

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT. WORTH DIVISION
2009 NOV -3 PM 3:01
CLERK OF COURT

CLAYTON SMITH AND JOHN SCHWERTZ JR.
Plaintiffs

v.

TARRANT COUNTY COLLEGE DISTRICT AND
ERMA JOHNSON HADLEY, INTERIM CHANCELLOR
TARRANT COUNTY COLLEGE DISTRICT,
IN HER OFFICIAL CAPACITY
Defendants

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CIVIL ACTION NO. _____

Verified Complaint

Plaintiffs, by counsel and pursuant to the Federal Rules of Civil Procedure, assert the following.

I.

Introduction

1. This is a civil action under 42 U.S.C § 1983 to protect and rectify the First Amendment rights of students in the Tarrant County College District (TCCD). By policy and practice, TCCD and its administration unlawfully restrict the First Amendment rights of Tarrant County College (TCC) students. TCCD’s polices are facially overbroad and prohibit the exercise of First Amendment rights on college campuses in traditional public forums. These constitutional defects give rise to both facial and as-applied constitutional challenges to the polices, and their application.

II.

Parties

2. Clayton Smith and John Shwartz, Jr. are students at the TCC Northeast campus in Hurst, Texas, are over the age of eighteen and reside in Tarrant County, Texas. They request the court declare unconstitutional TCCD's policies that restrict their right to assemble, protest, and communicate their views and petition government officials, and to enjoin TCCD and its administrators from sanctioning them for exercising their rights.

3. Defendant Tarrant County College District is a public career community college serving Tarrant County, providing associate degrees. In 2008 its enrollment was approximately 39,596 students, and its fall enrollment is reported to be approximately 43,000 students. TCCD was created in 1965 by the voters, and the first TCC campus was established in Fort Worth in 1967 as the South Campus, followed by the Northeast Campus in the City of Hurst. The Northwest Campus is in Fort Worth. The Southeast Campus is in the City of Arlington. A downtown Fort Worth campus, called the Trinity River Campus, opened in the fall of 2009. The Chief Administrator of the TCCD colleges is Defendant Interim Chancellor Erma C. Johnson Hadley.

III.

Statement of Facts

4. The controversy giving rise to this lawsuit arises from the plaintiffs intent to assemble, demonstrate, and express their view opposing Texas law and TCCD policy, which prohibit carrying concealed weapons on campus. The plaintiffs intend to participate in a nationwide demonstration on college campuses starting November 9, 2009, and to hand out leaflets expressing their opposition to current law and to the current

TCCD has established a policy prohibiting concealed weapons from being carried on campus. Plaintiffs intend their dress to express their support of the change of legislation and campus policies, by wearing T-shirts depicting empty holsters with a circle around the holster with a line through it and by wearing empty holsters on their hips. TCCD administrators have applied TCCD policy to permit the T-shirts, but forbid wearing the empty holsters on any campus or in any classroom. TCCD policy prohibits students from engaging in all protest activities unless the students first apply for a permit, which, if issued, allows restricted demonstrations only at a college-designated free speech zone, of which there is only one zone on each campus.

5. This dispute had its origin on March 28, 2008, when Brett Poulos, a student on the TCC South Campus, and a Media Liaison for the national organization Students for Concealed Carry on Campus, informed the TCC administration there would be a protest on the TCC South Campus, as well as on 130 other college campuses throughout the United States, entitled "Empty Holster Protest." Participating students, during the week of April 21 through April 25, 2008, would wear empty holsters on campus to protest state laws and school policies that prohibit carrying concealed handguns on campuses. The empty holster, Mr. Poulos stated, symbolized his and SCCC's contention that students, faculty, and guests were left defenseless by state laws and school policies because no one on the campus would have a legal concealed weapon for protection. The protestors' objectives were to educate the public about the facts of concealed carry, dispel myths about concealed carry and to "push state legislatures and school administrators to grant concealed handgun license holders the same right – the right to carry concealed handguns – on college campuses that these license holders

currently enjoy in most other places, for instance, movie theaters, office buildings, shopping malls, banks, etc.”

6. TCCD responded that students could not wear empty holsters on any campus, anywhere, at any time. The administrators’ decision, made by defendant Hadley, rests on the TCCD policy that it can control the time, place, and manner of all protests. There are no guidelines for applying the policies. Further, passing out literature was prohibited, as was any type of demonstration, unless the student applied at least 24 hours in advance for a permit to hold a demonstration and the TCC administrators granted a permit to hold the demonstration. Further, the demonstration could be held only in the college’s free speech zone, of which one area had been designated on each campus. The South Campus Free Speech Zone is in the center of the campus in the 18 foot oval space in front of the library. The Northeast Campus Free Speech Zone is in an open common area between the Physical Education Building and the Building Services Building. The Southeast Campus Free Speech Zone is near the Trustees’ Tree, which is located outside the main south entrance to the commons. All of these locations are traditional public forums for free speech activities. Without the TCC permit there could be no leafleting or demonstration. These restrictions were acquiesced in or approved by at least thirty TCCD administrators on four campuses, including Chancellor De La Garza and present Interim Chancellor Hadley, a defendant to this suit.

