

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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|-------------------------------------|---|-----------------------------|
| LAUREN DONINGER, P.P.A. | : | CIVIL ACTION NO. 3:07CV1129 |
| as GUARDIAN and | : | |
| NEXT FRIEND of AVERY DONINGER, | : | |
| Plaintiff, | : | |
| | : | |
| V. | : | [JURY TRIAL DEMANDED] |
| | : | |
| KARISSA NIEHOFF and | : | |
| PAULA SCHWARTZ, in their individual | : | |
| and official capacities, | : | |
| Defendants | : | OCTOBER 12, 2007 |

AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

1. This is a civil action for injunctive, declaratory, and monetary relief brought, inter alia, pursuant to the Civil Rights Act of 1866, 42 United States Code § 1983, and the first and fourteenth amendments to the United States Constitution. In particular, Avery Doninger, now a high school senior, claims through the plaintiff, her mother and next friend, that her first and fourteenth amendment rights were violated by the defendants, after she posted a constitutionally protected message from her home computer on an internet website. The plaintiff claims that the defendants banned her daughter's candidacy for senior class secretary and prohibited her from addressing her class and giving a speech, and treated her differently than other similarly situated students, and to punish her for protected speech and expression.

II. JURISDICTION AND VENUE

2. This action is brought pursuant to Title 42, United States Code §§ 1983 and 1988, and the first and fourteenth amendments to the United States Constitution. The plaintiff seeks to redress the defendant's deprivation and violation, under color of state law, of the rights, privileges and immunities secured for her minor daughter under the aforementioned amendments to the United States Constitution.

3. Jurisdiction is founded upon Title 28, United States Code §§ 1331 and 1343(3) and 1343(4); Title 28, United States Code § 2201; Title 42, United States Code § 1984; as well as the aforementioned statutory and constitutional provisions.

4. Because the defendants removed this action from the Connecticut Superior Court pursuant to Title 28, United States Code § 1441, jurisdiction, including Connecticut state claims, is also proper under Title 28, United States Code § 1441(c).

III. PARTIES

5. Plaintiff's daughter, Avery Doninger, a minor, was at all relevant times, a member of the class of 2008 at Lewis Mills High School in the Town of Burlington, Connecticut and a resident of the Town of Burlington. She brings this action through the plaintiff, Lauren Doninger, as her next friend.

6. At all relevant times, Defendant Karissa Niehoff (hereinafter "Defendant Niehoff"), is and was the principal of Lewis Mills High School and retained authority over the discipline of students enrolled at Lewis Mills High School (hereinafter "LMHS"). She is sued in both her individual and official capacities.

7. At all relevant times, Defendant Paula Schwartz (hereinafter "Defendant Schwartz"), is and was the superintendent of schools for Regional School District #10 and retained ultimate supervisory authority over the actions of administrators and principals within said school system, including review of disciplinary sanctions against students enrolled at LMHS. She is sued in both her individual and official capacities.

8. At all times relevant hereto, and in their actions described herein, defendants Niehoff and Schwartz acted jointly, as well as severally, and under the color of law, regulation, and policy, and under their alleged authority as public officials of Regional School District #10.

IV. FACTUAL ALLEGATIONS

9. At all relevant times, Regional School District #10 (hereinafter "Region #10") was a regional public board of education, within the meaning of Chapter 164 of the Connecticut General Statutes and Connecticut General Statute § 10-63i, which serves the towns of Burlington and Harwinton, Connecticut.

10. Public high school students who reside in Burlington and Harwinton attend LMHS in Burlington, a secondary school covering grades nine through twelve.

11. Lauren Doninger is the legal guardian and mother of Avery Doninger, a minor. Avery Doninger (hereinafter "Avery") was at all relevant times, a full time matriculated student in the LMHS class of 2008, and a resident of the town of Burlington. Avery was first elected by her peers to the positions of student council representative and 2008 class secretary during her freshman year, and was re-elected class secretary each school year thereafter.

