

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

COURTNEY LAWTON,

Plaintiff,

V.

BOARD OF REGENTS OF THE
UNIVERSITY OF NEBRASKA; HANK
BOUNDS, Individually and in his
Official Capacity; and RONNIE
GREEN, Individually and in his
Official Capacity,

Defendants.

CASE NO.

COMPLAINT AND REQUEST
FOR JURY TRIAL

COMES NOW the plaintiff, by and through her attorney Vincent M.

Powers, and for her cause of action states as follows:

1. This is an action seeking redress for the violations of constitutionally and statutorily protected rights guaranteed the plaintiff by the First Amendment and Fourteenth Amendment of the United States Constitution as brought pursuant to 42 U.S.C. 1983. Jurisdiction of this court is invoked pursuant to state and federal statutes.

2. At all times relevant, the plaintiff Courtney Lawton was a duly enrolled graduate student at the University of Nebraska.

At all times relevant, defendant Hank Bounds was the President of the University of Nebraska and is being sued individually and in his official capacity.

3. At all times relevant, the University of Nebraska was a land-grant university chartered in 1869. The University of Nebraska system is governed by a Board of Regents consisting of eight voting members. The Board supervises the general operations and directs all expenditures of the University of Nebraska at Lincoln as well as other universities within the system. The Board of Regents of the University of Nebraska is a body corporate that exists and operates by virtue of the constitution and statutes of Nebraska.

4. On or about August 4, 2017, the plaintiff, who was a resident of Lancaster County, Nebraska, received an offer from the defendant Board of Regents of the University of Nebraska to be a non-tenure track Lecturer of English from August 14, 2017, to May 11, 2018. This was a "Special Appointment". Further, she was to receive a salary of \$18,240.00. This was a .50 full-time equivalent position. Her responsibilities were 100 percent teaching. She was to teach two courses in the fall semester and two in the spring semester for the 2017-2018 academic year. Further, she would continue her studies as a graduate student at the University of Nebraska.

Attached and made a part of this Complaint is the Contract between the plaintiff and defendant Board of Regents as Exhibit 1.

5. On or about August 10, 2017, the plaintiff did accept the University of Nebraska's offer set forth above.

6. On or about August 25, 2017, the plaintiff exercised her right to free speech as guaranteed to her by the First Amendment of the Constitution of

the United States and the Constitution of the State of Nebraska by expressing her views while she was in the “free speech area” located at or near the student union at the University of Nebraska Lincoln campus.

7. On or about August 27, 2017, the plaintiff met with Marco Abel, the Department Chair of the College of Arts and Sciences, Dean Joseph Francisco, Professor Kwakiutl Dreher, Professor Julia Schleck and the Assistant Dean of the College of Arts and Sciences pursuant to their request to gather information regarding the exercise of the plaintiff’s First Amendment rights.

8. On August 28, 2017, Hank Bounds, who was then President of the University of Nebraska, posted a public message on Twitter criticizing the behavior of the plaintiff as “unprofessional” and “not in keeping with the standards of conduct” of the University.

9. On or about August 28, 2017, the plaintiff met with the defendant Ronnie Green in his capacity as Chancellor of the University of Nebraska-Lincoln, and other employees of the University of Nebraska-Lincoln. This meeting was to discuss the plaintiff’s exercise of her First Amendment rights. At said meeting, the plaintiff was informed by employees of the University of Nebraska-Lincoln that the University had received many angry letters and emails, all of which were critical of the plaintiff.

10. At the request of the employees of the defendant University of Nebraska-Lincoln, the plaintiff did not make any comments to the media even

though there were numerous comments in local media and social media critical of the plaintiff.

11. On or about September 5, 2017, the plaintiff met with employees of the defendant Board of Regents of University of Nebraska-Lincoln and was informed that a decision had been made to remove the plaintiff from her teaching duties for security reasons. Further, the plaintiff was to be reassigned to non-teaching duties for the remainder of the fall semester but would retain her position as a lecturer. The plaintiff was informed that this was not a disciplinary action but was being done for security reasons. Plaintiff's work was satisfactory at all times.

12. On or about September 5 and September 6, 2017, investigating officers in the University of Nebraska Police Department informed the plaintiff that they had not seen any active threats to her or her students. Said officers expressed surprise to learn that she had been removed from her teaching duties for security reasons.

