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FIRST AMENDMENT - PENNSYLVANIA

Barna v. Board of School Directors of Panther Valley School Dist.

United States District Court, M.D. Pennsylvania - October 15, 2013 - Slip Copy - 2013 WL 5663072

John Barna brought suit seeking damages and injunctive relief against School Board “due to his removal and banishment from meetings of the School Board in violation of his federal constitutional rights to free speech.”

On April 8, 2010, Barna attended a public School Board meeting wherein he asked several questions concerning financial dealings of the School Board. Mr. Barna indicated that some of his friends similarly had concerns about financial dealings of the School Board. In response to Plaintiff’s comments, Mr. Markovich, a School Board member, invited Barna to bring his friends to a subsequent School Board meeting, to which Plaintiff replied that his friends “carry guns, you wouldn’t want that.” Various members of the School Board responded with laughter to this quip. Markovich responded that “Aah well, I’ll wear my bullet-proof vest.”

Two weeks later, Barna attended another public School Board meeting. At the inception of the meeting, Markovich requested that Mr. Barna leave the meeting purportedly based upon the above-referenced comments of Mr. Barna at the April 5, 2010 School Board Meeting because his comments could have been taken as a threat. Plaintiff stated that he had been joking, but Markovich ultimately asked that Mr. Barna be removed from the meeting by a security guard. As he was leaving, Mr. Barna, in response to commentary from audience members in attendance at the April 22, 2010 School Board Meeting, jokingly stated to the audience to the effect that he might come after all of them. Mr. Barna was subsequently banned from all School Board meetings.

Barna filed suit and Defendants moved to dismiss. The Court engaged in the traditional First Amendment analysis and concluded that it was not appropriate at this stage of the case to grant Defendants’ motion as Plaintiff was entitled to develop a fuller factual record in support of his claim that the School Board engaged in viewpoint-based discrimination.

In a public forum any restrictions as to time, place, and manner of speech: (1) must be unrelated to content; (2) must be narrowly tailored to serve a significant governmental interest; and (3) must allow alternative ways of communicating the same information. As to the first prong, a disturbance may very well have been the reason for removing Barna, but Barna should be given an opportunity to show that the true motive for silencing him was the content of his speech.

As to the second prong, “there is a serious and substantial question in the undersigned’s mind as to whether a permanent ban on Plaintiffs attendance at all future Panther Valley School Board meetings and Panther Valley school property was ‘narrowly tailored’ to serve the undoubtedly compelling government interest in assuring the safety of other citizens in attendance at School Board meetings and on school property.”

