

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STEVE ARMBRUSTER,)
Plaintiff,)

v.)

JOHN C. CAVANAUGH, in his official)
capacity as Chancellor of the)
Pennsylvania State System of Higher)
Education; F. JAVIER CEVALLOS,)
individually and in his official capacity)
as President of the Kutztown University)
of Pennsylvania; WILLIAM F. MIOSKIE,)
individually and in his official capacity)
as Chief of the Kutztown University)
Police Department,)
Defendants.)

Case No. _____

COMPLAINT

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, by and through his undersigned attorneys, brings this Complaint against the above-named Defendants, their employees, agents, and successors in office to safeguard their rights under the United States Constitution, and in support thereof allege the following:

PRELIMINARY STATEMENT

1. This is an action under 42 U.S.C. § 1983 and the United States Constitution challenging the deprivation of Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution. Corporal Steven Armbruster was suspended from duty as a police officer

- for 1) telling his chief that an order to push demonstrators off campus was unconstitutional and for 2) failing to carry out an order to remove a “disorderly” demonstrator even though he knew the demonstrators were not disorderly.
2. While Corp. Armbruster was ultimately reinstated, he has been financially harmed due to his suspension and risks termination should he respect demonstrators’ right to speak in the future.
 3. Corp. Armbruster seeks a permanent injunction to require Defendants to remove the disciplinary letter from his file and to prevent Defendants from punishing him in the future for respecting demonstrator’s rights.
 4. Corp. Armbruster seeks declaratory relief, attorney’s fees and costs, and nominal and compensable damages for, among other things, lost wages due to the discipline.

JURISDICTION AND VENUE

5. This court has jurisdiction under 28 U.S.C. §§1331, 1343(a)(3), 1343(a)(4), 42 U.S.C. §1983, and the First and Fourteenth Amendments to the United States Constitution.
6. Venue for this action properly lies in this Judicial District pursuant to 28 U.S.C. §1391(b) because Defendants reside within this Judicial District, and all or substantially all of the events that give rise to the claims in this action occurred in this District.

PARTIES

7. Plaintiff Steve Armbruster is an adult individual residing in Lehigh, Pennsylvania. He is Corporal with the Kutztown University Police Department.
8. Defendant John C. Cavanaugh is the chancellor of the Pennsylvania State System of Higher Education. The State System of Higher Education is responsible for the activities and training of the Kutztown University Police Department and employs Corp. Armbruster. Mr. Cavanaugh is being sued in his official capacity.
9. Defendant F. Javier Cevallos is the president of the Kutztown University of Pennsylvania and was acting under color of state law during all times relevant to this Complaint. The University also directs the activities and training of the Kutztown University Police Department. Additionally, Mr. Cevallos gave orders to Corp. Armbruster during the incident in question. Mr. Cevallos is being sued in his official and individual capacities.
10. Defendant William F. Mioskie is the Chief of the Kutztown University Police Department acting under color of state law during all times relevant to this Complaint. He is being sued in his official and individual capacities.

Factual Allegations

11. Corp. Armbruster has been a police officer with the Kutztown University Police Department for 17 years.
12. On April 18, 2007, approximately fifteen individuals with Repent America demonstrated on an outdoor public forum area of Kutztown University's campus.
13. During the demonstration, approximately 300 counterdemonstrators, representing several different organizations and clubs, assembled.
14. The counterdemonstration became loud and Repent America was asked by Corp. Armbruster and Lieut. Dillon to move away from certain buildings, at which time Repent America began to do so.
15. Various students became upset and contacted University personnel about the content of Repent America's message.
16. Other police officers and Chief Mioskie responded to the scene along with University President Cevallos.
17. President Cevallos asked Corp. Armbruster to "push" Repent America off campus.
18. Corp. Armbruster did not reply to any of President Cevallos' requests to get the group off of campus. Therefore, President Cevallos approached Chief Mioskie to force the group off campus.
19. Chief Mioskie determined that the situation was disorderly since the counterdemonstrators became upset with Repent America's message.

20. Chief Mioskie began yelling at the leader of Repent America, Michael Marcavage, to inform him that the members of the group were no longer allowed to speak on campus.
21. After President Cevallos reached Chief Mioskie, the chief ordered Corp. Armbruster to “push” Repent America off campus.
22. Corp. Armbruster objected to the chief’s order, replying that it violated the group’s civil rights.
23. Corp. Armbruster understood that in following the chief’s order he would be asked to arrest or threaten group members with arrest under the disorderly conduct statute.
24. Corp. Armbruster believed that the order was wrong and feared that limiting the demonstrators’ ability to speak would subject him to liability.
25. Chief Mioskie relieved Corp. Armbruster of his duties and told him to leave the scene.
26. Prior to the completion of Corp. Armbruster’s conversation with Chief Mioskie, Mr. Marcavage was already arrested by another officer.
27. Mr. Marcavage was charged with disorderly conduct, and subsequently found innocent of the charges.
28. On April 20, 2007, Corp. Armbruster was notified that he was placed on paid administrative leave for his conduct at the demonstration and was asked not to report for duty or be on campus for his next three shifts before a Pre-Discipline Conference could be held on April 23, 2007.

