

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

FACULTY RIGHTS COALITION, et al	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	CIVIL ACTION NO. H-04-2127
	§	
HOSSEIN SHAHROKHI, in his	§	
official capacity, <i>Defendant.</i>	§	

**MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

TO THE HONORABLE LEE H. ROSENTHAL, U.S. DISTRICT JUDGE:

Comes now the FACULTY RIGHTS COALITION, by and through WOLFGANG P. HIRCZY DE MIÑO (“De Mino”), who appears both in his individual and representative capacity, and files this brief in support of its request for injunctive relief against Defendant HOSSEIN SHAHROKHI, Executive Director of Information Services at the University of Houston-Downtown (“UHD” or “the University”).

Plaintiffs seek a declaration that the University’s e-mail distribution facility for faculty and staff (“DT\_ALL\_USERS”) constitutes a public forum with respect to university employees and that adjunct faculty members (“Adjuncts”) are entitled to equal access to said forum under the First and Fourteenth Amendment. Plaintiffs seek prospective injunctive relief under §1983 to assure the preservation and full functionality of the Adjuncts’ University email accounts, and access to DT\_ALL\_USERS (“the message board”).

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## ISSUES PRESENTED

- A. Does the University's DT\_ALL\_USERS email distribution facility ("message board") constitute a public forum with respect to members of the university community (administrators, faculty, and staff)?
- B. Does the University's selective denial of access by Adjuncts to its electronic message board violated the Adjuncts' First Amendment rights?
- C. Does the University's decision to prevent Adjuncts from accessing their email accounts during the summer violate the Adjuncts' Equal Protection rights where the email accounts of tenure and tenure-track faculty members with 9-month appointments are not so restricted regardless of whether they teach or do not teach during the summer semester?
- D. Does the University's decision to "freeze" most Adjuncts' email accounts after the filing of this suit constitute illegal retaliation for the Plaintiffs' complaints about pay inequity, poor working conditions, and denial of First Amendment rights to associate and engage in free speech on campus, and to seek redress of grievances?
- E. Are the Plaintiffs entitled to preliminary injunctive relief under the facts of the case and the applicable law?

## **PROCEDURAL BACKGROUND**

On May 28, 2004 Plaintiffs filed suit to seek relief from selective censorship on the University's computer system. Specifically, Plaintiffs complained of discriminatory denial of adjunct faculty members' right to use UHD's email distribution list to disseminate messages on matters of public concern in violation of their First and Fourteenth Amendment rights when access and dissemination of messages on matters of public and private concern was not restricted for other users.

Shortly thereafter, the University, through the Named Defendant, suspended the Adjuncts' access to the University's computer systems altogether, thus barring them from sending as well as receiving messages.

## **SUMMARY OF THE ARGUMENT**

Plaintiffs aver that their access to the email accounts assigned to them by the University for their use, and the associated University-sponsored message board, has been restricted in a deliberate and discriminatory fashion to prevent them from exercising their First Amendment rights on an equal footing with other users. Plaintiff aver that the University's message board was established as a public forum for the members of the university community and that the Defendant's actions violate the Adjuncts' First and Fourteenth Amendment rights. Plaintiff seek prospective equitable relief under Section 1983 of the Civil Rights Act. Plaintiff further complain that the suspension of adjunct faculty accounts after their complaints constitutes a further act of illegal deprivation of their First Amendment and Equal Protection rights, and also amounts to illegal retaliation for engaging in protected First Amendment activity.

## ARGUMENT AND AUTHORITIES

### A. U.S. Constitution Protects Public Employees' Speech on Matters of Public Concern

The First Amendment to the U.S. Constitution provides that “[c]ongress shall make no law ... abridging the freedom of speech ... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. CONST. amend. I. The Fourteenth Amendment makes this limitation applicable to the states. *City of Ladue v. Gilleo*, 512 U.S. 43, 45 n.1, 129 L. Ed. 2d 36, 114 S.Ct. 2038 (1994). The Named Defendant in this suit is an official of the University of Houston-Downtown, a public university, and thus an agent of the State of Texas. 42 U.S.C. § 1983 provides a means whereby individuals whose constitutional rights are violated may obtain relief in federal court.

