

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

1. & 2. CHESTER AND NADIA SMALKOWSKI,)
as Individuals, and as Husband and Wife,)
3. & 4. and their Minor Children, N.S. and C.S.,)
)
&)
)
5. AMERICAN ATHEISTS, INC.,)
A Texas Non-Profit Corporation,)
)
Plaintiffs,)

v.)

COMPLAINT

Case No.:

1. HARDESTY PUBLIC SCHOOL)
DISTRICT, Independent School)
District, #15, an Oklahoma Public)
School District,)
)
2. THE COUNTY OF TEXAS COUNTY,)
OKLAHOMA, an Oklahoma Political)
Subdivision,)
)
3. THE TOWN OF HARDESTY,)
OKLAHOMA, an Oklahoma Municipal)
Government,)
)
4. DAVID DAVIDSON, I.S.D. #15)
Superintendent, in his Official and)
Individual Capacity,)
)
5. DAVID BREWER, Hardesty High School)
Principal, in his Official and Individual)
Capacity,)
)
6. LLOYD BUCKLEY, Hardesty High School)
Principal, in his Official and Individual)
Capacity,)
)
7. ERNEST COOK, Hardesty High School)
athletic coach, in his Official and Individual)

JURY TRIAL DEMANDED
ATTORNEYS LIEN CLAIMED

- Capacity,)
-)
- 8. CLINTON MARTIN, I.S.D. #15 School)
- Board Member, in his Official and)
- Individual Capacity,)
-)
- 9. CASSIE FUENTES, I.S.D. #15 School)
- Board Member, in her Official and)
- Individual Capacity,)
-)
- 10. BENJI FUENTES, Texas County Sheriffs)
- Deputy, in his Official and Individual)
- Capacity,)
-)
- 11. MEGAN KENNEDY, Texas County)
- Assistant District Attorney, in her Official)
- and Individual Capacity,)
-)
- 12. MATT McCORMICK, Texas County)
- Sheriffs Deputy, in his Official and)
- Individual Capacity,)
-)
- 13. GUY KOCH, Hardesty Police Officer,)
- in his Official and Individual Capacity,)
-)
- 14. ARNOLD PEOPLES, Texas County)
- Sheriff, in his Official and Individual)
- Capacity,)
-)
- 15. BEVERLY RICHARDS, Hardesty)
- Elementary School Principal, in her)
- Official and Individual Capacity,)
-)
- 16. BECKY GILBERT, Hardesty School)
- Secretary, in her Official and Individual)
- Capacity,)
-)
- Defendants.)

COMPLAINT

COME NOW Plaintiffs, Chester and Nadia Smalkowski, as individuals and as husband and wife, together with their minor children, N.S., and C.S., by and through their attorneys of record, and for their Complaints against the listed Defendants would state:

Jurisdiction and Venue

1. This action arises under the Constitution and laws of the United States, particularly, but not limited to, the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments thereto, and pursuant to 42 USC § 1983 et seq., entitling Plaintiffs to their attorney fees under 42 USC § 1988.
2. Subject matter jurisdiction over this action exists pursuant to 28 U.S.C. §§ 1331, 1343, 1367, and 2201.
3. All factual claims and allegations asserted hereinafter arose entirely within the Western District of Oklahoma and venue is proper in this district pursuant to 28 U.S.C. §1391.
4. Plaintiffs Chester, Nadia, N.S., and C.S. Smalkowski, at all times relevant to this Complaint were residents of Texas County, Oklahoma, located within the Western District of Oklahoma.
5. Defendant Hardesty Public School District, I.S.D. #15, is an Oklahoma Political Subdivision located entirely within the Western District of Oklahoma.
6. Defendant County of Texas County, Oklahoma, is an Oklahoma Political Subdivision located entirely within the Western District of Oklahoma.
7. Defendant Town of Hardesty, Oklahoma, is an Oklahoma Political Subdivision located entirely within the Western District of Oklahoma.

