

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

LORA BURNETT,

Plaintiff,

v.

COLLIN COUNTY COMMUNITY
COLLEGE DISTRICT, a municipal entity of
the State of Texas;

H. NEIL MATKIN, in his individual and
official capacities as President of Collin
College;

ANDREW HARDIN, JAY SAAD, JIM
ORR, DR. RAJ MENON, STACEY ANN
ARIAS, DR. J. ROBERT COLLINS, DR.
STACEY DONALD, GREG GOMEL, and
FRED MOSES, each in their individual and
official capacities as Members of the Board
of Trustees of Collin Community College;

Defendants.

Civil Action No. 4:21-cv-857

JURY TRIAL DEMAND

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TABLE OF AUTHORITIES

5. Burnett was not the only professor whom Collin College terminated for speaking out on important public issues: It has terminated two other professors and disciplined a third for the same reason.

6. Because Collin College does not have a tenure system for professors, Burnett and speaking out on important public issues.

7. discipline of professors exercising their First Amendment rights has itself become a topic of public controversy, attracting significant media coverage, resulting in hundreds of individuals protesting the terminations at Board of Trustees meetings, and drawing the attention of free speech and academic organizations across the country.

8. By punishing Burnett for speaking on matters of public concern, Defendants have
vi

Defendants

16. Defendant Collin County Community College District is an independent political subdivision of the State of Texas, organized under the laws of the State of Texas at Education Code § 130.0011 *et seq.* It is a municipal entity subject to liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978). *See Burlison v. Collin Cnty. Cmty. Coll. Dist.*, No. 4:17-CV-00749, 2019 WL 2266633 (E.D. Tex. Jan. 14, 2019).

17. Defendant H. Neil Matkin is the President of Collin College. He is responsible for the operations of Collin College, and has been delegated the final decisionmaking authority to employ administrative personnel, faculty, and other full-time personnel for Board-approved budgeted positions. *See* [redacted] al, DD(LOCAL)-X; *see also* Tex. Educ. Code § 130.082(d). President Matkin caused the Board of Trustees to not renew employment, resulting in the deprivation of her constitutional rights. President Matkin has been employed by Collin College since April 6, 2015. He is sued in his individual and official capacities.

18. Defendants Andrew Hardin, Jay Saad, Jim Orr, Dr. Raj Menon, Stacey Anne Arias, Dr. J. Robert Collins, Dr. Stacey Donald, Greg Gomel, and Fred Moses are members of the Board of Trustees for Collin College. The Board of Trustees as a body has power and duty to govern and oversee the management of the public schools of the district, the power to hold real and personal property, and the power to sue and be sued. *See* Collin College Board Policy Manual, BAA (Legal)-LJC (citing Tex. Educ. Code §§ 1.001(a), 130.082(d), 130.084). The Board of Trustees is a final policymaker for the Collin Community College District. The members of the Board of Trustees are sued in their individual and official capacities.

19. The Board of Trustees purport to be able to fire any employee for any reason, or for no reason at all. Collin College Board Policy Manuel, DMAB (Legal may decide by vote or inaction not to offer any employee further employment with the college

20. At all relevant times, all Defendants were acting under the color of state law.

FACTUAL ALLEGATIONS

Lora Burnett Uses Her Personal Twitter Account to Comment on National Politics.

21. Plaintiff Lora Burnett was a part-time lecturer at Collin College from 2015 to 2017, and returned as a full-time history professor at Collin College in 2019.

22.

Humanities - History of Ideas from the University of Texas at Dallas.

23. Burnett maintains a personal Twitter account, which she created in 2012, before her employment by Collin College. At all times relevant to the Complaint, on that account she prominently disclaimed that she was speaking strictly on her own behalf, stating:

32.

President Matkin a letter asking him not to take disciplinary action against Burnett. The American Historical Association further explained that President Matkin would be violating the First Amendment by punishing Burnett because her public statements [were] made wholly outside of the context of her employment at Collin College. The letter concluded by stating that the American Historical Association has confidence in the trust that Collin College will respect the First Amendment.

33. On the same day as the American Historical Association disciplining Burnett for her comments would violate the First Amendment, the Dean of Academic Affairs and Workforce at Collin College, Daphne Babcock, issued Burnett an

34. [redacted] is used to

sustain acceptable performance or behavior may result in form

35. The Employee Coaching Form

This is to serve as acknowledgement that you are entitled to your views and may freely post these views on your personal social media.

This is also to clearly communicate that you are not to use Collin College systems or resources to engage in private or personal conversations. If you are contacted through your Collin.edu account, you are not to respond from the college email system. You should use your personal email account on any and all personal communication.

In addition, please refrain from copying what appears to be private or personal communications to others via their Collin.edu email accounts. The Collin.edu system is for professional communications and those related to the educational mission of the college.

36. The

Burnett

and chill her from continuing to engage in speech on matters of public concern.

37. On October 15, 2020,

43. In the email, President Matkin increased enrollment amidst the COVID-19 pandemic, claiming that the number of individuals who were dying from COVID-19 was

44. President Matkin explained: If you find better numbers, please enlighten me, but, from my limited perspective, the effects of this pandemic have been blown utterly out of proportion across our nation and reported with unfortunate sensationalism and few facts regardless of which news outlet one tunes into. It has become political in a pivotal election year and frankly, it has made our jobs all the more difficult

45. Burnett was shocked by President concern for increasing enrollment (and increased revenue brought in by increased enrollment) instead of improving safety for faculty and students.

