

FILED

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

Alexandria Division

**2017 MAR 28 P 1:48
CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA**

**BRIAN C. DAVISON,
Plaintiff**

v.

Case No. __1:16-cv-932__

**LOUDOUN COUNTY BOARD
OF SUPERVISORS**

AND

PHYLLIS RANDALL,

In her official and individual capacities,

Defendants.

SECOND AMENDED COMPLAINT

Plaintiff, Brian C. Davison (hereinafter "Davison") brings this Second Amended Complaint against Loudoun County Board of Supervisors and Phyllis Randall for violations of his First and Fourteenth Amendment rights, his rights under Article I of the Virginia Constitution, and for violation of 28 U.S.C. 1983. In support thereof, the Plaintiff states as follows:

JURISDICTION AND VENUE

This action arises under U.S. Const. Amend. I and XIV and Virginia Constitution Article I. The Plaintiff seeks remedies under 42 U.S.C. § 1983. This Court has jurisdiction

over this matter pursuant to 28 U.S.C. § 1331 and by pendent jurisdiction as to the state law claim made herein.

Venue lies in the Eastern District of Virginia pursuant to 28 U.S.C. § 1391(b). Defendant Loudoun County is a government agency located within the jurisdiction and Defendant Randall is a resident of, or serves as an official within, this jurisdiction. Substantially all events or omissions giving rise to this claim occurred in this jurisdiction.

PARTIES & FACTS

1. The allegations and claims of Paragraphs 1-56 of the original complaint are repeated and incorporated herein by reference.
2. Exhibits 1-17 of the original complaint are repeated and incorporated herein by reference.
3. The allegations and claims of Paragraphs 1-25 of the First Amended Complaint are repeated and incorporated herein by reference.
4. Exhibits 18-24 of the First Amended Complaint are repeated and incorporated herein by reference.
5. Counts III and IV of the original complaint are incorporated; however, This Court dismissed these counts with prejudice in its order dated September 14, 2016.

COUNT VII

VIOLATION OF FREE SPEECH RIGHTS GUARANTEED BY ARTICLE I OF THE VIRGINIA CONSTITUTION

DEFENDANT PHYLLIS RANDALL

6. In ¶ 9-22 of the First Amended Complaint, incorporated herein, Plaintiff asserted a claim against Defendant Randall for violation of his free speech rights under the First Amendment to the United States Constitution as applied by the Fourteenth Amendment.

7. Defendant Randall unconstitutionally enacted a prior restraint of speech by banning Plaintiff from participating in the discussion of her “Chair Phyllis J. Randall” Facebook page. Plaintiff was banned as a result of viewpoint discrimination and in retaliation for his criticism of Randall’s actions as a public official.

8. For the same reasons as in Count V, Randall has violated Article I of the Virginia Constitution which protects its citizens’ right to free speech in Section 12.

9. Federal courts may invoke pendent jurisdiction over state law claims when they are entwined with the federal claims being adjudicated. While federal courts are barred from hearing state law claims against state officials under the Eleventh Amendment, municipal officials are not afforded the same protections. *Pennhurst State Sch. Hosp. v Halderman*, 465 U.S. 89, 123 (1984) (n34, “We have held that the Eleventh Amendment does not apply to ‘counties and similar municipal corporations’” citing *Mt. Healthy City Bd. Of Ed. v Doyle*, 429 U.S. 274, 280 (1977) and *Lincoln County v Luning*, 133 U.S. 529, 530 (1890)).

10. While counties are barred from liability if the relief is essentially the same as against

the state, the present case doesn't involve any financial liability that would immunize the Defendants. *Id.* at 123 (n34, "we have applied the Amendment to bar relief against county officials 'in order to protect the state treasury from liability that would have had essentially the same practical consequences as a judgment against the State itself.'" citing *Lakewood Country Estates, Inc. v Tahoe Regional Planning Agency*, 440 U.S. 391, 401 (1979) and *Edelman v Jordan*, 415 U.S. 651 (1974))

11. Plaintiff requests this Court invoke pendent jurisdiction and allow Plaintiff's free speech state law claim against Defendant Randall.

