



West Virginia E-Filing Notice

CC-17-2024-C-104

Judge: Thomas A. Bedell

To: Caleb David
cdavid@shumanlaw.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA
Mitchell Scott Guthrie v. Harrison County Board of Education
CC-17-2024-C-104

The following complaint was FILED on 4/26/2024 11:24:00 AM

Notice Date: 4/26/2024 11:24:00 AM

Albert F. Marano
CLERK OF THE CIRCUIT COURT
Harrison County
301 W. Main Street
CLARKSBURG, WV 26301

(304) 624-8640
Albert.Marano@courtswv.gov

COVER SHEET

E-FILED | 4/26/2024 11:24 AM
CC-17-2024-C-104
Harrison County Circuit Clerk
Albert F. Marano

GENERAL INFORMATION

IN THE CIRCUIT COURT OF HARRISON COUNTY WEST VIRGINIA

Mitchell Scott Guthrie v. Harrison County Board of Education

First Plaintiff: Business Individual Government Other

First Defendant: Business Individual Government Other

Judge: Thomas A. Bedell

COMPLAINT INFORMATION

Case Type: Civil

Complaint Type: Other

Origin: Initial Filing Appeal from Municipal Court Appeal from Magistrate Court

Jury Trial Requested: Yes No **Case will be ready for trial by:** _____

Mediation Requested: Yes No

Substantial Hardship Requested: Yes No

Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

I am proceeding without an attorney

I have an attorney: Caleb David, 1411 Virginia St E Ste 200 , Charleston, WV 25339

SERVED PARTIES

Name: Harrison County Board of Education

Address: 445 W Main Street, Clarksburg WV 26301

Days to Answer: 20 **Type of Service:** Filer - Private Process Server

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

**MITCHELL SCOTT GUTHRIE, as parent of
KATRINA CHEYENNE GUTHRIE, a minor;
DEBORAH SHRIVER, as parent of
SABRINA SHRIVER, a minor;
CLIFFORD POWELL, as parent of
ALAWNA POWELL, a minor; and
JESSICA BOWEN, as parent of
MAKENNA EARNEST, a minor,**

Plaintiffs,

v.

**Civil Action No.: 24-C-____
Hon. Judge _____**

**HARRISON COUNTY
BOARD OF EDUCATION,**

Defendant.

**VERIFIED COMPLAINT FOR TEMPORARY, PRELIMINARY, AND
PERMANENT INJUNCTIVE RELIEF**

Plaintiffs, Mitchell Scott Guthrie, as parent of Katrina Cheyenne Guthrie, a minor, Deborah Shriver, as parent of Sabrina Shriver, a minor, Clifford Powell, as parent of Alawna Powell, a minor, and Jessica Bowen, as parent of Makenna Earnest, by and through undersigned counsel, bring this civil action against the Defendant Harrison County Board of Education for violation of the minor students' rights to freedom of speech under the Constitution of West Virginia. Plaintiffs allege and aver as follows:

INTRODUCTION

1. Plaintiffs Katrina Guthrie, Sabrina Shriver, Alawna Powell, and Makenna Earnest are students at Lincoln Middle School who are being punished by Defendant Harrison County Board of Education for exercising their rights to freedom of speech and expression under the Constitution of West Virginia.

2. Plaintiffs lack a timely and adequate remedy under law against Defendant to remedy the continuing deprivation and infringement of rights Defendant is perpetrating.

3. Plaintiffs bring this action for injunctive relief to enforce their rights to freedom of speech and expression under the Constitution of West Virginia.

4. Plaintiffs do not seek monetary damages nor do Plaintiffs assert claims under the United States Constitution.

JURISDICTION

5. Jurisdiction and venue are proper in the Circuit Court of Harrison County, West Virginia because the events and circumstances giving rise to this Complaint occurred in Harrison County, West Virginia.

