT DEBTS WHICH HAVE BEEN DISCHARGED.

Section 14(f)(2), 11 U.S.C. §32(f)(2), of the Bankruptcy Act states:

> An order of discharge shall-
>
> (2) enjoin all creditors whose debts are discharged from thereafter instituting or continuing any action or employing any process to collect such debts as personal liabilities of the bankrupt.

The order of discharge issued by Judge Commisa on June 13, 1977 voided all judgments previously entered against plaintiff and, pursuant to §14(f)(2), enjoined all creditors from "instituting or continuing any action or employing any process" to collect debts of plaintiff which had been discharged.

The action taken by defendants is the kind of "action" or "process" enjoined by §14(f)(2) of the Bankruptcy Act. The statute refers to "any action" or "any process" (emphasis added) to collect a discharged debt. In drafting this provision Congress chose to include a wide range of creditor conduct within the scope of this law. The legislature did not use the adjective "legal" or anything similar thereto which would have limited this provision to legal process or actions. This demonstrates that Congress intended to include more than purely legal actions within the

scope of this law.

In order to further assess the meaning of the words "action" and "process", or in the event the Court finds that the statute is ambiguous, doctrines of statutory construct must be applied. The Eighth Circuit in Girardier v. Webster College, supra, failed to employ the appropriate doctrines of statutory construction and erroneously concluded that §14(f) did not apply to other than formal legal action by creditors. An examination of the relevant doctrines and the Webster College decision demonstrates the error committed by the Eighth Circuit.

1. The Bankruptcy Act is remedial legislation, In re Pioch, 235 F. 2d 903, 905 (3d Cir. 1956), and remedial legislation is to be liberally construed. Sutherland Statutory Construction §60.01 (1973). The Webster College decision never mentions this doctrine in its efforts to interpret the statute.

2. The provisions of §14 of the Bankruptcy Act should be liberally construed in favor of the bankrupt and strictly construed against the creditor. In re Pioch; supra; Levin v. Maure, 425 F. Supp. 205, 207 (D. Mass. 1977). Webster College strictly construed the statute against the bankrupt.

3. To liberally construe a statute is to make the statute apply to more situations than under a narrow construction and to construe the statute in such a way as to promote the remedial purpose of the law. Sutherland Statutory Construction §60.01 (1973). Webster College construes the statute so it applies to less situations (ie. only legal actions) than under the liberal construction suggested.

4. In absence of a specific technical meaning or legislative definition, words are to be accorded their ordinary meaning. Richards v. United States, 369 U.S. 9. Action means "conduct; behavior; something done; the condition of acting; an act or series of acts." Black's Law Dictionary (Revised Fourth Edition 1968) p.49. Process means "a series of actions, motions, or occurrences; progressive act or transaction; continuous operation; method, mode or operation, whereby a result or effect is produced; normal or actual course of procedure..." Black's Law Dictionary p. 1369. These are the ordinary definitions which are to be applied since there is no specific technical meaning given to these words and Congress did not provide definitions of these words. The Court in Webster College erred by looking to a technical definition of the words which led to a narrow construction.

5. The Court should construe the provision in question in a manner which furthers the purpose of the Bankruptcy Act to provide debtors with a clear field for future effort unhampered by pre-existing debts. Perez v. Campbell, Supra; Local Loan v. Hunt, 292 U.S. 234 (1934). Webster College did not consider this purpose when it interpreted §14(f), and the result reached neither furthers the Congress' objectives in enacting the Bankruptcy Act nor, the purpose of §14(f) of curtailing harassment of bankrupt debtors.

Furthermore, the authority cited in Webster College in support of the Court's construction is not persuasive. The legislative history quoted by the Court of Appeals at page 1272,

the "Explanatory Memorandum to Accompany S. 4247" (the 1970 Amendments) 116 Cong. Rec. 34818-34820 (Oct. 5, 1979), only addresses the question of the continuing validity of "reaffirmations" of debts after discharge in bankruptcy. The comment quoted from 1a Collier on Bankruptcy (14th ed. 1976) at ¶14.69, 563 F. 2d at 1267, merely refers to use of "garnishment" or "attachment writs" as examples of collection efforts enjoined by §14(f).[1]

Rutgers action of refusing to register plaintiff or release her transcripts is clearly an "action" or "process" within the purposes and intent of the Bankruptcy Act, particularly in light of the dictionary meanings of these terms, and the well established principles of statutory construction.

