

RETURN DATE: 8/14/07	:	SUPERIOR COURT
LAUREN DONINGER, P.P.A.	:	
as Guardian and Next Friend of	:	
Avery Doninger	:	J.D. OF NEW BRITAIN
Plaintiff,	:	
V.	:	
KARISSA NIEHOFF, and	:	AT NEW BRITAIN
PAULA SCHWARTZ	:	
Defendants	:	JULY 16, 2007

COMPLAINT FOR INJUNCTIVE RELIEF

Now comes Plaintiff, Lauren Doninger, P.P.A., for and on behalf of her minor child, Avery Doninger, to the Superior Court for the Judicial District of New Britain at New Britain with the following Complaint for relief from the decision and order of Defendants Karissa Niehoff and Paula Schwartz, summarily dismissing said minor child from her position as 2008 class secretary at Lewis Mills High School and for other punitive sanctions. In support hereof, the plaintiff state as follows:

COUNT ONE (Prayer for Injunctive Relief)

1. At all relevant time herein, Regional School District #10 (hereinafter "Region #10") is a regional public board of education, within the meaning of Chapter 164 of the Connecticut General Statutes and Connecticut General Statute § 10-631, which serves the towns of Burlington and Harwinton, Connecticut.
2. Public high school students who reside in Burlington and Harwinton attend Lewis Mills High School (hereinafter "LMHS") in Burlington, a four-year secondary school, covering grades nine through twelve.
3. Lauren Doninger is the legal guardian and next friend of Avery Doninger,

a minor about to enter her senior year of high school. Avery Doninger (hereinafter "Avery") was at all relevant times, a full time matriculated student at LMHS and a resident of the town of Burlington. Avery was first elected to student council in her freshman year, and has been elected secretary for LMHS class of 2008 each year thereafter.

4. At all time relevant to this complaint, Defendant Karissa Niehoff, (hereinafter Defendant Niehoff) is and was the principal of LMHS and exercised supervisory authority regarding student activities and enforcement of statutes and regulations that pertain to LMHS, including discipline of enrolled students.

5. At all times relevant to this complaint, Defendant Paula Schwartz, (hereinafter Defendant Schwartz) is and was the superintendent of schools for Regional #10 appointed by the Region #10 Board of Education, and retained ultimate supervisory authority over the actions of administrators, with said school system, including review or disciplinary sanctions against students enrolled in Region #10 schools.

6. At all times relevant hereto, and in all their actions described herein, Defendants Niehoff and Schwartz acted jointly as well as severally, and under the color of their authority as Region #10 school administrators and under color of state law.

7. On or about April 24, 2007 the LMHS student council was told by their faculty adviser that "Jamfest" could not be held in the auditorium on April 28, 2007, as scheduled, because there was not a staff member available to run the new equipment. "Jamfest" is an annual event at LMHS also known as "Battle of the Bands" organized by the student council, where local musicians perform for members of the community.

8. As a result, of the information conveyed to the student council on or

about April 24, 2007, another student council member sent out an e-mail to LMHS parents and students encouraging them to call the Region #10 board of education and express their support for "Jamfest." The e-mail was "signed" by four students, including Avery, but drafted and transmitted by another LMHS student.

9. Sometime after the aforementioned e-mail was sent, Avery encountered Defendant Niehoff the same day in the hallway at LMHS. Defendant Niehoff scolded Avery for the e-mail that was written and sent by the other student. Several phone calls were received by the board of education offices, that Defendant Schwartz was angered by the e-mail, and that the school board's office had received several calls regarding "Jamfest." Defendant Niehoff told Avery that "Jamfest" may be cancelled.

10. Thereafter, Avery told several students that she had been informed that "Jamfest" was cancelled.

11. Still later on or about April 24, 2007 at approximately 9:25 p.m., Avery used her personal computer while at home to post a comment on an online live journal, (also known as a "blog") stating that " 'Jamfest' is cancelled due to douchebags in central office. Here is an email that we sent out to a ton of people and asked them to forward to everyone in their address book to help get support for jamfest. Basically, because we sent it out, Paula Schwartz is getting a TON [sic] of phone calls and emails and such. We have so much support and we really appreciate it. However, she got pissed off and decided to just cancel the whole thing all together. Anddd [sic] so basically we aren't going to have it at all, but in the slightest chance we do it is going to be after the talent show on may 18th. Anddd [sic]...here is the letter we sent out to parents." Avery then attached the e-mail sent earlier and a letter drafted by the plaintiff

to Defendant Schwartz, and encouraged other parents to contact the Region #10 administration.

