

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

STEPHEN MURMER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.:
)	
CHESTERFIELD COUNTY)	
SCHOOL BOARD, DAVID SOVINE,)	
Principal, Monacan High School,)	
LYLE EVANS, Associate)	
Superintendent for Human Resources,)	
)	
Defendants.)	
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COMPLAINT

The plaintiff, Stephen Murmer, moves the Court for entry of judgment in his favor against the Chesterfield County School Board, David Sovine, and Lyle Evans and in support of such Complaint avers as follows:

NATURE OF ACTION AND JURISDICTION

1. This is a civil action under 42 U.S.C § 1983 seeking damages and injunctive relief against Defendants for committing acts, under color of law, with the intent and for the purpose of depriving Plaintiff of rights secured under the Constitution and laws of the United States; retaliating against Plaintiff for his exercise of constitutionally protected speech; and for refusing or neglecting to prevent such deprivations and denials to Plaintiff.

2. This case arises under the United States Constitution and 42 U.S.C. Sections 1983 and 1988, as amended. This Court has jurisdiction in this matter pursuant

to 28 U.S.C. Sections 1331 and 1343. The declaratory and injunctive relief sought is authorized by 28 U.S.C. Sections 2201 and 2202, 42 U.S.C. Section 1983 and Rule 57 of the Federal Rules of Civil Procedure.

3. Plaintiff brings this action resulting from damages incurred due to his unlawful termination from the Chesterfield County School System on or about January 9, 2007. Plaintiff was wrongfully discharged from his position as an art teacher for the County of Chesterfield in violation of his federal constitutional rights to free speech.

4. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. 1391(b)(1) and (b)(2). The actions complained of took place in this judicial district; evidence and employment records relevant to the allegations are maintained in this judicial district; Mr. Murmer would be employed in this judicial district but for the unlawful actions and practices of the Defendants; and the County of Chesterfield School Board is present and regularly conducts affairs in this judicial district.

PARTIES

5. Plaintiff Stephen Murmer (“Murmer”) is a former teacher at Chesterfield County Public Schools. He currently resides in Alabama.

6. Defendant Chesterfield County School Board is a corporate body and a political subdivision of the Commonwealth of Virginia under the authority of Title 22.2 of the Virginia Code and a “person” subject to suit within the meaning of 42 U.S.C. Section 1983. It is vested with the supervision of schools within Chesterfield County, including the hiring and termination of teachers.

7. David Sovine is the principal of Monacan High School. He is sued for damages in his individual capacity and for declaratory and injunctive relief in his official capacity.

8. Lyle Evans is the Superintendent for Human Resources for the Chesterfield County school system. He is sued for damages in his individual capacity and for declaratory and injunctive relief in his official capacity.

9. At all time relevant, Defendants acted under color of state law.

FACTS

10. Stephen Murmer (hereinafter "Plaintiff" or "Murmer") has a bachelor's degree in fine arts (BFA) from Virginia Commonwealth University, as well as a teacher's license.

11. Murmer worked as an art teacher for Chesterfield County Public Schools August 15, 1999 until his termination on January 9, 2007. From June 2002 until his termination he worked at Monacan High School.

12. Murmer was very successful as an art teacher: in 2002 he received the "Teacher of the Year" award, and he was extremely popular with his students, as well as their parents, over his 7 ½ years with the school system.

13. In addition to his career as a successful art teacher, Plaintiff has also been active as an artist.

14. As a painter, Plaintiff adopted a pseudonym, Stan Murmur, sufficiently close to his own name for copyright and proof of ownership purposes but sufficiently

different to separate his personae as artist and teacher.

15. To ensure his relative anonymity as an artist, Plaintiff frequently searched the Internet using the search engine Google to look for his name.

16. Not once before December 8, 2006, the date Defendants publicly suspended Plaintiff, did Google point towards any sites mentioning "Stan Murmur," or the artwork produced under that name, when Plaintiff searched for "Stephen Murmer."

