

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MEDFORD DIVISION

KENNETH WEBBER,)
Plaintiff,)
)
 v.)
)
FIRST STUDENT, INC., a Delaware)
corporation, JONEL TODD,)
JACKSON COUNTY SCHOOL)
DISTRICT 4, and BEN BERGREEN,)
individually and in his official)
capacity as Superintendent of)
Jackson County School District 4,)
Defendants.)
 _____)

COMPLAINT
Civil Rights Action (42 U.S.C.
§ 1983)
DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, Kenneth Webber, by and through the undersigned attorney, and files this Complaint against the Defendants, in support of which the Plaintiff alleges and avers as follows:

Jurisdiction

1. Jurisdiction in this Court is founded on the existence of a federal question pursuant to 28 U.S.C. § 1331 and the deprivation of civil rights pursuant to 28 U.S.C. § 1343(a)(3), as this is an action for relief under 42 U.S.C. § 1983.

2. Plaintiff also invokes this Court’s supplemental jurisdiction under 28 U.S.C. § 1367, as to the claims based upon the laws of the State of Oregon, as such claims form part of the same case or controversy that is the basis for the claims within this Court’s original jurisdiction.

Venue

3. Venue in the District of Oregon, Medford Division, is proper pursuant to 28 U.S.C. § 1391 and Local Rule 3-3 because (a) all of the Defendants reside in this judicial district and in the Commonwealth of Virginia, and (b) all or a substantial part of the events or omissions which give rise to the present claims occurred in this judicial district, and more specifically within the County of Jackson, State of Oregon.

Parties

4. The Plaintiff, Kenneth Webber, is an adult male who is, and at all relevant times herein was, a resident of the City of Medford, Oregon, and a United States citizen.

5. Defendant First Student, Inc. (herein referred to as “First Student”), d/b/a First Student Bus Transportation Services, Inc., is foreign business corporation incorporated in the State of Delaware, with its principal place of business in Cincinnati, Ohio, authorized to do and in fact doing business within the State of Oregon, including the operation of facilities within the City of Talent, County of Jackson, Oregon.

6. Defendant Jonel Todd (herein referred to as “Todd”), is an employee of Defendant First Student and is a manager of Defendant First Student’s facilities located in the City of Talent, Oregon.

7. Defendant Jackson County School District 4 (also known as Phoenix-Talent School District #4) (herein referred to as “the District”) is a body corporate created, existing and exercising authority under the laws of the State of Oregon and is responsible for the control and management of public schools within the geographic boundaries of the District. In all respects set forth herein, the District acted under color of state law.

8. Defendant Ben Bergreen (herein referred to as “Bergreen”) is the duly appointed Superintendent of the Defendant District and is responsible for the general supervision of all schools, personnel, and departments of the Defendant District. In all respects set forth herein, Defendant Bergreen acted under color of state law.

Factual Allegations

9. At all times relevant herein, First Student was under contract (hereafter referred to as “the contract”) with the District to provide transportation services for students to and from schools operated by the District.

10. On or about June 2007, the Plaintiff was employed by First Student to operate a bus in connection with and performance of the contract.

11. In connection with its performance of the contract, First Student maintains a facility at 6100 Colver Road within the City of Talent, Oregon, where school buses used in performance of the contract are garaged and where employees come to pick up the buses used to transport students of the District.

12. In connection with his employment, the Plaintiff would drive his personal vehicle, a 1997 Dodge Dakota pickup truck, to First Student’s Colver Road facility each work day and park his truck in a parking lot designated for First Student’s employees.

13. In 2009, the Plaintiff received as a gift from his father a 3-foot by 5-foot Confederate flag, consisting of a red field with blue stripes crossed diagonally across the field with five-point stars within the blue stripes. Also emblazoned across the flag is the word “Redneck.”

14. The Plaintiff, as an act of expression, attached the flag to his pickup truck; the flag was hung from an antenna attached near the cab and within the bed of the pickup truck.

15. Because of the way the flag was attached to the Plaintiff's truck, while the truck was not moving the flag could not be viewed fully unless a significant wind was blowing.

16. From on or about July 2009 until February 2011, the Plaintiff drove his pickup truck with the Confederate flag attached to First Student's Colver Road facility each work day and parked his truck in a parking lot designated for First Student's employees.

17. Because of the way the Plaintiff parked at the First Student's parking lot, the Confederate flag was not visible to passersby on the street.

18. Until February 23, 2011, the Plaintiff received no complaints about the flag on his truck and it did not create any disturbance at First Student's Colver Road facility.

19. On February 23, 2011, Defendant Bergreen visited First Student's Colver Road facility and saw the flag attached to the Plaintiff's pickup truck.

20. After Bergreen's visit ended, the Plaintiff was approached by Defendant Todd, who informed the Plaintiff that there was a problem with the presence of his flag.

21. Todd told the Plaintiff that Bergreen objected to the Plaintiff's flag and Bergreen wanted it removed from the Plaintiff's truck.

22. The Plaintiff informed Todd that he would not remove the flag and Todd did not further press the issue at that time.

23. On March 2, 2011, Todd called the Plaintiff into her office and informed him that he must remove the flag because it was contrary to company policy.

