

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

ELECTRONICALLY
FILED
Jan 11 2021
U.S. DISTRICT COURT
Northern District of WV

TINA RENNER and
PAMELA MCDONALD,

Plaintiffs.

Civil Action No. 3:21-cv-5 Judge Gina Groh

v.

BONDY SHAY GIBSON,
Superintendent of Jefferson
County Schools, individually,

Defendant.

COMPLAINT

This complaint, brought pursuant to 42 U.S.C. Section 1983, the First Amendment to the United States Constitution, for the Defendant's retaliation against the Plaintiffs' First Amendment rights on or about January of 2021 in or about Jefferson County, West Virginia, within the Northern District of West Virginia, Martinsburg Division.

JURISDICTION AND VENUE

Subject matter jurisdiction over the claims and causes of action asserted by Plaintiffs in this action is conferred on this Court pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1988, 28 U.S.C. §1331, 28 U.S.C. § 1343, 28 U.S.C. §§ 2201 and 2202, and other applicable law.

Venue in this District and division is proper pursuant to 28 U.S.C. §1391 and other applicable law, because this District is the location where the underlying facts occurred, and where the parties reside.

PARTIES

1. Plaintiff Tina Renner, was at all times relevant hereto a resident of Jefferson County, West Virginia, and is a school bus driver for Jefferson County Schools.

2. Plaintiff Pamela McDonald, was at all times relevant hereto a resident of Jefferson County, West Virginia, and is a school bus driver for Jefferson County Schools.

3. Defendant Bondy Shay Gibson was at all times relevant hereto the Superintendent of Jefferson County Schools, being so employed in Jefferson County, West Virginia. Upon information and belief, she is a resident of Charles Town, Jefferson County, West Virginia. She is named herein in her individual capacity, and is being prosecuted herein for actions taken by her under color of law while acting as Superintendent of Jefferson County Schools, under the employment of the Jefferson County Board of Education and the Jefferson County Commission.

FACTS

4. Plaintiff Tina Renner is a long-time school bus driver with Jefferson County Schools, located in Jefferson County, West Virginia. She is a supporter of President Donald Trump. On January 6, 2021, she departed from Charles Town, West Virginia, along with four other local women, and drove to Frederick, Maryland to board a bus to the Donald Trump Rally being held on January 6, 2021. The bus charter was organized by the Frederick County Conservative Club.

5. Plaintiff Pamela McDonald is also a long-time school bus driver with Jefferson County Schools, and also a supporter of President Donald Trump. She traveled with Tina Renner on the charter bus to attend the Donald Trump rally in Washington D.C. Plaintiffs intended to hear the President speak and to show their affiliation and support for President Trump.

6. The Plaintiffs boarded the bus and arrived in Washington D.C. at around 10:30 a.m. They were dropped off at the Holocaust Museum and were informed that the bus would pick them up at the same location at 3:00 p.m. to depart back to Frederick, Maryland.

7. Following their arrival in Washington D.C., Plaintiffs and three other women walked to the Washington Monument, arriving at approximately 10:45 a.m., where they waited for President Trump to speak to the crowd of his supporters.

8. At around 11:40 a.m., the large television screen began displaying the President's speech, which the Plaintiffs watched.

9. At around 12:50 p.m., the Plaintiffs and the three other women walked approximately 1.5 miles from where they had been standing to the U.S. Capitol. They did not cross any barricades or barriers and at all times remained in the area designated for public occupation.

10. Plaintiffs arrived at the steps immediately in front of the reflection pool to the West of the Capitol at approximately 1:10 p.m. Plaintiff Tina Renner and one other woman then sat on the steps of the reflective pool, due to being cold and tired, and waited while the others walked closer towards the Capitol.

11. While Plaintiff Tina Renner and the other woman sat on the steps of the reflective pool, Plaintiff Pamela McDonald and the other women walked some distance closer to the Capitol building. They never crossed any barricades or into any prohibited areas, where they observed the large crowd and the rally taking place. They observed no violence nor destruction of property. The crowd was entirely peaceful from their point of view.

12. The reflecting pool where Tina Renner and the other woman were sitting, is approximately 1,400 feet from any restricted or prohibited area surrounding the Capitol building on January 6, 2021.

