

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION at COVINGTON  
CASE NO. 2012-CV-00030**

**CHARLIE COLEMAN, ET AL.**

**PLAINTIFFS**

**vs.**

**CAMPBELL COUNTY LIBRARY  
BOARD OF TRUSTEES**

**DEFENDANT**

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**DEFENDANT CAMPBELL COUNTY LIBRARY  
BOARD OF TRUSTEE'S RESPONSE IN OPPOSITION  
TO PLAINTIFFS' MOTION TO BAR EX PARTE CONTACTS**

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The Defendant, Campbell County Library Board of Trustees, by and through counsel, for its Response in Opposition to Plaintiffs' Motion to Bar Ex Parte Contacts, states as follows:

**I. INTRODUCTION**

As part of its normal course of business, the Campbell County Library Board of Trustees ("the Library") releases a monthly newsletter entitled *Connections*. The newsletter is sent to any and all Library patrons who fill out a subscription form at a local branch. The newsletter is used as a means of providing information regarding Library activities and services. Due in part to recent newspaper articles about the pending lawsuit filed by Plaintiffs against the Library and increased questions by the public in general, the Library decided to include a brief article expressing the Library's position in the February 2010 issue of *Connections*. The article included information which was already in the public domain through pleadings and/or media coverage.

Immediately following the publication of the newsletter and in retaliation for the Library exercising its First Amendment rights, Plaintiffs filed the pending motion seeking an order barring any communication between the Library and the "proposed class of taxpayers." Because

the proposed class constitutes all property owners in Campbell County, Plaintiffs are essentially seeking a ban on communication between the Library and a significant majority of the general population of Campbell County.

Particularly troublesome to the Library is that the pending motion constitutes the second time Plaintiffs have filed a motion in direct retaliation to the Library's exercise of its First Amendment rights. On January 23, 2012, Plaintiffs filed additional legal authority in support of their Motion to Escrow All Tax Payments.<sup>1</sup> By Plaintiffs' own admission, they made this filing direct response to statements made by the Library to the *Cincinnati Enquirer* expressing its opinion on the merits of Plaintiffs' suit.<sup>2</sup> In that same article, of course, Plaintiffs' counsel advocated his position on behalf of his clients.<sup>3</sup>

Because case law in both the Sixth Circuit and the United States Supreme Court provides that the relief sought by Plaintiffs is impermissible, Plaintiffs' motion should be denied.

## **II. ARGUMENT**

Plaintiffs claim that the Library's Executive Director has made "misleading" statements regarding the merits of the action. (Motion, p. 1). In particular, they criticize the Executive Director for speaking at various city council meetings and publishing the article about the lawsuit in the February 2012 issue of *Connections*. (*Id.* at 1-2). Plaintiffs claim they do not have the same "podium" in which to address their concerns and "to allow the Defendant Library to use its standing as a library to then seek to mislead the public as to the issues raised herein is an abuse of the public trust and money." (*Id.* at 2).

Citing *Gulf Oil Co. v. Bernard*, 452 U.S. 89 (1981), Plaintiffs ask the Court to impose an order prohibiting Defendant from making any "ex-parte contacts with the proposed class of

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<sup>1</sup> See Doc. No. 1, Attachment #3.

<sup>2</sup> *Id.*

<sup>3</sup> See Attached Exhibit 1.

taxpayers.” Plaintiffs correctly note, the Supreme Court in *Gulf Oil* recognized that a district court has the authority to enter appropriate orders regarding the conduct of counsel and the parties. *Id.* However, Plaintiffs obfuscate the holding in *Gulf* and conveniently omit to mention that the Court actually struck down the very type of order Plaintiffs are seeking. *Id.*

In *Gulf*, the plaintiffs were employees of Gulf Oil Company who filed a class action lawsuit alleging racial discrimination in violation of Title VII of the Civil Rights Act. *Id.* at 92. Upon filing the action, the defendant sought an order limiting communications by parties, and their counsel, with class members. *Id.* The Court granted defendant’s motion and entered an order banning all communications concerning the class action between parties or their counsel and any actual or potential class member who was not a formal party without the prior approval of the Court. *Id.* at 94-95. Communications covered under the Order included statements “which may tend to misrepresent the stated purposes and effects of the class action” or “create impressions tending without cause, to reflect adversely on any party, any counsel, this Court, or the administration of justice.” *Id.* at 95.

