

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
IN THE NINTH CIRCUIT
CASE NO. 2021-CP-08-

Holly Chapman,

Plaintiff,

v.

Berkeley County School District, and Eddie
Ingram

Defendants.

SUMMONS
(Jury Trial Demanded)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your answer to this Complaint upon the subscriber at the address shown below within thirty (30) days (thirty five (35) days if served by United States Mail) after service hereof, exclusive of the date of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

(SIGNATURE BLOCK FOLLOWS)

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Columbia, South Carolina

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IN THE COURT OF COMMON PLEAS
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COMPLAINT

(Jury Trial Demanded)

EMPLOYMENT CASE

Plaintiff, complaining of the Defendants, respectfully makes the following allegations.

INTRODUCTION

For almost 50 years, the Supreme Court has recognized that public employers may not require citizens to forsake their constitutional rights as conditions of employment. *See e.g.; Pickering v. Bd. of Education*, 391 U.S. 563,574 (1968); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 492 U.S. 274,283-84 (1977); *Connick v. Myers*, 461, U.S. 138, 145 (1983); *Lane v. Franks*, 134 S.Ct. 2369, 2377 (2014). In determining whether a government agency or official has violated an employee's free speech rights, this Court conducts a two-step inquiry. It begins by asking whether the employee spoke as a citizen on a matter of public concern. "If the answer is no, First Amendment protections are not implicated. If, however, the answer is yes, then we must ask whether the employee's interest in speaking out about the matter of public concern outweighed the governments' interest in providing effective service to the public." *Hunter v. Town of Mocksville*, 789 F.3d 389, 397 (4th Cir. 2015). At the end of the inquiry, the Court also asks whether "the employee's speech was a substantial factor in the employee's

termination decision". *Bland v. Roberts* 730 F.3d. 368,374 (4th Cir. 2013)(quoting *McVey v Stacy*, 157 F.3d 271,277-78 (4th Cir. 1998)).

In this case, Berkeley County School District terminated a teacher and sought to revoke her teaching license by labeling her comments as immoral, because she shared her opinions on governmental rules for mask wearing during the Covid pandemic. Robust discussions of mask use have been ongoing in Berkeley County since the inception of Covid-19 and restrictions in 2020. The Berkeley County School District has stated that it can take steps to protect public health and save lives. The scientific effectiveness of mask wearing has been debated by other government officials, including the Governor of South Carolina, Henry McMaster. The Governor acknowledges that he feels masks wearing impairs learning for children. He has prohibited mask requirements in South Carolina public schools. DHEC and the South Carolina Department of Education, on the other hand, have stated that masks are safe, encouraged, and do not interfere with learning. The government of McMaster has imposed a law on its citizens, banning any use of state funds to require masks in schools. Mayors of Cities have resorted to using City and other funds to enforce mask use and protect workers, students and teachers health.

Discussion of mask use in schools is clearly important, a matter of serious public concern and protected speech under the First Amendment. The Supreme Court has held that the First Amendment protects an individual's right to express their views, even if those views are considered offensive to others. See e.g. *National Socialist Party v. Skokie* (1977), *Brandenburg v Ohio* (1969).

PARTIES AND JURISDICTION

1. Plaintiff Holly Chapman is a citizen and resident of Berkeley County, South Carolina.
2. Defendant Berkeley County School District is a public school district in Berkeley County, South Carolina.

3. Defendant Eddie Ingram is a citizen and resident of Pasquotank County, North Carolina. He was formerly the Superintendent of the Defendant District.
4. Plaintiff alleges a violation of 42 U.S.C. § 1983 (Speech) and tortious interference with prospective contractual relations against Berkeley County Schools. She alleges malicious prosecution against Ingram.
5. These claims are pled in the alternative where necessary.
6. These claims arise under federal statutory law and the common law of South Carolina.
7. This Court can exercise jurisdiction over these claims.
8. The events giving rise to this action occurred, for the most part, in Berkeley County and this Court is a proper venue for this case.
9. Plaintiff demands a jury trial on all triable claims and issues.

FACTUAL ALLEGATIONS

10. Plaintiff is a certified teacher with an active certification in good standing.
11. She was hired by the Defendant District in August 2015.
12. Plaintiff received no disciplinary actions during her employment by the Defendant District, prior to the incident at issue.
13. Plaintiff's evaluations by the District reflect that she met or exceeded job expectations.
14. The District has a social media policy titled Board Policy GBEEA.
15. That policy, in its legal references section, acknowledges "Public employees maintain their First Amendment rights to comment on matters of public interest."
16. Plaintiff posted a Facebook video in December 2020 to her personal page in which she expressed her political frustrations with perceived government intrusion with respect to COVID mask mandates and protocols.