8. Plaintiff American Atheists, Inc. is a non-profit corporation organized under the laws of the State of Texas. American Atheists is a volunteer organization active in protecting the rights of Atheists and dedicated to the separation of church and state. Plaintiff American Atheists, Inc. has members who are citizens of the United States, of the State of Oklahoma, and of the City of Hardesty, and who own real estate in the State of Oklahoma. This action is brought on behalf of such persons who are members of American Atheists, Inc. and who pay taxes to the United States, the State of Oklahoma, the County of Texas (Defendant), and the Town of Hardesty (Defendant) that are used to fund Defendant Independent School District #15 of Texas County, Oklahoma described in this Complaint. Plaintiff American Atheists, Inc. has standing as an organization on behalf of its taxpayer members who are citizens of the United States, of the State of Oklahoma, and of the Town of Hardesty.
9. Plaintiffs Chester and Nadia Smalkowski are members of Plaintiff American Atheists, Inc.
10. Defendant Davidson, during all times relevant to this Complaint, was a resident of Texas County, Oklahoma, located within the Western District of Oklahoma.
11. Defendant Brewer, during all times relevant to this Complaint, was a resident of Texas County, Oklahoma, located within the Western District of Oklahoma.
12. Defendant Buckley, during all times relevant to this Complaint, was a resident of Texas County, Oklahoma, located within the Western District of Oklahoma.
13. Defendant Cook, during all times relevant to this Complaint, was a resident of Texas County, Oklahoma, located within the Western District of Oklahoma.
14. Defendant Martin, during all times relevant to this Complaint, was a resident of Texas County, Oklahoma, located within the Western District of Oklahoma.

15. Defendant Cassie Fuentes, during all times relevant to this Complaint, was a resident of Texas County, Oklahoma, located within the Western District of Oklahoma.
16. Defendant Benji Fuentes, during all times relevant to this Complaint, was a resident of Texas County, Oklahoma, located within the Western District of Oklahoma.
17. Defendant Kennedy, during all times relevant to this Complaint, was a resident of Texas County, Oklahoma, located within the Western District of Oklahoma.
18. Defendant McCormick, during all times relevant to this Complaint, was a resident of Texas County, Oklahoma, located within the Western District of Oklahoma.
19. Defendant Koch, during all times relevant to this Complaint, was a resident of Texas County, Oklahoma, located within the Western District of Oklahoma.
20. As a result of the allegations plead above, jurisdiction and venue are properly asserted before this court.

Brief Factual Statement

21. Plaintiffs incorporate by reference paragraphs 1 - 20 listed above.
22. On or about Friday, November 19, 2004, Plaintiff N.S., a student at Defendant Hardesty High School, attempted to participate in a scheduled High School Basketball game. Plaintiff was instructed by basketball team Coach, Defendant Cook, and his wife to participate in the “*Lord’s Prayer*” - Plaintiff N.S. refused. As a result, Defendant Cook instructed Plaintiff N.S. that she must be separated from her team and withdraw into the locker room; thereby ostracizing and otherwise punishing Plaintiff N.S. for her refusal to participate in the team’s religious ritual.

23. Then on November 20, 2004, Defendant School District Administrators and Employees (Superintendent Defendant Davidson, Principal Defendant Buckley and Defendant Cook) unlawfully and unconstitutionally met in conspiracy to violate Plaintiffs' constitutional rights by removing Plaintiff N.S. from the girls' basketball team. This was done to punish Plaintiff N.S. for not participating in the required religious activity described above; however, the removal of Plaintiff N.S. from the team was accomplished by Defendant School inventing a false accusation against Plaintiff N.S. as a pretext for the suspension. At no time was Plaintiff N.S. informed of this decision by Defendant School.
24. Defendant School further injured Plaintiff N.S. by slandering and defaming her character by informing the other members of the Girls Basketball Team that Plaintiff N.S. had been removed from the team for committing a fabricated infraction. No investigation was conducted by Defendant School against Plaintiff N.S. further denying her required Due Process. As a result of this false and malicious accusation made by Defendant School and its officials, Plaintiff N.S. became increasingly harassed by her fellow students and by teachers for her religious, political and personal views and beliefs.
25. Since Plaintiff N.S. was never informed that she was suspended from the team, Plaintiff N.S. arrived ready to participate with her team in a scheduled game on or around Tuesday, November 23, 2004. At this time, Plaintiff was informed of the false accusations against her and further subjected to public humiliation and mental distress.
26. Plaintiff Chester Smalkowski, believing his daughter, Plaintiff N.S., to have been falsely accused, and in an attempt to reinstate her to the team, met Defendant Buckley, School Principal, at Defendant Buckley's home on or around November 27, 2004. Defendant

Buckley at that time struck Plaintiff Chester Smalkowski repeatedly without warning or provocation. Defendant Buckley then falsely accused Plaintiff Chester Smalkowski of inflicting various injuries to Defendant Buckley's person during the incident and then used the pretext of these alleged injuries to support a warrant for the false arrest and imprisonment of Plaintiff Chester Smalkowski on or around November 29, 2004. Defendant Buckley had presented false and contrived evidence of injuries he allegedly suffered during the incident on or about November 27, 2004 when he wrongfully attacked Plaintiff Chester Smalkowski.