COUNT VIII

VIOLATION OF DUE PROCESS RIGHTS GUARANTEED BY ARTICLE I OF THE VIRGINIA CONSTITUTION

DEFENDANT PHYLLIS RANDALL

12. In ¶ 23-25 of the First Amended Complaint, incorporated herein, Plaintiff asserted a claim against Defendant Randall for violation of his due process rights under the Fourteenth Amendment to the United States Constitution.

13. Defendant Randall restrained Plaintiff's speech without providing prior notice or a chance to appeal.

14. For the same reasons as in Count VI, Randall has violated Article I of the Virginia Constitution which protects its citizens' right to procedural due process in Section 11.

15. Plaintiff requests this Court invoke pendent jurisdiction and allow Plaintiff's

procedural due process state law claim against Defendant Randall.

RELIEF

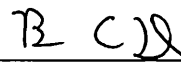
WHEREFORE, Plaintiff prays that the Court find that the Defendants' Loudoun BOS and Randall's Facebook social media forums, as described herein, are limited public forums; that the Plaintiff's right to participate in the forums' public comments is protected by the First Amendment and Article I of the Virginia Constitution; that the Plaintiff's comments made by him and deleted/hidden/suppressed by Defendants was and is speech protected by the First Amendment and Article I of the Virginia Constitution; that Defendant Randall's ban on the Plaintiff's comments was an infringement of speech protected by the First Amendment and Article I of the Virginia Constitution; that Defendant Loudoun County BOS violated the procedural due process rights of the Plaintiff by not providing prior notice or a chance to be heard in a meaningful manner with respect to Plaintiff's deleted Facebook comments; that Defendant Randall violated the procedural due process rights of the Plaintiff by not providing prior notice or a chance to be heard in a meaningful manner with respect to Plaintiff's being banned from commenting on her official Facebook page; and that the Defendants have violated Plaintiff's First and Fourteenth Amendment rights while acting under the color of state law.

It is further prayed that the Court enter an Order enjoining Defendants to restore the deleted comments; to refrain from deleting Plaintiff's, or any citizens', comments based on viewpoint discrimination; to provide Plaintiff and other citizens access to and a right to

participate in any limited public forums established by the Defendants; and to provide appropriate procedural due process in all further comment deletions or restrictions on speech and access with regard to Defendants' limited public forums.

It is also prayed that the Court issue a declaratory judgment finding Defendant Randall's blocking future Plaintiff comments on her official Loudoun Chairwoman Facebook page violates the Plaintiff's First Amendment and the Virginia Constitution's Article I free speech rights as well as Plaintiff's Fourteenth Amendment and the Virginia Constitution's Article I due process rights. Plaintiff further prays that he be allowed recovery of his costs against all Defendants as provided by statute; and for such further relief as shall be appropriate.

ACTING PRO SE



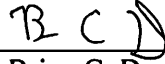
Brian C Davison
43724 Stone Fence Ter
Leesburg, VA 20176
571.577.8360
bcdavison@hotmail.com

CERTIFICATE OF SERVICE

I declare under penalty of perjury that no attorney has prepared, or assisted in the preparation of this document.

I hereby certify that on the 28th day of March, 2017, a true copy of the foregoing pleading was emailed to the law office of counsel for the Defendants. The pleading was also filed in person with the Clerk of Court and Defendants' counsel will receive a copy via PACER.

Julia B. Judkins, VSB No. 22597
Bancroft, McGavin, Horvath and Judkins
9990 Fairfax Blvd, Suite 400
Fairfax, VA 22030
Tel: 703.385.1000
Fax: 703.385.1555
jjudkins@bmhjlaw.com
Counsel for Defendants



Brian C. Davison
43724 Stone Fence Ter
Leesburg, VA 20176
Tel: 571.577.8360
bcdavison@hotmail.com
Plaintiff

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Defendants.

NOTICE OF FILING SECOND AMENDED COMPLAINT

THE CLERK OF THE COURT is kindly requested to file Plaintiff's Second Amended Complaint per direction of the Magistrate Judge's Order of **Friday, March 24, 2017** pursuant to Fed. R. Civ. P. 15(a)(2).

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B C D

Brian C Davison
43724 Stone Fence Ter
Leesburg, VA 20176
571.577.8360
bcdavison@hotmail.com