24. The Plaintiff refused Todd's demand and Todd immediately suspended the Plaintiff.

25. The next day, March 3, 2011, Todd called the Plaintiff and requested he come to her office at the Colver Road facility.

26. The Plaintiff did as Todd requested and when he arrived at the Colver Road facility, another First Student employee, its Grant's Pass location manager whose identity is presently unknown, was with Todd.

27. Todd again told the Plaintiff that he must remove the Confederate flag from his truck because it was contrary to company policy, and the Plaintiff again refused to remove it.

28. Todd then told the Plaintiff he was suspended from his job for an additional three work days.

29. On March 8, 2011, Todd again called the Plaintiff and asked him to come and meet with her at the Colver Road facility.

30. The Plaintiff met Todd as requested and Todd again stated that in order for the Plaintiff to continue to work for First Student, he must remove the Confederate flag from his pickup truck.

31. The Plaintiff refused to agree to remove the flag and Todd informed him that his employment was terminated for insubordination.

32. Bergreen has stated in public that he did request that the Plaintiff remove the Confederate flag because some people find that flag offensive and that it is seen as racist.

33. Bergreen has stated in public that the demand and requirement that the Plaintiff remove the flag from his pickup truck was pursuant to a policy of the District.

34. Bonnie Bastian, a spokesperson for First Student, has made public statements that the Plaintiff was ordered to remove the flag from his pickup truck because it violates a policy of the District which prohibits expression that may be offensive, tend to alarm, or annoy certain individuals or groups.

35. Defendant First Student ordered, procured, approved, and/or ratified the actions of Defendant Todd in suspending and eventually terminating the Plaintiff's employment with First Student because of the Plaintiff's refusal to accede to the demand that he remove the Confederate flag from his pickup truck.

First Claim

Deprivation of First Amendment Rights -- 42 U.S.C. § 1983

36. The Plaintiff realleges and incorporates by reference the allegations in ¶¶ 1-35 set forth above.

37. The Plaintiff's display of the Confederate flag from his truck constitutes speech and expression on a matter of public concern that is protected by the First Amendment to the United States Constitution.

38. The interests of Defendants First Student and the District in promoting the efficiency of services provided to the public was in no way impaired by the Plaintiff's

display of the Confederate flag from his pickup truck, and the Defendants' interests in suppressing the Plaintiff's expression do not outweigh the Plaintiff's interests.

39. The actions of Defendants First Student and Todd in suspending and terminating the Plaintiff's employment were undertaken under color of state law because they were done pursuant to and in enforcement of a policy, custom, or rule implemented by the District and Bergreen, were done willfully, in joint action with the District and Bergreen, were done pursuant to a conspiracy between each of the Defendants, were done in connection with the performance of a public function, and/or because the District and Bergreen were closely involved in the decision to require the Plaintiff to remove the Confederate flag from his pickup truck.

40. The Plaintiff was deprived of his rights under the First Amendment to the United States Constitution when he was required, as a condition of retaining his employment, to remove the Confederate flag from his pickup truck and was subsequently terminated from his employment because he refused to comply with the requirement.

41. Defendant Bergreen caused the deprivation of the Plaintiff's First Amendment rights by ordering, demanding, and/or suggesting that Defendants First Student and Todd enforce District policy by ordering the Plaintiff to remove the Confederate flag from his pickup truck.

42. The deprivation of the Plaintiff's First Amendment rights was caused by a policy, custom, or practice of the District to forbid constitutionally-protected expression that may be offensive to certain individuals or groups.

43. The Plaintiff is entitled to relief for the harm caused by this deprivation of his First Amendment rights under 42 U.S.C. § 1983.

Second Claim

Deprivation of Fourteenth Amendment Rights -- 42 U.S.C. § 1983

44. The Plaintiff realleges and incorporates by reference the allegations in ¶¶ 1-43 set forth above.

45. The Plaintiff's display of the Confederate flag from his truck was singled out for punishment and adverse treatment by the Defendants because of the content of the expression signified by the Confederate flag and the Defendants' objections to that expression.

46. The Plaintiff was thereby treated differently than other similarly situated persons who engaged in expression or conveyed messages from their vehicles while parked at Defendant First Student's Colver Road facility.

47. The actions of Defendants First Student and Todd in suspending and terminating the Plaintiff's employment were undertaken under color of state law because they were done pursuant to and in enforcement of a policy, custom or rule implemented by the District and Bergreen, were done willfully, in joint action with the District and Bergreen, were done pursuant to a conspiracy between each of the Defendants, were done in connection with the performance of a public function, and/or because the District and Bergreen were closely involved in the decision to require the Plaintiff to remove the Confederate flag from his pickup truck.

48. The Plaintiff was deprived of his right to equal protection of the law under the Fourteenth Amendment to the United States Constitution when he was required, as a condition of retaining his employment, to remove the Confederate flag from his pickup

truck and was subsequently terminated from his employment because he refused to comply with the requirement.

49. Defendant Bergreen caused the deprivation of the Plaintiff's Fourteenth Amendment rights by ordering, demanding, and/or suggesting that Defendants First Student and Todd enforce District policy by ordering the Plaintiff to remove the Confederate flag from his pickup truck.