17. As the artist Stan Murmur, Plaintiff developed the technique of incorporating his own body and the bodies of models as "brushes" or "stamps" in the process of painting, continuing, combining and developing the traditions of, for example, tattoo art (where the human body is used as canvas), and *Anthropometry* of the post-modern French Artist Yves Klein (1928-1962), who used female bodies as "living brushes" in the process of creating art.

18. Plaintiff has thus created paintings by using his posterior and other body parts as a stamp with which to imprint paint onto a canvas.

19. With this technique, which includes sitting in paint and then pressing his buttocks onto a canvas, Plaintiff has created paintings which range from depicting stylized flowers to portraiture and patterns.

20. These seemingly simple paintings thus have a surprise in store for the viewer: only gradually, if at all, comes the realization that the image has been created with monotypes of the human body, a realization intended to reverberate in the viewer, setting in motion a process of self-discovery of one's own personality traits, oscillation

between watching a flower (or portrait or pattern) and one's preconceived bias of the human body. The artist's hope is that the viewer thus discovers his individual personality characteristics through visual response – as well as his personal views on the concept and the purpose of art.

21. Without an agent, Plaintiff has had to rely on his own marketing skills to inform the public of his art. Using humor, techniques of “sampling,” performance art, his own web site, and other techniques, he has been remarkably successful at promoting his art.

22. On or about October 25, 2003, Stan Murmur appeared in a short-lived cable TV show entitled “Unscrewed with Martin Sargent,” where he explained how he promoted his artwork using the Internet, demonstrated how he creates his art, and completed a composition for TechTV.

23. As character invention Stan Murmur, Plaintiff was wearing a costume consisting of a towel wrapped around his head in a turban, a Groucho Marx mask, a white bathrobe, and a black swim thong.

24. Stan Murmur's appearance on the TV show was funny, self-deprecating and evocative, and from it all emerged serious, challenging, contemporary art.

25. Stan Murmur was never naked during his performance.

26. Stan Murmur's performance eventually found its way onto YouTube, an Internet website on which users post videos. Plaintiff had no role in posting the video on YouTube.

27. Plaintiff has gained success in the art world: he has exhibited his paintings at galleries such as Studio 560, Gallery Culture, Gallery Triage, Rentz Gallery, Doo Gallery, Planet Zero Art Center, and Retro Art & Framing. His paintings fetch between \$600 and \$4,800 on the market.

28. Plaintiff has scrupulously kept his private artwork separate from his role as a teacher.

29. At no time did Murmer discuss his art in his classroom. Nor did he ever inform students about his art or the YouTube.com video.

Defendants' 2004 Reaction to Plaintiff's Artistic Expression

30. Upon information and belief, on or about March 3, 2004, Deborah D. Hinton, who at that time was Principal of Monacan, and other school officials learned of Plaintiff's website where he exhibited his art works.

31. The matter was referred to Human Resources which conducted an investigation, including a thorough review of Plaintiff's website and media appearances.

32. After Plaintiff volunteered to remove three photographs from his website, Human Resources completed its investigation, and no further action was taken.

33. Principal Hinton informed Plaintiff that no disciplinary actions would be taken toward Plaintiff.

34. At least since this time, March of 2004, the Chesterfield County school system has known of Plaintiff's artistic activities, including his technique of using his

buttocks to create paintings.

35. Upon information and belief, the Chesterfield County school system at this time also became aware of Plaintiff's appearance on the "Unscrewed with Martin Sargent" episode.

Defendant's 2006 Reaction to Plaintiff's Artistic Expression

36. In early December, 2006, the Chesterfield school system suddenly rediscovered its earlier concerns about the content of Plaintiff's art.

37. On December 8, 2006 Defendant David Sovine, Principal for Monacan High School, (hereinafter "Sovine") and Defendant Lyle E. Evans (hereinafter "Evans"), Associate Superintendent for Human Resources, pulled Murmer out of his classroom for a meeting.