PARTIES

6. Plaintiff Mitchell Scott Guthrie is the father of Katrina Cheyenne Guthrie. At all times relevant, Ms. Guthrie has been an eighth-grade student at Lincoln Middle School in Harrison County. The Guthries' residence is in Harrison County, West Virginia.

7. Plaintiff Deborah Shriver is the mother of Sabrina Shriver. At all relevant times, Ms. Sabrina Shriver has been an eighth-grade student at Lincoln Middle School in Harrison County. The Shrivens' residence is in Harrison County, West Virginia.

8. Plaintiff Clifford Powell is the father of Alawna Powell. At all relevant times, Ms. Powell has been an eighth-grade student at Lincoln Middle School in Harrison County. The Powells' residence is in Harrison County, West Virginia.

9. Plaintiff Jessica Bowen is the mother of Makenna Earnest. At all relevant times, Ms. Earnest has been an seventh-grade student at Lincoln Middle School in Harrison County. Ms. Bowen and Ms. Earnest's residence is in Harrison County, West Virginia.

10. Defendant Harrison County Board of Education (“HCBOE”) is a political subdivision that governs the public schools in Harrison County, West Virginia. At all relevant times, Defendant HCBOE controlled Lincoln Middle School in Harrison County, West Virginia.

FACTS

11. Ms. Guthrie, Ms. Shriver, Ms. Powell, and Ms. Earnest (“minor student athletes”) are middle school student athletes at Lincoln Middle School.

12. The minor student athletes compete in women’s middle school shot put on the Lincoln Middle School track and field team.

13. On April 9, 2021, House Bill 3293 was passed by the West Virginia Legislature. House Bill 3293 restricts biological males from participating in women’s sports: “Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.”

14. On April 16, 2024, the United States Court of Appeals for the Fourth Circuit issued an opinion overturning a District Court decision upholding House Bill 3293 and finding that a transgender student, who is a biological male, could not compete in women’s sporting events.

15. On April 18, 2024, the minor student athletes attended the 2024 Harrison County Middle School Championships track and field meet at Liberty High School and were scheduled to compete in shot put. The transgender student involved in the Fourth Circuit decision was present at the meet and competing against the minor student athletes in shot put.

16. The minor student athletes, along with one other female student from Lincoln Middle School, stepped out of the shot put circle, forfeited, and refused to compete in protest of

the court decision and the ongoing unfairness of permitting a biological male to compete in women's sporting events.

17. The minor student athletes' protests were silent. They each stepped into the shot put circle, raised the shot put to their chins, and then stepped out of the shot put circle and handed the shot put to the official.

18. The minor student athletes' individual protests lasted approximately 10 seconds each and did not disrupt the track meet in any way.

19. The minor student athletes' protest did not affect any other competitors.

20. Following their protest, the minor student athletes did not receive any notice that further action would be taken against them for protesting and forfeiting.

21. During practice the following week, however, the five student athletes who participated in the protest were instructed to run "Indian sprints" by coach Dawn Riestenberg.

22. On April 24, 2024, the minor student athletes attended a press conference with public figures, including Riley Gaines, a national advocate for equality and fairness in women's sports, statewide officeholders Attorney General Patrick Morrissey and Auditor J.B. McCuskey, and several Republican members of the State Senate and House of Delegates, addressing their protests.

23. The following day, on April 25, 2024, at approximately 4:30 p.m., Plaintiff Mitchell Scott Guthrie spoke with Lincoln Middle School principal Lori Scott, who informed Mr. Guthrie that the student athletes who engaged in the protest, including his daughter, would not be permitted to compete in a scheduled track and field meet on April 27, 2024.

24. Plaintiff Clifford Powell spoke with Dawn Riestenberg, who informed him that his daughter would not be allowed to participate in the scheduled track and field meet on April 27,

2024. Ms. Riestenberg informed Mr. Powell that the minor student athletes would not be permitted to compete because it was her job “to score points for the track team,” directly correlating the minor student athletes’ protest and subsequent appearance at a press conference to the decision to ban them from competition.