11. Avery's comment was posted on the website "livejournal.com," which describes itself as "...an online journaling community, where people from around the world share stories, discuss topics and keep in touch with friends. It's a free service that you can use for meeting people and creating bonds through writing and sharing." The online journal was a public forum that was not sponsored by or associated with Region #10, in any manner.

12. On or about April 25, 2007, Defendants Niehoff and Schwartz, and the student council faculty advisor met with Avery and the three other signatories to the April 24th e-mail to clarify where and when "Jamfest" could be held. The defendants instructed the four students to send out a clarification e-mail stating that "Jamfest" would be rescheduled for June 8th, and that the previous e-mail was a result of a lack of communication between school officials and the student council. An e-mail announcing the new date for "Jamfest" and explaining the lack of communication, was sent by one of the other students.

13. On or about May 17, 2007, when Avery went to the office to accept her re-nomination for class secretary, Defendant Niehoff handed a hard copy of the April 24, 2007 livejournal.com blog entry and told Avery to do three things:

- (1) apologize to Defendant Schwartz for the journal entry;
- (2) tell her mother about the journal entry; and
- (3) immediately resign as 2008 class secretary and withdraw her candidacy for re-election to that position.

14. Avery agreed to apologize to Defendant Schwartz for the journal entry and did so in writing.

15. Avery also agreed to tell her mother about her journal entry, and showed it to her when she came home from school that day.

16. Avery refused to resign from her elected post. Thereupon, Defendant Niehoff summarily dismissed Avery from her position and disqualified her from running for re-election, as a result of the journal entry. At the time, Avery was the only candidate who had accepted a nomination for 2008 class secretary, and expected to be elected by acclamation.

17. Defendant Niehoff provided no appeal process or opportunity to challenge the arbitrary and unilateral punitive actions against Avery.

18. On or about May 21, 2007 Niehoff told the plaintiff that Avery could not run for 2008 class secretary because she had forfeited that "privilege" due to the content of her online journal.

19. On or about May 21, 2007 plaintiff requested that Defendant Niehoff provide documentation to justify the unilateral action taken against Avery. Defendant Niehoff sent the plaintiff written material that failed to address either the plaintiff's concerns or a lawful justification for the punitive measures.

20. On or about May 22, 2007 the plaintiff sent Defendant Niehoff an e-mail requesting a meeting to reconsider the aforementioned measures against Avery. Although, Defendant Niehoff initially offered to meet with the plaintiff, the plaintiff and Defendant Niehoff were unable to agree on a date, and Defendant Niehoff never replied to the plaintiff's proposed list of alternative dates.

21. On or about May 24, 2007, NBC 30 Connecticut News television broadcast an interview with the plaintiff and Avery discussing the journal entry and the sanctions imposed by the defendants against Avery.

22. On or about May 24, 2007, Avery asked her civics teacher if she could discuss the NBC30 television interview and the speech rights of high school students. The civics teacher asked Avery questions about the interview and issues raised during class.

23. Later that day, Avery was summoned to Defendant Niehoff's office from her chemistry class and ordered by Defendant Niehoff not to talk about the television interview in the school. As a result of this admonition, Avery missed twenty minutes of her chemistry class.

24. On or about May 25, 2007, Avery wore to school a shirt imprinted with the message "R.I.P. DEMOCRACY." Other students with Avery wore pre-printed shirts that stated "Team Avery" on the front and "Support LSM Freedom of Speech" on the back. These shirts clearly contained messages supporting Avery and her candidacy for class secretary.

25. While Avery was carrying a similar "Team Avery" shirt Defendant Niehoff came up to her and other students wearing the shirts, and prohibited the students from entering the auditorium, where class officer candidates would be giving speeches, unless they removed the shirts.

26. Although Avery had not donned the "Team Avery" shirt she was carrying, she feared adverse consequences of wearing the shirt and was chilled in her constitutional rights by the actions of Defendant Niehoff.