13. A short time later, Pamela McDonald and the other women returned to where Tina Renner was sitting, and together they made the return walk to the Holocaust Museum, which is the spot at which the bus was to pick them up to return home.

14. The women waited for the bus to arrive. When it arrived, all five of them boarded the bus, which departed Washington D.C. at approximately 3:45 p.m. as planned.

15. Neither of the Plaintiffs witnessed any violence or destruction of property while in Washington D.C. on January 6, 2021. They only experienced and participated in a peaceful protest and political rally for President Trump, who spoke at the rally. They did not witness, nor did they participate in, the lawless actions which occurred that day closer to, and within, the Capitol building. Neither of the Plaintiffs, nor anyone with whom they traveled, to their knowledge, took part in such actions. Neither of the Plaintiffs, nor their associates, were anywhere near crossing into prohibited areas at the Capitol Building during their time in Washington D.C. They were among the thousands upon thousands of peaceful protestors and rally participants that day who exercised their First Amendment protected speech in support of President Trump.

16. Following the Plaintiffs' return from Washington D.C., Defendant Gibson, who is a known anti-Trump, left-wing activist, upon information and belief, instructed school employees under her supervision to engage in surveillance of the social media accounts of

employees of Jefferson County Schools, including the Plaintiffs, in order to ascertain whether any school employee had attended the Donald Trump rally in Washington D.C.

17. The day following the rally - on or about January 7-8, 2021 - the Plaintiffs each received a phone call from JR Hollen, Director of Transportation, informing them that they would be placed on administrative leave, and not to show up for work the following Monday. He said it was due to their presence at the Trump Rally in Washington D.C. on January 6, 2021. He further asked them not to discuss the substance of the phone call with anyone.

18. The following day, on January 8, 2021, Defendant Gibson sent the following letter to Tina Renner, notifying her that she was being placed in suspension for attending the Trump Rally:

I was made aware that you took part in the Electoral College protest that erupted into deadly violence on January 6, 2021. I have been provided videos and photographs posted on your public social media page that collectively threaten and demean public officials. These images and statements are a cause for grave concern in our community. In particular, a large number of our children have parents who are federal law enforcement and government officials including several Capitol Hill police who were assaulted. Additionally, I have confirmed that you failed to report your absence from work on this day.

Accordingly, I have determined that you are on administrative leave with pay effective immediately. A representative from the Human Resources Department will contact you to schedule a meeting with me on Tuesday, January 12, 2021. As this meeting may result in a recommendation of disciplinary action against you, up to and including the termination of your employment, you may bring a representative with you.

During this suspension, you shall not enter upon any Jefferson County Schools' property or participate in any school activities.

Sincerely,

Bondy Shay Gibson, Ed.D.
Superintendent

cc: Personnel File
JR Hollen, Director of Transportation

19. Also on January 8, 2021, Defendant Gibson wrote a letter, also delivered via email, to Plaintiff Pamela McDonald, also notifying her of being placed on suspension, which stated as follows:

VIA EMAIL AND CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Pamela McDonald
111 McGregor Dr.
Ranson, WV 25438
pamela.mcdonald@k12.wv.us

Dear Ms. McDonald:

I was made aware that you took part in the Electoral College protest that erupted into deadly violence on January 6, 2021. I have reviewed disturbing videos and photographs posted that tagged you on a public social media page which included threatening and demeaning statements regarding federal government officials. I understand that many community members are upset by these images. Particularly in our community in which a large percentage of children have parents who work in federal government including federal law enforcement.

Accordingly, I have determined that you are on administrative leave with pay effective immediately pending additional investigation. Should you have additional documentation you wish to present please send to me in advance or bring to the meeting. A representative from the Human Resources Department will contact you to schedule a meeting with me for Tuesday, January 12, 2021. As this meeting may result in a recommendation of disciplinary action against you, up to and including the termination of your employment, you may bring a representative with you.

During this suspension, you shall not enter upon any Jefferson County Schools' property or participate in any school activities.

