

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

ALLAN MONGA and PORTLAND)
PUBLIC SCHOOLS,)
)
PLAINTIFFS,)
)
V.)
)
)
NATIONAL ENDOWMENT FOR THE)
ARTS, JANE CHU, CHAIRMAN OF)
NATIONAL ENDOWMENT FOR THE)
ARTS, THE POETRY FOUNDATION,)
)
DEFENDANTS)
)
and)
)
THE MAINE ARTS COMMISSION)
)
PARTY-IN-INTEREST)

CASE NO. _____

**COMPLAINT
(INJUNCTIVE RELIEF REQUESTED)**

Plaintiffs Allan Monga and the Portland Public Schools complain against Defendants the National Endowment for the Arts (“NEA”), Jane Chu, Chairman of the NEA and The Poetry Foundation, and Party-In-Interest the Maine Arts Commission (“MAC”), as follows:

SUMMARY OF THE ACTION

1. This is an action brought by Allan Monga, a student at Deering High School in Portland, Maine and the Portland Public Schools seeking emergency injunctive relief to permit Allan to participate in the national Poetry Out Loud competition scheduled for April 23, 2018 in Washington D.C. Allan, who is a talented student with a passion for poetry, won the Maine

State Poetry Out Loud contest but is being prevented by the Defendants from participating in the national competition based on a patently discriminatory rule adopted by the Defendant National Endowment of the Arts which permits citizens and permanent legal immigrants but no other categories of legal immigrants to participate in the contest. Allan will suffer irreparable harm if he is not permitted to participate in this once-in-a-lifetime opportunity whereas the Defendants will suffer no harm at all. This Court should therefore act quickly to enjoin the Defendants' illegal activity and order that Allan Mondo participate in the national Poetry Out Loud contest.

PARTIES

2. Plaintiff Allan Monga is an individual who resides in Westbrook Maine. Allan an enrolled student in the eleventh grade at Deering High School ("Deering"), which is part of the Portland Public Schools.

3. The Portland Public Schools is the public school district in Portland, Maine, and as part of its mission, it is responsible for ensuring that students experience a challenging, relevant and joyful education that empowers every learner to make a difference in the world.

4. A significant percentage of the students who attend school in the Portland Public Schools are immigrants without permanent resident status and the Portland Public Schools has an interest in ensuring that all of its students, including its immigrant population, are all treated fairly and are not discriminated against in the provision of educational opportunities.

5. Deering High School ("Deering") is one of three public high schools operated by Portland Public Schools. Deering's population includes a significant number of immigrant students.

6. The NEA is an independent federal agency that funds, promotes, and strengthens the creative capacity of our communities. The NEA is located in Washington, D.C.

7. Jane Chu is the Chairman of the NEA and she is being sued in her official capacity.

8. The Poetry Foundation is an independent literary organization committed promoting poetry: discovering and celebrating the best poetry, placing it before the largest possible audience, and encouraging new kinds of poetry. The Poetry Foundation is located in Chicago, Illinois.

9. The Maine Arts Commission (“MAC”) is a State of Maine agency that supports artists, art organizations, educators, policy makers, and community developers in advancing the arts in Maine. The MAC is named herein as a party-in-interest to the extent that its presence in the lawsuit is necessary to afford Plaintiffs the relief they request. No other relief is requested against it.

JURISDICTION AND VENUE

10. This action arises under the Fifth and Fourteenth Amendments to the United States Constitution and Title VI of the Civil Rights Act of 1964. This Court has original jurisdiction over this action under the provisions of 28 U.S.C. § 1331 because Plaintiffs assert claims arising under the Constitution and laws of the United States, 29 U.S.C. §§ 201, et seq.

11. Venue is proper in the District of Maine under 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

12. The NEA, the Poetry Foundation, and the MAC operate as partners in administering Poetry Out Loud, an educational program integrated into school curriculums as a poetry-reading contest.

13. The NEA describes Poetry Out Loud as follows:

A partnership of the NEA, the Poetry Foundation, and the state arts agencies, Poetry Out Loud is a national arts education program that encourages high school

students to learn about great poetry through memorization and performance. Poetry Out Loud offers educational materials and a dynamic recitation competition to high schools across the country. Students select, memorize, and recite poems from an anthology of more than 900 classic and contemporary poems. In this pyramid structure competition, winners advance from classroom recitation contests to school-wide competitions, then to the state competitions and, ultimately, to the national finals in Washington, DC.

