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**SUPREME COURT**  
OF THE  
**STATE OF CONNECTICUT**

—————  
JUDICIAL DISTRICT OF NEW BRITAIN  
—————

**S.C. 20076**

**AUSTIN HAUGHWOUT**  
*PLAINTIFF-APPELLANT*

**V.**

**LAURA TORDENTI, ET AL.**  
*DEFENDANT-APPELLEES*

—————  
**BRIEF OF DEFENDANT-APPELLEES**  
—————

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## **COUNTERSTATEMENT OF THE ISSUE**

1. Did the trial court correctly find, based on the evidence of record, that the plaintiff college student's statements and gestures concerning guns and mass gun violence, in the context in which they were made, constituted true threats that reasonably caused fear of violence and the disruption that such fear engenders and were therefore not protected speech?

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## **INTRODUCTION**

At issue in this appeal is whether the trial court correctly held that the defendant college administrators did not violate the plaintiff college student's right to freedom of speech when they expelled him for making statements and gestures related to guns and mass gun violence that the court determined were true threats. Among other statements, the plaintiff referred to "shooting up the school," named another student as his "number one target," wondered how many rounds of ammunition he would need, and stated that a mass shooting in Oregon had "beat us." He also showed off pictures of the guns he owned and made frequent shooting hand gestures and firing noises while aiming at students in the student center. Because the trial court correctly held that the plaintiff's words and gestures constituted true threats that cannot be tolerated on a university campus that has a duty to protect its students from the fear of mass gun violence, its decision should be affirmed.

## **COUNTERSTATEMENT OF THE FACTS**

The Plaintiff-Appellant Austin Haughwout was a student at Central Connecticut State University ("CCSU") where the Defendant-Appellees were or are employed in various administrative capacities. He was charged with violations of the CCSU Student Code of Conduct, and after notice and opportunity to be heard, was found responsible by a three person CCSU panel of the charged violations. A.3. His CCSU-based appeal of the findings was unavailing and he was expelled. A.20. Thereafter, Mr. Haughwout brought an action in the Superior Court for the Judicial District of New Britain in which he alleged, *inter*

*alia*, constitutional, contract and common law claims seeking both equitable and monetary relief. A.149-150.<sup>1</sup>

After the trial court (Shortall, J.) ruled on Defendant-Appellees' preliminary motion to dismiss, which raised issues not on appeal here, an amended complaint was filed on June 23, 2016. An evidentiary hearing on Mr. Haughwout's motion for preliminary injunction was held on August 8, 2016, and the trial court denied the request for preliminary relief. Thereafter, the parties stipulated that the matter was ripe for full adjudication on the merits. A2.350-360; A.149-150.

With respect to Mr. Haughwout's claims in this appeal, in its memorandum of decision the trial court, among other findings, expressly found that while a student, Mr. Haughwout: (i) "made frequent shooting hand gestures as a form of greeting to students in the student center"; (ii) "with his hand in a shooting gesture aimed at students and made firing noises as they were walking through the student center"; (iii) "wondered aloud how many rounds he would need to shoot people at the school and referred to the fact that he had bullets at home and in his truck"; (iv) "showed off pictures of the guns he owned and boasted about bringing a gun to school"; (v) "referred specifically and on more than one occasion to 'shooting up the school'"; (vi) "during a test of the school's alarm system stated that 'someone should really soot up the school for real so it's not a drill'"; (vii) "named as his 'number one target' a particular student in the student center"; and (viii) "made specific

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<sup>1</sup> Mr. Haughwout incorrectly characterizes this case as an administrative appeal. In fact, prior to the filing of *this* action, Mr. Haughwout, acting *pro se*, filed what he purported was an "administrative appeal" of his expulsion in the New Britain Superior Court. That action, No. HHBCV15501709S, was dismissed by the Court (Schuman, J.) on February 8, 2016, based on the merits of defendants' motion to dismiss asserting that the expulsion was not a "final decision" in a "contested case" within the meaning of the Connecticut Uniform Administrative Procedures Act, Conn. Gen. Stat. §§ 4-183(a), 4-166(5) and 4-166(4), and on Mr. Haughwout's failure to file a timely opposition.