29. Following the conference, Corp. Armbruster was given official notice of suspension *without* pay for five working days for failure to carry out the direct order to remove a person who was ordered to disperse due to the subject's disorderly actions.
30. Corp. Armbruster has lost about \$600 in wages.
31. Due to the disciplinary action, Corp. Armbruster has a disciplinary letter on file that may prevent his promotion to Sergeant.
32. Corp. Armbruster has also been warned that should he refuse to obey such an order in the future that he risks termination.
33. Corp. Armbruster has subsequently only received menial job assignments and more significant job assignments have been given to officers of lower seniority. He has also been denied training and received a low performance evaluation. This is all in retaliation for his expression of concerns of others' constitutional rights and lack of immediate cooperation with unconstitutional orders.

ALLEGATIONS OF LAW

34. Corp. Armbruster exercised his First Amendment right in expressing concern that forcing demonstrators off of campus would violate the demonstrators' constitutionally protected right to free speech.
35. He also refused to immediately cooperate with undermining the demonstrators' constitutional rights by forcing them off campus for exercising their First Amendment rights.

36. Though the chief claimed that the demonstrators should be arrested for disorderly conduct, they were not disorderly and it would be unconstitutional to burden their rights on the basis of inapplicable law.
37. As a result, Corp. Armbruster was suspended and lost about \$600 in wages, faces the possibility of termination under similar circumstances, and is being positioned to be passed over for promotion.
38. Corp. Armbruster, acting with the duty as a law enforcement officer to refrain from depriving the constitutional rights of others, exercised his right to refuse to immediately follow unconstitutional orders, which would have resulted in the violation of others' speech, assembly, free exercise of religion, and Fourth Amendment rights, all protected through the Fourteenth Amendment.
39. All of the actions of Defendants, their officers, agents, servants, and employees, as alleged herein, were conducted according to order of the President of the University and Chief of Police on the basis of the content of the demonstrators' speech.
40. The State System of Higher Education and the University failed to train its police departments and police chiefs to prevent them from misusing laws like the disorderly conduct statute to remove persons engaged in First Amendment activities.
41. The lack of adequate training of the Chief constitutes deliberate indifference to the constitutional rights of demonstrators and police officers respecting those constitutional rights.

42. Corp. Armbruster has suffered irreparable injury and suffers the threat of irreparable injury to his constitutional right through termination should this situation occur again.

FIRST CAUSE OF ACTION
Retaliation for Right To Free Speech

42 U.S.C. § 1983; First and Fourteenth Amendments to the U.S. Constitution

43. Plaintiff hereby realleges all matters set forth in the preceding paragraphs of this Complaint and incorporate them herein.

44. Plaintiff's expression of concern about the violation of other individuals' constitutional rights is itself protected speech.

45. Plaintiff was immediately relieved of his duties when he merely expressed those concerns and sought to discuss the issue with the Chief of Police.

46. Defendants retaliated against and punished Plaintiff's speech by relieving him of his duties, investigating him, suspending him, disciplining him, and otherwise targeting him.

47. Defendants' actions thus constitute a violation of Plaintiffs' rights under the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

SECOND CAUSE OF ACTION

Violation of Right to Refuse to Violate Others' Constitutional Rights

42 U.S.C. § 1983; Fourteenth Amendment to the U.S. Constitution

48. Plaintiff hereby realleges all matters set forth in the preceding paragraphs of this Complaint and incorporate them herein.
49. Plaintiff would have been liable for violation of others' constitutional right if he would have immediately obeyed the orders given to him by the President and the Chief.
50. Plaintiff had a duty to refrain from depriving the demonstrators' rights to speech, assembly, free exercise of religion, and freedom from unlawful arrest.
51. Plaintiff, under the duty to refrain, had the concurrent right to refuse to deprive the demonstrators' right to free speech.
52. Defendants punished Plaintiff for failing to immediately obey their unconstitutional order.
53. Defendants' actions undermined Plaintiff's constitutional right to choose to refrain from violating others' right to free speech.
54. Defendants' actions thus constitute a violation of Plaintiffs' rights under the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

A. That this Court declare that Defendants' actions violated the First and Fourteenth Amendment rights of Plaintiff;

B. That this Court grant a permanent injunction requiring Defendants to remove the disciplinary letter from Plaintiff's file and to prevent Defendants from punishing Plaintiff in the future for respecting demonstrators' rights;

C. That this Court award nominal and compensable damages;

D. That this Court award Plaintiffs' costs and expenses of this action, including reasonable attorneys fees, in accordance with 42 U.S.C. § 1988 and other applicable law; and,

E. That this Court grant such other and further relief as the Court deems equitable, just, and proper.

Dated: February 27, 2009

By: /s/Randall L. Wenger
Randall L. Wenger
PA ID No. 86537
Fred Cabell
PA ID No. 53224
INDEPENDENCE LAW CENTER
23 North Front Street, 2nd Floor
Harrisburg, PA 17101
717-657-4990
717-545-8107 (fax)
rwenger@indlawcenter.org

Dennis E. Boyle
PA ID No. 49618
BOYLE, NEBLETT & WENGER
4660 Trindle Road, Suite 200

Camp Hill, PA 17011
717-737-2430
717-737-2452 (fax)
deboyle@dennisboylelaw.com

Ted Hoppe
PA ID No. 62082
HOPPE & MARTIN, LLP
423 McFarlan Road
Kennett Square, PA 19348
610-444-2001
610-444-5819 (fax)
thoppe@hoppemartin.com