The rationale for according constitutional protection to private speech on the part of employees of a governmental agency is to allow the employees to participate freely in public affairs and avoid chilling their use of speech that the employer might find objectionable. *Pickering v. Bd. of Educ.*, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968). Public employees do not have to have tenured status to enjoy these protections. *See Perry v. Sindermann*, 408 U.S. 593, 597-98, 33 L.Ed. 2d 570, 92 S.Ct. 2694 (1972). Nor can surrender of constitutional rights be made a condition of initial employment, or re-employment, to prevent a public employee from enjoying these rights. *See Pickering v. Board of Education*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811(1968).

Public employees' speech is protected to the extent they comment as citizens on matters of public concern. *Connick v. Myers*, 461 U.S. 138, 147, 103 S.Ct. 1684, 1689, 75 L.Ed. 2d 708 (1983). Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by

the record. *Connick v. Myers*, 461 U.S. at 147-48.

Here, the employees' speech in question concerns issues of administrative policy, budgeting, utilization of public resources, policies that have implications for the quality of service provided to students, as well as questions of equity and work conditions of university employees responsible for teaching half of the classes in which students enrol. See Exhibit \_\_: Adjuncts Bill of Particulars and Petition for Redress. It clearly implicates a number of matters and issues of public concern, including the misuse of student fees to pay the UH president's exorbitant annual salary (compared to the salaries paid elected public officials such as the President of the U.S. and the Governor of Texas).

Moreover, even if the Named Plaintiff had not submitted the Adjuncts' Petition for distribution, he specifically requested that the Defendant permit him to distribute a message on "matters of public concern" to the university community. See Exhibit \_\_: Email from De Mino to Shahrokhi 05/01/04. The request, thus captioned to skirt the issue of prior restraint/preclearance, was denied. The Adjuncts' Petition was never posted to DT\_ALL\_USERS.

The Adjuncts' email accounts have since been suspended to prevent them from receiving any and all messages, including individual copies of the Petition or related messages sent from non-UHD-sponsored email accounts, such as that of the Faculty Rights Coalition ([FacultyRightsTx@cs.com](mailto:FacultyRightsTx@cs.com)). A test message sent on June 4, 2004 to Nader Naderi, the adjunct whose criticism of the UHD administration on DT\_ALL\_USERS precipitated the University's censorship, was returned as undeliverable. See Exhibit \_\_.

The shift to staffing with cheap, contingent, part-time adjunct faculty, and the accompanying claims of exploitation of this vulnerable group, is a major national trend in higher education. (See Exhibits \_\_ through \_\_). UHD Faculty Senate President Kirk Hagen acknowledges that the Adjuncts' Petition is political in nature. See Exhibit \_\_: Kirk Hagen's

response to De Mino's request to distribute the Adjuncts' Petition to DT\_ALL\_USERS. He agrees in his private capacity that the treatment of adjuncts by American universities is "scandalous," and has since promised to help publicize the issue. Exhibit \_\_\_.

**B. The DT\_ALL\_USERS E-mail Distribution Facility Constitutes a Public Forum for the UHD Community**

A speaker's right to access government property is determined by the nature of the property or 'forum.' The campus of a public university possesses many characteristics of a public forum" *Widmar v. Vincent*, 102 S.Ct. 269, 274 n.5 (1981); *Hays County Guardian v. Supple*, 969 F.2d 111,116 (5<sup>th</sup> Cir. 1992)(finding that the campus of Southwest Texas State University is a public forum).

Although the First Amendment uses the express command "shall make no law," some regulation has been upheld as permissible. Inter alia, the relevant constitutional jurisprudence distinguishes between traditional public forums, a designated public forum, and a limited public forum. Restrictions on speech in traditional and designated public fora are subject to strict scrutiny review while the constitutionality of such regulations in a limited public forum is examined under a reasonableness standard. *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330, 346 (5<sup>th</sup> Cir. 2001).

