

Do High School Students Have a Constitutional Right to Their Grades? The Fifth Circuit Applies the *Goss* Framework to Limit Students’ Fourteenth Amendment Property Interests

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I. INTRODUCTION

The Cleveland School District, located in Mississippi, waited until 2016 to desegregate.¹ To fulfill the fifty-year-old desegregation decree, the Mississippi school district consolidated two public schools to create one Cleveland Central High School.² While there are obvious and alarming implications of a district waiting until 2016 to desegregate, consolidating the two schools’ academic records presented a pertinent issue for the district’s administration.³ Both high schools failed to follow the district handbook’s standards for awarding course credit and quality points.⁴ As a result, many graduating students at the new, consolidated high school with identical courses and grades received different credit

1. James v. Cleveland Sch. Dist., 45 F.4th 860, 863 (5th Cir. 2022).

2. See *id.* (citing Cowan v. Bolivar Cnty. Bd. of Educ., 186 F. Supp. 3d 564, 621 (N.D. Miss. 2016)). In *Cowan v. Bolivar County Board of Education*, the United States District Court for the Northern District of Mississippi held that the Cleveland School District had to desegregate. 186 F. Supp. 3d at 621. The court emphasized that the middle and high school students in Cleveland, Mississippi were deprived of the constitutional right to an integrated education for over fifty years because the school district did not adhere to the Supreme Court mandated desegregation examined in *Alexander v. Holmes County Board of Education*. *Id.* (citing 396 U.S. 1218, 1219-20 (1969)).

3. See *James*, 45 F.4th at 863.

4. *Id.*

values on their transcripts.⁵ School administrators tried to resolve the inconsistencies by altering the transcripts in accordance with the handbook's guidelines.⁶ Olecia James, a model student, was not satisfied by the alterations to her transcript.⁷ Because of the changes, she did not finish valedictorian or salutatorian as originally expected; she finished third.⁸ James and her parents consulted with various administrators, but they did not restore her transcript to its original form.⁹

James filed suit against the school district and its administration, alleging that they conspired to strip her of salutatorian honors under 42 U.S.C. § 1983, violated Mississippi law, and "violated her federal due-process and equal-protection rights" under the Fourteenth Amendment.¹⁰ The United States District Court for the Northern District of Mississippi recognized that James identified a cognizable property interest to her quality points; it did not, however, find any deprivation of such property.¹¹ The court struck the equal protection claim on the ground that the administration's calculation of quality points did not have any discriminatory effect or purpose.¹² James appealed only her substantive and procedural due process claims.¹³ In the appeal, James asserted "an interest in 'continued receipt of an education pursuant to the rules adopted by the school board as well as the laws the Mississippi Legislature adopted to govern public schools in this state.'"¹⁴ On appeal, the United States Court of Appeals for the Fifth Circuit held that James did not have a cognizable property interest in her quality points or components of her public education because she was not totally excluded from the educational process.¹⁵

Academic success has become a defining characteristic for many high schoolers' personas, and the pressure to be at the top pushes students

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. After James and her family petitioned at school board meetings, the administrators at first agreed to restore her transcript. Shortly after, however, the superintendent changed their mind and made a final, hard-lined decision to adjust all transcripts in accordance with the handbook. The administration justified its decision by stating, "it [was] the fairest outcome for a bad situation." *Id.*

10. The district court granted the defendants' motion for summary judgement on the grounds of qualified immunity and found that there was no constitutional violation. *Id.* at 864.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 866-67.

to take extreme measures. In a society where some people view transcripts as determinative of their self-worth, it is important for courts to narrow the opportunity to claim a constitutional right to good grades. The Fifth Circuit successfully avoided the temptation to extend the scope of Fourteenth Amendment due process property interests and followed its own precedent along with that of the United States Court of Appeals for the Tenth Circuit.¹⁶ The Fifth Circuit held that James did not have a cognizable property interest because she did not link her interest to a state-created right, nor was she totally excluded from the educational process.¹⁷

Part II of this Note outlines how the United States Supreme Court and Circuit Courts have classified Fourteenth Amendment due process interests in academic settings. Part III explains how the Fifth Circuit applied precedent to analyze a student's due process property claim to the quality points on their transcript. Part IV asserts that the Fifth Circuit adhered to precedent but did not analyze the most factually analogous cases. The Note further details the implications of the court's decision and identifies its support of the recent restructuring of the Supreme Court's substantive due process analysis. Part V briefly concludes.