27. Defendant Texas County, through Defendant Megan Kennedy, Assistant District Attorney, conspired with other officials and employees of Defendants to punish Plaintiff Chester Smalkowski for his religious views by prosecuting a criminal case against him which, upon information and belief, the Defendant County and Defendant Kennedy knew to be grounded on false statements and perjury. Defendant County and Defendant Kennedy then offered to drop all charges against Plaintiff Chester Smalkowski in exchange for Plaintiffs banishment from the entire County of Texas County, Oklahoma.
28. Plaintiffs refused to vacate their home and move their residence in response to the offer from the Defendant County and Defendant Kennedy. As a result, the criminal charges against Plaintiff Chester Smalkowski was presented to a Texas County, Oklahoma jury for trial, where, in June, 2006, Plaintiff Chester Smalkowski was completely exonerated and acquitted of all charges by a unanimous jury of twelve citizens.
29. In response to Plaintiffs' objections to the suspension from the basketball team, legal counsel for Defendant Schools, acting as an agent of Defendant School, wrote a letter citing Plaintiff

N.S.'s *lack of participation in the team's religious ceremony*, as a motivating factor in Plaintiff N.S.'s removal from the team.

30. Defendant School's legal counsel additionally cited the "false allegations" and an alleged lack of physical conditioning by Plaintiff N.S., although the legal counsel was unable to explain how Plaintiff N.S. was physically fit enough to participate in the Defendant School's Track and Field Team, ***and the BOY'S Football Team!*** These allegations, made by the Defendant School's legal counsel have further defamed Plaintiff N.S. and denied her constitutional rights to due process of law and to freedom from religious establishment.
31. One year later, on or around November 18, 2005, Plaintiff N.S. once again tried to participate in the girls basketball team. Once again, Defendant Cook attempted to force Plaintiff N.S. to recite the "*Lord's Prayer*." However, this time, Plaintiff N.S. chose to recite the Pledge of Allegiance instead.
32. Once again, Plaintiff N.S. was punished by Defendant School for her refusal to recite the religious prayer mandated by Defendant School. On November 21, 2005, the Monday following the basketball game, Plaintiff N.S. was once again falsely accused of allegations, unsupported by any evidence or investigation, and was once again denied due process when she was punished for her stance on the mandated prayers. Defendant School's officials and employees (Defendant Brewer, School Principal, and, in concert with other employees present, Teacher Mariconda and Defendant Elementary School Principal Beverly Richards), falsely accused Plaintiff N.S. of threatening another student, and was summarily suspended from school without a Due Process hearing or notice, as is required by Oklahoma Statutes. Defendant Brewer and Defendant Richards, in conspiracy with one another, rejected an

appeal from the order of banishment from the District's property from Plaintiffs without a Due Process Hearing. Additionally Defendant Becky Gilbert, working in concert and conspiracy with Defendants Koch, Davidson and Kennedy, knowingly and intentionally withheld police report statements that would have exonerated N.S. from the allegations used as a pretext for her suspension.

33. Then, on November 22, 2005, Defendant Cassie Fuentes, Defendant School Board Member and Defendant Clinton Martin, also a Defendant School Board Member, entered into a conspiracy or concert of action, together with other officials and employees of Defendant School, under color of the laws, customs, or usages of the State of Oklahoma to unlawfully suspend Plaintiff N.S. from school and to deny her constitutionally guaranteed rights to due process of law and to equal protection of the laws. Additionally, Plaintiff N.S. was denied her statutory right to have a hearing to determine the merits of the allegations against her or to investigate the matter.
34. Defendant School then, in further constitutional violations, denied Plaintiffs Chester and Nadia Smalkowski the right to come to Defendant School and any District schools.
35. Plaintiff Nadia Smalkowski had made a video of her daughter Plaintiff N.S. not participating in the religious ritual described above, and said video had been aired publicly. This evidence proved to be highly embarrassing to the fiction created by Defendants to justify their unlawful actions toward Plaintiffs, causing them to retaliate against Plaintiff Nadia Smalkowski by maliciously barring her from her children's school, in violation of her liberty rights and her rights to due process of law and to equal protection of the laws.