Critical to the characterization of a forum as either traditional or designated is actual use. In differentiating a designated public forum from a nonpublic one, a court considers two factors: (1) the government's intent with respect to the forum; and (2) the nature of the forum and its compatibility with the speech at issue. *Id.*, 260 F.3d at 346. Moreover, government owned property is considered a traditional public forum when the property has been traditionally used by the public for assembly and debate, or when the government intentionally has opened up a non-public forum for public discourse. *Hays*, 969 F.2d at 116.

Although the University's forum at issue here cannot be characterized as traditional in the literal sense, given the fact that it only became a possibility with the installation of computer systems on campus, there is no reason why the basic principle that intent and actual usage determine the nature of the forum should not equally apply in this context.

A university may choose to designate a physical forum as a public forum for First Amendment purposes even if it may otherwise qualify as nonpublic. With regard to the electronic message board in question, however, designation is not even an issue because the University affirmatively created the electronic space in the first instance. Unlike physical real estate owned by a state entity, the email distribution facility would not even exist but for the decision of and by the University to establish it as a communications tool for its employees. By its very design, DT\_ALL\_USERS serves no other purpose but to disseminate information to all account holders on the university's email system. The relevant public is even designated by name ("ALL USERS"). Since message transmittal and retrieval is asynchronous (i.e. it does not require the simultaneous presence of the recipients), the facility serves as a more central forum and marketplace for exchange of ideas and information than any physical place on campus ever could. It is also the only efficient way, if not the only way, information can be shared with the entire campus community (save students) in a timely and reliable fashion. Although the UHD campus is more compact than the Central Campus, the UHD community consists entirely of commuters. Its e-services, however, can be accessed from anywhere through the Internet.

Plaintiffs neither claim that the forum is open to the public at large, nor that it should be open to the general public. Plaintiffs instead claim it is a public forum for those who have an official connection to the University by virtue of their employment (i.e., administrators, faculty, and staff).

**C. Access to the DT\_ALL\_USERS E-mail Distribution Facility and to the University's Computer System Was Selectively Denied**

As shown in the documentary evidence marshaled by the Plaintiffs, DT\_ALL\_USERS is used by administrators, faculty, and staff as a communications tool for a wide variety of purposes, including, but by no means limited to messages on matters of public concern. Users receive announcements of various kinds, notices of deaths of non-UH-affiliated family members, fund-raising letters, health and fitness advice, and notices regarding various events on and off campus, some even religious in nature. On one occasion a complaint about Metro Police writing tickets for jaywalking resulted in a lively exchange on the message board. Even controversies and issues of global import surface on the list, e.g. the recent Iraq prisoner abuse scandal. Messages are posted by or on behalf of administrators, faculty, student organizations, and other entities. See Exhibits \_\_\_ through \_\_\_. The fact that access to the message board was not restricted (or subject to approval by a moderator) is seen in the occasional, accidental posting of private replies to messages sent to all. See Exhibit \_\_\_.

The Named Plaintiff's message in support of Naderi's First Amendment right to speak out about adjunct issues, and to criticize the University Administration, in stark contrast however, was intercepted and kept off the system (See Exhibit: De Mino's attempts posting in support of Nader Naderi's Free Speech; Exhibit \_\_\_: System Administrator's response informing De Mino of posting restriction and nondistribution). The posting request for the Adjuncts' Petition was denied (Exhibit \_\_\_).

The climate for free speech on university-related issues at UHD is stifling, as seen in the apologetic notice of thefts in the UHD library posted by a librarian, who was concerned about undermining UHD's image and related public relations efforts by advising library users to not leave their possessions unattended. Exhibit \_\_\_.

#### **D. Right to Receive Information Was Also Denied**

Prior to the filing of this suit, the Adjuncts' right to access the system to receive messages distributed through the list was not an issue. The Plaintiffs' First Amendment complaint centered on restrictions on their right to send/post messages. After the filing of this suit, their right to send and post messages, as well as their right to receive them, are all in issue because the University has since blocked them from accessing the system altogether.