Sincerely,

Bondy Shay Gibson, Ed.D.
Superintendent

cc: Personnel File
JR Hollen, Director of Transportation

20. Upon information and belief, Defendant Gibson has sent essentially the same letter to other Jefferson County Schools employees who were suspected by Gibson to have attended the Donald Trump rally in Washington D.C.

21. In contrast to her disciplinary actions taken against supporters of President Trump, on or about February 14, 2019, Jefferson County Schools teacher, Grant H. Prillaman, forcibly “occupied” the office of Senator Joe Manchin at the U.S. Capitol, with other left-wing protestors, and was arrested by Capitol Police for blocking the doors and hallways.¹ The incident was reported in the news - even mentioning Prillaman by name as a being a teacher. He was arrested and charged by Capitol Police in Case No. 2019 PAF 000039, District of Columbia v.s Grant H. Prillaman, with “Crowding, Obstructing, or Incommoding.” Despite being Superintendent of Jefferson County Schools at that time, Gibson did not suspend Prillaman, nor take other disciplinary action against him. Nor did she contact the news media to report that a school employee had been involved in an arrest by Capitol Police for “occupying” a senator’s office, as Gibson did to the Plaintiffs. Upon information and belief, the reason she did not do so to Prillaman is because she agrees with Prillaman’s left-wing politics and activism, whereas she does not personally agree with the Plaintiffs’ support of President Donald Trump.

¹ See, ‘Resist Rockwood’ Holds Sit-in of Senator Joe Manchin’s Office, Feb. 14, 2019, <https://www.dcmediagroup.us/2019/02/14/resist-rockwool-holds-sit-in-senator-joe-manchin-office/>

COUNT ONE - CIVIL RIGHTS VIOLATION UNDER 42 U.S.C. 1983
FIRST AMENDMENT RETALIATION

22. Plaintiffs incorporate by reference all of the prior paragraphs as though fully restated herein.

23. The Plaintiffs engaged in protected First Amendment speech when they traveled to Washington D.C. to express their political support, affiliation, and viewpoints for President Trump. The U.S. Capitol has long been recognized as, and in facts is, a traditional public forum and/or a designated public forum which has been open to citizen protests and political rallies. In fact, the rally and protest which took place on January 6, 2021 took place pursuant to a permit issued by the National Park Service. Indeed, on just about any controversial political and social topic, protestors and rally participants have been found at the U.S. Capitol exercising their First Amendment rights to petition, assemble and speak. In-person protests are a time-honored, venerable means of expressing dissent in our constitutional republic. United States v. Grace, 461 U.S. 171 (1983).

In-Person Protests are Protected First Amendment Activities

24. The First Amendment, in relevant part, provides that “Congress shall make no law ... abridging the freedom of speech.” U.S. Const. amend. I. The Fourteenth Amendment makes this prohibition applicable to the states. *See Fisher v. King*, 232 F.3d 391, 396 (4th Cir. 2000).

25. Not only does the First Amendment protect freedom of speech, it also protects “the right to be free from retaliation by a public official for the exercise of that right.” Suarez Corp. Indus. v. McGraw, 202 F.3d 676, 685 (4th Cir. 2000).

26. The First Amendment bars the firing or discipline of public employees “solely for the reason that they were not affiliated with a particular political party or candidate.” Knight v. Vernon, 214 F.3d 544, 548 (4th Cir.2000). Such firings can impose restraints “on freedoms of belief and association.” Elrod v. Burns, 427 U.S. 347, 355 (1976).

27. "The First Amendment affords the broadest protection to such political expression in order to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Bland v. Roberts, 730 F.3d 368 (4th Cir. 2013).

28. Viewpoint discrimination is itself a violation of the First Amendment. The Supreme Court articulated this principle in Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819, 828-829 (1995), observing that while “[i]t is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys,” and while “government regulation may not favor one speaker over another,” that “[w]hen the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” Id. Thus, “[v]iewpoint discrimination is thus an egregious form of content discrimination.” Id. at 829. “The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” Id. *See, also*, McCullen v. Coakley, 573 U.S. 464, 484-485 (2014) (noting that permitting one class of speakers to speak and not another raises questions of viewpoint discrimination).

