

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

LASTAYSHA MYERS,
by and through her legal parent and next friend,
LEDA MYERS,

Plaintiff,

v.

CASE NO. 05-5042

JEFF THORNSBERRY, in his official capacity as
Assistant Principal of Webb City High School;
STEPHEN GOLLHOFER, in his official capacity as
Principal of Webb City High School; and
RONALD LANKFORD, in his official capacity as
Superintendent of Webb City R-VII School District,

Defendants.

COMPLAINT

COMES NOW Plaintiff LaStaysha Myers, by and through her legal parent and next friend Leda Myers, and, for her Complaint against Defendant Jeff Thornsberry, in his official capacity as Assistant Principal of Webb City High School, Defendant Stephen Gollhofer, in his official capacity as Principal of Webb City High School, and Defendant Ronald Lankford, in his official capacity as Superintendent of Webb City R-VII School District, herein alleges and states as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201, arising out of the violation of rights guaranteed to Plaintiff by the First and Fourteenth Amendments to the United States Constitution.

JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331, 1343, and 2201.

3. Venue in the United States District Court for the Western District of Missouri is proper pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff LaStaysha Myers, at all times relevant hereto, was a fifteen-year-old student enrolled at Webb City High School in Webb City, Missouri, and a resident of the State of Missouri.

5. Webb City R-VII School District is a duly organized school district in the State of Missouri with responsibility for the operation of, inter alia, Webb City High School.

6. Defendant Jeff Thornsberry, at all times relevant hereto, was Assistant Principal of Webb City High School.

7. Defendant Stephen Gollhofer, at all times relevant hereto, was Principal of Webb City High School.

8. Defendant Ronald Lankford, at all times relevant hereto, was Superintendent of Webb City R-VII School District

9. Defendants Thornsberry, Gollhofer, and Lankford at all times relevant hereto, were acting under color of state law.

FACTUAL ALLEGATIONS

10. In part because she has gay relatives and friends, Plaintiff holds the political belief that that gay people and their supporters should be treated with fairness and dignity. Plaintiff also holds the political belief that gay people and their supporters should be able to express their pro-gay political beliefs.

11. In the fall of 2004, Plaintiff learned that Defendants had engaged in a pattern of censorship of pro-gay student expression, and that the actions taken by Defendants had become a subject of civic discourse. As a result, Plaintiff was moved to express her own pro-gay political beliefs.

12. On or about October 20, 2004, Plaintiff learned that, earlier that day, Defendant Thornsberry had censored her friend and classmate Brad Mathewson, who is gay, for wearing a T-shirt to school that expressed his pro-gay political beliefs. Defendant Thornsberry had informed him that the T-shirt was inappropriate and offensive, and had instructed him either to change his shirt or to turn it inside-out. On the front of the T-shirt were the words “Gay-Straight Alliance.” The words referred to a student organization at an out-of-state high school in which Mathewson had previously been enrolled. On the back of the T-shirt were the words “Make a Difference,” three pairs of symbols – two male symbols (? ?), two female symbols (? ?), and a male and female (? ?) symbol – and a pink triangle, a well-known symbol of the gay rights movement. Mathewson had previously worn the T-shirt to school on multiple occasions without incident.

13. On or about October 27, 2004, Plaintiff learned that, earlier that day, Defendant Thornsberry had censored Mathewson for wearing a different T-shirt to school that expressed his pro-gay political beliefs. Defendant Thornsberry had instructed him either to change his shirt or to turn it inside-out. On the front of the T-shirt were the words “I’m gay and I’m proud,” a star, and a rainbow, another well-known symbol of the gay rights movement.

14. Plaintiff further learned that, earlier that day, Defendant Thornsberry had censored another friend and classmate for wearing a T-shirt that expressed his pro-gay political

beliefs. Defendant Thornsberry had instructed him to change his shirt. On the front of the T-shirt were the words “I love lesbians.”

15. On or about November 7, 2004, Plaintiff learned that Defendants Lankford and Gollhofer had informed Mathewson that he would not be allowed in school unless he refrained from wearing clothing expressing his pro-gay political beliefs.

16. On or about November 30, 2004, Plaintiff observed Fred Phelps, a well-known political opponent of the gay community, and a handful of his supporters staging a protest in the local community to express their political belief that Mathewson should not be able to express his pro-gay political beliefs.

17. That night, Plaintiff, with assistance from her mother Leda Myers, made a T-shirt bearing several slogans expressing support for gay people (e.g., “I Support The Gay Rights,” “Love Who You Want To,” “Who Are We To Judge,” “I Support Them All The Way,” “We All Have The Right To Be Who We Want To Be”). Several of Plaintiff’s friends made similar T-shirts.