II. BACKGROUND

The Fourteenth Amendment says that no state shall deprive “any person of life, liberty, or property, without due process of law.”¹⁸ Individuals who believe a state stripped them of a due process interest are quick to allege Fourteenth Amendment violations; however, the courts are wary to expand the Amendment's scope.¹⁹ Particularly in the educational setting, there are few instances in which a court has held that a student claimed a cognizable property interest.²⁰ The standard is strict; to have a valid claim, a student must show that they were totally excluded from the educational process.²¹

16. *See id*; *see generally* Swindle v. Livingston Par. Sch. Bd., 655 F.3d 386, 389 (5th Cir. 2011); Nevares v. San Marcos Consol. Indep. Sch. Dist., 111 F.3d 25, 26 (5th Cir. 1997); Shepard v. Cleveland Sch. Dist., 822 F. App'x. 312, 313 (5th Cir. 2020); Arundar v. DeKalb Cnty. Sch. Dist., 620 F.2d 493, 494 (5th Cir. 1980); Seamons v. Snow, 84 F.3d 1226, 1234-35 (10th Cir. 1996) (explaining that a student does not have a cognizable property interest beyond the guarantee to an education itself).

17. *James*, 45 F.4th at 866-67.

18. U.S. CONST. amend. XIV, § 1.

19. *See, e.g., James*, 45 F.4th at 867.

20. *Id.*

21. *Id.* at 866.

The Supreme Court addressed the educational property interest issue in *Goss v. Lopez*.²² The Court held that students who are temporarily suspended from public schools have protected property and liberty interests under the Due Process Clause of the Fourteenth Amendment.²³ The Court reasoned that a student may not be totally excluded from the educational process without adequate due process because the alleged property interest derives from the state's statutory guarantee to provide its students with a continuous public education.²⁴

A. *The Fifth Circuit's Narrow Application of Goss*

The Fifth and Tenth Circuits applied the Supreme Court's decision in *Goss* to determine how far constitutional protection of the property interests involved in one's education should extend.²⁵ In general, the Fifth Circuit has held that students have a cognizable property interest in the "entitlement to a public education," and that right is triggered only if they are completely excluded from the educational process.²⁶ For example, the Fifth Circuit noted in *Swindle v. Livingston Parish School Board* that the Supreme Court recognized a property interest in the "continued receipt of an education when the state creates a public school system and requires children to attend."²⁷ In that case, a student was expelled for the remainder of the academic year after attending a school dance while under the influence of marijuana.²⁸ The administration denied the student's request for alternative education programs during their expulsion, and the student had to repeat the eighth grade.²⁹ The Fifth Circuit saw it as a total exclusion from the educational process.³⁰ The court, applying *Goss*, emphasized that the student had a cognizable property interest in a continued education during their time of expulsion because a Louisiana statute granted students the right to the alternative program.³¹

Conversely, in *Nevarres v. San Marcos Consolidated Independent School District*, the court held that the school did comply with Texas's statutory guarantee to a continuous education.³² The high school principal

22. 419 U.S. 565, 567 (1975).

23. *Id.* at 574-76.

24. *Id.* at 576.

25. See cases cited *supra* note 16.

26. *James*, 45 F.4th at 865 (quoting *Goss*, 419 U.S. at 574).

27. 655 F.3d 386, 393 (5th Cir. 2011).

28. *Id.* at 388-89.

29. *Id.* at 390-91.

30. *Id.* at 394-95.