13. On or about September 6, 2017, Steve Smith, a spokesperson for the defendant Board of Regents, released a public statement in the course and scope of his employment with said defendant, which contradicted the agreement and understanding of the meeting on September 5, 2017, and stated that the plaintiff's removal from teaching for the fall semester was due to security but instead the statement referred to the plaintiff's exercise of her free speech rights. Mr. Smith stated, "our expectations for civility were not met by

the lecturer in her behavior . . . and not representative of the University where the robust free exchange of ideas takes place 24 hours a day, 7 days a week.”

14. On or about September 6, 2017, the plaintiff received a letter from an employee of the defendant Board of Regents placing her on probation. This was an adverse employment action taken by the defendants.

15. On or about October 24, 2017, the plaintiff had a meeting with defendant Ronnie Green and others to discuss the exercise of her First Amendment rights. At said meeting, the video footage of the plaintiff’s exercise of her First Amendment rights was reviewed by those persons who were present. The video footage revealed that the plaintiff did not invade the space of any other student but was involved in the “robust free exchange of ideas” in the free speech zone which was created by the defendants for the purpose of expressing speech.

16. As of October 24, 2017, the plaintiff was to return to teaching in the Spring 2018 semester. The plaintiff was to teach 20th Century Fiction and a section of first-year composition.

17. On or about October 30, 2017, three members of the Nebraska state legislature published an op-ed article in the Hastings, Nebraska Tribune entitled “Five Questions for UNL”. Avowing that “as state senators” they had “justifiable reasons to be concerned about the social condition and discriminatory actions of our state’s flagship university,” they posed five

questions, all of which inferred that the University of Nebraska was hostile to conservative students.

18. On or about November 17, 2017, Chancellor Green sent an article to the local newspapers that plaintiff's suspension would continue into the second semester and that she would be banned from future teaching at the University which stated: "The behavior of the graduate student that day was unacceptable; she has not been teaching at the university since that time. We communicated today to the grad student that she will not teach at our university going forward because of this inappropriate behavior."

The intentional publication by defendant Green of the above comments concerning the plaintiff did damage the plaintiff's ability to find future employment. This decision to ban the plaintiff from teaching in 2017-2018 and/or permanently barring the plaintiff from teaching at the UNL in any capacity was done without notice to the plaintiff and without any adjudication hearing, all to her damage, including past, present and future, loss of income, humiliation, anxiety, worry, and mental anguish.

19. On or about November 17, 2017, then President Bounds wrote to Governor Pete Ricketts and the speaker of the legislature, Jim Scheer, to assure them that Ms. Lawton would "not be teaching at the University of Nebraska."

This decision to ban the plaintiff from teaching in 2017-2018 and/or permanently barring her from teaching at the UNL in any capacity was done

without notice to the plaintiff and without any adjudication hearing. The intentional publication by defendant Bounds of the above comments concerning the plaintiff did cause severe damage to the plaintiff'. Further this decision to ban the plaintiff from teaching in 217-2018 and/or permanently banning the plaintiff from teaching at the UNL in any capacity was done without notice to the plaintiff and without any adjudication hearing., all to her damage, including past, present and future loss of income, humiliation, anxiety, worry, and mental anguish.

20. On or about November 17, 2017, during a subsequent meeting with defendant Ronnie Green and other employees of the defendant Board of Regents, Courtney Lawton was told by defendant Green that she could not return to the classroom because it would be too disruptive to the campus and there would be negative press to the university. This was an adverse employment action which has damaged the plaintiff to this date and will continue to damage her into the future. At this meeting, defendant Ronnie Green nor any other employee, officer or agent of the defendant Board of Regents referred to or cited any safety concerns. Rather, the defendant Green and other employees, officers or agents of the defendant Board of Regents with the consent of defendant Green, voiced their concern about negative press and pressure from political forces outside the University of Nebraska system.

21. On November 20, 2017, the plaintiff was informed that two members of the news media met with defendant Green and at least one of

employee of the defendant Board of Regents and were informed that the defendants would not allow the plaintiff to teach at the University of Nebraska-Lincoln in the spring semester in 2018 or ever again.

22. In January 2018, defendant Board of Regents approved a statement that pledged the University to uphold the First Amendment. Further, the defendant Board of Regents reiterated the University's commitment to freedom of expression. The defendant Board of Regents were aware of the adverse employment action taken against the plaintiff; however, took no action to allow Ms. Lawton to return to her teaching duties. Further, they took no action to give Ms. Lawton any type of adjudication hearing or any other type of due process with respect to the adverse employment action taken by the defendants and each of them.

23. At all times relevant, the University of Nebraska's Bylaws stated that "the termination of an Appointment for a Specific Term prior to its stated termination date, . . .the University shall have the burden of proving adequate cause for the termination by the greater weight of the evidence."