38. Sovine and Evans claimed that Monacan students had told a physical education teacher that they had seen Murmer on a YouTube video related to "butt art," and asked her to play the video in her classroom. This allegation was never substantiated, and the physical education teacher was never mentioned in any subsequent proceedings.

39. Sovine and Evans also claimed that students had reported and complained about a MySpace account with a link to the YouTube video.

40. Sovine also claimed that several teachers had reported disruptions in their classrooms due to discussions among students about the YouTube video on December 7, 2006.

41. Sovine asked Murmer if he was aware of the YouTube video. Murmer confirmed that he had been involved in a number of appearances related to his “butt art.” He explained that in all his appearances he had used the pseudonym Stan Murmur, and that he had always disguised his appearance.

42. Sovine, Evans and Murmer reviewed the YouTube video during this conference, and Murmer confirmed that he was in the video.

43. Notwithstanding the claims of Sovine and Evans, at no time prior to his suspension did the YouTube.com video cause any disruption in Murmer’s classroom.

44. Upon information and belief, the YouTube video caused no more disruption overall than any exciting topic of gossip that might create a temporary buzz of excitement among teenagers.

45. Evans then told Murmer that based on the recommendation by Sovine, Murmer would be placed on administrative leave with pay for five days, until a full investigation could be completed.

46. Evans also stated that based on his review of the video and pending additional information from the investigation, Murmer’s leave would subsequently change to leave without pay.

47. Evans told Murmer that all this information would be presented to the School Board for their review. Evans stated that he knew what the school board’s decision would be, and that teachers had in the past been dismissed for lesser infractions.

48. Sovine then instructed Murmer not to discuss the matter of his suspension with anybody.

49. Shortly after the meeting, however, Defendants' spokesperson Debra Marlow told Fox News that Murmer had been put on administrative leave "because of the way he does his art."

50. After the meeting Sovine met with several teachers and requested narrative accounts pertaining to these events. Among them were: Mrs. Linda Wagstaff (Latin teacher), Mrs. Kerri Rosenzweig (Marketing teacher), Anne Rieser (Art teacher), and Mrs. Joi Delaney (French teacher and cheerleading sponsor).

51. By letter dated December 11, 2006 Evans informed Plaintiff that he was suspended for "engaging in activities which have created a significant disruption to the school/classroom environment." The letter further stated that Evans intended to appear before the School Board on January 9, 2007 to request that Plaintiff's suspension be made without pay.

52. By letter dated December 18, 2006, Evans again changed the reason for Plaintiff's suspension, now claiming that "your appearance and behavior as displayed on the YouTube internet site [...] is vulgar, [...] is conduct unbecoming of a teacher, and [...] has caused disruption in the school."

53. In a letter dated January 3, 2007, Plaintiff was informed by Superintendent Marcus Newsome that his request for a hearing as provided by the school system's grievance procedure was denied. The letter stated in part that "no dismissal hearing

will occur. I will recommend dismissal to the School Board [B]ecause the School Board will have the dismissal recommendation at that time, the hearing on my recommendation for suspension without pay is unnecessary and therefore canceled.”

54. On January 9, 2007, Defendant School Board held a hearing to determine if Murmer should be dismissed for engaging in activities that created a significant disruption in the school/classroom environment.

55. Present at this hearing was the School Board, the Superintendent, Assistant Superintendent, Sovine, and counsel for the school system.

56. After the hearing, Defendant School Board announced that it was dismissing Murmer from teaching position. This time, the stated reason for the dismissal was “conduct unbecoming of a teacher in this system.”

57. This decision was rendered in unanimous voice in front of national television and other members of the press.

CAUSES OF ACTION

COUNT ONE

Constitutional and Civil Rights Pursuant to 42 U.S.C. §§ 1983, 1988 **Violation of First Amendment Speech Rights** **(Against all Defendants)**

58. The foregoing allegations are incorporated as if re-alleged herein.

59. Murmer’s method of painting and his discussions and demonstrations of his art are speech protected by the First Amendment to the U.S. Constitution.