In the context of leafleting, the U.S. Supreme Court has held that the right to freedom of speech encompasses the right to distribute literature as well as the right to receive it. *Martin v. City of Struthers*, 319 U.S. 141, 143 (1943). Accordingly, Plaintiffs now seek injunctive relief to obtain system access to avail themselves of the system both in passive (receiving) and active (sending/posting) modes.

#### **E. Elements of Claim for Preliminary Injunction**

Injunctive relief is authorized by statute and/or by general principles of equity. *Grupo Mexicano de Desarrollo v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 330-31, 119 S.Ct. 1961, 1973-74 (1999). In order to show themselves entitled to relief, litigants must generally show that they have a valid cause of action, a substantial likelihood of success on the merits, irreparable harm and lack of an adequate remedy. Under federal law, the movant must also show that the public interest will not be adversely affected and that the equities favor the movant. He or she does not have to prove the asserted cause of action at this stage of the proceedings, however.

Plaintiffs can and do satisfy each of the requisite elements, as set forth below:

## **F. Valid Cause of Action and Substantial Likelihood of Success on the Merits**

To obtain preliminary injunctive relief, a Plaintiff must first show a substantial likelihood that it would succeed on the merits of its claims once the case proceeds to a full and complete trial. *Lakedreams v. Taylor*, 932 F.2d 1103, 1107 (5th Cir. 1991). In the case at bar, the Named Plaintiff marshals evidence that he was prevented from commenting on matters of public concern by the Defendant in a forum in which others were not so restricted and were at liberty to express themselves even on matters of purely private concern using UHD's IT recourses. Exhibits \_\_\_ through \_\_\_. The Defendant admitted that (some) adjunct faculty members' accounts had been restricted during the semester (Exhibit \_\_\_), and that adjunct accounts were altogether "suspended" on or about June 1, 2004, making in impossible for them to send or even receive messages. See Exhibit \_\_\_.

The prohibition of distributing literature is a classic form of a prior restraint. *Lovell v. Griffin*, 303 U.S.444, 450-52 (1938). The restriction at issue here is even more draconian than a mere prohibition, however. Being blocked by technical means from access to the forum altogether, the Plaintiffs cannot even violate the policy as a prerequisite to challenge the prior restraint in court while at the same time being able to disseminate the content of their speech. Plaintiffs' speech was not only chilled. It was suppressed altogether. Rather than allowing the Adjuncts to exercise their free speech rights, and counter the Adjuncts' speech with speech of their own if warranted, the University's Administrators chose to silence the Adjuncts. After all, the Adjuncts have no vested right in continued employment and are at the Administrators' mercy. The messages and criticism articulated in the Adjuncts' Petition was effectively kept out of the forum by excluding the would-be messenger(s). Thus the core purpose of the First Amendment, the

free airing and exchange of ideas, was frustrated.

Claims of constitutional violations are actionable under Section 1983 of the Civil Rights Act. Plaintiffs have shown that they have an actionable claim of constitutional violations, and that they have suffered a constitutional injury. A party seeking a preliminary injunction does not have to prove its claims at this stage of the proceedings, only has to make a showing of likely success on the merits." *Puerto Rico Conservation Found. v. Larson*, 797 F. Supp. 1066, 1070 (D. Puerto Rico 1992).

**G. Substantial Threat of Irreparable Injury for Which There Is No Adequate Remedy at Law**

In addition to showing success on the merits of its claim, the Plaintiffs must also show that they will suffer irreparable harm if an injunction is not granted. *DSC Communications Corp. v. DGI Techs., Inc.*, 81 F.3d 597, 600 (5th Cir. 1996); *Cherokee Pump & Equip. Inc. v. Aurora Pump*, 38 F.3d 246, 249 (5th Cir. 1994). To establish a substantial threat of irreparable injury or harm, the Plaintiffs must clearly demonstrate some concrete injury resulting from the Defendants' actions. *See Fund for Animals v. Clark*, 27 F. Supp. 2d 8, 14 (D.D.C.1998); *George Washington Home Owners Ass'n v. Widnall*, 863 F. Supp. 1423, 1427 (D. Colo. 1994). Irreparable harm is also considered to be a harm that cannot be redressed by either an equitable or legal remedy following trial. *Acierno v. New Castle County*, 40 F.3d 645, 653 (3d Cir. 1994). Irreparable harm is neither speculative nor remote, but is actual and imminent. *See United States v. W.T. Grant Co.*, 345 U.S. 629, 633, 97 L. Ed. 1303, 73 S. Ct. 894 (1953). This element is met if the Plaintiffs can prove it is likely to suffer this type of harm before a trial on the merits. *Puerto Rico Conservation Found.*, 797 F. Supp. at 1071.