reference to a shooting at an Oregon community college where several students had been killed and wounded, stating that the Oregon shooting has 'beat us.'"<sup>2</sup> The trial court further found "the spate of shootings at schools and colleges in recent years, including the Oregon shooting in October 2015, the same month in which some of Mr. Haughwout's statements about 'shooting up' Central were made," were "part of the factual context" for assessing the evidence in light of the "true threats" doctrine. Based on the evidence adduced, and in light of controlling legal standards, the trial court held Mr. Haughwout's words and conduct constituted true threats. In so doing, the trial court observed that it

ha[d] no trouble concluding that Mr. Haughwout's statements and gestures while in the student center at Central fit the definition of "true threats." Indeed it is hard to know how else to classify them. They were certainly not statements that sought "to communicate a belief or idea." *State v. DeLoreto*, .... [265 Conn. 145 (2003)]. To suggest that they constituted merely "expression of public issues" such as have "always rested on the highest rung of First Amendment values"; *NAACP v. Clayborne*, 458 U.S. 886, 913 (1982); borders on the fanciful.

A.142-147; see also, A2.189-193; A2.197.

The trial court entered judgment for the defendants on all counts. A.149-150. This appeal followed. Notably, Mr. Haughwout is only appealing the trial court's ruling on his free speech claim, and has not appealed the trial court's rejection of his other claims.

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<sup>2</sup> In his brief Mr. Haughwout complains he received new evidence against him fifteen minutes before the disciplinary panel proceeding. (Mr. Haughwout's brief at 7) Leaving aside the reasons for what occurred, notably, the trial court "conclude[d] that Central's disciplinary procedures did not violate Mr. Haughwout's due process rights under either the federal or state Constitution and adhered to the disciplinary procedures prescribed by the [Student] code [of Conduct]." A.140. The issue is not on appeal here. Similarly, he appears to complain that the disciplinary panel did not make particularized findings of fact. Notwithstanding that due process does not require such in a student disciplinary proceeding, again, the issue is not before this Court.

## **ARGUMENT**

### **I. THE TRIAL COURT CORRECTLY HELD THAT MR. HAUGHWOUT'S STATEMENTS AND GESTURES WERE TRUE THREATS THAT WERE NOT CONSTITUTIONALLY PROTECTED**

#### **A. The Standard of Review**

While whether a statement or expressive conduct rises to the level of a true threat is a matter of law for the court, the court must apply an objective standard based on the totality of the facts and circumstances. *State v. Gaymon*, 96 Conn. App. 244, 248 (2006); *State v. DeLoreto*, 265 Conn. 145, 152-53 (2003); *Reid v. Comm'r. of Correction*, 93 Conn. App. 95 (2006), *State v. Krijger*, 313 Conn. 434, 446 (2014); *State v. Skidd*, 104 Conn. App. 46, 59-60 (2007); *United States v. Wheeler*, 776 F.3d 736, 743 (10th Cir. 2015); *Doe v. Pulaski County Special Sch. Dist.*, 306 F.3d 616 (8th Cir. 2002). In so doing, an appellate tribunal must not "make credibility determinations regarding disputed issues of fact. Although ... [the appellate court] review[s] de novo the trier of fact's ultimate determination that the statements at issue constituted a true threat ... all subsidiary credibility determinations and findings that are not clearly erroneous" must be accepted. *Krijger*, 313 Conn. at 447. In other words, the issue is whether a reasonable hearer or receiver of the expressive conduct would believe the communicator was expressing a serious intent to commit an act of unlawful violence.