25. To date, neither Plaintiffs nor their minor children have received any formal notification of their discipline, of any rule violation, or of their rights to appeal the school’s decision.

26. As a result, Plaintiffs have no other avenue to seek reprieve from this blatant violation of their minor children’s rights to free speech and expression.

COUNT I

27. Article III, Section 7 of the Constitution of West Virginia provides, “No law abridging the freedom of speech, or of the press, shall be passed; but the legislature may by suitable penalties, restrain the publication or sale of obscene books, papers, or pictures, and provide for the punishment of libel, and defamation of character, and for the recovery, in civil actions, by the aggrieved party, of suitable damages for such libel, or defamation.”

28. The Supreme Court of Appeals of West Virginia has stated,

The First Amendment to the United States Constitution and Article III, Section 7 of the West Virginia Constitution are virtually identical in pertinent parts. Both constitutional provisions prohibit the making of any law abridging the freedom of speech or of the press. For purposes of this opinion, we use the First Amendment to the United States Constitution and Article III, Section 7 of the West Virginia Constitution interchangeably. Article I, Section 1 of the West Virginia Constitution recognizes that the United States Constitution shall be the supreme law of the land. Accordingly, the decisions of the United States Supreme Court interpreting the First Amendment are binding on this Court and, consequently, will be used throughout our discussion of this issue. *See Pushinsky v. West Virginia Bd. of Law Examiners*, 164 W.Va. 736, 744, 266 S.E.2d 444, 449 (1980).

Yurish v. Sinclair Broad. Grp., Inc., 246 W. Va. 91, 97-98, 866 S.E.2d 156, 162-63 (2021) (quoting *State By & Through McGraw v. Imperial Mktg.*, 196 W. Va. 346, 359 n.43, 472 S.E.2d 792, 805 n.43 (1996)).

29. “Thus, the United States Supreme Court decisions in First Amendment cases are binding precedent on this Court and will be treated as such.” *Yurish v. Sinclair Broad. Grp., Inc.*, 246 W. Va. 91, 98, 866 S.E.2d 156, 163 (2021).

30. The minor student athletes engaged in constitutionally protected speech and expression when they stepped out of the shot put circle, forfeited, and refused to compete in protest of a court decision and the ongoing unfairness of permitting a biological male to compete in women’s sporting events.

31. Defendant HCBOE, by choosing to discipline the minor student athletes by not permitting them to compete in future meets, engaged in actions that would chill a person of ordinary firmness from continuing to engage in the constitutionally protected activity of speech and expression in protest of a court decision and the ongoing unfairness of permitting a biological male to compete in women’s sporting events.

32. The minor student athletes’ protest during the track and field meet and continuing protest during the subsequent press conference was a substantial or motivating factor in Defendant HCBOE’s conduct.

33. Because Defendant is engaged in ongoing discipline of the minor student athletes for constitutionally protected speech and expression, an injunction is required to avoid harm to the minor student athletes and to protect their constitutional rights.

34. Without an injunction, the minor student athletes will not be permitted to engage in athletic competition, including an athletic competition on April 27, 2024.

35. Without an injunction, the minor student athletes will continue to be punished for engaging in constitutionally protected speech and expression.

36. Defendant will not suffer any harm if an injunction is granted.

37. Plaintiffs are likely to succeed on the merits. The Supreme Court of the United States has long held that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

38. In *Tinker*, the Supreme Court held that a school violated the constitutional rights to speech and expression of students who wore black armbands in protest of the Vietnam War. *See generally id.*

39. In *West Virginia v. Barnette*, 319 U.S. 624 (1943), the Supreme Court held that, under the First Amendment, a student in public school may not be compelled to salute the flag. *See generally id.*

40. In *Barnette*, the Supreme Court stated, “The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures -- Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.” *Barnette*, 319 U.S., at 637.

