

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AVERY DONINGER,	:	CIVIL ACTION NO. 3:07CV1129 (MRK)
Plaintiff,	:	
	:	
V.	:	
	:	
KARISSA NIEHOFF and	:	
PAULA SCHWARTZ, in their individual	:	
and official capacities,	:	
Defendants	:	MAY 12, 2009

PLAINTIFF’S REQUEST FOR CERTIFICATION TO APPEAL

The plaintiff, by and through counsel, hereby moves this court to certify as a final judgment the order partially granting defendants’ motion for summary judgment pursuant to Fed. R. Civ. Pro. 54(b) and 28 U.S.C. § 1292(b). In support hereof, the plaintiff states as follows:

1. On or about January 15, 2009, this Court granted in part and denied in part defendants’ motion for summary judgment and denied plaintiff’s motion for summary judgment. Thereafter, following cross motions for reconsideration by both defendants and plaintiff, this Court issued a Memorandum of Decision denying both motions on March 19, 2009.

2. The defendants appealed these decisions on April 7, 2009 and the plaintiff filed a cross appeal on April 16, 2009.

3. Fed. R. Civ. Pro. 54(b) allows a District Court, in its discretion, to direct an entry of final judgment when (1) multiple claims or multiple parties are present, (2) at least one claim is finally decided within the meaning of 28 U.S.C. § 1291, and (3) the court makes an express determination that there is no just reason for delay of the appeal, and expressly directs the clerk to enter a partial judgment. The determination whether there is no just reason for delay is left within the sound discretion of the trial court. Fed. R. Civ. Pro. 54(b); *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 435-36 (1956); *Ginett v. Computer Task Group, Inc.*, 962 F.2d 1085,

1091 (2d Cir. 1991).

4. The claims that remain to be tried relate to the defendants' censorship of the plaintiff's message displayed on t-shirts. These claims are inextricably intertwined with the claims on which this Court granted summary judgment, relating to the plaintiff's speech on her personal Internet journal. Whether or not the plaintiff ultimately prevails on appeal, the trial on the t-shirt issue would necessarily involve many of the same factual questions arising from the Internet posting claim. In fact, the message on the plaintiff's t-shirt was created and relates to the discipline taken by the defendants as a result of the internet posting.

5. In the interest of judicial economy, the plaintiff therefore requests that the court certify the order partially granting the defendants' motion for summary judgment so that all issues related to this appeal may be considered at once. This would likely conserve resources and avoid piecemeal litigation.

6. Alternatively, 28 U.S.C.A. § 1292(b) states that "[w]hen a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order."

7. This appeal involves a controlling question of law surrounding the first amendment rights of students on the internet upon which courts have issued differing opinions. Specifically, the appeal seeks to clarify the extent to which school officials may control student expression outside of school hours and off campus. This Court's unique perspective adds yet another opinion to the debate. Definitive resolution of the issue would materially advance termination of the litigation for the reasons listed above and by providing a clear standard of law under which all of the issues may be considered at trial.

8. On May 5, 2009, the plaintiff discussed this motion with Attorney Gerarde and he joins in this motion in light of his pending motion to stay trial during an interlocutory appeal on the remaining claims.

WHEREFORE, the plaintiff requests that the Court grant this motion.

THE PLAINTIFF –
AVERY DONINGER

By: /s/ Jon L. Schoenhorn
Jon L. Schoenhorn, Her Attorney
Fed. Bar No. ct00119
Jon L. Schoenhorn & Associates, LLC
108 Oak Street
Hartford, CT 06106
T: (860) 278-3500
F: (860) 278-6393
E: civlrights@aol.com

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