#### **B. The Contours of the True Threat Doctrine**

A "true threat," unprotected by federal and state constitutional principles of free speech, is a serious expression of intent to commit and act of unlawful violence. *DeLoreto*, 265 Conn. at 154; *State v. Carter*, 141 Conn. App. 377, 399 (2013), *aff'd*, 317 Conn. 845 (2015) (True threats are undeserving of First Amendment protection); *Krijger*, 313 Conn. at 449–50; *State v. Sabato*, 321 Conn. 729, 734–35 (n.5) (2016); *Skidd*, 104 Conn. App. at

55; *Virginia v. Black*, 538 U.S. 343, 359 (2003); *United States v. Parr*, 545 F.3d 491, 497 (7th Cir. 2008). True threats fall outside the protection of the First Amendment. *State v. Nowacki*, 155 Conn. App. 758, 783 (2015); *Reid v. Comm'r of Correction*, 93 Conn. App. 95, 109–110 (2006); *Doe v. Rector & Visitors of George Mason Univ.*, No. 1:15–CV–209, 2015 WL 5553855 at \*13 (E.D.Va.); *Parr*, 545 F.3d at 497; *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 382–83 (1992); *Com. v. Milo M.*, 740 N.E.2d 967 (Mass. 2001) (Student discipline for true threats does not violate free speech principles).

The true threats doctrine is intended to protect people from the *fear* of violence, and the disruption that such fear engenders. *DeLoreto*, 265 Conn. at 154; *Doe*, 2015 WL 5553855 at \*13 (True threats by their very expression inflict injury); *Doe*, 306 F.3d at 622.

To legally constitute a true threat, the threat of violence need not be imminent. *DeLoreto*, 265 Conn. at 158; *State v. Cook*, 287 Conn. 237, 257 (2008); *Carter*, 141 Conn. App. at 401; *State v. Tarasiuk*, 125 Conn. App. 544, 549 (2010); *Parr*, 545 F.3d at 497 (No precise time of action required). In fact, the speaker or communicator need not actually intend to commit an act or acts of violence at all. *DeLoreto*, 265 Conn. 145; *Gaymon*, 96 Conn. App. at 247–48; *Carter*, 141 Conn. App. at 399; *Reid*, 93 Conn. App. at 109; *Skidd*, 104 Conn. App. at 55; *Wheeler*, 776 F.3d at 743; *Porter ex rel. LeBlanc v. Ascension Par. Sch. Bd.*, 301 F. Supp. 2d 576, 583, 588 (M.D. La. 2004); *Parr*, 545 F.3d at 498.

### **C. Courts Play a Critical Role in Protecting the Educational Mission of Schools and Universities**

Courts have long recognized that school and university communities play a special and important role in educating and nurturing students, different from the rest of society, and that on occasion and in keeping with constitutional principles courts may need to step in to protect students and the integrity of the educational process and mission. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (Recognizing that schools,

within constitutional bounds, have authority to prescribe and control conduct); *Doe*, 2015 WL 5553588 at \*14; *Porter*, 301 F.Supp. 2d at 583 (School officials do not operate in a vacuum or a fantasy world; school violence is real, citing the massacre at Columbine High School); *Moore v. Black*, No. 03-CV-0330A(SR), 2004 WL 1950338 at \*6 (W.D.N.Y.2004) (A university has the right to exclude even First Amendment activities that violate reasonable campus rules or substantially interfere with the opportunity of other students to obtain an education); *Healy v. James*, 408 U.S. 169, 188–89 (1972). This is so because "First Amendment rights must always be adjudicated in light of the special characteristics of the environment of the particular case." *Connecticut State Fed'n of Teachers v. Bd. of Ed. Members*, 538 F.2d 471, 479 (2d Cir. 1976) (citing *Tinker*, 393 U.S. 503 and *Healy*, 408 U.S. 169).<sup>3</sup>

These important principles, unique to educational settings, were aptly summarized by the Court in *State v. Schoner*, 591 P.2d 1305 (Ariz. Ct. App. 1979):