41. Defendant’s discipline of the minor student athletes is a clear violation of the First Amendment and, therefore, a clear violation of Article III, Section 7 of the West Virginia Constitution.

42. Finally, the public has an interest in ensuring that students' free speech and expression rights are protected.

43. It cannot be understated how vital the freedom of speech and expression are to West Virginians, and the public interest favors protection of these rights enshrined in the Bill of Rights of West Virginia's Constitution.

44. Plaintiffs therefore ask the Court to award all relief to which they are entitled in law or equity including:

a. awarding temporary, preliminary, and permanent injunctive relief requiring Defendant to rescind its discipline in violation of law and to permit the minor student athletes to participate in all future athletic competitions, including the competition on April 27, 2024; and

b. awarding Plaintiffs their costs and a reasonable attorney fee.

COUNT II

45. Legislative rules govern interscholastic sports in West Virginia.

46. West Virginia Code of State Rules § 127-3-8 provides specific rules related to protests:

If a team, or student participating in an individual contest, leaves the playing area **in protest** and fails to complete the contest, **the contest is forfeited** and the school principal or designee and the violator *may* be required to appear before the WVSSAC Executive Director to indicate why additional action should not be taken.

W. Va. Code St. R. § 127-3-8.4 (emphasis added).

47. To date, no action has been taken by the West Virginia Secondary School Activities Commission. Rather, Defendant, through its employees Lori Scott and Dawn Riestenberg, has disciplined the minor student athletes without regard for the governing legislative rules, without regard for the student athletes' rights to free speech and free expression, and without regard for the

student athletes' due process rights afforded under Article III, Section 10 of the Constitution of West Virginia.

48. By unilaterally declaring the student athletes ineligible or otherwise disciplining the student athletes for their protected conduct, Defendant has deprived the minor student athletes of a liberty interest protected by the West Virginia Constitution without notice, an opportunity to be heard, or any other due process.

49. Plaintiffs therefore ask the Court to award all relief to which they are entitled in law or equity including:

a. awarding declaratory judgment that Defendant's actions violate Article III, Section 7 and Article III, Section 10 of the Constitution of West Virginia;

b. awarding declaratory judgment that Defendant's actions violate legislative rules governing interscholastic sports;

c. awarding temporary, preliminary, and permanent injunctive relief requiring Defendant to rescind its discipline in violation of law and to permit the minor student athletes to participate in all future athletic competitions, including the competition on April 27, 2024; and

d. awarding Plaintiffs their costs and a reasonable attorney fee.

**MITCHELL SCOTT GUTHRIE,
as parent of KATRINA CHEYENNE
GUTHRIE, a minor,
DEBORAH SHRIVER, as parent of
SABRINA SHRIVER, a minor,
CLIFFORD POWELL, as parent of
ALAWNA POWELL, a minor; and
JESSICA BOWEN, as parent of
MAKENNA EARNEST, a minor,
By Counsel,**

/s/ Caleb B. David
Caleb B. David, Esquire (WVSB #12732)
SHUMAN MCCUSKEY SLICER PLLC

P.O. Box 3953
Charleston, WV 25339
(304) 345-1400; (304) 343-1826 (fax)
cdavid@shumanlaw.com

Michael D. Dunham Esquire (WVSB #12553)
SHUMAN MCCUSKEY SLICER PLLC
116 S. Stewart St.
Winchester, VA 22601
Phone: 540-486-4195
Facsimile: 304-343-1826
mdunham@shumanlaw.com

VERIFICATION

I, Mitchell Scott Guthrie, state under penalty of perjury that I have personal knowledge of the factual allegations made in the foregoing Verified Complaint for Temporary, Preliminary, and Permanent Injunctive Relief. I declare under penalty of perjury that I have read the factual allegations of this Verified Complaint for Temporary, Preliminary, and Permanent Injunctive Relief and that those allegations are true to the best of my knowledge.

April 26, 2023

/s/ Mitchel S. Guthrie (see written statement)
Mitchell S. Guthrie