27. The shirts were not likely to cause a disruption to the educational process at LMHS and did not violate other students' rights or the school dress code. Students at LMHS are permitted by Region #10 policy to wear shirts with printed messages and statements except for certain language unrelated to this action.

28. On or about May 25, 2007, in the auditorium during the candidate speeches some students called out for Avery to speak. Defendant Niehoff told those students that if they were "disrespectful" their votes would not be counted. Defendant Niehoff's comments were specifically intended to prevent Avery from speaking or pursuing her candidacy for class secretary.

29. Avery was prohibited from addressing her class and giving a speech in support of her nomination because of Defendant Niehoff's arbitrary and capricious actions in retaliation for the publication of the blog.

30. Defendant Niehoff hand-picked another student to replace Avery as class secretary, and that student was elected to that position, after Defendant Niehoff disqualified Avery from being a candidate.

31. Defendant Niehoff caused a discipline log entry to appear in Avery's guidance file falsely stating that Avery inappropriately used school computers to send unauthorized e-mails. The log also falsely stated that there was a follow up conversation with students on April 25, 2007 regarding "appropriate use of computers, appropriate communication strategies for resolution of conflict, responsibilities of class officer as representative of student body," although no such conversation had occurred. Said entry was retaliation for Avery's exercise of her constitutional rights and created as part of the conspiracy to conceal the unlawful misconduct of the defendants.

32. Defendant Niehoff previously informed both the plaintiff and Avery that there would be no adverse consequences for the e-mail that was sent by an other student, to which Avery's name was added.

33. On or about June 8, 2007 Defendant Niehoff admitted to the plaintiff that Avery had not sent the April 24, 2007 e-mail to parents, but since her name was included she must take responsibility for it. The statement that Avery was "responsible" for the e-mail was part of the defendants' conspiracy to conceal their unconstitutional punitive actions towards Avery.

34. On or about June 8, 2007, plaintiff appealed to Defendant Schwartz in writing requesting that she reverse the punitive actions of Defendant Niehoff.

35. On or about June 11, 2007, Defendant Schwartz responded to plaintiff that Defendant Niehoff's "decision is not negotiable at this point."

36. On or about June 15, 2007, plaintiff met jointly with Defendants Niehoff and Schwartz in an effort to overturn the unconstitutional retaliatory measures against Avery. The defendants verbally refused to reconsider their unconstitutional and unlawful actions against Avery.

37. On or about June 20, 2007, Defendant Schwartz informed the plaintiff in writing that the aforescribed sanctions against Avery would not be reversed.

38. The actions of the defendants as aforesaid have caused irreparable harm to the plaintiff for which there is no adequate remedy of law.

39. The facts as set forth, demonstrate probable success on the merits and balancing of equities in her favor.

COUNT TWO (violation of Const. Art. I, § 4)

1. Paragraphs 1 through 39 of the First Count are hereby realleged in this Second Count, as if fully set fourth herein.

40. The defendants took adverse punitive measures against Avery Doninger as a direct result of Avery's expression of opinion in writing about public officials' actions on a public internet website.

41. Defendants violated Avery's rights under Connecticut Constitution Art. I, § 4 by restricting her ability as a Connecticut citizen to freely speak, write and/or publish her sentiments on a matter of concern.

COUNT THREE (violation of Const. Art. I, § 5)

1. Paragraphs 1 through 39 of the First Count are hereby realleged in this Third Count, as if fully set fourth herein.

40. The defendants curtailed and restrained Avery's speech and right to publish by their arbitrary and capricious action in violation of Connecticut Constitution, Article I, § 5.

COUNT FOUR (violation of Const. Art. I, § 14)

1. Paragraphs 1 through 39 of the First Count are hereby realleged in this Fourth Count, as if fully set fourth herein.

40. As a Connecticut citizen Avery possessed the right to apply to those invested with the powers of government of Region #10 for redress of grievances, or other proper purposes, by petition, address or remonstrance and did so, but was punished as a result.

41. The defendants violated Avery's rights under Connecticut Constitution, Article I, § 14.

COUNT FIVE (Intentional infliction of emotional distress)

1. Paragraph 1 through 39 of the First Count are hereby realleged in this Fifth Count, as if fully set fourth herein.

40. Defendants Niehoff and Schwartz knew or should have known that their arbitrary and capricious actions of punishing Avery would inflict emotional distress.