[t]he United States Supreme Court has held that expressive activity ceases to be constitutionally protected, and may be prohibited, if it materially interferes with, or substantially disrupts, the normal operation of schools, school activities or the rights of other persons. *Tinker v. Des Moines Independent Com. Sch. Dist.*, 393 U.S. 503, 513, 89 S.Ct. 733, 740, 21 L.Ed.2d 731, 740-1 (1969); *Grayned v. City of Rockford*, 408 U.S. at 118, 92 S.Ct. at 2304, 33 L.Ed.2d 233. In *Healy v. James*, 408 U.S. 169, 92 S.Ct. 2338, 33 L.Ed.2d 266 (1972), the Court elaborated upon this rule as follows: "In the context of the 'special characteristics of the school environment,' the power of the government to prohibit 'lawless action' is not limited to acts criminal in nature. Also prohibited are actions which 'materially and substantially disrupt work and discipline of the school.'" *Tinker v. Des Moines Independent School District*, 393 U.S., at 513, (89 S.Ct. at 740) 21 L.Ed.2d at 741.

*Id.*; *Com. v. Milo*, 433 Mass. at 158-59.

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<sup>3</sup> For example, it is well settled that given the special nature of school and university environments, even state run schools and universities are afforded considerable flexibility in complying with due process requirements in their student disciplinary processes. A.129-131; A.95-97 (and cases cited therein).

**D. The Trial Court Correctly Held That Based on the True Threats Doctrine, Mr. Haughwout's Expulsion Did Not Violate His Free Speech Rights**

Using the objectively reasonable standard set forth above, the trial court found Mr. Haughwout's words and gestures constituted true threats, engendering fear and impeding and endangering the educational process. A.142-147. Having found that Mr. Haughwout had made the various statements and gestures on the CCSU campus, the trial court

conclude[d] from the content of the statements and his repeated utterances of them in a public place like the student center that Mr. Haughwout meant to “communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals”; *Virginia v. Black*, ... 538 U.S. 359; namely, the students at Central. Whether he actually intended to carry through on the threat is unknown and immaterial. “The speaker need not actually intend to carry out the threat.” *Id.*

A.145-46. The trial court further concluded that

a reasonable person, such as Mr. Haughwout, would have seen that such repeated statements would be interpreted by the students to whom and in whose presence he made them as “serious expressions of intent to harm or assault.” *State v. Cook* ... 287 Conn. 249. And, although some of the students treated Mr. Haughwout's statements as a joke, at least some of them who heard these threats were “alarmed” and “concerned” about them and in some cases changed their behavior; e.g., coming less often to the student center because of Mr. Haughwout's statements.

A.146. In addition, the trial court found that

[p]art of the “factual context” of Mr. Haughwout's statements was the spate of shootings at schools and colleges in recent years, including the Oregon shooting in October 2015, the same month in which some of Mr. Haughwout's statements about “shooting up” Central were made. Those shootings had taken numerous lives of students and faculty and inflicted serious injuries on many others. Gestures and statements like those made by Mr. Haughwout on a college campus at such a time are the very kind of statements that any reasonable person would foresee as creating fear on the part of his fellow students. Protecting people “from the fear of violence and the disruption that fear engenders” is the reason true threats are not constitutionally protected. *Virginia v. Black* ... 538 U.S. 360.

A.147.

The trial court's findings of these salient facts properly compelled it to hold that the expressions at issue were true threats that could support Mr. Haughwout's expulsion without violating free speech principles.

**II. IN ASSERTING THAT THE TRUE THREATS STANDARD WAS NOT MET, MR. HAUGHWOUT IGNORES CERTAIN COMPELLING EVIDENCE AND EMBELLISHES OR MISCONSTRUES OTHER EVIDENCE**

**A. *Krijger* Is of Limited Applicability Here**

Mr. Haughwout relies heavily on the Court's ruling in *Krijger*, 313 Conn. 434. In *Krijger*, the defendant Krijger was convicted of threatening Waterford's town attorney after a contentious contempt of court hearing following a longstanding zoning enforcement dispute involving Krijger's property. After the hearing, the two men exchanged heated words, and Krijger made a veiled threat to the effect that what had happened to the attorney's son, who had been in a severe accident resulting in multiple medical injuries and permanent brain damage, would happen to the attorney, and he, Krijger, would "be there to watch it happen." *Krijger*, 313 Conn. at 439. While *Krijger* is important in that it further elucidates the legal principles of the true threats doctrine in Connecticut, it is so factually distinguishable from this case that its applicability is limited. Besides the fact that it was a criminal and not a civil case, and that it did not arise in an institutional educational context, the words at issue in *Krijger* were spoken in anger, in the passion of the moment, between two persons who had a long history together. The offending words were uttered shortly after a particularly contentious court proceeding, and the words themselves were followed by an immediate expression of contrition by the speaker. Most tellingly, there was only one impassioned utterance.