31. *Id.*

32. 111 F.3d 25, 26 (5th Cir. 1997) (citing *Goss v. Lopez*, 419 U.S. 565 (1975)).

sent the student to an alternative education program while their assault charge was still pending, and the student alleged that this action violated the Fourteenth Amendment.³³ Applying *Goss*, the Fifth Circuit reasoned that because the administration put the student in an alternative program, the school did not deprive them of a property right.³⁴ The court further explained that a student does not have a cognizable property interest to choose a particular school curriculum; the interest is solely in the right to a public education itself.³⁵ The Fifth Circuit therefore declined to extend *Goss* beyond the bare guarantee that a student cannot be totally excluded from the educational process.³⁶

B. Goss Applied to “Components” of the Educational Process

Just as the court found that suspended and expelled students are constitutionally protected solely to the extent that they may not be totally excluded from the educational process, the Fifth and Tenth Circuits refused to expand the *Goss* framework to protect the “components” of education.³⁷ A high school student brought a due process property claim after their school allegedly denied their request to enroll in particular courses.³⁸ The Fifth Circuit held that the student did not allege any particular statute or independent source that entitled them to choose particular courses; therefore, they did not have a cognizable property interest under the Fourteenth Amendment.³⁹ Accordingly, the Fifth Circuit followed its own trend of keeping the *Goss* property interests limited to cases in which a student is completely removed from the educational process.⁴⁰

The Fifth Circuit continuously maintained its stance on the narrow applicability of *Goss*, and refused to recognize a property interest brought by a high school student in the same district as Olecia James in *Shepard*

33. *Id.*

34. *Id.*

35. *Id.* at 27.

36. The Fifth Circuit strayed from entering the realm of school administrators and emphasized that school disciplinary procedures should primarily be dealt with at the state and local level. *Id.*

37. *Arundar v. DeKalb Cnty. Sch. Dist.*, 620 F.2d 493, 494 (5th Cir. 1980); *Shepard v. Cleveland Sch. Dist.*, 822 F. App'x. 312, 313 (5th Cir. 2020); *Seamons v. Snow*, 84 F.3d 1226, 1234-35 (10th Cir. 1996).

38. *Arundar*, 620 F.2d at 494.

39. *Id.*

40. *Id.*; *Goss v. Lopez*, 419 U.S. 565, 576 (1975).

v. Cleveland School District.⁴¹ Shepard alleged that the school district gave another student opportunities for online schooling that they were not afforded, boosted the other student's grade points, and ultimately miscalculated Shepard's GPA; however, the court did not see those as cognizable property interests.⁴² The court emphasized that "[w]hile students have a property interest in receiving a state-provided public education . . . there is no free-standing right to class honors."⁴³ Furthermore, the court held that the student did not identify an independent source or statute entitling them to those alleged rights.⁴⁴

The Tenth Circuit also refused to extend the *Goss* cognizable property interest beyond its limited applicability.⁴⁵ The plaintiff, Brian Seamons, transferred high schools after his football teammates assaulted him, and his coaches kicked him off the team for speaking up about it.⁴⁶ Seamons alleged he had property interests in his education at the high school, advanced placement courses and credits, and the ability to partake in interscholastic athletics.⁴⁷ Applying *Goss*, the Tenth Circuit held that the "separate components" of one's high school education, beyond that of the right to an education itself, do not fall under a protected property interest.⁴⁸

III. COURT'S DECISION

In the noted case, the Fifth Circuit affirmed the district court's ruling that the school district did not deprive James of due process.⁴⁹ But, the Fifth Circuit disagreed with the district court's finding that James had a cognizable property interest in their grade points.⁵⁰ The Fifth Circuit followed its previous decisions and those of the Tenth Circuit by refusing to expand the scope of *Goss* to include cognizable property interests in the "components" of public education, especially when the proposed

41. 822 F. App'x. at 312-13; *James v. Cleveland Sch. Dist.*, 45 F.4th 860, 863 (5th Cir. 2022).

42. *Shepard*, 822 F. App'x at 312-13.

43. *Id.* at 313 (citing *Goss*, 419 U.S. at 595).

44. *Id.* (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)).

45. *See Seamons v. Snow*, 84 F.3d 1226, 1235 (10th Cir. 1996) (stating that the court "[has] interpreted *Goss* to speak only in general terms regarding the 'educational process.'" (quoting *Albach v. Odle*, 531 F.2d 983, 985 (10th Cir. 1976))).

46. *Id.* at 1230.

47. *Id.* at 1234.