46. Burnett was also distressed because Collin College intentionally obscured information regarding cases of COVID-19 on its campus, while other community college systems in Texas maintained online dashboards to share total numbers of COVID-19 cases among students, faculty, and staff.

47. For instance, on October 2, 2020, a Collin College student died of complications from COVID-19, but the college community was not notified about that death until President Board of Trustees meeting on October 29 a full twenty-seven days afterward.

48.

55. Burnett later learned that the family of the deceased faculty member believed that the professor was exposed to COVID-19 while teaching.

56. On January 13, 2021, Burnett shared on Twitter a link to an obituary for Professor Ralph Gregory Hendrickson, whom she had known to have been a professor at Collin College,

57. On January 19, 2020, Babcock issued

58. Before tweeting, Burnett had

70. Collin College did not cancel any classes online comments concerning the vice-presidential debate or her criticism of President COVID-19 pandemic.

71. vice-presidential debate and her criticism of President -19 pandemic did not impact her ability to teach her courses.

Defendants Have Adopted a Custom or Practice of Retaliating Against Professors Who Speak on Matters of Public Concern.

72. Statements and actions by Defendants Collin College, President Matkin, and the Board of Trustees

76. On September 22, 2021, Jones filed a lawsuit alleging, among other claims, violations of the First Amendment.

77. Jones alleged that Collin College, President Neil Matkin, and Vice President Toni Jenkins retaliated against her by authorizing the non-her expression regarding COVID-19 and her association with TFA.

78. Jones also alleged that the Board of Trustees enacted a formal or informal policy

-renewal because of that speech.

79. Heaslip also believed that she was terminated

84. O

87. *The Dallas Morning News*

98. The AAUP also wrote that
pattern of indifference toward academic freedom and norms of shared governance. The actions to
terminate the services of [Burnett and Jones] appear to have been taken in disregard of the
AAUP-AAC&U 1940 *Statement of Principles on Academic Freedom and Tenure*.
Investigations into Dismissals at Linfield University and Collin College,

105. Additionally, Burnett has experienced significant emotional distress, including suffering from physical manifestations of stress and anxiety.

FIRST CAUSE OF ACTION
***Monell* Claim Under 42 U.S.C. § 1983**
(Against Defendant Collin Community College District)

106. Burnett re-alleges and incorporates by reference all facts and circumstances described above, set forth in the preceding paragraphs of this Complaint.

107. Defendant Collin Community College District is a municipal entity subject to municipal liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978). See *Burleson v. Collin Cnty. Cmty. Coll. Dist.*, No. 4:17-CV-00749, 2019 WL 2266633 (E.D. Tex. Jan. 14, 2019).

108. As described above, Defendant Collin Community College District engaged in a persistent, widespread custom or practice of Collin College officials, namely the Board of Trustees and President Matkin, terminating College faculty, including Burnett, because of their constitutionally protected speech on matters of public concern.

110. Even a single decision or act by a final policymaker can give rise to municipal liability. It is well established that a municipality may be held liable for a particular course[s] of action tailored to a specific situation and not intended to control decisions in later situations, provided that the decision to adopt that particular course of action is properly made by that government's authorized decisionmakers. *Gonzalez v. Ysleta Ind. Sch. Dist.*, 996 F.2d 745, 754 (5th Cir. 1993) (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986)).

111. As a legal consequence of Defendant Co.'s violation of Plaintiff's First Amendment rights, Burnett is entitled to compensatory damages, and the reasonable costs of this

112. Burnett's First Amendment rights, Burnett is also entitled to injunctive relief mandating that Defendants rescind its decision not to renew her employment.

SECOND CAUSE OF ACTION
First Amendment Retaliation under 42 U.S.C. § 1983
(Against All Individual-Capacity Defendants)

113. Burnett re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs of this Complaint.

114. It is clearly established that a state cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression. *Connick v. Myers*, 461 U.S. 138, 142 (1983).

118. As described above,
contract because of her

FOURTH CAUSE OF ACTION
Declaratory Relief Under 28 U.S.C. §§ 2201, *et seq.*
(Against All Defendants)

123. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs of this Complaint.

124. An actual controversy has arisen and now exists between Burnett and Defendants or practice of retaliating against professors who speak out on matters of public concern violates the Constitution.

125.

from

Environment Tex.

Citizen Lobby, Inc. v. ExxonMobil Corp., 824 F.3d 507, 523 (5th Cir. 2016).

126. Plaintiff demands declaratory employment contract, and its custom or practice of terminating professors for speaking on matters of public concern, are unconstitutional abridgments of the freedom of speech. Such a declaratory judgment will clarify and settle the legal relations in issue and will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to this proceeding.

DEMAND FOR JURY TRIAL

In compliance with Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury on all issues so triable.

DATED: October 26, 2021

Respectfully submitted,

/s/ JT MORRIS

JT MORRIS

TX Bar No. 2409444

JT MORRIS LAW, PLLC

1105 Nueces Street

Austin, TX 78701

Telephone: (512) 717-5275

jt@jtmorrislaw.com

GREG H. GREUBEL*

PA Bar No. 321130; NJ Bar No. 171622015

JOSHUA T. BLEISCH*

IN Bar No. 35859-53

FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION

510 Walnut Street, Suite 1250

Philadelphia, PA 19106

(215) 717-3473

greg.greubel@thefire.org

josh.bleisch@thefire.org

**Pro Hac Vice* Motions forthcoming

Counsel for Plaintiff Lora Burnett