In this case, as only partially documented in the trial court's memorandum of decision, Mr. Haughwout engaged in a substantial series of expressive words and

conduct, over a period of time, to multiple fellow students, all of which reiterated the same theme or content -- gun violence at the University -- whether describing the intent or willingness to engage in such gun violence, or describing that he possessed the wherewithal to carry out such gun violence. A. 144-145. Most chillingly, the repeated words and gestures, unlike in *Krijger*, rarely appeared to be spoken or expressed in passion, but rather with a grim coldness evocative of a well formed intent, and with an apparent emphasis on its fear engendering effect on listeners or recipients of the gestures.<sup>4</sup> Mr. Haughwout surely never recanted any of his words or gestures, or apologized for their effect on others, and they occurred again and again. A2.170-172.

Finally, *Krijger* reflects another critical difference that distinguishes it from this case. In *Krijger* the finder of fact, the jury, had already found the defendant not guilty of intentional threatening in the second degree, finding only that the defendant had acted in reckless disregard of the risk that the victim would perceive his words as threatening. *Krijger*, 313 Conn. at 451. While the *Krijger* jury's affirmative finding that *recklessness* had been proven beyond a reasonable doubt did not *per se* preclude a finding of a true threat, it made it significantly more unlikely or implausible. Here, the trial court was the finder of fact, and, having heard the testimony and reviewed all the exhibits, it expressly found that "any" reasonable person would have found Mr. Haughwout's words and gestures represented a threat of unlawful violence. A.147.

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<sup>4</sup> An exception that further underscored the sense of danger was when Mr. Haughwout spoke of shooting up the school while visibly upset. A2.171. In addition, at the disciplinary hearing, Mr. Haughwout admitted to referring in anger to CCSU's Director of the Office of Student Conduct as a "f---ing asshole." A2.232-233. That was a type of aggression from Mr. Haughwout the Director had not seen before. A2.236.

**B. The Evidence Demonstrates That Mr. Haughwout's Words and Gestures Engendered Fear in Reasonable Hearers and Observers**

In his brief, Mr. Haughwout seeks to have the Court believe that Mr. Haughwout's words and gestures did not engender fear in those who heard him or observed his gestures. The evidence belies this assertion. While Mr. Haughwout admits that the original complainant to the police was "alarmed," and "felt afraid for everyone's safety," and that another hearer was "kind of concerned," (Mr. Haughwout's brief at 3, 15); A. 171-172; A.168, Mr. Haughwout attempts to dismiss such evidence, broadly reciting that several witnesses mentioned that Mr. Haughwout might be joking. Students described feeling alarmed, including with regard to the frequency of the remarks, to the point where some discontinued going into the student center. A.146; A.224. Hearers and observers may well have been partially conflicted, but one student hearer gave permission to another student to go to the police about the situation, and that person expressly did follow up with the police, stating his concern for campus safety including what *he* had seen and heard from Mr. Haughwout. A2.187-188; A2.196-197; A2.171. Rather than ignore the words and gestures, they all acted on what they heard and observed, including providing detailed information to the police. A2.168-172. In addition, while several of them verbally agreed to provide testimony or information at Mr. Haughwout's campus disciplinary proceeding, only one showed up, and he became notably agitated and fearful, and refused to appear before the disciplinary panel when he learned Mr. Haughwout would be present, leaving abruptly. A2.201-202.

On the evidentiary record before it, the trial court properly concluded Mr. Haughwout's words and conduct had reasonably engendered fear on the CCSU campus.