48. *Id.* at 1235.

49. *James v. Cleveland Sch. Dist.*, 45 F.4th 860, 867 (5th Cir. 2022).

50. *Id.* at 865.

interests are not linked to any state-created right.⁵¹ While James presented both equal protection and due process claims to the district court, only their procedural and substantive due process claims were at issue on appeal.⁵²

The court addressed the procedural and substantive due process claims separately, reasoning that in order to have a valid substantive due process claim, a student must first have a cognizable interest anchored in a statute.⁵³ Under the Supreme Court's holding in *Goss*, students have a cognizable state created property interest in the "entitlement to a public education."⁵⁴ Applying the *Goss* framework, the court noted that it historically has found that a student is entitled to due process protection only if they are totally excluded from the educational process.⁵⁵ The court cited prior Fifth and Tenth Circuit opinions that refused to recognize property interests in extracurricular activities, grade points, or other aspects of the educational process.⁵⁶ Therefore, based on both Fifth and Tenth Circuit precedent, the court concluded that James did not have a cognizable property interest in the quality points on their transcript.⁵⁷ The court emphasized that "a student's not being chosen salutatorian or not getting specific course points is not the 'total exclusion from the educational process,' that would trigger due process safeguards."⁵⁸ Because James failed to allege a cognizable property interest, her substantive due process claim was "doom[ed] . . . by definition"; however, the court still used the opportunity to acknowledge the newly

51. *Id.* at 867.

52. *Id.* at 864. The court began its opinion by recognizing the defendants' claim to qualified immunity. In order to defeat a claim of qualified immunity, the plaintiff must show that the officials invoking it "violated a statutory or constitutional right of the plaintiff" and . . . 'the right was clearly established at the time of the violation.'" *Id.* (quoting *Dyer v. Houston*, 964 F.3d 374, 380 (5th Cir. 2020)). In order to determine whether the superintendents, principal, and school board members violated James's constitutional right, the court evaluated the sufficiency of their procedural and due process claims. *Id.* at 865-67.

53. *Id.* at 865-67.

54. *Id.* at 865 (quoting *Goss v. Lopez*, 419 U.S. 565, 574 (1975)).

55. *Id.* (citing *Swindle v. Livingston Par. Sch. Bd.*, 655 F.3d 386, 401 (5th Cir. 2011) (quoting *Goss*, 419 U.S. at 576)).

56. Specifically, the court applied various cases in which the Fifth or Tenth Circuits negated high school students' property interest claims to take particular courses, be a member of the football team, or receive class honors. *Id.* (citing *Arundar v. DeKalb Cnty. Sch. Dist.*, 620 F.2d 493, 494 (5th Cir. 1980); *Seamons v. Snow*, 84 F.3d 1226, 1235 (10th Cir. 1996); *Shepard v. Cleveland Sch. Dist.*, 822 F. App'x. 312, 313 (5th Cir. 2020)).

57. *Id.* at 866.

58. *Id.* (quoting *Swindle*, 655 F.3d at 401).

established substantive due process framework.⁵⁹ Finally, the court suggested that civil rights laws offer alternative remedies if a student is stripped of academic awards due to discrimination, but emphasized that it is not the court's role to write rules about how a school should award quality points for certain courses.⁶⁰

IV. ANALYSIS

Because academic excellence has become a pillar in many American homes to measure success, it is not shocking that a high school student may feel constitutionally entitled to receive the grades they think they deserve. However, some courts historically have strayed away from interfering with local and state academic decision-making as long as students are not completely excluded from receiving an education.⁶¹ While the Fifth Circuit recognized that what happened to James was “unfair” and “surely disappointing,” it ultimately decided to join its precedent and that of the Tenth Circuit in refusing to create constitutional property rights in separate components of the educational process.⁶² The court's conclusion is on point, however in reaching its decision, it did not use the most analogous precedent, and therefore could have had a more effective analysis. Furthermore, the court's decision left some unanswered questions. While the court ruled consistently with precedent, it missed an opportunity to specifically clarify the limits of the *Goss* framework and left questions as to what exactly it means to be totally excluded from the educational process.⁶³ It also took the opportunity to support and explain the *Dobbs* analysis, even though the court found James's substantive due process claim failed on its face.⁶⁴

59. *Id.* at 866-67 (citing *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2246 (2022)). The court gave a brief summary of the *Dobbs v. Jackson Women's Health Organization* analysis, and then ultimately concluded that because James did not allege a cognizable property or liberty interest, the substantive due process claim failed. *Id.* at 867 (citing *Edinowe v. Bailey*, 860 F.3d 287, 292 (5th Cir. 2017)).