In addition defendants' action falls within the narrow definition of those terms as enunciated by Webster College. Defendants' action is an onerous self help collection remedy. In effect the action constitutes the assertion of a lien or an attachment of plaintiff's property-her marks and transcripts. Defendants' only right to take such action would be by virtue of a common law lien which surely is an action or process enjoined by §14(f).

Under the required liberal construction, which must promote the remedial purposes of the Bankruptcy Act and of §14, this Court should hold that defendants' self help action is prohibited by the §14(f).

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[1]The necessity and degree of court participation in writs of attachment and garnishment varies according to state law.

POINT IV

DEFENDANTS HAVE DENIED PLAINTIFF EQUAL PROTECTION AND DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Pursuant to 42 U.S.C. §1983 anyone who is deprived, of any right, privilege or immunity secured by the Constitution, by a person acting under color of state law, is entitled to legal or equitable redress. Rutgers University is an instrumentality of the State of New Jersey and it is equivalent to a state agency. Rutgers v. Piluso, 60 N.J. 142, (1972), N.J.S.A. 18a:65-1 et seq. Since Rutgers is a state entity carrying out a public function, defendants' actions fall within the ambit of "state action" under the Fourteenth Amendment and 42 U.S.C. §1983. See Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U.S. 308 (1968); Evans v. Newton, 382 U.S. 296 (1966); Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). Plaintiff contends that the policy and actions of the defendants as applied to her deny her equal protection and due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

Any classification made by the defendants, functioning as an instrumentality of the state, must not be arbitrary and must always rest upon some difference which bears a reasonable relationship to a legitimate governmental interest. McLaughlin v. State of Florida, 379 U.S. 184, 190 (1964); USDA v. Moreno, 413 U.S. 528, 534-5; Morey v. David, 354 U.S. 457 (1957). "A classification must be reasonable, not arbitrary, and must rest upon some gound of difference having a fair and substantial rela-

tionship to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." Reed v. Reed, 404 U.S. 71, 76 (1971) quoting Royster Guano Co. v. Virginia, 235 U.S. 412, 415 (1920). (emphasis added) The classification scheme established and the action taken by defendants in implementing the challenged policy, violates plaintiff's right to equal protection of the laws as: it is arbitrary; the classification does not have a fair and substantial relationship to the object of the policy; and it does not further a legitimate governmental interest.

The defendants have implemented a policy that students who are at least three months behind in their financial obligations to the University will be denied registration and release of their transcripts. Included within the class of students who are denied registration and transcripts because of delinquent accounts are those people who have had their debts to the University discharged in bankruptcy. The latter group has no legal obligation to pay the University since they have been released of their legal obligations pursuant to §17 of the Bankruptcy Act.

This policy of the defendants arbitrarily distinguishes between two classes. One class is composed of persons who legally owe no debts to the University because they have discharged their obligations by payment. The other class is composed of persons who also have no legal obligation to pay the University because their debts have been discharged in bankruptcy. None of the people in either of these classes are legally indebted to the University. The legal responsibility to the University is

the same for both classes.[1] The defendants cannot legally collect money from either class. In spite of the similar legal status of these people with regard to their debts to the University, the defendants treat one of these classes vastly differently than the other. The distinction drawn is arbitrary and unreasonable and violative of the Equal Protection Clause since the legal responsibility to the University is the same for both these classes.

Furthermore, Rutgers relinquishes "holds" on registration and transcripts when debts are paid. Thus, it is clear that the purpose of the challenged policy is to collect money. In order to withstand scrutiny under the equal protection clause, this policy must be rationally related to furthering a legitimate governmental interest. Reed v. Reed, 404 U.S. 71 76 (1971); McLaughlin v. State of Florida, 379 U.S. 184, 190 (1964); USDA v. Moreno, 413 U.S. 538, 534-35; Davis v. Weir, 497 F. 2d 139, 144-145 (5th Cir. 1974). Examining the effect of the policy as applied to plaintiff demonstrates that it does not enhance any such interest. First, the policy does not necessarily further the defendants' interest in collecting money. By denying plaintiff registration and transcripts defendants have not put themselves any closer to collecting from plaintiff since she does not have the means to pay. The policy is unreasonable since it presumes that one is more likely to pay if coercive measures are employed without allowing for any assessment of one's ability to pay. In cases such as this, all defendants have done