7. TCCD’s policies justifying these restrictions are found in the Student Handbook and the TCCD Board Policies. They are:

“TCC has the responsibility and authority to formulate and enforce rules for student conduct.... Students are expected to abide by all rules and regulations. Failure to comply with these rules and regulations may be grounds for

disciplinary action up to and including dismissal from colleges” Handbook section V.

“The college may initiate disciplinary action against any students involved in disruptive activities” including “holding rallies, demonstrations, or any other form of public gathering without prior approval of the college” Handbook Section V.

“Each campus has a free- speech zone. The director of student activities, who must be notified 24 hours in advance of scheduling speech time, can provide information about the free-speech zone.” Handbook Section V.

“If the College District creates a forum for the distribution of non- school literature the college district may impose time, place, and manner negotiations....” TCC Policy GF(legal) issued 4/21/09.

8. Between April 2008 and April 2009 the TCCD was asked on several occasions to change its policies and was criticized for its policies and decisions by several citizens and two national organizations that oppose unconstitutional restrictions on First Amendment rights on college campuses. TCCD refused to change its policies.

9. On April 10, 2009, plaintiff Clayton Smith sent TCC and its administrators an e-mail describing an event planned in conjunction with Students for Concealed Carry on Campus. The “Empty Holster Protest,” would be part of a coordinated national protest planned for April 20-24, 2009, in which students and faculty would peacefully attend class and perform other daily tasks while wearing empty holsters. As plaintiff Smith explained in his e-mail, the empty holsters were to communicate the belief that because of concealed carry prohibitions, “students, faculty, and guests are left defenseless on college campuses,” and to signify opposition to state laws and school policies denying concealed handgun license holders the same rights on college campuses that they have been granted elsewhere. Plaintiff’s e-mail emphasized that the protest would be entirely peaceful and that the holsters were to be completely empty, without containing anything even resembling a firearm. Further, the e-mail

communicated the participants intent to hand out flyers on campus explaining the protest and their beliefs regarding carrying firearms on campus. Plaintiff Smith also informed TCC and its administrators that protestors would be wearing T-shirts communicating similar sentiments. Plaintiff sought to exercise his First Amendment rights in support of what he believes are his Second Amendment rights, by protesting state law and TCCD policy.

10. In an e-mailed response to plaintiff Smith TCCD and its administrators forbade plaintiff and other protestors from wearing empty holsters anywhere on campus. TCC restricted any protest on the Northeast Campus to its "Free Speech Zone," identified on the permit form as the "east front porch of the Student Center Building." Plaintiff Smith was forbidden from handing out flyers anywhere except behind a table in the assigned section of the Free Speech Zone. The administration informed Smith that he was required to request permission to use the Free Speech Zone at least 24 hours prior to the protest. Smith refused to meet these requirements, so no protest was held

11. On October 30, 2009, plaintiff Smith informed defendants TCCD and Hadley that an Empty Holster Protest would be held the week of November 9, 2009 and he requested the defendant Hadley advise him if TCCD's policies and procedures had changed since the Spring 2009 Empty Holster Protests.. On November 1, 2009, Interim Chancellor Hadley informed plaintiff Smith that the "campuses have specific requirements for those who wish to protest on campus." Those have been described above. Rather than comply with TCCD's unconstitutional restrictions and requirements, Smith has filed this lawsuit to remove them.

12. Quarantining expressive activity by requiring prior administration approval, and if approval is given, limiting the protest to the designated free speech zones, grants the defendants the unfettered discretion to censor student speech. The defendants have restricted the First Amendment rights of students seeking to symbolically support Second Amendment rights, even in those areas of the college that are traditional free speech areas like roads, sidewalks, common areas, and parks. By prohibiting protected symbolic speech, quarantining free expression to a small area on each campus, maintaining overbroad prohibitions against expressive conduct, and granting administrators unfettered discretion to decide the time, manner, and place for free speech activities, the defendants restrict the free expression rights of plaintiffs and other students. Because plaintiffs disagree with the TCCD policies, and refuse to comply with them, they have filed this lawsuit.