24. The plaintiff has never given notice of any adjudication hearing by the defendants, nor has the plaintiff ever been offered or received an adjudication hearing by the defendants and each of them.

25. On or about December 21, 2017, defendant Green informed a third party that it would not provide an adjudication hearing for Ms. Lawton. At no time did any of the defendants consult with the University of Nebraska faculty

body, including the Academic Freedom and Tenure Committee or the faculty Senate. Nor at any time did any of the defendants present to anyone any evidence of a threat of immediate harm to the plaintiff or any student should she be allowed to teach.

26. The plaintiff's suspension from teaching, which was only to have been for the fall 2017 semester was extended into the following semester, in violation of her written contract with the defendants and her oral agreement referred to above.

As such, the plaintiff suffered an adverse employment consequence of her exercising the right to free speech as guaranteed to her by the First Amendment to the Constitution of the United States and the Constitution of the State of Nebraska.

27. At all times, the plaintiff's teaching prior to her being removed involuntarily from the classroom, was satisfactory.

28. The defendants and each of them knew or should have known that removing the plaintiff from teaching violated her constitutional rights as set forth above.

29. At all times relevant, the plaintiff had a property interest in being a lecturer of English as set forth in her Special Appointment referred to above.

30. Ms. Lawton graduated from the University of Nebraska with her Ph.D. in English in August 2018. However, because she was denied the opportunity to teach in the classroom, she was damaged in that her prospects

for future employment were diminished. The plaintiff has mitigated her damages by finding employment but not as a professor at a research university, all to her damage. The plaintiff has suffered past, present and future anxiety, mental anguish, health care expenses, humiliation, inconvenience and loss of income together with other elements of general damages as a proximate result of the actions of the defendants.

31. The defendants Ronnie Green and Hank Bounds, at all times relevant acting within the scope of their employment with defendant Board of Regents and acting individually, did bar the plaintiff from ever working in the classroom as an instructor, teacher or professor. This action taken by the defendants and each of them was done without notice to the plaintiff, and without any opportunity for a hearing, all in violation of her First and Fourteenth Amendments of the Constitution of the United States.

32. Due to the willful nature of the defendants' conduct, punitive damages are appropriate pursuant to the violations arising out of 42 U.S.C. 1983, the Constitution of the United States made applicable to the State of Nebraska pursuant to the Fourteenth Amendment to said Constitution. The actions and each of them violated the plaintiff's right under the First Amendment of the Constitution of the United States and the State of Nebraska to free speech.

33. In June 2018, the American Association of University Professors (AAUP) did formally censure the University of Nebraska-Lincoln for violating the

academic freedom of Courtney Lawton, the plaintiff herein. The University of Nebraska-Lincoln was placed on the AAUP's censure list. The AAUP's investigation of the facts surrounding the plaintiff being removed from teaching in the classroom included "that UNL failed to provide Lawton with the appropriate hearings outlined in university policy and commonly practiced in American institutions of higher education".

Further, the AAUP noted "that while the UNL administrator said the action against Ms. Lawton was neither a suspension or a dismissal, an op-ed pinned by Chancellor Ronnie Green and printed in several newspapers last November proved otherwise, when he stated "(Lawton) will not teach at our university going forward because of (her) inappropriate behavior".

34. The AAUP found that the defendants refused to afford the plaintiff "a hearing on the substantive grounds for her dismissal".

COUNT ONE

35. Plaintiff incorporates Paragraphs 1 through 34 as if fully set forth herein.

36. Plaintiff was retaliated against by the defendants, and each of them, after she engaged in a protected activity as set forth above. The plaintiff exercised her right to free speech as guaranteed to her by the First Amendment to the Constitution of the United States of America, the Constitution of the State of Nebraska and the Bylaws, policies, practices and procedures of the Board of Regents of the University of Nebraska.

37. Plaintiff was never given any type of due process hearing prior to retaliatory actions being taken against her by the defendants and each of them.

38. The defendants, and each of them, knew, or should have known, that teaching in the classroom was significant and important to the plaintiff's education while enrolled at the University of Nebraska. Further, the defendants, and each of them, knew that the plaintiff had accepted a Special Appointment as a Lecturer of English for the fall and spring semesters of 2017-2018 at the University of Nebraska – Lincoln campus.

39. That in retaliation for the plaintiff's exercise of her constitutional rights in the "free speech zone" located at the University of Nebraska – Lincoln, she was not allowed to teach in a classroom in violation of her appointment as a Lecturer of English. Further, the defendants and each of them made public statements critical of the plaintiff, all to her damage in seeking employment.