14. Deering High School advertises Poetry Out Loud each year by making announcements and posting posters. Some English teachers incorporate Poetry Out Loud into their lesson plans and ask all of their students to participate.

15. Poetry Out Loud uses a pyramid structure that starts at the classroom level. Winners advance to a school-wide competition, then to a regional and/or state competition, and ultimately to the national finals.

16. Each winner at the state level receives \$200 and an all-expenses paid trip with an adult chaperon to Washington, D.C., to compete for the national championship. The state winner's school receives a \$500 stipend for the purchase of poetry books.

17. A total of \$50,000 in awards and school stipends are given at the national finals, including \$20,000 for the national champion.

18. The awards are based solely on artistic merit. Allan was born in Zambia in December, 1998. In 2017, he fled Zambia to seek asylum in the United States and relocated to Portland, Maine.

19. Allan has filed an asylum application with the U.S. Citizenship and Immigration Services. He has an Employment Authorization Card, currently authorizing him to work through February, 2020, and a Social Security Number from the Social Security Administration.

20. Upon approval of his asylum application, Allan will then apply to be a permanent resident. Through no fault of his own, the asylum application process can take years to be completed.

21. Allan is an enrolled student in the eleventh grade at Deering, where he has distinguished himself as an extraordinary poet.

22. Deering High School has been participating in Poetry Out Loud since approximately 2012. It registers for Poetry Out Loud through the MAC.

23. Poetry Out Loud is an extension of Deering High School's English curriculum. Students learn skills that benefit their overall education including vocabulary, reading comprehension, and constructing meaning.

24. As part of his high school education, Allan participated in Deering's Poetry Out Loud competition. Allan won the school-wide competition with his sensational performances of "America" by Claude McKay, and "In the Desert" by Stephen Crane.

25. To prepare for the southern Maine regional competition, Allan practiced every day, before, during and after school. He practiced with two teachers, Drew Pisani and Margaret Callaghan, and he practiced on his own.

26. Allan performed three poems at the regional competition: "She Walks in Beauty by Lord" by Lord Byron, "The Song of the Smoke" by W.E.B. Du Bois, and "In the Desert" by Stephen Crane.

27. Allan won the regional competition.

28. Allan's teachers, principal, and superintendent contacted the MAC and urged it to let him participate in the state finals. The MAC, which conducts the Maine State POL competition,

declined to enforce the discriminatory rule and permitted Allan to participate in the Maine State finals.

29. To prepare for the finals, Allan continued to practice before, during, and after school with two teachers from Deering High School and Deering High School's drama teacher.

30. Accompanied by his teachers and classmates, Allan performed three poems at the state finals on March 20, 2018.

31. Allan won the state finals. A true and accurate recording of Allan's performance is attached the Affidavit of Allan Monga.

32. The competition started with approximately 9,500 students from across the state.

33. Elated, Allan told Maine Public Radio, "I love poetry, but I never had the opportunity to express myself in other people's words. And when I got here, I got to learn about Poetry Out Loud, and I thought, 'It's the perfect fit for me.'"

34. On March 18, 2018, Deering posted on its website, "Deering's Allan Monga WINS the State Poetry Out Loud Championship" and provided links to his winning recitation of "In the Dessert."

35. The national competition, for the student champions from every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands will be held in Washington, D.C. on April 23-25, 2018.

36. Despite winning the Poetry Out Loud state competition, the Defendants are excluding Allan from the national competition because of a Poetry Out Loud eligibility rule (the "POL eligibility Rule"), which provides as follows:

Citizenship: In keeping with federal law, competitors at the state and national finals must be U.S. citizens or permanent residents with a valid tax identification or Social Security number. Tax identification or Social Security numbers are required to receive prizes, including cash payments or travel awards. Students are

responsible for verifying their eligibility. This requirement has been in place since 2006.

