

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD E. WOOLSLAYER,

Plaintiff,

Civil Action No. 2:20-cv-573

v.

MICHAEL A. DRISCOLL, President
Indiana University of Pennsylvania, a university of the
Pennsylvania State System of Higher Education,
in his official and individual capacities,

Defendant.

JURY TRIAL DEMANDED

CIVIL COMPLAINT

Plaintiff, Donald E. Woolslayer, by undersigned counsel, and pursuant to Fed. R. Civ. P. 8, files this Civil Complaint and in support alleges the following:

I. Jurisdiction

1. The Jurisdiction of this Court is invoked pursuant to Section 1 of the Civil Rights Act of 1871, 42 U.S.C. §1983; 28 U.S.C §§1331 and 1343(a)(3) and (a)(4).

II. The Parties

2. Plaintiff Donald E. Woolslayer, is an adult individual citizen who resides at 232 McHenry Road, Indiana, Pennsylvania 15701. At all times relevant hereto, he was employed by the Indiana University of Pennsylvania as Director of Facilities Operations. His place of employment was 1011 South Drive, Indiana, Pennsylvania 15705.

3. Defendant Michael A. Driscoll, is the President of Indiana University of Pennsylvania, a university of the Pennsylvania State System of Higher Education, and his principal place of business is Sutton Hall, Room 201, 1011 South Drive, Indiana, Pennsylvania 15705-1046.

4. Plaintiff sues Defendant Driscoll pursuant to *Ex parte Young*, 209 U.S. 123, 159 (1908)

and its progeny, in his official capacity seeking reinstatement and other declaratory and injunctive relief.

5. Defendant Driscoll is a state actor with hiring and firing authority over the employees in his University. At all times relevant he operated pursuant to authority granted or delegated to him under Pennsylvania law, and therefore acted under color of state law. He is sued individually for damages.

III. Factual Background

6. Woolslayer worked for Indiana University of Pennsylvania (hereafter IUP), from April 2016 until March 31, 2020 as Director of Facilities Operations.

7. The Director of Facilities Operations is responsible for maintenance and operation of IUP facilities including academic, residential and foundation facilities.

8. The Director of Facilities Operations' functions are related to maintenance, and physical plant operations.

9. The Director of Facilities Operations has no power to speak in the name of any Pennsylvania or IUP policymaker.

10. The Director of Facilities Operations job involves implementation of maintenance and operation of IUP facilities, but the position has no input into the decision making concerning the scope and/or nature of IUP functions.

11. The Director of Facilities Operations job does not involve meaningful input into the scope and nature of either Pennsylvania; the Pennsylvania State Higher Education System, or Indiana University of Pennsylvania education policy issues.

12. Throughout his tenure as Director of Facilities Operations, Woolslayer's performance was rated fully acceptable by his supervisors. Indeed, in his last performance review he was rated

in the mid-3 level on a scale of 1-4 with four being the highest evaluation.

13. In or around late March 2020, Woolslayer discovered that the spouse of one of his employees had been diagnosed with COVID-19, a highly infectious Coronavirus that currently has been declared a Pandemic by the World Health Organization, and has caused the Governor of Pennsylvania to declare a statewide public health emergency.

14. Because of exposure of one of his employees to the highly infectious virus, Woolslayer determined that he should advise IUP employees of this and caution them to take necessary precautions to avoid infection.

15. However, Woolslayer's supervisors and members of IUP Human Resources Department recommended that Woolslayer not alert employees, and that he not caution those employees to take necessary precautions to avoid infection.

16. On March 30, 2020, in a multi-addressed email, Woolslayer informed employees that "one of our colleagues is self-quarantined due to exposure to COVID-19." Woolslayer also notified his supervisor. IUP's Human Resources objected to the notification.

17. In addition on March 30, 2020, Woolslayer informed employees that they should consult with their healthcare provider to ascertain their risk and their course of action in light of the exposure of one of their co-workers to COVID-19.