40. Due to plaintiff's exercise of her First Amendment rights in the free speech zone created by the defendants, the plaintiff suffered an adverse employment action in which she was barred from teaching. Further, plaintiff received a permanent ban on her ever being able to teach as a lecturer, teacher or professor at the University of Nebraska, all in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Nebraska. As a result of this conduct, the plaintiff suffered damages, including a diminution of the value of her degree from the University of Nebraska, loss of income upon graduation,

diminished career opportunities, mental anguish, inconvenience, healthcare expenses and other elements of general damages.

41. Said actions of the defendants, and each of them, violated the plaintiff's rights under the First Amendment of the Constitution of the United States and the State of Nebraska, all to her damage.

42. The aforementioned unlawful acts violated 42 U.S.C. 1983, the Constitutions of the United States of America and the State of Nebraska as well as amendments thereto.

WHEREFORE, plaintiff respectfully requests this Court assume jurisdiction herein as to all counts alleged and grant the following relief:

- a) Declare the conduct of the defendants to be in violation of the rights of the plaintiff under the United States Constitution, federal law and the Nebraska Constitution;
- b) Award the plaintiff monetary damages for lost income together with the monetary value of the loss of benefits plus accrued interest;
- c) Award the plaintiff compensatory damages for the mental suffering, inconvenience, humiliation, emotional distress and all other general damages available to her under the law in an amount to be determined by a jury of the court;
- d) Award the plaintiff punitive damages under federal law for the violations alleged herein;

- e) Award the plaintiff costs and reasonable attorney's fees pursuant to 42 U.S.C. 1988 and such other and further relief as the Court deems just and reasonable to correct the wrong done to the plaintiff.

COUNT TWO

43. Plaintiff incorporates Paragraphs 1 through 42 as if more fully set forth herein.

44. Plaintiff was suspended and/or dismissed from her position as a Lecturer of English in the fall and spring semesters of 2017-2018 of the University of Nebraska.

45. At all times, plaintiff was entitled to due process under the Constitution of the United States and the Constitution of the State of Nebraska.

46. The defendants have intentionally deprived the plaintiff of a property interest in her employment with the University of Nebraska.

47. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.

48. Due to plaintiff's exercise of her First Amendment rights in the free speech zone created by the defendants, the plaintiff suffered an adverse employment action in which she was barred from teaching. Further, plaintiff received a permanent ban on her ever being able to teach as a lecturer, teacher or professor at the University of Nebraska, all in violation of the Equal

Protection Clause of the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Nebraska.

49. The actions of the defendants and each of them violated the plaintiff's rights pursuant to Fourteenth Amendment of the Constitution of the United States and the Constitution of the State of Nebraska.

50. Plaintiff suffered damages including a diminution of the value of her degree from the University of Nebraska, loss of income upon graduation, diminished career opportunities, mental anguish, inconvenience and other elements of general damages.

51. The aforementioned unlawful acts violated 42 U.S.C. 1983, the Constitutions of the United States of America and the State of Nebraska as well as amendments thereto.

WHEREFORE, plaintiff respectfully requests this Court assume jurisdiction herein as to all counts alleged and grant the following relief:

- a) Declare the conduct of the defendants to be in violation of the rights of the plaintiff under the United States Constitution, federal law and the Nebraska Constitution;
- b) Award the plaintiff monetary damages for lost income together with the monetary value of the loss of benefits plus accrued interest;
- c) Award the plaintiff compensatory damages for the mental suffering, inconvenience, humiliation, emotional distress and all

other general damages available to her under the law in an amount to be determined by a jury of the court;

- d) Award the plaintiff punitive damages under federal law for the violations alleged herein;
- e) Award the plaintiff costs and reasonable attorney's fees pursuant to 42 U.S.C. 1988 and such other and further relief as the Court deems just and reasonable to correct the wrong done to the plaintiff.

COUNT THREE

52. Plaintiff incorporates Paragraphs 1 through 51 as if more fully set forth herein.

53. Due to plaintiff's exercise of her First Amendment rights in the free speech zone created by the defendants, the plaintiff suffered an adverse employment action in which she was barred from teaching. Further, plaintiff received a permanent ban on her ever being able to teach as a lecturer, teacher or professor at the University of Nebraska, all in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Nebraska.

54. Upon information and belief, no other person has ever been removed from teaching and/or permanently banned from employment as an instructor, teacher or professor at the University of Nebraska without any type of adjudication hearing.

55. The aforementioned unlawful acts violated 42 U.S.C. 1983, the Constitutions of the United States of America, the State of Nebraska as well as amendments thereto.