Plaintiffs challenged the Order and a divided panel on the Fifth Circuit Court of Appeals affirmed the Court’s decision. *Id.* at 97-98. The Fifth Circuit granted a rehearing *en banc*, and reversed the panel’s decision holding that the Order was an unconstitutional prior restraint on speech accorded First Amendment protection. *Id.* at 98. The Supreme Court granted certiorari and found that the Order exceeded the Court’s authority under Rule 23 of the Federal Rules of Civil Procedure. *Id.* at 102-104.

The Court noted that while District Courts have discretion to enter appropriate orders regarding the conduct of counsel and parties, the “discretion is not unlimited, and indeed is bound by the relevant provisions of the Federal Rules.” *Id.* at 100. The Court held that a District

Court cannot limit communications via order without “a specific record showing by the moving party of the particular abuses by which it is threatened.” *Id.* at 102. The moving party must provide a “particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.” *Id.* Furthermore, the court must find that the relief sought is consistent with the policies of Rule 23, “giving explicit consideration to the narrowest possible relief.” *Id.*

In *Williams v. United States District Court*, 658 F.2d 430 (6<sup>th</sup> Cir. 1981) the Sixth Circuit, citing *Gulf*, held that a local rule in the Southern District of Ohio limiting communications between parties and potential class members was invalid both on its face and as applied because it exceeded the Court’s rule-making authority under Rule 23. The Court noted that the Court could only impose such extreme restrictions on communications where abuses or potential abuses appeared on the record to be egregious. *Id.* at 436. However, the Court noted that there was nothing in the record to indicate that the Court had either the legal or factual grounds to support such an order. *Id.*

Here, Plaintiffs have not presented any evidence to suggest that there is a compelling need for an order limiting the Library’s First Amendment rights. The article published in *Connections* merely reiterated the Library’s public position on the allegations in Plaintiffs’ Complaint. Nothing in the article disrupts or impedes Plaintiffs’ ability to pursue their case or communicate with potential class members. Plaintiffs’ argument with respect to the funds appropriated for *Connections* is equally without merit as the Library publishes *Connections* in the regular course of business and would have done so with or without the article about the lawsuit.

Additionally, the Library’s status as a public entity does not give it the bully pulpit Plaintiffs portray. Plaintiffs criticize the Executive Director for attending and making statement

at various city council meetings. (Motion, p. 2). However, the same opportunity and right to address public entities are available for Plaintiffs. As such, there is no “podium” in which the Library stands above Plaintiffs.

Beyond the legal deficiencies in their Motion, what stands out is the rank hypocrisy when considering the public statements made by Plaintiffs about their claims. In the *Cincinnati Enquirer* article cited by Plaintiffs in their Motion to Escrow Funds, Plaintiffs’ counsel asserted that “library districts overspend on things like salaries for unnecessary personnel.”<sup>4</sup> Counsel was further quoted as saying, “no one is solving the problem of these unelected taxing boards...the laws were written to be followed and the state’s not holding them accountable.”<sup>5</sup>

Plaintiffs conveniently make no mention of these statements when attacking the Library. In essence, Plaintiffs believe that they are free to advocate their positions in a public forum, but that the Library cannot respond or defend itself in any way. Thus, it is quite clear that Plaintiffs seek this Order not to prevent harm, but instead to gain a tactical legal and political advantage.

## **II. CONCLUSION**

Based upon the foregoing, Defendants, Campbell County Library Board of Trustees, respectfully request that Plaintiffs’ motion be denied.

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<sup>4</sup> See attached Exhibit 1.

<sup>5</sup> *Id.*

Respectfully submitted,

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**CERTIFICATION**

This is to certify that on the 22<sup>nd</sup> day of February, 2012, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to: Brandon N. Voelker.

**/s/ Jeffrey C. Mando**  
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