Plaintiffs Were Suspended for Attendance at an In-Person Protest Wholly Unrelated to their Employment with Jefferson County Schools

29. Plaintiffs are both low-level employees of the Jefferson County Schools, who are not in confidential, policymaking, or public contact roles which could interfere with, or undermine the operation of Jefferson County Schools as an agency by engaging in unrelated politically affiliated speech or political activities.

30. The protected speech engaged in by the Plaintiffs attending the rally in D.C. did not, and could not, impair the maintenance of discipline by supervisors at Jefferson County Schools. Plaintiffs' attendance at the Washington D.C. rally had no relation or relevance to their employment with Jefferson County Schools, and their employment positions as school bus drivers.

31. The protected speech engaged in by the Plaintiffs attending the rally in D.C. did not, and could not, impair harmony among coworkers at Jefferson County Schools. Plaintiffs' attendance at the Washington D.C. rally had no relation or relevance to their employment with Jefferson County Schools, and their employment positions as school bus drivers.

32. The protected speech engaged in by the Plaintiffs attending the rally in D.C. did not, and could not, act so as to damage close personal relationships in the workplace. Plaintiffs' attendance at the Washington D.C. rally had no relation or relevance to their employment with Jefferson County Schools, and their employment positions as school bus drivers.

33. The protected speech engaged in by the Plaintiffs attending the rally in D.C. did not impede with the performance of the public employee's duties as school bus drivers.

34. The protected speech engaged in by the Plaintiffs attending the rally in D.C. did not, and could not, interfere with the mission of Jefferson County Schools. Plaintiffs' attendance at the Washington D.C. rally had no relation or relevance to their employment with Jefferson County Schools, and their employment positions as school bus drivers.

35. The protected speech engaged in by the Plaintiffs attending the rally in D.C. was not communicated publicly in association with Jefferson County Schools, nor privately among employees of Jefferson County Schools who were not already attending the event. Plaintiffs attendance at the rally had no connection, either directly, nor indirectly, with Jefferson County Schools.

36. The protected speech engaged in by the Plaintiffs attending the rally in D.C. did not conflict with the responsibilities of the Plaintiffs' within Jefferson County Schools. Both Plaintiffs had sufficient leave days available to attend the rally. Plaintiffs' attendance at the Washington D.C. rally had no relation or relevance to their employment with Jefferson County Schools, and their employment positions as school bus drivers.

37. The protected speech engaged in by the Plaintiffs attending the rally in D.C. did not involve the abuse of authority and public accountability that the Plaintiffs' roles as employees entailed, given the fact that they were school bus drivers.

38. The employment positions held by the Plaintiffs do not involve party or political allegiance to any particular affiliation. Plaintiffs' attendance at the Washington D.C. rally had no relation or relevance to their employment with Jefferson County Schools, and their employment positions as school bus drivers.

39. The exercise of the Plaintiffs' First Amendment rights in attending the Donald Trump rally was a substantial or motivating factor in the Defendant's decision to suspend and discipline them. Defendant Gibson would not have made the same decision absent the protection expression of speech.

40. Upon information and belief, Defendant Gibson, an ardent anti-Trump activist, misused her position as Superintendent of Jefferson County Schools, to engage school employees in online social media surveillance of attendees of the rally in Washington D.C., in order to obtain information regarding whether any Jefferson County Schools employees were in attendance.

41. Defendant Gibson was able to ascertain that both of the Plaintiffs, among others, attended the rally in Washington D.C. However, she was not able to find any evidence that either of the Plaintiffs engaged in any illegal or inappropriate behavior at the rally. She has recklessly taken the false and illogical position that anyone attending the rally were "collectively" responsible for violence, as well as "threatening" or "demeaning" public officials.²

42. Neither Plaintiff Renner, nor Plaintiff McDonald, engaged in - nor even witnessed - violence on January 6, 2021. Likewise, neither Plaintiff were involved in "threatening," nor "demeaning" any public officials on January 6, 2021.