WHEREFORE, plaintiff respectfully requests this Court assume jurisdiction herein as to all counts alleged and grant the following relief:

- a) Declare the conduct of the defendants to be in violation of the rights of the plaintiff under the United States Constitution, federal law and the Nebraska Constitution;
- b) Award the plaintiff monetary damages for lost income together with the monetary value of the loss of benefits plus accrued interest;
- c) Award the plaintiff compensatory damages for the mental suffering, inconvenience, humiliation, emotional distress and all other general damages available to her under the law in an amount to be determined by a jury of the court;
- d) Award the plaintiff punitive damages under federal law for the violations alleged herein;
- e) Award the plaintiff costs and reasonable attorney's fees pursuant to 42 U.S.C. 1988 and such other and further relief as the Court deems just and reasonable to correct the wrong done to the plaintiff.

COURTNEY LAWTON, Plaintiff

s/ Vincent M. Powers

Vincent M. Powers #15866

POWERS LAW

411 South 13th Street, Suite 300

PO Box 84936

Lincoln, NE 68501-8946

402/474-8000

powerslaw@me.com

REQUEST FOR JURY TRIAL

Plaintiff requests a jury trial to be held in the Lincoln, Lancaster County, Nebraska.

s/ Vincent M. Powers



DEPARTMENT OF ENGLISH

August 4, 2017

Ms. Courtney Lawton
English Department
Andrews Hall

Dear Ms. Lawton,

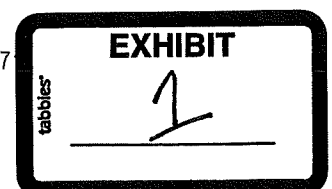
I am pleased to offer you a Special Appointment as a non-tenure track Lecturer of English for the period from August 14, 2017 to May 11, 2018. In the language of the Bylaws of the Board of Regents of the University of Nebraska (<http://nebraska.edu/board/bylaws-policies-and-rules.html>; Section 4.4), a "Special Appointment" is a non-tenure leading appointment and the University has no obligation to notify you further of reappointment or non-reappointment. No one on a Special Appointment may accrue time toward tenure.

Your salary for the 2017-18 academic year will be \$18,240 paid in nine equal monthly installments beginning September 30, 2017. This appointment is 0.50 full-time equivalent. Your appointment shall consist of the following apportionment of responsibilities: 100 % teaching. This offer and all of its terms and conditions are subject to approval procedures set forth in Section 3.2 of the Bylaws of the Board of Regents.

Although no reappointment can be assumed this type of appointment permits renewal. Consideration of renewal would be based among other factors, on satisfactory performance, availability of funding and the continuation of the position.

For the 2017-18 academic year your duties will be to teach two courses in the fall and two in the spring semester. Faculty members are required to set and keep regular office hours, to meet all classes where and when scheduled, to conform to the departmental course description for each course assigned and to prepare and distribute to students a syllabus which clearly specifies course requirements and grading policies. Faculty are also required to give teaching evaluations in all sections. You will be required to submit teaching evaluations and other appropriate material as designated by the department for review each year.

A Lecturer appointed with an FTE of 0.50, or greater is ordinarily eligible for NUFLEX and retirement benefits. Information on normal fringe benefits available to faculty members at the University of Nebraska-Lincoln can be accessed at the following website: <http://www.nebraska.edu/faculty-and-staff/benefits.html>. If you have questions about them

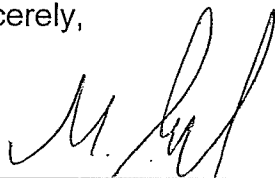


or about your eligibility to participate, please contact the Benefits Office, Room 32, Canfield Administration (phone: 402-472-2600.)

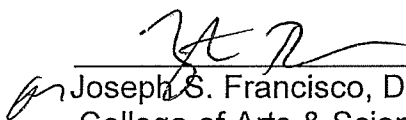
This offer is contingent upon your having employment authorization from the United States Citizenship and Immigration Services to assume this position. If you need assistance in obtaining the appropriate visa classification, we will provide it.

If you have any questions about this offer please call me at 472-1850. Please respond to this offer by signing one copy of this letter and returning it to me no later than August 11, 2017 if you wish to accept this offer. This offer will no longer be effective after that date. If you accept the offer, you agree to abide by the Bylaws of the Board of Regents and the Bylaws of the University of Nebraska-Lincoln, including the statement of responsibilities, rights, and benefits contained therein.

Sincerely,



Marco Abel, Chair
Department of English



Joseph S. Francisco, Dean
College of Arts & Sciences

Accepted:



Courtney Lawton

8/10/2017

Date