60. *Id.* at 866-67.

61. *See generally* cases cited *supra* note 16 (restricting a student's ability to bring a due process claim).

62. *James*, 45 F.4th at 863-67.

63. *Id.*

64. *Id.*

A. *The Fifth Circuit Accurately Applied the Goss Standard but Buried the Most Analogous Precedent*

The Fifth Circuit abided by its prior jurisprudence in refusing to acknowledge that high school students have a cognizable property interest in the separate components of the educational process, and as a result, avoided the temptation to allow the *Goss* framework to become a slippery slope.⁶⁵ Even though it adequately followed prior jurisprudence, the court could have framed its analysis in a more persuasive way by focusing on *Arundar v. Dekalb County School District* and *Seamons v. Snow*.⁶⁶

First, the Fifth Circuit cited two examples of its own precedent that discussed the implications of Fourteenth Amendment property rights in cases where a student has been disciplined and temporarily removed from school through a suspension or expulsion.⁶⁷ While these discussions are relevant, the factual circumstances are distinguishable from Olecia James, a model student whose transcript fell victim to administrative error.⁶⁸ The court in *Swindle* did find the school deprived the student of due process because after expelling the student, the school district denied their request for an alternative education.⁶⁹ The court reiterated this reasoning in *Nevares* when it held that if a student is suspended or expelled, but given prompt access to an alternative program, they cannot bring a successful procedural due process claim.⁷⁰ Through its analysis of *Swindle* and *Nevares*, the Fifth Circuit distinguished James's purported interest in a right to her quality points from those students who have been expelled and denied access to any education at all.⁷¹ The court stood loyally by the *Goss* principle, which states that unless a student is "totally excluded" from receiving a public education, they do not have a cognizable property interest.⁷² While *Swindle* and *Nevares* demonstrated how to apply the *Goss* framework, the factual circumstances surrounding suspended and expelled students are not similar to Olecia James, a model student.⁷³

65. The court refused to open the floodgates to allow a high school student to bring a due process claim in situations where they are not completely excluded from the educational process. *Id.* at 865-67.

66. *Id.*; 620 F.2d 493, 493 (5th Cir. 1980); 84 F.3d 1226, 1226 (10th Cir. 1996).

67. See *James*, 45 F.4th at 865 (citing *Swindle v. Livingston Par. Sch. Bd.*, 655 F.3d 386, 401 (5th Cir. 2011); *Nevares v. San Marcos Consol. Indep. Sch. Dist.*, 111 F.3d 25, 26 (5th Cir. 1997)).

68. *Id.* at 863-64.

69. *Swindle*, 655 F.3d at 394.

70. See *Nevares*, 111 F.3d at 26-27.

71. *James*, 45 F.4th at 865-66.

72. *Id.* (citing *Goss v. Lopez*, 419 U.S. 565, 567 (1975)).

73. *Id.* at 865-66; *Swindle*, 655 F.3d at 388-90; *Nevares*, 111 F.3d at 26-27.

The Fifth Circuit primarily focused on the factually distinguishable cases of *Swindle* and *Nevarés* as examples of interpretations of the *Goss* framework, but other precedent is much more analogous to James's case.⁷⁴ For example, in the noted case, the Fifth Circuit fleetingly mentions *Arundar*; however, the student's situation in that case is much more similar to James's than to students in other cases.⁷⁵ The student in *Arundar* brought a procedural due process claim after their high school did not allow them to take particular courses of study.⁷⁶ The court held that the student did not have a cognizable property interest to choose a particular curriculum because no independent source or statute entitles high school students to take specific courses.⁷⁷ Similarly, the court in the noted case emphasized that there is no statute that entitles students a right to their class rank or quality points.⁷⁸ A claim to the right to study certain courses is much more analogous to the right to particular grades than to a student who files a claim after they are suspended or expelled from school for unwelcomed conduct. *Arundar* is the Fifth Circuit precedent on which the court should have focused.⁷⁹