Here, Plaintiff represents that irreparable harm is occurring and will continue to

occur as long as the Defendant denies them access to their email accounts and the associated virtual forum, thus preventing them from communicating with each other and with the university community, and from receiving all information distributed through the university's email system, including even announcements and communications for the Administration pertaining to their employment and their official duties.

Loss of free speech is considered irreparable. *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690 (1976). The loss of the opportunity of receiving timely information through their email accounts is irreparable as well, because it will be impossible to revert to the status quo retroactively. Accordingly, Plaintiffs also satisfy this element.

#### **H. Threatened Injury Outweighs Any Harm That the Injunction May Cause to Defendant**

The third element required for a preliminary injunction is the balancing of the equities. *DSC Communications Corp.*, 81 F.3d at 600; *Cherokee Pump & Equip. Inc.*, 38 F.3d at 249. Here, the interest of the Plaintiffs in the opportunity to exercise their First Amendment rights and their interest in receiving information distributed through the University's email system are of constitutional proportions. Activities such as speaking, leafleting, circulating petitions, displaying signs, and disseminating literature on matters of public concern are activities that are considered fundamental First Amendment rights. *Schenk v. Pro-Choice Network*, 519 U.S. 357, 377 (1997). In addition, their interest in remaining accessible by email to former and prospective students, to colleagues throughout the country, and to the general public, is also substantial.

The University's asserted interest in saving costs by blocking access to the adjuncts' email accounts during the summer, by contrast, is either zero or *de minimis*. The computing capacity to operate the adjunct accounts already exists. Overall demand on IT

system resources is much lower during the summer semester because only a limited number of classes are offered. Many students do not take classes in the summer at all. Whether measured by student headcount or volume of credit hours, enrolment is substantially lower than it is during the Spring and Fall semesters. Since the computing capacity is already there, nothing is saved by denying Adjuncts the use of their email accounts.

Moreover, the Defendant has since admitted in his response in opposition of Plaintiffs' verified application for injunctive relief that the University maintains all the information on the Adjuncts' email accounts for an entire year, and thereafter transfers it onto CD (*See Def's Response in Opposition to Pl's Verified Application for TRO; p.4*). Thus, no disk space is saved by preventing the Adjuncts' access to their email accounts during the summer.

In sum, while the harm to the Adjuncts is substantial, there is no credible competing claim of injury on the part of the University and its Director of Information Services if the email accounts remain accessible and operational. The balance of equities, if any is implicated in weighing the effects of granting or denying injunctive relief at all, heavily tilts in favor of the Adjuncts. *Pappan Enters. v. Hardees*, 143 F.3d 800, 805 (3d Cir. 1998).

#### **I. Injunction Will Not Be Detrimental to the Public Interest**

The final consideration to be entertained by a court asked to grant a preliminary injunction is how the relief requested affects the public interest. *DSC Communications Corp.*, 81 F.3d at 600; *Cherokee Pump & Equip. Inc.*, 38 F.3d at 249. When deciding whether to issue an injunction, courts must remain mindful of the public consequences.

*Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312, 72 L. Ed. 2d 91, 102 S. Ct. 1798 (1982).

**1. Fundamental Constitutional Rights Trump Policy and Efficiency Considerations**

Here, the Plaintiffs complain about the deprivation of their constitutional rights to avail themselves of a well-established on-campus forum to engage in protected First Amendment activity, and to receive information sent to them individually, and as subscribers to the DT\_ALL\_USERS email distribution list. Like freedom of speech (see *supra*), freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment *NAACP v. Alabama*, 357 U.S. 49, 460, 2 L.Ed. 2d 1488, 78 S.Ct. 1163 (1958). To the extent the Plaintiffs state a valid constitutional claim, the denial of their free speech and association rights cannot be justified on public interest grounds, unless the Defendant can establish a compelling state interest that survives strict scrutiny. State action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny. *NAACP*, 357 U.S. at 460-61.