36. Defendant School, through its officials and employees, then failed to protect Plaintiffs N.S. and C.S., both students at Defendant School, from the harassment and threats (both verbal and physical), continued defamation against both children which was in fact caused by Defendant School through their unconstitutional actions against Plaintiffs. Defendant School, through Defendant Davidson and Defendant Buckley, and others, conspired together to disregard their responsibilities to act in *loco parentis* to Plaintiffs to create and maintain a safe and welcoming environment conducive to education, but instead unconstitutionally created an atmosphere of fear, and an environment hostile to Plaintiffs' beliefs, and hostile to them physically, emotionally and intellectually, thereby depriving Plaintiffs C.S. and N.S. of their right to a public school education, and violation the rights of Plaintiffs to receive such an education.
37. As a result of the actions taken by Defendants against Plaintiffs, Plaintiffs Chester and Nadia Smalkowski were forced to remove their children, Plaintiff's N.S. and C.S. from Defendant School as a result of the fear of harm that might befall Plaintiffs should they remain at Defendant School.
38. Defendant Cassie Fuentes, conspired, unlawfully with Defendant Benji Fuentes, a Deputy Sheriff for Defendant County and *also the spouse of Defendant Cassie Fuentes*, and attempted to hire, coerce, or otherwise convince, for payment of money or other consideration on school property, one Jerry Kelly to inflict personal harm on Plaintiff Chester Smalkowski in retaliation for his religious opinions and in further retaliation for Plaintiff Chester Smalkowski's attempts to defend his daughter and family against the false and malicious allegations described above.

39. Defendant McCormick, Deputy Sheriff for Defendant County, in conspiracy with other Defendants' employees, attempted to coerce or convince, for payment of money or other consideration, one Chelsey Brewer to submit a falsified police report falsely alleging the existence of unlawful firearms on the property of Plaintiffs' for the purpose of unlawfully providing Defendant McCormick a false pretext for *re-arresting* Plaintiff Chester Smalkowski, removing his children and taking his property. Plaintiff Smalkowski does not own firearms. McCormick then further attempted to intimidate Brewer as a potential witness by harassing her and her husband at Mr. Brewer's place of business.
40. Defendant County, through the actions of Defendant Benji Fuentes, then continued the conspiracy when Defendant Benji Fuentes abused the power and authority of his badge and his status as a law enforcement officer during his continuing harassing investigation of the false criminal charges brought against Plaintiff Chester Smalkowski. Defendant Fuentes unlawful acts include, but are not limited to:
- a) attempts to coerce the bail bondsman to withhold bail without charges;
 - b) to improperly confer with Defendant Kennedy during Plaintiff Chester Smalkowski's preliminary hearing;
 - c) to improperly hold a private conference with prosecution witness Defendant Guy Koch, Defendant Town of Hardesty Police Officer, immediately before Defendant Koch was called to testify;
 - d) to instigate and coerce members of the Diaz family to file a groundless restraining order against Plaintiff Chester Smalkowski;

- e) to attempt to obtain false statements from Defendant School students in order to create a false cause for arrest;
 - f) to harass Plaintiff Chester Smalkowski's employee, Chelsey Brewer, until she quit her job with Plaintiff;
 - g) to conspire with Defendant McCormick to coerce false testimony from Chelsey Brewer in order to obtain an arrest warrant for Plaintiff Chester Smalkowski.
41. Defendant County Sheriff Arnold Peoples participated in the conspiracy against Plaintiffs by continuing to defame Plaintiffs, and by knowingly making false statements against Plaintiffs to the public through the media. Further, Defendant Peoples tried to coerce the bail bondsman to rescind Plaintiff Chester Smalkowski's bail without legal, lawful or valid cause.
42. Defendant Buckley conspired with Defendant Koch, to interfere with the judicial process guaranteed to Plaintiffs by falsely asserting that Plaintiff Chester Smalkowski had assaulted Buckley. Said actions were committed by Defendant Koch while acting in concert with the other Defendants and performing his duties as the police officer for Defendant Town of Hardesty.
43. Defendant County, in an act of conspiracy and in concert of action with others, falsely alleged that Plaintiffs Chester and Nadia Smalkowski were abusive to their children, N.S. and C.S. and other members of the Smalkowski family. Defendant County then used this false information in complaints to the Department of Social Services, who investigated the Smalkowski home and discovered the allegations to be completely unfounded and without merit.

