

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-2613

Herbert R. Hawn, Jr.,

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Plaintiff - Appellee,

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v.

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B. Alan Sugg, in his official capacity as
President; Dr. Charles Hathway, in his
official capacity as Chancellor; Bart R.

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Lindsey, James B. Blair, William E.

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Clark, Frances A. Cranford, Joe L.

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Hargrove, M.D., H. L. Hembree, III,

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J. Thomas May, Frank W. Oldham, Jr.,

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Carl S. Whillock, in their official

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capacity as members of the Board of

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Trustees of the University of Arkansas;

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University of Arkansas at Little Rock,

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Defendants - Appellants.

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Lewis E. Epley, Jr., in his official
capacity as a member of the Board of
Trustees of the University of Arkansas,

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Defendant,

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Appeal from the United States
District Court for the
Eastern District of Arkansas.

[UNPUBLISHED]

Submitted: March 9, 1998

Filed: November 20, 1998

Before WOLLMAN and LOKEN, Circuit Judges, and BATAILLON,* District Judge.

PER CURIAM.

The order of the district court denying defendants' motion for summary judgment on the grounds of Eleventh Amendment immunity is reversed, and the case is remanded for further proceedings not inconsistent with this court's opinion in Humenansky v. Regents of the University of Minnesota, 152 F.3d 822 (8th Cir. 1998), rehearing denied, No. 97-2302 (8th Cir. Nov. 3, 1998).

BATAILLON, District Judge, concurring.

I adhere to the views expressed in my dissent in Humenansky but agree that we are bound to follow that decision in this case.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

*The HONORABLE JOSEPH F. BATAILLON, United States District Judge for the District of Nebraska, sitting by designation.