

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 06-cv-_____

JAY BENNISH,

Plaintiff,

CHERRY CREEK SCHOOL DISTRICT,
LINDA FOX, in her official capacity,

Defendants.

COMPLAINT

PLEASE TAKE NOTICE THAT THE PLAINTIFF, JAY BENNISH, by and through counsel David A. Lane, of Killmer, Lane & Newman, LLP, hereby brings this action for declaratory and injunctive relief. The plaintiff hereby complains of defendants and allege as follows:

PRELIMINARY STATEMENT

This is a civil rights action for declaratory and injunctive relief, and attorneys fees arising under 42 U.S.C. §§ 1983, 1988 and 28 U.S.C. Section 2201 due to defendants' current and imminent violations of plaintiffs' rights guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

JURISDICTION AND VENUE

This Court has jurisdiction over this action pursuant to 28 U.S.C. § § 1331 and 1343. This Court has authority to grant the declaratory relief requested herein pursuant to 28 U.S.C. § 2201(a). Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391.

PARTIES

1. Plaintiff JAY BENNISH is a citizen of Colorado and an employee of the CHERRY CREEK SCHOOL DISTRICT (hereinafter CCSD).

2. JAY BENNISH is employed by as the CCSD as a high school teacher at Overland High School in Colorado, teaching a course called Accelerated World Geography.

3. CCSD is the governmental body which has overall responsibility for the operation of the Overland High School and the training of all of its faculty and staff including Defendant FOX, and is deemed an individual under 42 U.S.C. § 1983.

4. DEFENDANT FOX is the Executive Director of High School Education for CCSD and a decision maker and policy maker for the CCSD.

FACTUAL ALLEGATIONS

5. Plaintiff brings this action for the constitutional injuries he is sustaining, or imminently will sustain, upon the defendants' imposing a prior restraint upon his speech seeking to prevent him from speaking to the media about a matter of public concern involving his suspension from his teaching duties based upon allegedly critical comments he made in class regarding such topics as capitalism, the war in Iraq and President Bush.

6. On January 29, 2006, the day after President Bush's State of the Union speech, Jay Bennish was teaching his class.

7. Unlike geography classes of years ago where the memorization of Earth's physical features was all that was taught, Bennish teaches a class involving topics such as how geography affects such things as politics, culture, economics, religion and the general human condition in many countries. It can fairly be characterized as a course in

“human geography.” (see attached Exhibit 1).

8. At the beginning of each semester, Bennish informs his students that his goal is to teach his students how to critically think about these important issues. In order to spark debate, Bennish will make controversial statements in class and ask his students to deconstruct his arguments and counter with arguments of their own. Not only does Bennish ask his students to think critically about his statements but to think critically about official governmental positions as well.

9. Unbeknownst to Bennish, on January 29, 2006, a student surreptitiously tape recorded approximately twenty minutes of an hour-long class. In that segment of the class, Bennish spoke unflatteringly about President Bush and our country’s foreign and economic policies. The student gave the recording to various media outlets, apparently in an effort to spark outrage against Bennish and cause him to lose his job.

10. At 2:45 p.m. on March 1, 2006, Bennish was summoned to the principal’s office. Present were various officials from CCSD including DEFENDANT FOX.

11. At this meeting, BENNISH was informed that he was being placed on administrative leave pending an investigation of his speech. BENNISH expressed that he was feeling attacked and that no one was defending his position within the administration of CCSD. He asked why CCSD was giving in to the pressure from a right-wing fringe element and received no answer. At this point BENNISH informed those present that he felt that in order to defend his principles, he would like to talk to the media as no one at CCSD was willing to defend his principles. It was then that DEFENDANT FOX informed BENNISH that he had a First Amendment right to talk to the media if he so

desired, however CCSD “preferred” that he not do so and that if he chose to talk to the media CCSD would view this as “insubordination.”

12. It is BENNISH’S belief that insubordination is grounds for termination and that this was a very thinly disguised, (if disguised at all) threat against him.

13. Since this meeting, BENNISH has been pilloried by the right-wing media and CCSD has released statements to the media to the effect that “it seems apparent” that BENNISH violated CCSD policy in making his statements in class and that “personnel actions” may be warranted. (See attached Exhibit 2).

14. BENNISH would like to speak to the media to explain his teaching methodology, what his class is about, and why he is commenting about matters of grave public concern to his students in his class, why he was criticizing United States economic and foreign policy as well as the current administration, as well as the apparent violation of his rights under the First Amendment to the United States Constitution by CCSD officials.

15. The actions of CCSD and FOX have chilled BENNISH from exercising his rights under the First Amendment to speak to the media.

16. BENNISH has received dozens of phone calls from the media seeking to interview him, but the prior restraint upon his speech imposed upon him by the Defendants has prevented him from commenting on issues of vital public concern.

17. Clearly, the speech Mr. BENNISH wishes to engage in with the media is political in nature and is therefore afforded the highest level of First Amendment protection under the law.

FIRST CLAIM FOR RELIEF
(FIRST AMENDMENT FREE SPEECH VIOLATION)

18. The prior restraint of the Constitutionally protected speech of Plaintiff is designed to chill BENNISH'S right to free speech by intimidating him from making any further controversial statements by threatening him with the loss of his job.

19. Threatening BENNISH with the loss of his job if he talks to the media about the issues of grave public concern outlined *supra*. would chill a person of ordinary firmness from exercising their right to speak under the First Amendment, and has in fact chilled BENNISH from talking to the media.

20. The Defendants have no legal interest in preventing BENNISH from speaking publicly to the media about these events and BENNISH has an overriding Constitutional right to so speak.

PRAYER FOR RELIEF

Plaintiff seeks a declaration of unconstitutionality as to the prior restraint against JAY BENNISH, and seeks injunctive relief to forbid defendant to continue to restrain him in a manner that would be inconsistent with the plaintiffs' rights to engage in controversial speech regarding important issues of the day. Plaintiff also seeks attorneys fees as applicable.

WHEREFORE plaintiff respectfully request that this Court:

A) Issue a declaratory judgment that the prior restraint imposed upon Plaintiff's exercise of his rights by the Defendants would deprive plaintiff of his rights to free speech in violation of the First and Fourteenth Amendments to the Constitution of the United States of America;

B) Enjoin the Defendants from continuing to restrain Plaintiff in violation of his

rights under the First and Fourteenth Amendments to the United States Constitution;

C) Award attorneys fees as applicable in the discretion of the Court in an amount to be determined and;

D) Such further relief as justice requires.

Respectfully submitted this 4th day of March, 2006.

KILLMER, LANE & NEWMAN, LLP

s/David A. Lane

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. I also emailed the foregoing to counsel for the Defendants:

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