17. Plaintiff was not friends with or followed by her students on Facebook where she posted the subject video.

18. Plaintiff's account is under a pseudonym and not her "teacher name."

19. Plaintiff made a sexual innuendo in her speech as an analogy to government overreach, but the innuendo was not objectively explicit or obscene.

20. Prior to Plaintiff's posting of her statement, similarly situated teachers within the District, including peers at the School where Plaintiff taught also engaged in posting sexual innuendo and speech of a sexual nature on social media, including a teacher at Plaintiff's middle school (who is a stand-up comedian that posted raunchy comedy on her own tik-tok account in her name despite being followed by students on that platform,) and were not disciplined.

21. Plaintiff's speech was less sexual in nature than that of her comedian peer, but contained a political message objecting to governmental interference in personal matters.

22. The key difference between Plaintiff's speech and that of her peer teacher's, as relevant to this lawsuit, is that Plaintiff's speech was political and the above referenced peers' speech was not.

23. Sometime around January 2021 a student at Plaintiff's school apparently gained access to Plaintiff's Facebook Video and then reposted a short portion of it to Snapchat.

24. Plaintiff's speech did not cause any real or significant educational disruption or disturbance at her school, nor was there any anticipation of disruption of education as a result of the circulation of the video clip.

25. The provision of education to the students at Plaintiff's middle school was not disrupted by Plaintiff's speech or the circulation thereof.

26. Plaintiff did not receive any calls or emails from other teachers or parents about the video.

27. Plaintiff learned that the video had been circulated amongst some students on or around February 15, 2021.

28. She worked that day, and the next day as she normally would without incident.

29. Plaintiff was called into a meeting with her principal and the District's Chief Human Resources Officer and questioned about the video on February 17, 2021.

30. At the meeting, Plaintiff was asked to prepare a statement. Her first draft was deemed insufficient, and the Defendant's HR Director directed her to write a follow-up statement explicitly describing the content of her speech. She did so.

31. Plaintiff then returned to work and worked as normal, without issue, that day and the next day.

32. Plaintiff was called to another meeting with her principal and the District's HR Director on February 19, 2021.

33. Plaintiff was then told she could either immediately resign or be terminated and was not given a reasonable amount of time to weigh her options, or seek counsel.

34. The Defendant's HR Director was authorized by the Superintendent and the Defendant District's Board to present Plaintiff with these options on February 19, 2021, either explicitly or implicitly based on her role at the Defendant District.

35. Plaintiff asked to speak to a lawyer prior to signing any documents but was told she would not be allowed additional time and needed to decide right then to be fired or resign.

36. The Defendant District forced Plaintiff to resign without making plans for the coverage of her online and in-person classrooms for the period immediately following her termination.

37. Therefore, the only real disruption to education at the Defendant District arising from this situation was the District's conduct and reaction to Plaintiff's speech, and not the Plaintiff's speech itself.

38. On February 24, 2021, Plaintiff asked her former Principal at her school if she would serve as a positive reference for her and she said she would.

39. On March 9, 2021, Plaintiff began pursuing employment with Charleston County School District.

40. On March 17, 2021, Plaintiff sent an email to the Defendant District's Human Resources Officer, Defendant Ingram, and others, requesting that the Defendant District reconsider her constructive discharge or grant her a grievance or appeal.

41. Plaintiff received no response to that letter.

42. The next day, March 18, 2021, Defendant Ingram notified Plaintiff in a letter that charges were being filed against her with the South Carolina Board of Education for a separation of employment arising from alleged misconduct.

43. The letter said that on March 9, 2021, the Defendant District Board approved sending a formal complaint and report against Plaintiff's teaching certificate to the South Carolina Department of Education.

44. The minutes from March 9, 2021 read that the Board voted "to accept the recommendation of the administration to approve that [a] formal complaint and report of the breach of contract for one teacher be sent to the state board of education to ask that appropriate action be taken against the employee for unprofessional conduct as discussed during executive session."

45. The referral to the State Board of Education was for Plaintiff.

46. The referral to the State Board of Education was initiated upon the recommendation of Defendant Ingram.

47. The Defendant District sent a letter to the Board of Education on March 19, 2021, stating Plaintiff was terminated for breaching her contract with the district, without detail regarding the nature of the breach.