50. The deprivation of the Plaintiff's Fourteenth Amendment rights was caused by a policy, custom, or practice of the District to forbid constitutionally-protected expression that may be offensive to certain individuals or groups.

51. The Plaintiff is entitled to relief for the harm caused by this deprivation of his Fourteenth Amendment rights under 42 U.S.C. § 1983.

Third Claim

Violation of Oregon Constitution Art. I, § 8

52. The Plaintiff realleges and incorporates by reference the allegations in ¶¶ 1-51 set forth above.

53. The Plaintiff's display of the Confederate flag from his truck constitutes speech and expression on a matter of public concern that is protected by Oregon Constitution Art. I, § 8.

54. The interests of Defendants First Student and the District in promoting the efficiency of services provided to the public was in no way impaired by the Plaintiff's display of the Confederate flag from his pickup truck, and the Defendants' interests in suppressing the Plaintiff's expression do not outweigh the Plaintiff's interests.

55. The actions of Defendants First Student and Todd in suspending and terminating the Plaintiff's employment were undertaken under color of state law because they were done pursuant to and in enforcement of a policy, custom or rule implemented by the District and Bergreen, were done willfully, in joint action with the District and Bergreen, were done pursuant to a conspiracy between each of the Defendants, were done in connection with the performance of a public function, and/or because the District and Bergreen were closely involved in the decision to require the Plaintiff to remove the Confederate flag from his pickup truck.

56. The Plaintiff's rights under Oregon Constitution Art. I, § 8 were violated when he was required, as a condition of retaining his employment, to remove the Confederate flag from his pickup truck and was subsequently terminated from his employment because he refused to comply with the requirement.

57. Defendant Bergreen caused the violation of the Plaintiff's rights under Oregon Constitution Art. I, § 8 by ordering, demanding, and/or suggesting that Defendants First Student and Todd enforce District policy by ordering the Plaintiff to remove the Confederate flag from his pickup truck.

58. The violation of the Plaintiff's rights under Oregon Constitution Art. I, § 8 was caused by a policy, custom, or practice of the District to forbid constitutionally-protected expression that may be offensive to certain individuals or groups.

59. The Plaintiff is entitled to relief for the violation of his rights under Oregon Constitution Art. I, § 8.

Fourth Claim

Violation of Oregon Constitution Art. I, § 20

60. The Plaintiff realleges and incorporates by reference the allegations in ¶¶ 1-59 set forth above.

61. The Plaintiff's display of the Confederate flag from his truck was singled out for punishment and adverse treatment by the Defendants because of the content of the expression signified by the Confederate flag and the Defendants' objections to that expression.

62. The Plaintiff was thereby treated differently than other similarly situated persons who engaged in expression or conveyed messages from their vehicles while parked at Defendant First Student's Colver Road facility.

63. The actions of Defendants First Student and Todd in suspending and terminating the Plaintiff's employment were undertaken under color of state law because they were done in pursuant to and enforcement of a policy, custom or rule implemented by the District and Bergreen, were done willfully, in joint action with the District and Bergreen, were done pursuant to a conspiracy between each of the Defendants, were done in connection with the performance of a public function, and/or because the District and Bergreen were closely involved in the decision to require the Plaintiff to remove the Confederate flag from his pickup truck.

64. The Defendants violated the Plaintiff's right to equal privileges and immunities under Oregon Constitution Art. I, § 20 when they required the Plaintiff, as a condition of retaining his employment, to remove the Confederate flag from his pickup truck and subsequently terminated the Plaintiff's employment because he refused to comply with the requirement.

65. Defendant Bergreen caused the violation of the Plaintiff's rights under Oregon Constitution Art. I, § 20 by ordering, demanding, and/or suggesting that Defendants First Student and Todd enforce District policy by ordering the Plaintiff to remove the Confederate flag from his pickup truck.

66. The violation of the Plaintiff's rights under Oregon Constituion Art. I, § 20 was caused by a policy, custom, or practice of the District to forbid constitutionally-protected expression that may be offensive to certain individuals or groups.

67. The Plaintiff is entitled to relief for the harm caused by this deprivation of his rights under Oregon Constitution Art. I, § 20.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, joint and severally, as follows:

A. That judgment be entered finding in favor of the Plaintiff on each of the claims set forth above;

B. That the Court grant an injunction requiring Defendants First Student and Todd to rehire and reemploy the Plaintiff on terms equal to those under which the Plaintiff was employed on March 2, 2011 and forbidding the discharge of the Plaintiff for displaying the Confederate flag from his personal vehicle while parked at First Student's employee parking lot;

C. That Plaintiff be awarded compensatory damages in an amount to be shown at trial for back pay, front pay, the value of all employee benefits lost as a result of his suspension and termination from employment with First Student, and for the pain, suffering and emotional distress caused by the Defendants' actions;

D. That Plaintiff be awarded his attorney fees pursuant to 42 U.S.C § 1988,

together with costs of this litigation; and

E. Such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Plaintiff hereby demands a trial by jury.

Dated: March _____, 2011

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