12. On or about April 24, 2007 the plaintiff and other members of the LMHS student council were told that a school-sponsored event known as "Jamfest" could not be held as scheduled in the auditorium on April 28, 2007 because a staff member was unavailable to run the audio-visual equipment. Avery was a co-organizer of "Jamfest," an annual student council-sponsored event at LMHS, in which local musicians perform for students and members of the community.

13. Subsequent to the information conveyed to the student council on or about April 24, 2007, another student council member (hereinafter "T. F.") accessed his father's e-mail account and typed and transmitted an e-mail to parents, taxpayers, the faculty advisor, and students encouraging them to contact the Region #10 board of education and express their support for allowing "Jamfest" to go on as scheduled. The e-mail was "signed" and approved by four students, including Avery, but typed and

transmitted by T. F.

14. Sometime later on the same day, Avery encountered Defendant Niehoff, who proceeded to scold Avery for the e-mail that was transmitted by T.F., and informed her that Defendant Schwartz was angered by the number of telephone calls and e-mails she had received regarding "Jamfest." Defendant Niehoff then told Avery that as of that moment, "Jamfest" was cancelled. Defendant Niehoff also told Avery that if the students apologized to Defendant Schwartz, "Jamfest" might be rescheduled.

15. Thereafter, Avery related to several students the substance of her conversation with Defendant Niehoff.

16. On or about April 24, 2007, at approximately 9:25 p.m., Avery accessed the internet from her personal computer while at home, and posted a comment on an online website, (also known as a "blog"). The posting stated as follows:

"Jamfest" is cancelled due to douchebags [sic] 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 inserted into the blog the text of the e-mail transmitted by T. F. earlier in the day, and a separate e-mail sent by the plaintiff to Defendant Schwartz. Avery encouraged parents and taxpayers to contact the Region #10 school administration.

17. Avery posted her blog message 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 [one] can use for meeting people and creating bonds through writing and sharing.” Livejournal.com is a public forum that was not sponsored by or associated with Region #10.

18. On or about April 25, 2007, Defendants Niehoff and Schwartz met with Avery and the three other signatories to the April 24th e-mail to clarify where and when “Jamfest” would take place. The defendants instructed the four students to send out a clarifying e-mail from a school computer stating that “Jamfest” would be rescheduled, and that the previous e-mail was a result of a lack of communication between school officials and the student council. Thereafter, T.F. sent an e-mail containing the requested information.

19. On or about May 17, 2007, Avery went to the school office to accept her re-nomination for class secretary. At that time Defendant Niehoff handed her a hard copy of the April 24, 2007 livejournal.com blog entry with the word “douchebags” underscored, and instructed Avery to do the following tasks:

- (a) apologize to Defendant Schwartz for the journal entry;
- (b) tell her mother about the journal entry; and
- (c) immediately withdraw her candidacy for 2008 class secretary.

20. Avery agreed to Defendant Niehoff’s demand that she apologize to Defendant Schwartz for the April 24, 2007 journal entry and did so in a hand-written note received by Defendant Schwartz on or about May 23, 2007.

21. Avery also agreed to tell her mother about her April 24, 2007 journal entry, and showed it to her that evening when she came home.

22. Avery refused, however, to resign or withdraw from her class post.

Thereupon, Defendant Niehoff unilaterally disqualified Avery from running for re-election as class secretary.

23. Defendant Niehoff provided no appeal process or opportunity to challenge the arbitrary and punitive action taken against Avery. Defendant Niehoff discussed the measures she took against Avery with Defendant Schwartz, who approved them.

24. On or about May 21, 2007 Defendant 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 posting.

25. 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.

26. On or before May 24, 2007, the plaintiff requested a meeting with Defendant Niehoff to discuss reconsideration of the punitive measures taken against Avery, but no such meeting took place.

27. On or about May 24, 2007, NBC 30 Connecticut News broadcast a television news story about Avery's case. Thereafter, Avery asked permission of her civics teacher if she could discuss in class the news story and the speech rights of high school students in general.

28. 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 news story while in the school. As a result of this admonition, Avery missed twenty minutes of her chemistry class and was restricted and chilled in her right to speak on matters of general concern within the school setting.