48. The Defendant District sent a second letter to the Board of Education on April 21, 2021 stating Plaintiff had been terminated for engaging in alleged unprofessional conduct.

49. The sole policy sent by the Defendant District to the Board of Education, District Policy GDQD, regarding the charge against Plaintiff did not specifically address Plaintiff's conduct, but references vague undefined infractions for "gross immorality" or "other acts of serious misconduct as determined by the administration."

50. It appears the District's position was that Plaintiff's political speech fell into either or both of those two categories.

51. The District did not assert to the Board that Plaintiff violated its social media policy, Board Policy GBEEA.

52. The District has no contemporaneous documentation asserting that Plaintiff violated its social media policy.

53. Plaintiff did not violate Board Policy GBEEA.

54. Ultimately, The State Board of Education (effective June 30, 2021) declined to prosecute any charges against Plaintiff's license because her speech outside of work on a matter of public concern was protected by the First Amendment.

55. Plaintiff interviewed with Charleston County School District ("CCSD") on March 18, 2021 for a teaching role for the 2021-2022 school year.

56. The next day March 19, 2021 she received a recommendation for the role she had interviewed for. She then signed a letter of intent from CCSD.

57. On March 22, 2021, the District's HR director sent Plaintiff a letter saying she had made a typographical error on Plaintiff's termination letter in February indicating she had recently revisited her file.

58. When a teacher in South Carolina applies for a new position, the Principal at the teacher's old school, as a routine administrative matter must complete a reference requests form. Without this form the application for the new position is considered incomplete.

59. Contrary to this routine policy Plaintiff's former principal at the Defendant District was dilatory in April 2021 in completing the reference request form for Plaintiff who was applying to work at CCSD.(Charleston County School District). At this point in time Plaintiff had already been interviewed and signed a letter of intent.

60. The internal files produced by CCSD in response to a South Carolina FOIA request reveal no record of the requested written reference from Plaintiff's former Berkeley County principal.

61. The internal files produced by CCSD in response to a South Carolina FOIA reveal that there was verbal communication between Berkeley County, likely from the Defendant District's HR Director and Charleston County regarding the Plaintiff.

62. Plaintiff received a letter from CCSD on May 4, 2021, that said due to *concerns* in her file, CCSD would not move forward with the hiring process.

63. The reason Plaintiff was not hired by CCSD according to an internal CCSD email dated July 8, 2021, was that an official at the Defendant County raised concerns about her and communicated that she resigned "**in lieu of termination due to social media postings related to masks.**"

64. Internal emails from CCSD dated April 30, 2021, and May 4, 2021 indicated that Plaintiff would have received the position she was seeking at CCSD but for the reference from the Defendant District, related to Plaintiff's political speech.

FIRST CAUSE OF ACTION
Against the District
Violation of § 42 U.S.C. 1983 (Speech)

65. Plaintiff realleges the above where consistent.

66. Plaintiff was wrongfully and constructively discharged.
67. The District's policy on Social Media acknowledges that "Public employees maintain their First Amendment rights to comment on matters of public interest."
68. That policy was put into effect on May 22, 2018.
69. The District was aware that "Public employees maintain their First Amendment rights to comment on matters of public interest" on and after May 22, 2018.
70. Plaintiff was presented with the option to immediately resign or be fired because of a Facebook video she posted in December 2020 where she complained of government overreach regarding COVID-19 and mask mandates.
71. The Defendant District made a referral to the State Board of Education against Plaintiff's license as a result of her political social media speech, and labeling her as immoral.
72. The Defendant District made a negative report about Plaintiff to CCSD as a result of her political social media speech.
73. That speech was about a matter of serious public concern.
74. That speech was made as a citizen and not pursuant to Plaintiff's job duties.
75. Plaintiff's speech did not interfere with her duties and responsibilities or cause disruption in the workplace.
76. There was no anticipation of disruption of the workplace arising from Plaintiff's speech.
77. Plaintiff was fired pursuant to District Policy GDQD.
78. Free speech about matters of public concern is a clearly established right.
79. Policy GDQD is an official policy of the Defendant School District.
80. The Defendant District's HR Director, who presented Plaintiff with the option to be fired or resign, was authorized by the District to do so.

81. The Referral to the State Board of Education against Plaintiff's teaching certificate was made by the Defendant District's HR Director after a vote of the Defendant District's Board upon the recommendation of the District's Superintendent. All parties involved in the above were authorized by the District to do so.