Additionally, the court only subtly referenced the Tenth Circuit's decision in *Seamons v. Snow* and hid it within its analysis of the *Nevarés* precedent.⁸⁰ The student in *Seamons* alleged a right to their education, advanced placement courses, and athletics.⁸¹ The presumably typical student in *Seamons* fell victim to outside forces, bullying and harassment, just as James fell victim to outside forces, namely inconsistent transcript procedures.⁸² Even though it is not Fifth Circuit precedent, a noncontroversial student alleging a property interest in advanced placement courses and interscholastic athletics is rather factually analogous to star student Olecia James's claim to her class rank and

74. See *James*, 45 F.4th at 865-66; *Swindle*, 655 F.3d at 401; see *Arundar v. DeKalb Cnty. Sch. Dist.*, 620 F.2d 493, 493 (5th Cir. 1980); *Seamons v. Snow*, 84 F.3d 1226, 1226 (10th Cir. 1996) (focusing its analysis on disciplinary action cases but should have expanded more on cases in which a high school denied students the opportunity to take certain classes or participate in athletics); see also *Nevarés*, 111 F.3d at 26.

75. *James*, 45 F.4th at 865 (citing *Nevarés*, 111 F.3d at 27 and *Arundar*, 620 F.2d at 493).

76. 620 F.2d at 494.

77. *Id.*

78. *James*, 45 F.4th at 865-66.

79. 620 F.2d at 493.

80. See *James*, 45 F.4th at 865 (discussing *Nevarés*, 111 F.3d at 27).

81. 84 F.3d at 1234.

82. *Id.* at 1230; *James*, 45 F.4th at 863-64.

grades.⁸³ The court should have highlighted, rather than bury, *Seamons* in its opinion.⁸⁴

The Fifth Circuit may have focused on *Nevaras* and *Swindle* because they both specifically discussed how to apply *Goss*, but *Arundar* and *Seamons* did as well.⁸⁵ The court in *Arundar* emphasized that under the *Goss* framework, a student does not have a cognizable property interest to a particular curriculum choice if it is not granted to them by an independent source.⁸⁶ The court applied the *Goss* analysis just as the Fifth Circuit did in the noted case; without statutory entitlement to a particular component of the educational process, a student's procedural due process claim fails.⁸⁷ Additionally, the court in *Seamons* recognized that the student had a constitutional right to receive a public education and noted that "separate components of the educational process, such as participation in athletics and membership in school clubs" do not fall under the constitutional protection created by *Goss*.⁸⁸ Olecia James's claim to her class rank and grades probably constitute "separate components."⁸⁹ Therefore, it is curious that the Fifth Circuit did not highlight these cases or dive into a deeper analysis of them and instead focused on factually distinguishable precedent.⁹⁰

B. *Implications of the Court's Decision*

While the Fifth Circuit ruled consistently under *Goss*, the court may have missed an opportunity to clarify how strict the framework should be so as to prevent future frivolous claims.⁹¹ A student should not have a constitutional right to their class rank, but there may be aspects of

83. *See Seamons*, 84 F.3d at 1234; *James*, 45 F.4th at 865-66.

84. 84 F.3d at 1234.

85. *Nevaras*, 111 F.3d at 26-27; *Swindle v. Livingston Par. Sch. Bd.*, 655 F.3d 386, 401 (5th Cir. 2011); *Goss v. Lopez*, 419 U.S. 565, 565 (1975); *Arundar v. DeKalb Cnty. Sch. Dist.*, 620 F.2d 493, 494 (5th Cir. 1980); *Seamons*, 84 F.3d at 1234-35.

86. *Arundar*, 620 F.2d at 494.

87. *Id.*; *James*, 45 F.4th at 865-66.

88. *Seamons*, 84 F.3d at 1235 (citing *Albach v. Odle*, 531 F.2d 983, 985 (10th Cir. 1976)).