### **C. Mr. Haughwout's Words and Gestures Were Directed at Particular Persons**

Mr. Haughwout also claims Mr. Haughwout's words and gestures were not true threats because there was no particular intended victim or victims. This too ignores the evidence. Not only did the trial court reasonably find that Mr. Haughwout labelled, to his face, one particular student as his "number one target," who in turn spoke with the police about it, the trial court also found that students walking into or utilizing the student center at CCSU were subjected to the hand gestures and comments, clearly sending the message that they were intended or possible victims. A2.170; A2.168; A144-146. Again, this case is unlike *Krijger*, where the facts reflected a culmination of a dispute between two discrete individuals. Here, the very threat of violence, and the fear that threat engenders, is endemic to mass shootings, which we have now seen so many of in this nation; in such cases the victims are multiple, random, and often utterly unknown by and unconnected to the gunman in any way. Indeed, the threat of such multiple victims -- people who just happen to unluckily be in a particular place at a particular time -- goes to the very heart of the fear inducing phenomenon. The victims become victims not through any action of their own, other than being in the "wrong place at the wrong time." The students here who spoke with the police hoped to ensure their campus, and especially the student center, would not become such a "wrong" place.

### **D. Mr. Haughwout's Claim That Any Threat Was Not Imminent Is Not Relevant**

Mr. Haughwout repeatedly asserts that the trial court's finding that Mr. Haughwout's words and gestures were true threats was flawed because if any threat occurred it was not imminent. Leaving aside the debate that could be had about whether the threats were imminent or not, the applicable legal standard does not require that the threats be

imminent in order to be deemed true threats, and so this Court need not address that issue. *DeLoreto*, 265 Conn. at 158; *Cook*, 287 Conn. at 257; *Carter*, 141 Conn. App. at 401; *Tarasiuk*, 125 Conn. App. at 549; *Parr*, 545 F.3d at 497 (No precise time of action required). Moreover, as discussed above, while the nature of the threats here are a different animal, that does not make them any less threatening. A critical source of and reason for the fear induced by the threat of mass shootings is the randomness of the place and time they may occur; the greater factual context here, as recognized by the trial court, is that, unfortunately, of all the public places such events have occurred, schools, colleges and universities are particularly common venues for such tragedies.

#### **E. Mr. Haughwout's Words and Gestures Were Not Political Commentary or Expression**

Mr. Haughwout creatively argues that his words and gestures were actually political commentary, satire or expression, specially protected under free speech principles. Having heard and reviewed all the evidence, the trial court had little trouble dispensing with this claim, finding that it "bordered on the fanciful." A.144. Notwithstanding a factual record devoid of support for the claim, Mr. Haughwout nevertheless presses ahead, positing arguments and implausible characterizations of the words and gestures, untethered from the evidence. Various, Mr. Haughwout argues that the words and gestures were jokes, political hyperbole, or even satire "that evinces the nuanced intellectual basis of his [Mr. Haughwout's] humor." (Mr. Haughwout's brief at 15-17).<sup>5</sup> The record is devoid of any evidence that Mr. Haughwout's comments and gestures were ever part of any debate or discussion of Second Amendment gun rights or the public issue of gun control more generally; the expressions were not humorous, even in the sense of

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<sup>5</sup> Mr. Haughwout compares himself to Ovid, Shakespeare, Swift, and even Lenny Bruce. Mr. Haughwout's words and gestures made no such cultural contributions.

political satire, and reasonable hearers or recipients of the words and gestures did not feel and in fact were not invited into a debate, discussion or reflection on the public policy issues surrounding gun control. Most tellingly, Mr. Haughwout himself did not make any such claims before the CCSU hearing panel, instead claiming that there was something about his personality that caused people to lie about him and his activities, and that the evidence against him was the result of a personal vendetta by a particular student to have him expelled. A2.206; A2.208-209; A2.213-214; A2.225. Given the protections afforded political or public commentary under law, the reason for this claim is obvious, but factual support for it is less than negligible.