60. Murmer never created, exhibited, discussed, demonstrated, performed, or in other way referred to his art in a classroom setting.

61. Murmer never used his art or his discussions about his art for curricular purposes, or during school-sponsored publications, theatrical productions, or any other expressive activities that students, parents, and members of the public could reasonably have perceived to bear the imprimatur of Monocan High School.

62. Murmer never engaged in classroom speech inconsistent with the educational mission of Monocan High School.

63. At all times, Murmer's artwork and speech about his artwork was speech of a private citizen on a matter of public concern.

64. Murmer's free speech right to produce and discuss his artwork outweighed any interest of the Defendants in suppressing that speech.

65. Defendants violated Murmer's right to free speech by terminating his employment because of his art or his discussions about his art.

66. Defendants acted intentionally and with callous disregard for Murmer's clearly established constitutional rights.

67. As a direct and proximate result of the Defendants' violations of Murmer's constitutional rights, Murmer has suffered severe and substantial damages. These damages include lost salary, lost employee benefits, lost raises, diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, loss of reputation, humiliation, embarrassment, inconvenience, mental

and emotional anguish and distress and other compensatory damages, in an amount to be determined by a jury and the Court.

COUNT TWO
Unconstitutional Prior Restraint Pursuant to
42 U.S.C. §§ 1983, 1988
Violation of First and Fourteenth
Amendment Rights of Free Speech
(Against all Defendants)

68. The foregoing allegations are incorporated as if re-alleged herein.

69. Defendants prohibited Murmer from speaking to anybody about his art, his discussions about his art, and his unlawful suspension.

70. At the same time, Defendants, through spokespersons, told the media, including members of the national press and television, that they were terminating Murmer “because of the way he does his art,” for “appearance and behavior [,,, that] is vulgar, [...] is conduct unbecoming of a teacher, and [...] has caused disruption in the school,” for “engaging in activities which have created a significant disruption to the school/classroom environment” and for “conduct unbecoming of a teacher in this system.”

71. Defendants’ prohibition to Murmer from speaking to anybody about his art, his discussions about his art, and his unlawful termination, constituted an unconstitutional prior restraint.

72. As a direct result of the actions, statements and/or policies of the Defendants, Murmer suffered an unconstitutional deprivation of his rights under the

First and Fourteenth Amendments to the U.S. Constitution.

73. Defendants acted intentionally and with callous disregard for Murmer's known statutory and constitutional rights.

74. As a direct and proximate result of the Defendants' violations of Murmer's statutory and constitutional rights as described herein, Murmer has suffered damage to reputation, humiliation, embarrassment, mental and emotional anguish and distress and violation of right to free speech as protected under the Constitution as well as other compensatory damages, in an amount to be determined by a jury and the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Stephen Murmer, requests judgment against Defendants as follows:

A. For appropriate declaratory relief regarding the unlawful and unconstitutional acts and practices of Defendants.

B. For appropriate compensatory damages in an amount to be determined at trial;

C. For appropriate equitable relief against all Defendants as allowed by the Civil Rights Act of 1871, 42 U.S.C. Section 1983, including the enjoining and permanent restraining of these violations, and direction to Defendants to take such affirmative action as is necessary to ensure that the effects of the unconstitutional and unlawful employment practices are eliminated and do not continue to affect Plaintiff's, or others',

employment opportunities;

D. For an award of reasonable attorney's fees and his costs on his behalf expended as to such Defendants pursuant to the Civil Rights Act of 1871, 42 U.S.C. Section 1988; and

E. For such other and further relief to which Plaintiff may show himself justly entitled.

PLAINTIFF REQUESTS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully Submitted,

STEPHEN MURMER

By _____
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