41. Defendants' conduct was willful and/or wanton and violated federal and state constitutional right to speech, petition, publication and remonstrance without affording her the right to due process. Defendants' conduct was also extreme and outrageous in that they singled out Avery for unfair treatment to retaliate for her constitutionally protected expression and violated her right to equal protection under the law.

42. Defendants' actions, as aforesaid, directly caused emotional distress to both the plaintiff and to Avery.

43. Thus distress, is expected to continue and be permanent in nature. Avery remains in continual fear she will suffer retaliation because of her constitutionally-protected activity.

44. The actions of the defendants, as aforesaid, have caused injury to the plaintiff and her daughter.

COUNT SIX (Title 42 U.S.C. § 1983, the Civil Rights Act)

1. Paragraphs 1 through 39 of the First Count are hereby realleged in this

Sixth Count, as if fully set forth herein.

40. Paragraphs 40 to 43 of the Fifth Count are hereby realleged in this Sixth Count.

44. The defendants acted jointly and in conspiracy to violate Avery's constitutional rights.

45. Defendants Niehoff and Schwartz violated the following clearly established constitutional right of the plaintiff and Avery:

- (A) The right to free speech, expression, petition, and protest, in violation of the first amendment of the United States Constitution;
- (B) The right to due process of law, in violation of the fourteenth amendment to the United States Constitution.
- (C) The right to the equal protection of the law in violation of the fourteenth amendment to the United States Constitution.

46. The actions of the defendants, as aforesaid, violated Title 42, United States Code, §§ 1983 and 1988.

WHEREFORE, the plaintiff seeks the following relief, and requests that the Court, grant the following relief.

A. As to the First Count:

1. That any bond requirements be waived because the claim is based upon violations of constitutional rights;

2. Enter preliminary and permanent injunctions, enjoining the defendants from:

- (a) Removing Avery from the position of LMHS 2008 class secretary and by reinstating her to that position in good standing until a new and fair election is held where Avery is a candidate;
- (b) Allowing any student council meetings or activities to take place until a new election for class secretary to be held two weeks into the 2007-2008 school year, allowing plaintiff and other candidates adequate time to campaign and present speeches to the senior class in a formal assembly, which will be attended by the class of 2008, the faculty and the defendants;
- (c) maintaining any disciplinary remarks in the plaintiff's academic or guidance department files pertaining to the claims arising from this complaint;
- (d) intimidating, threatening or taking other punitive action against Avery and other students, for campaigning for class secretary by wearing or displaying shirts, that advocate the election of Avery and/or student speech rights in general;

- (e) intimidating, threatening or taking other punitive action against the plaintiff or Avery for exercising their first amendment rights, including the filing of this action, or for speaking about her rights in appropriate class and on-campus settings;
- (f) intimidating, threatening or taking other punitive action against any student voting for or advocating on behalf of, Avery or for her re-election to the position of 2008 LMHS class secretary;
- (g) preventing Avery from addressing the entire class of 2008, in a special assembly, or from speaking at the 2008 commencement and graduation ceremony;

- 3. Award costs of this Action; and
- 4. Grant such other and further relief as this court deems proper and just.

B. As to the Second, Third, Fourth and Fifth Counts:

- 1. Award compensatory damages to the Plaintiff;
- 2. Award punitive damages to the Plaintiff, in the form of attorney's fees and non-taxable costs;
- 3. Award costs of this action;
- 4. Enter preliminary and permanent injunctions, in the form set forth in paragraph A.2 of the prayer for relief in Court One; and
- 5. Grant such other and further relief as this Court deems proper and just.

C. As to the Sixth Count:

1. Award compensatory damages to the Plaintiff;
2. Award punitive damages to the Plaintiff;
3. Award costs of this action;
4. Award attorney's fees pursuant to 42 U.S.C. §1988;
5. Waive any bond requirements;
6. Enter preliminary and permanent injunctions, enjoining the defendants in the form set forth in Paragraph A.2 of the First Count; and
7. Grant such other and further relief as this court deems proper and just.

Dated at Hartford, Connecticut this 16th day of July, 2007.

THE PLAINTIFF –
LAUREN DONINGER, P.P.A., for
AVERY DONINGER, A MINOR

By: _____

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