**F. Mr. Haughwout's Words and Gestures Were Not the Expressions of a Child**

Mr. Haughwout appears to attempt to explain his words and expressive conduct by comparing them to the words and acts of a playful child. (Mr. Haughwout's brief at 21). They were not comparable. This was not a single childish act of indiscretion; the words and gestures were frequent, repetitive, and they all carried the same message -- that Mr. Haughwout might well engage in gun violence on the campus, and had the wherewithal to do so.

**G. Mr. Haughwout's Words and Gestures Must Be Viewed in the Context of the Totality of the Circumstances**

Mr. Haughwout's brief embraces a particularly misleading strategy, namely, isolating particular words, acts and gestures. Mr. Haughwout then seeks to attack these one by one, attempting to characterize or construe each separate phrase or event -- even if distasteful or crude -- as plausibly explained as benign or at least reasonably susceptible to a more benign interpretation. (Mr. Haughwout's brief at 19-23). However, this is a direct misapplication of the law, which expressly requires an examination of the *totality* of the

circumstances -- viewing them all together in order to determine whether reasonable hearers or recipients of the expressive conduct would become fearful because, taken as a whole, the circumstances point to a serious expression of intent to commit an unlawful act of violence. *Gaymon*, 96 Conn. App. at 248; *DeLoreto*, 265 Conn. at 145, 152–53; *Reid*, 93 Conn. App. at 95; *Krijger*, 313 Conn. at 446; *Skidd*, 104 Conn. App. at 59; *Wheeler*, 776 F.3d at 743; *Doe*, 306 F.3d 616. The trial court understood and applied this principle, and found as a matter of fact that reasonable hearers and recipients would, and probably did, conclude Mr. Haughwout was expressing just such intent. A.145-146. As correctly noted by the trial court, recent "shootings had taken numerous lives of students and inflicted serious injuries on many others. Gestures and statements like those made by Mr. Haughwout on a college campus at such a time are the very kind of statements that any reasonable person would foresee as creating fear on the part of his fellow students." A.147.

#### **H. Mr. Haughwout's *Actual* Intent Is Neither Dispositive Nor Controlling**

Notably, in his interview with Mr. Dukes (the Director of CCSU's Office of Student Conduct) and before the CCSU hearing panel, Mr. Haughwout for the most part did not claim his statements and gestures were actually benign, but rather that he never made them. A.145. Mr. Haughwout's brief, however, is almost entirely devoted to articulating why this Court, in contravention of the trial court's findings, should construe the statements and gestures as benign. The danger in focusing on Mr. Haughwout's *post hoc* explanations of his intent or meaning in his series of statements and gestures is that such focus is misplaced, when the focus should be solely on what a reasonable hearer or recipient of the repeated statements and gestures would conclude about Mr. Haughwout's intent on the university campus. Again, whether Mr. Haughwout actually harbored intent to

commit violence on campus is irrelevant. *DeLoreto*, 265 Conn. at 145, 159–60; *Gaymon*, 96 Conn. App. at 247–48; *Carter*, 141 Conn. App. at 399; *Reid*, 93 Conn. App. at 95; *Skidd*, 104 Conn. App. at 55; *Wheeler*, 776 F.3d at 743; *Porter ex rel. LeBlanc*, 301 F.Supp. 2d at 583, 588; *Parr*, 545 F.3d at 498. In effect, this Court must put itself in the shoes of Mr. Haughwout's fellow students, and determine if their concerns and responses were reasonable under the totality of the circumstances; in that regard, their responses included one student giving another permission to go to the police, one actually going to the police to report the incidents, and all freely describing their concerns to the police when interviewed. A2.168-172. These facts must be coupled with their failure to appear at the disciplinary hearing, including one student who presented to appear, and then fearfully left when he learned Mr. Haughwout would be present. A2.201-202.

The trial court correctly held that "[w]hether he [Mr. Haughwout] actually intended to carry through with the threat is unknown and immaterial." A.146.