[1]Any moral obligation to pay a discharged debt rests with the bankrupt-debtor and is not an appropriate concern of defendants.

is decrease their chances of getting paid by hampering plaintiff's future education and therefore limiting her employment prospects. Secondly, defendants seek to collect money on a debt which has been discharged in bankruptcy. This is not a legitimate governmental interest since it flies in the face of the purpose of the Bankruptcy Act. Perez v. Campbell, Supra. Thirdly, the purpose of the National Defense Student Loan Act is to provide needy students with financial assistance to enable them to obtain a college degree. 45 C.F.R. §144.1. In their efforts to collect on student loans defendants are contravening the purpose of the National Defense Education Act by precluding plaintiff from continuing her education.[1] The classification scheme established by defendants' policy does not substantially relate to a legitimate governmental objective. Accordingly, the policy and actions of defendants as applied to plaintiff violate her rights to equal protection of the laws.

Assuming without conceding that the purpose of defendants' policy is rational and the classifications made thereby are rationally related to a legitimate governmental interest, defendants have nevertheless denied plaintiff due process of law. Insofar as the requirements of due process are concerned the policy of the defendants must be reasonable, not arbitrary or capricious, and the means selected to implement the policy must have a real and substantial relationship to the object to be attained. Nebbia v. People of State of New York, 291 U.S. 502,

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[1]The policy also violates a federal regulation promulgated under the National Defense Education Act which specifically instructs defendants to "refrain from collection activity with respect to a loan in the event the borrower is adjudicated bankrupt and such a loan has been discharged." see 45 C.F.R. §144.49.

532 (1934).

The purpose of the National Defense Student Loan Program, as stated earlier, is to assist needy students in gaining a college education. The purpose of the Rutgers' policy is to collect debts. The actions of the defendants serves to thwart both these policies by limiting plaintiff's education possibilities and thereby her employment potential. Rather than helping to extinquish the debt, defendants' policy prolongs the existence of the alleged obligation. see Rutledge v. Schreveport, 387 F. Supp. 1277, 1278 (S.D. La. 1975). The defendants have exhausted all reasonable means of collecting this debt by suing plaintiff and recovering a judgment against her. They were free to execute on the judgment if plaintiff had any means to repay this debt. Imposing the onerous brudens on plaintiff which result from defendants' actions are arbitrary and capricious since the means employed do not further defendants goal of collecting money from plaintiff.

Hence, the challenged policy and actions of the defendants' violate plaintiff's right to due process of law.

CONCLUSION

For the foregoing reasons plaintiff requests that this Court:

A. Declare the policy of Rutgers University of refusing to register plaintiff or release her transcripts because she has failed to pay a debt which was discharged in bankruptcy to be in conflict with the purpose of the Bankruptcy Act and therefore invalid under the Supremacy Clause and preliminarily and permanently enjoin defendants from refusing to register plaintiff or release her transcripts because she has failed to pay any debts which were discharged in bankruptcy;

B. In the alternative, declare that §14(f) of the Bankruptcy Act enjoins defendants from refusing to register plaintiff or release her transcripts because she has failed to pay a debt or debts which were properly discharged in bankruptcy and preliminarily and permanently enjoin defendants from refusing to register plaintiff or release her transcripts because she has failed to pay a debt which was properly discharged in bankruptcy;

C. In the alternative, declare that Rutgers' policy and actions of refusing to register plaintiff or release her transcripts because she has failed to pay National Defense Student Loan obligations which were discharged in bankruptcy violate plaintiff's right to equal protection or due process and preliminarily and permanently enjoin defendants from refusing to register plaintiff or release her transcripts because she has failed to pay National Defense Student Loans which were discharged

in bankruptcy and set this down for hearing on damages only.

Respectfully submitted,

JONATHAN I. EPSTEIN
Attorney for Plaintiff
ESSEX-NEWARK LEGAL SERVICES
449 Central Avenue
Newark, New Jersey 07107
(201) 484-4010