18. The following day, Plaintiff wore her T-shirt to school to express both her support for Mathewson and her political belief that gay people and their supporters should be able to express their pro-gay political beliefs. Upon information and belief, Plaintiff’s friends wore their T-shirts to school for similar reasons.

19. Defendants cannot show that any disruption resulted from the T-shirts themselves. Indeed, Plaintiff and her friends did not even make it to their first classes for the day before Defendants Thornsberry and Gollhofer stopped them, rendering any assertion of disruption entirely speculative. If any disruption occurred, it resulted from Defendants’ own response to the T-shirts.

20. Defendants Thornsberry and Gollhofer instructed Plaintiff and her friends to change their shirts or turn them inside-out. When Plaintiff and her friends refused to do so, Defendants Thornsberry and Gollhofer sent them home for wearing their T-shirts to school. When Leda Myers picked up Plaintiff from school, Defendant Thornsberry informed her that Plaintiff would be further disciplined if she were to wear her T-shirt to school again.

21. The actions taken by Defendants Thornsberry and Gollhofer against Plaintiff and her friends were consistent with the position previously adopted by Defendants Lankford and Gollhofer when censoring Mathewson.

22. That night, Plaintiff, with assistance from Leda Myers, made a new T-shirt bearing “Webster’s dictionary definition” of the word “gay” – “marry [sic]; happy.” Plaintiff did so because she wanted to communicate that there is nothing wrong with the word “gay.”

23. The following day, Plaintiff wore the new T-shirt to school. Plaintiff believed that she was allowed to do so because it was not the T-shirt that she had worn the previous day.

24. Defendants cannot show that any disruption resulted from the T-shirt itself. Indeed, Plaintiff did not even make it to her first class for the day before Defendants Thornsberry and Gollhofer stopped her, rendering any assertion of disruption entirely speculative. If any disruption occurred, it resulted from Defendants’ own response to the T-shirt.

25. Defendants Thornsberry and Gollhofer instructed Plaintiff to change her shirt. When Plaintiff refused to do so, Defendants Thornsberry and Gollhofer sent her home for wearing her T-shirt to school. When Leda Myers picked up Plaintiff from school, Defendant Thornsberry informed her that Plaintiff would be further disciplined if she were to wear any clothing expressing her pro-gay political beliefs to school again.

26. The action taken by Defendants Thornsberry and Gollhofer against Plaintiff was consistent with the position previously adopted by Defendants Lankford and Gollhofer when censoring Mathewson.

27. Plaintiff and Leda Myers have observed one of Plaintiff's classmates wearing a T-shirt to school expressing his anti-gay political beliefs. Plaintiff has further observed several of her classmates wearing T-shirts, buttons, stickers, etc. to school expressing their pro-religion political beliefs.

28. Plaintiff wants to wear her T-shirts to school again to express her political belief that gay people and their supporters should be able to express their pro-gay political beliefs. Plaintiff has not done so for fear of further discipline. Plaintiff is deeply concerned by the pattern of censorship of pro-gay student expression in which Defendants have engaged.

29. Plaintiff fears retaliation by Defendants.

COUNT I

30. Paragraphs 1-24 are incorporated by reference as if fully set forth herein.

31. The actions of Defendants, as described herein, have denied and infringed upon the right to freedom of expression guaranteed to Plaintiff by the First and Fourteenth Amendments to the United States Constitution.

32. The actions of Defendants, as described herein, were taken under color of state law in direct violation of Plaintiff's constitutional rights and are therefore actionable under 42 U.S.C. § 1983.

33. As a direct result of Defendants' actions, Plaintiff has suffered a direct and immediate violation of her constitutional rights and is therefore entitled to injunctive and declaratory relief, and reasonable attorneys' fees, pursuant to Federal Rules of Civil Procedure

57 and 65 and 28 U.S.C. § 2201, to redress and remedy the violation, and to prevent irreparable harm and future violations of her rights and the rights of others.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully asks for judgment in her favor and against Defendants, including temporary and permanent injunctive relief and a declaration that the actions of Defendants, as described herein, were and are unconstitutional, illegal, and void, and that the same were in contravention of Plaintiff's constitutional rights. Plaintiff further asks for judgment that Defendants reimburse Plaintiff for her reasonable attorneys' fees, expenses, and costs associated with the maintenance of this action, pursuant to 42 U.S.C. § 1988, and all such further relief as the Court may deem just and proper.

FLEISCHAKER, WILLIAMS & POWELL

By: s/s William J. Fleischaker
William J. Fleischaker
Missouri Bar No. 22600
P. O. Box 996
Joplin, MO 64802
417-623-2865

Kenneth Y. Choe
Application for Admission Pro Hac Vice Pending
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004
(212) 549-2553

ATTORNEYS FOR PLAINTIFF