#### **I. The Fact That the Local Prosecutor Declined to Prosecute Mr. Haughwout Is of No Moment**

Mr. Haughwout notes in his brief that the CCSU police sought an arrest warrant for him, which the local prosecutor declined to pursue. (Mr. Haughwout's brief at 5). As correctly held by the trial court, this fact is of no consequence to the legitimacy of the University's ability to discipline Mr. Haughwout for his threatening words and gestures, given that in a criminal prosecution the state would have been required to prove each element of the offense of threatening beyond a reasonable doubt. A.119-120. Indeed, the Court in *Krijger*, 313 Conn. 434, the case so heavily relied upon by the Mr. Haughwout, noted such distinctions. *Krijger*, 313 Conn. at 448, 450 (Also noting that in a *criminal* prosecution the threat, among other things, must be "immediate"). Again, the contours of what student behavior is acceptable in a university community is clearly not coterminous

with what is simply not criminal. *Tinker*, 393 U.S. at 506; *Healy*, 408 U.S. at 189; *Connecticut State Federation of Teachers*, 538 F.2d at 479; *Schoner*, 121 Ariz. at 531.

### **CONCLUSION**

Mr. Haughwout has posited that this case is important for four reasons: (i) because it has garnered publicity; (ii) because it has implications for the gun control debate; (iii) because it will affect disciplinary proceedings at public universities; and (iv) because it has implications for criminal law. (Mr. Haughwout's brief at 1-2).

Even if the first reason is true, it has absolutely no bearing on this Court's decision making, and to suggest otherwise is unwarranted. The evidence at trial established that the second stated reason is unfounded, since the "gun control debate" played no part in the facts on the ground or the trial court's decision, and was primarily a *post hoc* justification presented by Mr. Haughwout in the court proceedings. While the third reason might conceivably be true, it is unlikely, since the law surrounding free speech is well developed, and permits reasonable time, place and manner restrictions. *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009) (citing *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983)); *Acevedo v. Sklarz*, 553 F. Supp. 2d 164 (D. Conn. 2008) (Student conduct that materially disrupts the educational process is not constitutionally protected speech). Here, where Mr. Haughwout's words and gestures, as received by reasonable hearers or recipients, did not relate to any important public policy issue, and Mr. Haughwout's manner of expression, reasonably heard as true threats, was clearly out of bounds on a college campus, any precedential value this case may have will more likely go to a school or university's ability to protect its community from potential gun violence. Moreover, most precedent setting university student discipline cases are decided on due process grounds, an issue not before the Court here. Finally, as reflected in the

discussion above regarding the important distinctions between this case and the decision in *Krijger*, 313 Conn. 434, this is a civil case, with a different burden of proof, and involves the special environment of a university campus where the issue is not whether a criminal law has been violated, but rather whether a student code of conduct -- representing a kind of covenant between a learning community and one who has been admitted to it -- has been violated. As such, any implications for criminal law generally will be somewhat limited.

Rather, this case is important because it directly addresses the ability of a public institution of teaching and learning to protect its students from the fear of violence and palpable disruption to the lives and education of all members of such an institution that the fear of violence, especially mass gun violence, engenders. The trial court, after examining all the evidence and assessing the credibility of the witnesses -- which included the Mr. Haughwout and his father -- consistent with principles of due process, free speech, and the University's own procedures, found that Mr. Haughwout's words and gestures constituted true threats that cannot be tolerated on a university campus. A.142-148. The Defendant-Appellees respectfully urge this Court to affirm the trial court's decision so that public educational institutions can continue to protect their respective communities, while still honoring constitutional guarantees.

Respectfully submitted,

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## **CERTIFICATION**

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure § 67-2, that on January 12, 2018:

(1) the electronically submitted brief has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and

(2) the electronically submitted brief and the filed paper brief has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and

(3) the brief being filed with the appellate clerk are true copies of the brief that was submitted electronically; and

(4) the brief complies with all provisions of this rule; and

(5) a copy of the brief has been sent to the Plaintiff Mr. Haughwout and to any trial judge who rendered a decision that is the subject matter of the

(6) appeal, in compliance with Section 62-7 at the following address:

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