29. On or about May 25, 2007, Avery attempted to enter the auditorium for an

assembly carrying a pre-printed shirt that stated “Team Avery” on the front and “Support LSM Freedom of Speech” on the back. Other students also carried or wore shirts with similar expressions. These shirts clearly contained messages supporting Avery’s constitutional rights, and constituted lawful nondisruptive speech expressing opposition to the punitive measures taken against Avery by the defendants.

30. Defendant Niehoff approached Avery and other students wearing the shirts, and prohibited them from entering the auditorium with said shirts, where class officer candidates would be giving speeches.

31. Although Avery had not donned the “Team Avery” shirt she was carrying, she feared being subjected to additional punitive measures if she wore, or entered the auditorium, with the shirt. Avery reasonably believed she would be barred from the auditorium and her right to participate in the election, and was otherwise chilled in her constitutional rights by the actions of Defendant Niehoff. Therefore, neither Avery nor the other students entered the auditorium with the printed shirts.

32. The “Team Avery” shirts were not likely to cause a disruption to the educational process at LMHS and did not violate either the rights of others or the school dress code. Students at LMHS were permitted by Region #10 written policy to wear shirts with printed messages and statements, including the type of messages on the shirts possessed by Avery and the other students on May 25, 2007.

33. By prohibiting the “Team Avery” shirts, Defendant Niehoff also violated Region #10's own policy concerning permissible attire at school assemblies.

34. Avery was prohibited from addressing her class on May 25, 2007, or giving a speech in support of her nomination, due to Defendant Niehoff’s arbitrary and capricious decision to ban her from running for class officer, which was in retaliation for the earlier publication of the livejournal.com blog.

35. Defendant Niehoff asked another student to accept the position as class secretary, and that student was chosen by Defendant Niehoff for that position, despite the fact that a plurality of students elected Avery as class secretary by writing her name on the ballots.

36. 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, [and] responsibilities of class officer[s] as representative[s] of student body," although no such conversation had occurred. Said entry was further retaliation for Avery's exercise of her constitutional rights and created as part of a conspiracy between the defendants and others to conceal the unlawful misconduct of the defendants.

37. The log was placed in Avery's guidance file at the instruction of Defendant Schwartz with the explicit knowledge and encouragement of the attorney for Region #10 to create a pretext for the unconstitutional actions, although Defendant Niehoff previously informed both the plaintiff and Avery that there had been no adverse consequences for the e-mail sent by T.F. on April 24, 2007.

38. On or about June 8, 2007 Defendant Niehoff conceded to the plaintiff that she was aware that Avery did not send the April 24, 2007 e-mail to parents, but since her name was included in the posting she must take responsibility for it. The statement that Avery was "responsible" for the e-mail was part of the defendants' conspiracy to create a pretext and false record in order to conceal the unconstitutional punitive measures directed towards Avery.

39. On or about June 8, 2007, plaintiff appealed to Defendant Schwartz in

writing requesting that she reverse the unlawful punitive actions of Defendant Niehoff.

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

41. On or about June 15, 2007, plaintiff met jointly with Defendants Niehoff and Schwartz in an unsuccessful effort to overturn the unconstitutional retaliatory measures against Avery. The defendants had previously agreed, as part of the conspiracy, to refuse to reconsider their unconstitutional and unlawful actions.

42. The defendants conspired to cause the aforescribed harm to Avery to punish her for having referred to unidentified school system administrators as "douchebags," and for petitioning citizens and taxpayers to contact the defendants to express support for "Jamfest."

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

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

V. FIRST CAUSE OF ACTION (Title 42 U.S.C. § 1983) Violation of Civil Rights.

45. The allegations contained in paragraphs 1 through 44 are hereby incorporated by reference as if fully set forth herein.

46. The defendants, acting jointly and severally, agreed to single out Avery for punitive treatment because they were opposed to the message that she conveyed in her journal entry, and to exact revenge for the perceived slight to Defendant Schwartz.

47. Defendants Niehoff and Schwartz violated the following clearly established constitutional rights 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 the equal protection of the law, in violation of the fourteenth amendment to the United States Constitution.