89. *James*, 45 F.4th at 865-66.

90. The court also elected to highlight an unpublished opinion, *Shepard v. Cleveland School District*, to show that they previously held that a student does not have a cognizable property interest to their grades. *Id.* at 866. The court itself noted in footnote two that *Shepard* was not published, but still used *Nevaras* and *Swindle* to back up its reasoning as examples of "published decisions" that do not afford students a constitutional right to separate components of their education rather than citing the factually analogous precedent of *Arundar* or *Seamons*. *See id.* at 865-67, 865 n.2 (citing *Nevaras*, 111 F.3d at 27; *Swindle*, 655 F.3d at 401); *Arundar*, 620 F.2d at 494; *Seamons*, 84 F.3d at 1234-35 (containing more factual similarities to the noted case).

91. *James*, 45 F.4th at 865-66; *Goss v. Lopez*, 419 U.S. 565, 565 (1975).

education that do not fall under the “total exclusion” category and still warrant constitutional protection. For example, the Fifth Circuit held that a student does not have a cognizable property interest to choose a particular curriculum.⁹² But if a school district refuses to teach evolution in its biology curriculum and its neighboring district includes it, a student in the former district may be “totally excluded” from the educational process.⁹³ The Fifth Circuit, in accordance with its conservative reputation, clearly adheres to its prior jurisprudence, so it is unlikely that they would choose to expand the framework beyond its set bounds in a case like *James*.⁹⁴

Furthermore, the decision has implications on future substantive due process claims because the Fifth Circuit used the noted case as an opportunity to show its support of the Supreme Court’s restructured due process analysis in *Dobbs*.⁹⁵ The Fifth Circuit used space in its opinion to demonstrate that the Court “recently clarified” how to analyze a substantive due process claim, provided the *Dobbs* analysis, and then did not even apply it to James’s claim. The court said, “James’s claim immediately runs aground, however, because she alleges only a property interest and not a liberty interest.”⁹⁶ Therefore, the inclusion of *Dobbs* was an unnecessary political move.⁹⁷

V. CONCLUSION

The Fifth Circuit made it clear that it will not recognize a due process violation claim as valid unless a student demonstrates that they were totally excluded from the educational process.⁹⁸ The Supreme Court established that standard in 1975, and the courts have not loosened it since its inception.⁹⁹ While it did adhere to precedent, the Fifth Circuit did not use the most factually analogous cases to support its opinion, and therefore may have missed an opportunity for a more effective analysis of James’s alleged property interest.¹⁰⁰ The court focused on distinguishable cases involving students who brought due process claims after a suspension or expulsion; meanwhile, there is Fifth and Tenth Circuit

92. *Arundar*, 620 F.2d at 494.

93. *Goss*, 419 U.S. at 565.

94. 45 F.4th at 863-67.

95. *Id.* at 866-67 (citing *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2228 (2022)).

96. *Id.* at 867.

97. *Id.* at 866-67.

98. *Id.* at 865-67.

99. *Goss v. Lopez*, 419 U.S. 565, 565 (1975); *see supra* note 16.

100. *James*, 45 F.4th at 864-67.

precedent involving typical students who alleged property claims to take particular courses and participate in extracurricular activities.¹⁰¹ Furthermore, the court missed an opportunity to clarify how strict the *Goss* framework should be.¹⁰² Ultimately, the court correctly held that Olecia James and other students should not have a constitutional right to their class rank or grade point average, but there may be instances where a student is not “totally excluded” from a state-provided education that still should warrant constitutional protection.¹⁰³ Finally, the court used the noted case as an opportunity to align itself with *Dobbs* even after it admitted that James’s substantive due process failed on its face.¹⁰⁴

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101. The court heavily focused its analysis on *Nevaras* and *Swindle*, rather than expanding on the factually analogous precedent in *Arundar* and *Seamons*. *Id.*; see cases cited *supra* note 90.

102. *James*, 45 F.4th at 864-67 (citing *Goss*, 419 U.S. at 565).

103. *Id.* at 864-67.

104. *Id.* at 866-67 (citing *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2228 (2022)).

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