Under strict scrutiny, a content-neutral regulation of speech in a public forum “must be narrowly tailored to serve a significant government interest and must leave open ample alternative channels of communication.” *Hays*, 969 F.2d at 118. “A regulation is narrowly tailored” when it does not “burden substantially more speech than is necessary to further the government’s legitimate interests.” *Id.* (quoting *Ward v. Rock Against Racism*, 109 S.Ct. at 274 n.5 (quoting *Healy v. James*, 92 S.Ct. 2338, 2346-47 (1972)).

Here, the issue is not merely curtailment of the scope of First Amendment rights, or some time, place, and manner restrictions, which in any event are inapplicable to an electronic forum that is open 24 hours a day and occupies no physical space. The issue is

a total ban on speech by an entire class of university employees which has been singled out and deprived of rights enjoyed by others in the same campus community as a matter of course.

The University's action in cutting off adjunct faculty members from their email accounts after the filing of this suit is comparable to the Administration's response to the Pro-Life Cougars suit in 2003. In that case, a student group and a named individual member thereof complained about being denied permission to stage an exhibit in Butler Plaza - the hub on the Central Campus - to promote their ideas about abortion, and challenged the underlying policy in federal court. UH then changed the policy and prohibited any and all expressive activity in Butler Plaza and argued that the Cougars' suit was moot since no other group was allowed to use the same venue either. *See Pro-Life Cougars v. Univ. of Houston*, 259 F. Supp. 2d 575 (S.D.Tex. 2003).

To Judge Werlein's credit, UH did not prevail with its strategy of suppressing all expressive activity to squelch expressive activity the Administration disapproved of. UH lost the case and ended up with a sizeable bill for attorneys fees incurred by the Plaintiffs.

## **2. Requested Injunction Will Serve the Public Interest**

Even if the Plaintiffs fail to establish a constitutional right to access however, the University's alleged interest in saving a negligible amount of money by excluding the Adjuncts from an already existing forum and communications infrastructure is far outweighed by the competing interest of preserving the Adjuncts' email accounts between the end of the Spring semester and the beginning of the Fall semester, regardless of whether they have summer teaching engagements. Keeping the accounts active will allow former and prospective students in their classes, and the general public, to contact them in

connection with the Adjuncts' official duties at the University. It will also allow them to communicate with other members of the university community, engage in joint scholarly endeavors, and cooperate in improving campus life and the curriculum. There is no good reason why the Adjuncts should be cut off from the UHD community, when the email accounts of tenured and tenure-track faculty are not similarly suspended irrespective of whether they teach in the summer or not. Nor is such disparate treatment constitutional under Equal Protection principles.

UHD is a teaching institution that serves a diverse constituency. Many of its students are academically challenged and need all the extra help and attention they can get in order to succeed. As a teaching institution, the University publicly emphasizes that its faculty is accessible and cares about students. UHD touts its open admissions policy and the dedication of this faculty in its sales pitch to the public and its recruitment of new students. At the very least, UHD should not impede adjunct faculty members' efforts to contribute to the accomplishment of UHS's mission, even if they don't get paid for any of their contributions during the summer months.

Alternatively, UHD should be estopped from arguing that it has a legitimate interest in taking its adjunct faculty off-line when it promotes itself as a university where "professors know their students by name" and are committed to help them succeed through guidance and mentoring in addition to classroom instruction.