43. The only social media post in which Plaintiff McDonald was "tagged" was a photograph taken on the charter bus, at a time when it wasn't in Washington D.C. There was

² In the letter to Plaintiff Renner, Defendant Gibson used the language, "I have been provided videos and photographs posted on your public social media page that collectively threaten and demean public officials." In the letter to Plaintiff McDonald, Defendant Gibson used the language, "I have reviewed disturbing videos and photographs posted that tagged you on a public social media page which included threatening and demeaning statements regarding federal government officials."

nothing inappropriate about the post in which she was tagged, nor in the conduct of riding a bus with other individuals for the purpose of attending a political rally.

44. The only social media post which Plaintiff Renner was involved, was a short video clip of her surroundings - approximately 10 seconds long - which contained nothing inappropriate, and which contained no statements by Renner. The video was posted to a friend's personal Facebook page, and was not posted to Plaintiff Renner's page - nor anywhere else publicly. The video only showed Plaintiff Renner's participation in, and attendance at, an in-person protest and political rally, which is core First Amendment-protected activity and speech.

45. Upon information and belief, Defendant Gibson, directly or through one of her subordinates, contacted WDVM news and leaked the allegations made in the letters to the Plaintiffs for public dissemination. In an article and television news story dated January 9, 2021, titled, "JEFFERSON COUNTY SCHOOLS REVEALS AT LEAST TWO STAFF ATTENDED PROTESTS IN WASHINGTON, D.C.", who reported as follows:

JEFFERSON COUNTY, W. Va. (WDVM) — Jefferson County Schools has revealed that at least two staff members were in Washington D.C. to protest the electoral vote.

The statement details that Superintendent Bondy Shay Gibson was made aware on Friday of the staff members' participation that left the Capitol Building in shambles.

The statement reads,

"Jefferson County Schools fully supports the rights of employees and students to exercise their first amendment freedoms, including the right to peaceably assemble and to petition the government, but Wednesday's protests involved violence and other unlawful conduct."

The District is now investigating whether any employee who participated in the protests engaged in any illegal activity.

The statement also explained that the District cannot provide any additional information at this time as “this involves a personnel matter.”

This is a developing story and will be updated.

46. Although Defendant Gibson did not specifically state the Plaintiffs’ names to the media, the viral nature of the information on social media, and in the community, quickly revealed the Plaintiffs’ names among those in and around Jefferson County. Moreover, it is anticipated that the Plaintiffs’ name will become public once further steps are taken to terminate the Plaintiffs’ employment, or otherwise discipline them, before the Jefferson County Board of Education.

47. Defendant Gibson’s leak to WDVM recklessly and falsely insinuated that she had evidence that the Plaintiffs were among those who committed criminal act at the Capitol by engaging in violence and destruction of property in and around the Capitol building. In reality these insinuations were patently false and outrageous.

48. The reaction of Defendant Gibson, as outlined above, to the Plaintiffs’ constitutionally-protected attendance at the January 6, 2021 in-person protest and rally, to suspend them and seek to terminate their employment and/or otherwise punish them, including attempting to publicly shame them in the media, are actions which would “chill a person of ordinary firmness” from continuing to engage in the protected activity of attending in-person protests, political rallies, sharing political opinions, viewpoints, ideas, and otherwise participating in civil discourse.

49. The Plaintiffs’ protected free speech activity, as outlined above, was the substantial, if not sole, motivating factor in Defendant Gibson’s conduct in suspending the

Plaintiffs, and seeking to terminate their employment and/or otherwise punishing them as employees, attempting to publicly shame them in the media.

50. Defendant Gibson, acting as Superintendent of Jefferson County Schools, acted under color of law, and intended to interfere with the Plaintiffs' First Amendment rights, as outlined herein.

51. The Plaintiffs have suffered substantial injury as a result, including both constitutional injury, as well as other injuries, for which they are entitled to recover from Defendant Gibson.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs demand judgment against the Defendant as prayed for, including:

A. That damages be awarded against Defendant Gibson pursuant to Count One of the Complaint for the violation of the Plaintiffs' civil rights, as well as an award by the Defendant for the costs of this action, including reasonable attorney fees under 42 U.S.C. § 1988; and

B. Such other and further relief as this Court shall deem just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY

TINA RENNER and
PAMELA MCDONALD,
By Counsel

/s John H. Bryan

John H. Bryan (WV Bar No. 10259)

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