82. The District's HR Director who is believed to have made the negative report to CCSD about Plaintiff was authorized by the District to do so.

83. The District is not an arm of the state.

84. The District terminated Plaintiff because of her protected speech as a citizen on a matter of public concern.

85. The District referred Plaintiff to the Board of Education for charges against her certificate, and labeled her as committing conduct that was grossly immoral, because of her protected speech as a citizen on a matter of public concern.

86. The District interfered with Plaintiff's prospective contractual relations because of her protected speech as a citizen on a matter of public concern.

87. This conduct amounts to a violation of Plaintiff's civil rights actionable against the District pursuant to S.C. Code Ann. 42 U.S.C. § 1983.

88. Plaintiff seeks damages from the Defendant under 42 U.S.C. § 1983 for lost wages, lost earning capacity, lost benefits, reputational loss, and emotional pain and suffering.

89. Plaintiff seeks additional special damages related to her loss of public service loan forgiveness approximating an additional \$187,000.00 in losses as a result of her separation.

90. Plaintiff also seeks attorney fees, costs, and prejudgment interest, and other damages available by law and from this Court.

SECOND CAUSE OF ACTION
Against the District
Tortious Interference with Contract.

91. Plaintiff realleges the forgoing where not consistent herewith.
92. In late April 2021 or early May 2021 the Defendant District made a negative report to CCSD about Plaintiff's qualifications to teach and shared the circumstances relating to the nature of her separation.
93. Prior to her political speech Plaintiff had a good disciplinary record, was considered well qualified, had been working at the school for over five (5) years, had won awards, successfully coached and worked with disabled students.
94. The surreptitious reference was not written, as is the practice and procedure normally utilized, but over the phone and was not recorded, upon information and belief.
95. The reference was not limited to dates of employment, pay level, and wage history.
96. The reference was not from Plaintiff's building-level principal.
97. The Defendant District was aware of Plaintiff's prospective contractual relations with CCSD when it gave the above reference.
98. The Defendant District knew or should have known its forced separation of Plaintiff was wrongful under the law such that it had no good reason for sharing the underlying circumstances with a third party.
99. Plaintiff would have received a job at CCSD, but for the Defendant's interference.
100. The same amounts to a tortious interference with prospective contractual relations for which the District is liable.
101. Damages include lost wages, lost earning capacity, lost benefits, reputational loss, and emotional pain and suffering, costs, attorney's fees and other damages permitted by law and this Court.
102. Plaintiff seeks additional special damages related to her loss of public service loan forgiveness approximating \$187,000.00 in addition to losses as a result of her inability to find reemployment.

THIRD CAUSE OF ACTION
Against Ingram
Malicious Prosecution

103. Plaintiff realleges the above where consistent.
104. Defendant Ingram made a recommendation to the District's Board that it refer charges against the Plaintiff to the State Board of Education.
105. The District's Board approved Ingram's without looking into the facts or performing any sort of investigation or reasonable inquiry.
106. The District's Board overwhelmingly approved Ingram's recommendations on Board referrals throughout his tenure with the District.
107. Ingram knew or should have known the Plaintiff's speech was protected political speech and was not a suitable basis for a referral to the State Board of Education.
108. There was no probable cause underlying the charges made against Plaintiff's certificate upon the recommendation of Defendant Ingram.
109. Those charges resolved in Plaintiff's favor as the Board declined to prosecute the Plaintiff.
110. Defendant Ingram was reckless, malicious, and grossly negligent in recommending charges against the Plaintiff's certificate
111. Plaintiff suffered damages as a result of Ingram's malicious prosecution against her teaching certificate.
112. Those damages include loss of income, attorney fees, diminished earning capacity, stress and anxiety, and pain and suffering.
113. Plaintiff seeks additional special damages related to her loss of public service loan forgiveness approximating \$187,000.00 in addition to losses as a result of Defendant Ingram's conduct.

114. Defendant Ingram's determination to press charges was grossly negligent and wanton and Plaintiff is entitled to punitive damages as a result.

PRAYER FOR RELIEF

115. Plaintiff requests a jury trial on all claims.

116. Plaintiff requests that the jury award all damages she seeks on the above claims including punitive damages against the Individual Defendant where appropriate.

117. Plaintiff further requests that the Court grant her all other equitable relief it deems just and necessary including reinstatement.

118. Plaintiff last requests pre-judgment interest, attorney fees, and costs where permissible under law.

(SIGNATURE BLOCK FOLLOWS)

Respectfully Submitted,

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