18. The very next day, March 31, 2020 Defendant Driscoll fired Woolslayer, offering no reason other than that he (and senior leadership at IUP) had "lost confidence in [Woolslayer's] ability to effectively perform [his] assigned duties as Director of Facilities Operations."

19. Defendant offered no other reason for firing Woolslayer.

20. Defendant on the same day cancelled Woolslayer's health insurance, although it knew that Woolslayer had ongoing medical conditions.

Count I
42 U.S.C. §1983
Retaliation for Speaking on Matter of Public Concern

21. Plaintiff incorporates by reference the allegations in paragraphs 1 through 20 as if fully restated herein.

22. Defendant Driscoll fired Woolslayer because of he spoke as a citizen on a matter of public concern in violation of Plaintiff's rights to speak freely and to petition the government for redress of grievances under the First and Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. §1983.

23. At all times relevant hereto, Driscoll acted under color of state law, inasmuch as his acting as set forth at length above, constitute misuse of power possessed solely by virtue of state law and made possible only because Driscoll is and was clothed with the authority of state law.

24. Woolslayer, as a citizen has a right to speak on matters of public concern under the First and Fourteenth Amendments of the United States Constitution.

25. As set forth above Woolslayer was acting as a citizen both speaking upon matters of public concern, and petitioning the government for redress of grievances and therefore his speech and petitioning activities are protected under the First and Fourteenth Amendments of the United States Constitution.

26. Woolslayer, as a citizen of the United States, did not surrender his rights and privileges under the United States Constitution as a condition of employment with IUP.

27. As described above, Defendant fired Woolslayer in retaliation for his exercise of his First and Fourteenth right to speak on matters of public concern and to petition for redress of grievances.

28. The actions of Defendant was intentional and were undertaken with reckless disregard of Woolslayer's federally protected right to exercise his First Amendment rights.

29. As a result of Defendants' intentional actions against Woolslayer he has suffered and continues to suffer damages, including but not limited to lost wages and benefits, anxiety, emotional distress, loss of reputation, loss of career opportunities, humiliation and inconvenience.

30. The conduct by Driscoll, as set forth above, was a conscious choice on the part of Defendant to disregard Plaintiff's constitutional rights, and deprived Woolslayer under color of state law, of rights of speech, and petition under the First and Fourteenth Amendments of the U.S. Constitution in violation of 42 U.S.C. §1983.

31. As a direct and proximate result of Driscoll's intentional and reckless actions, Woolslayer has sustained the injuries and damages set forth above.

WHEREFORE, Plaintiff demands judgment against Defendant Driscoll individually, and against Defendant Driscoll in his official capacity for injunctive and declaratory relief for deprivation of his right to speak on matters of public concern and to petition for redress of grievances under the First Amendment of the U.S. Constitution and 42 U.S.C. §1983, and damages as follows:

- a. That Defendant Driscoll in his official capacity be permanently enjoined from discriminating against Plaintiff for engaging in First Amendment activities;
- b. That Defendant Driscoll in his official capacity be permanently enjoined from retaliating against Plaintiff because he engaged in First Amendment protected activities;
- c. That Defendant Driscoll in his official capacity be ordered to reinstate Plaintiff to the position he occupied at the time she was terminated;
- d. That Defendant Driscoll in his individual capacity be ordered to pay Plaintiff all of his lost pay and benefits;
- e. That Plaintiff be awarded against Defendant Driscoll in his individual capacity compensatory damages to compensate for pain, suffering, emotional distress and humiliation Plaintiff has suffered as a result of Driscoll's conduct;

- f. That Plaintiff be awarded punitive damages against Defendant Driscoll in his individual capacity in an amount sufficient to punish Defendant and to deter similar conduct;
- g. That Plaintiff be awarded against Defendant Driscoll in his official and in his individual capacity, the costs and expenses of this litigation, and, pursuant to 42 U.S.C. §1988, a reasonable attorney's fee; and
- h. That Plaintiff be awarded such further relief as this Court deems to be just and proper.

Respectfully submitted,

ROTHMAN GORDON, P.C.

/s/ Samuel J. Cordes

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