37. The eligibility rule is posted on the websites of the NEA, the Poetry Foundation, and the MAC.

38. Defendant Chu is the federal official in charge of enforcing the eligibility rule.

39. Prior to the state finals, Allan and the Portland Public Schools (through officials at Deering High School) informed Defendants MAC and Richard that Allan was not a U.S. citizen or permanent resident. The Deering officials nevertheless urged Defendants MAC and Richard to allow Allan to compete in the state finals.

40. Plaintiffs have repeatedly requested information from the NEA as to the basis for the POL Eligibility Rule's exclusion of legal immigrants who do not yet have permanent status but the EA has provided no sound explanation for its rule.

41. As a result of the Defendants' enforcement of the POL Eligibility rule against Allan, Allan faces the prospect of not being able to compete in the national championship to exhibit his creative talents alongside other state champions. In the meantime, has been declined access to a local poet to coach him in preparation for the national competition like other state champions, and prevented from securing travel or accommodations for the national competition like other state champions. Plaintiffs face immediate and irreparable injury as a result of the Defendants' conduct: the exclusion of Allan, an enrolled student at the Portland Public Schools, from participating in the Poetry Out Loud national competition on April 24-25, 2018, in violation of his constitutional and other federal rights.

COUNT I
VIOLATION OF THE RIGHT TO EQUAL PROTECTION
FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(DEFENDANTS NEA AND CHU)

42. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

43. The POL Eligibility Rule, on its face and as applied or threatened to be applied, violates Allan's right to equal protection under the Fifth Amendment, which contains that same guarantee of equal protection under the law as that provided in the Fourteenth Amendment.

44. The POL Eligibility Rule discriminates against Allan on the basis of his alienage and national origin.

45. This discriminatory classification is based on a suspect class and Defendants NEA and Chu have no compelling interest justifying this classification and it is not narrowly tailored to serve any legitimate governmental interest.

46. This discriminatory classification also fails to further any substantial governmental interest.

47. This discriminatory classification is not supported by any rational basis.

48. Plaintiffs have been and will continue to be injured because Defendants (NEA and Chu) have and will continue to deny them the opportunity to attend and participate in the national competition, and the opportunity for Allan to work with a poet, in violation of his right to equal protection under the Fifth Amendment.

COUNT II
VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
(DEFENDANT POETRY FOUNDATION)

49. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

50. Upon information and belief, Defendant Poetry Foundation is a “program or activity” within the meaning of Title VI and, specifically, a “corporation, partnership or other private organization” 42 U.S.C. § 2000d-4a.

51. Upon information and belief, Defendant Poetry Foundation receives Federal financial assistance.

52. Defendant Poetry Foundation is intentionally discriminating against Allan on the basis of his national origin in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., by employing eligibility rules that intentionally discriminate against individuals on the basis of their national origin.

53. Discrimination that violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution constitutes a violation of Title VI when committed by a program or activity that accepts federal funds.

54. Title VI is privately enforceable.

55. Plaintiffs have been and will continue to be injured because Defendant Poetry Foundation has and will continue to deny them the opportunity to attend and participate in the national competition on the basis of his alienage and national origin due to its employment of intentionally discriminatory eligibility rules.

56. Plaintiffs are entitled attorneys’ fees and costs pursuant to 42 U.S.C. § 1988.

57. Defendants have a reasonable likelihood of success on the merits of their claims against defendants.

58. Allan Monga will be irreparable injured if an injunction is not entered.

59. The harm to Plaintiffs if an injunction is not entered outweighs the harm to Defendants of the entry of injunction.

60. Injunctive relief is in the public interest.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request that the Court grant them:

- a. Preliminary and permanent injunctive relief requiring that the Defendants allow Allan Monga to participate in the national competition;
- b. Declaratory judgment that Defendants' eligibility rules violate the Equal Protection Clause of the Fifth and Fourteenth Amendments of the United States Constitution and Title VI of the Civil Rights Act of 1964
- c. Costs and reasonable attorneys' fees; and
- d. Such other or further relief as the Court deems just.

Respectfully submitted this 11th day of April, 2018.

/s/Melissa A. Hewey

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CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2018 I electronically filed the foregoing motion with incorporated memorandum of law with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/Melissa A. Hewey

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