44. From the dates listed above continuing until the date of the filing of this action, Plaintiffs, and each of them, have been the victims of an unlawful, invidious, unconstitutional, and ongoing conspiracy against them by the Defendants and others, both known and unknown, to deprive Plaintiffs of Rights secured to them by the Constitution and laws of the United States of America, and the State of Oklahoma. The actions taken by Defendants against Plaintiffs, were, in part, motivated by Defendants animus against Plaintiffs Smalkowski's membership in Plaintiff American Atheists, Inc.'s organization.
45. Upon information and belief, the conspiracy began at a time unknown to Plaintiffs, but existed at least as early as November, 2004, continuing through the filing of this pleading and continuing into the future; further, the conspiracy herein alleged has been punitively undertaken against Plaintiffs since Plaintiffs refused to adopt the religious views and beliefs which Defendants (knowing Plaintiffs to be Atheists) seek to unconstitutionally establish in the public schools of Oklahoma, under color of the laws, customs, or usages of the State of Oklahoma.
46. Defendants, and each of them, and in conspiracy one with the other, and under color of the laws, customs and usages of the State of Oklahoma, deliberately violated, and acted with deliberate indifference or hostility toward, plaintiffs' federally protected rights herein enumerated, including, but not limited to, their First Amendment rights to be free of the establishment of a religion by the state, and their Fifth and Fourteenth Amendment rights to due process of law and to equal protection of the laws.
47. Upon information and belief, Defendants individually, and in conspiracy or concert of action, conspired to encourage and promote specific religious exercises, which are unlawful when

encouraged by a public school, including, but not limited to, leading students, including Plaintiff N.S., in recitation of the Protestant Biblical version of "*The Lord's Prayer*," a religious text, at public school sponsored sports events.

48. Upon information and belief, Defendants knowingly acted to violate Plaintiff N.S.'s constitutional and Title IX Rights by making these religious exercises a mandatory condition of Plaintiff N.S.'s participation in public school-sponsored athletics, and by attempting to establish a religion and to coerce Plaintiff N.S. into adherence thereto.
49. As a direct, proximate, and foreseeable result of the constitutional and statutory violations by Defendants herein, acting in abuse of their badge of authority, under color of law, and in compliance with the policies of their superiors, Defendant Town of Hardesty, Defendant Texas County, and Defendant Hardesty Public School District, and/or acting individually, Plaintiffs have suffered severe mental and physical pain and distress, trauma, loss of income, malicious prosecution, public embarrassment, harassment, false imprisonment, and physical injury to their persons of a temporary and permanent nature, all to their detriment, for which they seek compensation.
50. Plaintiffs have suffered, are suffering, and will continue to suffer, unless enjoined by this court, immediate and irreparable harm and injury to rights secured to them by the Constitution and laws of the United States. Plaintiffs have a high likelihood of prevailing on the merits in this action, and they have no clear, speedy or adequate remedy available to them at law, save the injunction of this court, permitted and required by 42 U.S.C. § 1983, *et seq.* The violations complained of are so patent, and so clearly unlawful, that an injunction bond should not be required. Defendants cannot be harmed by being ordered to abide by the

Constitution of the United States. Specifically, Plaintiffs seek injunctive relief prohibiting Defendants from organizing, maintaining, or permitting organized prayer of any specific denomination or religion at any function sponsored by Defendants; and further, Plaintiffs seek injunctive relief prohibiting Defendants from retaliating, punishing or otherwise taking adverse action against any person due to their religious beliefs or lack thereof.

51. Defendants' acts or omissions are repugnant to persons of ordinary sensibilities, entitling plaintiffs to punitive damages.
52. As Plaintiffs in a claim brought under Title 42 of the United States Code, § 1983, Plaintiffs have the right to be awarded their reasonable and necessary attorney fees as granted by Congress in 42 USC §1988.

WHEREFORE, Plaintiffs pray and demand for:

- a) A Judgment against Defendants, and each of them, on each cause of action, for a fair and reasonable amount of compensatory damages, in an amount to be determined by a jury, within the jurisdiction of the Court;
- b) A trial by jury on all issues so triable;
- c) An award of punitive damages in an amount sufficient to deter similar actions by similar actors, in an amount to be determined by a jury;
- d) Court costs and the expenses of this action;
- e) Attorney fees as permitted by law;
- f) Injunctive relief, both temporary and permanent, enjoining Defendants from further actions violating the constitutional Rights of Plaintiffs herein complained of; and

- g) Any and all other relief, both legal and equitable, to which plaintiffs may appear entitled.

DATED THIS 11th day of August, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. R. Rice', with a horizontal line underneath it.

RICHARD R. RICE, OBA #15129

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