## **J. Findings Supporting Preliminary Injunctive Relief**

A preliminary injunction is an extraordinary remedy and must be supported by specific findings of the court. *Placid Oil Co. v. United States Dept. of Interior*, 491 F. Supp. 895, 904 (N.D. Tex. 1980). Accordingly, the Plaintiffs request that the Court make

the following findings based on the evidence proffered:

1. The DT\_ALL\_USERS email distribution list established and operated by the University of Houston-Downtown constitutes a public forum with respect to administrators, faculty, and staff at the University of Houston-Downtown.
2. Plaintiffs engaged in, and sought to engage in, protected First Amendment activity when they articulated criticism of University administrators and spoke out on the status of and policies pertaining to adjunct faculty.
3. Plaintiffs have presented evidence to establish a substantial likelihood of success on the merits of their claim that their access to, and utilization of, UHD's email system and the DT\_ALL\_USERS email distribution list was interfered with in violation of the their First and Fourteenth Amendment rights.
4. The Plaintiffs have no adequate remedy at law and will suffer irreparable harm if a preliminary injunction is not granted.
5. The public interest would not be adversely affected by granting Plaintiffs' request for an injunction enjoining Defendant Shahrokhi from impeding adjunct faculty members' access to their UHD-provided email accounts and to the associated DT\_ALL\_USERS email distribution list.
6. The public's interest will be served by an order requiring the preservation and full functionality of adjunct faculty members' email accounts between the end of the Spring semester and the beginning of the Fall semesters.

## CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs respectfully request that based on the argument and evidence presented, this Court enjoin the on-going violation of the Adjuncts' First and Fourteenth Amendment rights by the Named Defendant and his agents, and grant any other and further relief they may be entitled to in law or equity.

Respectfully submitted on June \_\_\_\_, 2004.

By:

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WOLFGANG HIRCZY DE MIÑO, PH. D.

Texas Bar Card No. 32143

FACULTY RIGHTS COALITION

2038 ½ Lexington

Houston, Texas 77098

Tel.: (713) 806-8517

Fax: (713) 527-039

E-mail: [FacultyRightsTx@cs.com](mailto:FacultyRightsTx@cs.com)

## Certificate of Service

I hereby certify that a true and correct copy of this brief, and the proposed injunction order, was transmitted to Defendant's attorney of record by fax on June 25, 2004 at or about 10:50 a.m. to the fax number shown below and is being / was sent by U.S. Mail on June 25, 2004 to the mailing address shown below.

Daniel C. Perkins  
Assistant Attorney General  
General Litigation Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 463-2120  
(512) 320-0667 FAX

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Wolfgang Hirczy de Miño

FACULTY RIGHTS COALITION,  
and WOLFGANG P. H. DE MIÑO,  
*Plaintiffs,*

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v.

CIVIL ACTION NO. H-04-02127

HOSSEIN SHAHROKHI, in his official  
capacity as Executive Director of  
Information Services at UHD, a  
component of the University of Houston  
System,  
*Defendant.*

## ORDER

On \_\_\_\_\_, 2004 the Court heard Plaintiffs' Motion for Preliminary Injunction. Upon consideration of the evidence and pleadings, this Court is of the opinion that the motion is meritorious and should be granted.

The Court finds that there is good cause for issuance of a preliminary injunction to protect adjunct faculty members' access to, and use of, their UHD email accounts to send and receive messages, and to utilize UHD's email distribution facility (message board) designated "DT\_ALL\_USERS" under the same rules and conditions as tenure and tenure-track faculty members.

The Court further finds that the Plaintiffs will suffer immediate and irreparable injury if preliminary injunctive relief is not issued.

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Preliminary Injunction is GRANTED.

HOSSEIN SHAHROKHI, in his official capacity as Executive Director of Information Services at UHD, and his agents, employees, or attorneys, are hereby restrained from blocking access to the email accounts set up by UHD for the use by

adjunct faculty members employed at UHD as of May 14, 2004 and from imposing restrictions on them that do not apply to regular faculty. Shahrokhi is further enjoined from deleting monthly back-up copies, if any, of the contents of, and utilization and maintenance data pertaining to, these accounts.

This order shall not enter into force until the Plaintiffs have posted bond in the amount of \$50 / The requirement of bond is waived.

This order shall remain in force and effect, pending final hearing on this matter or until further order of this Court.

SIGNED at \_\_\_\_\_ on this the \_\_\_ day of June, 2004, at Houston,  
Texas

\_\_\_\_\_  
Lee H. Rosenthal, United States District Judge