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

VI. SECOND CAUSE OF ACTION (violation of Connecticut Constitution)

49. The allegations contained in paragraphs 1 through 44 are hereby incorporated by reference as if fully set forth herein.

50. 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.

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

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

53. As a Connecticut citizen, Avery possessed the right to ask taxpayers and citizens to apply to those invested with the powers of governance of Region #10 for redress of grievances, or for other proper purposes, by petition, address or remonstrance and, in fact, did so, and was thereby punished by the defendants.

54. The aforesaid actions of the defendants violated Avery's rights under Connecticut Constitution, Article I, § 14.

VII. THIRD CAUSE OF ACTION (intentional infliction of emotional distress)

55. The allegations contained in paragraphs 1 through 44 are hereby

incorporated by reference as if fully set forth herein.

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

57. Defendants' conduct was willful and/or wanton and violated federal and state constitutional rights. Defendants' conduct was also extreme and outrageous in that they singled out Avery for unfair treatment to retaliate for her constitutionally protected expression.

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

59. The aforescribed distress, is expected to continue and be permanent in nature. Avery remains in continual fear she will suffer retaliation at the hands of the defendants despite the exercise of constitutionally-protected activity.

60. Notice of the plaintiff's claims were served upon the secretary of Region #10 on or about July 16, 2007.

VIII. CLAIMS FOR RELIEF

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

1. Enter preliminary and permanent injunctions, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining the defendants from:
 - a) Precluding Avery Doninger and any other student from publically declaring that Avery Doninger won the election for 2008 class secretary;
 - b) Preventing Avery Doninger from assuming the office of the class of 2008 secretary;
 - c) Interfering with students' rights to wear shirts conveying messages, provided

that they are not otherwise explicitly prohibited by the Region #10 Board of Education policy 5132 as it existed in July, 2007;

d) Preventing Avery Doninger from attending any class officer meetings;

e) Preventing Avery Doninger from engaging in any acts as class of 2008 secretary;

f) Preventing Avery Doninger from participating in any duties assigned to the 2008 class secretary;

g) Preventing students from the class of 2008 from attending an assembly in the auditorium where Avery Doninger may give a speech during the regular school day;

h) Preventing the defendants from retaliating in any way against Avery Doninger or other students who support her position in this case;

i) Violating the first amendment rights of Avery or other students, including but not limited to, prohibiting the defendants from engaging in any disciplinary retaliatory action for non-threatening internet postings not created or sent from Lewis Mills High School;

j) Intimidating, threatening or taking other punitive action against Avery and other students, for wearing or displaying shirts, that advocate for the rights of Avery and/ or for student speech rights in general;

k) Intimidating, threatening or taking other punitive action against the plaintiff or Avery for exercising their first amendment rights, including filing of this action, or for speaking about her rights in appropriate class and on campus settings;

l) Preventing Avery from addressing the entire class of 2008, in a special assembly, or from speaking at the 2008 commencement and graduation ceremony; and

m) Maintaining any disciplinary logs or other written documents in Avery's academic or guidance files pertaining to the claims arising from this complaint.

2. Award costs pursuant to Rule 54(d) of the Federal Rules of Civil Procedure and Connecticut state law;

3. Award compensatory damages to the Plaintiff;

4. Award punitive damages to the Plaintiff;

5. Award attorney's fees pursuant to 42 United States Code § 1988;

6. Issue a declaratory ruling, pursuant to Rule 57 of the Federal Rules of Civil Procedure and Title 28 United States Code § 2201, that Avery Doninger's first amendment rights have been violated in one or more ways mentioned above; and

7. Grant such other and further relief as this court deems proper and just.

Dated at Hartford, Connecticut this 12th day of October, 2007.

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

By: /s/ Jon L. Schoenhorn
Jon L. Schoenhorn, Her Attorney
Jon L. Schoenhorn & Associates, LLC
108 Oak Street
Hartford, CT 06106
Fed. Bar No. ct00119

CERTIFICATION

I hereby certify that on the above date, a copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Jon L. Schoenhorn
Jon L. Schoenhorn