13. To redress the irreparable harm plaintiffs will suffer under the defendants' policies and practices, plaintiffs seek a declaratory judgment that the defendants' policies violate the First Amendment on their face and violate plaintiffs' rights as those policies are applied. Plaintiffs also seek temporary, preliminary and permanent injunctive relief to prevent defendants from further enforcing the challenged policies in a manner inconsistent with plaintiffs' constitutional rights.

IV.

Jurisdiction and Venue

14. Jurisdiction for this case is based on 28 U.S.C. §§ 1331, 1343, 1367, 2201, 2002, and 42 U.S.C. §§ 1983 and 1988.

15. Venue is proper under 28 U.S.C. § 1391 in the Northern District of Texas, Fort Worth Division because this claim arose in Tarrant County, Texas

V.

Statement of Law

16. At all relevant times, all defendants' acts described herein were taken under the color, authority and pretense of governmental regulations and policies of Tarrant County College District. Defendants' policies regarding free speech are unconstitutional on their face and as applied because they impermissibly restrict protected student expression and association, serve as a prior restraint, and grant College officials unfettered discretion in the restriction of expression.

17. Defendants' policy designating a small free speech zone on each campus is unconstitutional on its face and as applied because it does not serve a compelling governmental interest, is not narrowly drawn, impermissibly restricts student expression, and serves as a prior restraint. There are traditional public forums on TCCD's campuses, including public streets, sidewalks, and common areas. TCCD's policy prohibiting free speech activities in traditional public forums is overboard and serves no compelling interest. TCCD's decree that no traditional public forums can be used for free speech purposes is unconstitutional.

18. The policies and conduct of defendants restricting all First Amendment by requiring an advance application to engage in such activity before allowing expressive activities on the campus grounds is an unconstitutional prior restraint on First Amendment rights that cannot withstand strict scrutiny because no compelling governmental interest is advanced by the policy, the policy is overbroad, and there are no

guidelines for the application of the policy by administrators. The policy vest unfettered discretion in Defendants to restrict constitutionally protected expression.

19. TCCD policies, as applied to plaintiffs, prohibiting them from wearing empty holsters as a symbolic expression of their protest are unconstitutional. The prohibition against this manner of symbolic speech in traditional public forums or designated public forums fails the applicable strict scrutiny test because no compelling governmental interest justifies the restriction, it is overbroad, and leaves the policy available no alternative forum for this manner of expression. The prohibition against the symbolic speech of empty holsters in the classroom is subject to the reasonableness standard, whether the classroom is considered a limited designated free speech zone or a nonpublic zone, and no facts reasonably justify this restriction.

20. By enacting and enforcing the speech-restrictive regulations and by applying the policies as outlined above, Defendants have placed unconstitutional conditions on the receipt of the government benefits of a higher education at a county-supported college because were plaintiffs to exercise their constitutional rights, they would be subject to discipline, including possible expulsion from the college. Defendants have deprived plaintiffs of their established right to freedom of speech, expression and association secured by the First Amendment to the Constitution by requiring him forfeit those right in exchange for a governmental benefit.

21. Plaintiffs are suffering irreparable harm from the challenged policies of defendants, which cannot be fully compensated by an award of monetary damages. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to appropriate relief invalidating the unconstitutional TCCD policies.

VI.

Requested Relief

22. Plaintiffs request that the Court:
- a. Declare that the sections of the Handbook and TCCD policies, as described in this Complaint, are unconstitutional on their face because they violate the rights to freedom of speech, guaranteed to plaintiffs under the Constitution of the United States and by operation of Texas statute and federal law;
 - b. Declare that the sections of the Handbook and TCCD policies, as described in this Complaint, are unconstitutional as applied or threatened to be applied to the activities of plaintiffs, because they violate plaintiffs' rights to freedom of speech, guaranteed to plaintiffs under the Constitution of the United States and by operation of state and federal law;
 - c. Issue a temporary restraining order, preliminary injunction and permanent injunction against Defendants, their agents, administrators, employees, and any other persons acting on their behalf, from enforcing said policies against Plaintiffs and others for participation in the activities described in this Complaint; and
 - d. Grant to plaintiffs an award of their costs of litigation including reasonable attorneys' fees and expenses.

Respectfully submitted,



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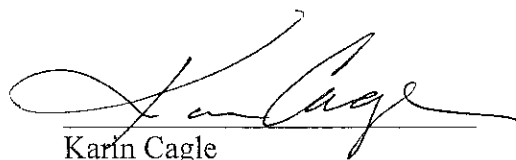
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ATTORNEYS FOR PLAINTIFFS

Declaration

I have reviewed the Complaint, and the evidence and law supporting it that will be filed in support of the motions for temporary restraining order and for injunctive relief, and I declare under the penalty of perjury, the statements in it are true. Signed this 3rd day of November 2009.



Karin Cagle