

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

JASON W. ROBERTS,

Plaintiff,

v.

DONALD R. HARAGAN, et al.,

Defendants

§
§
§
§
§
§
§
§
§

CIVIL NO. 5-03CV0140-C

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE COURT:

In support of their motion for summary judgment, Donald R. Harrigan, et al., defendants, respectfully submit the following.

I.

SUMMARY

The plaintiff, Jason Roberts, a law student at Texas Tech University, has sued, the President of Texas Tech University, the Chancellor of the Texas Tech University System, each of the nine members of the Board of Regents, the Texas Tech Vice President for Student Affairs, and the Assistant Director of the Texas Tech Center for Campus Life. Roberts sues each defendant under 42 U.S.C. § 1983, in his or her official capacity for injunctive relief and in his or her individual capacity for damages. Roberts alleges that the defendants have deprived him of his First Amendment free speech rights.

Because a state university campus is a limited designated public forum, reserved for educational purposes, university officials have some latitude to impose reasonable limitations on the

time, *place*, and manner of public expressive activities by students. In the exercise of that discretion, the university policies, operating procedures, and student handbook in effect at the time the plaintiff submitted his grounds use request, did not create unconstitutional prior restraint. University regulations were not based on content or viewpoint, did prohibitions of a form of expression but only limited the place of expression, and even when a reservation was denied it did not result in the exclusion of any applicant's mode of expression from the entire forum.

The university regulations did not require or authorize officials to review proposed expression for its content or viewpoint. The discretion of officials responding to grounds use requests was constrained by standards and was subject to internal appellate review, which in Roberts' case resulted in the reversal of the initial denial. Roberts was allowed to express himself at the time and in the manner he requested, at an equally advantageous location only a few feet from the one he requested. His request was slightly modified, with his concurrence, for valid reasons.

The former anti-harassment policy would have reached few if any instances of protected speech but prohibited mostly, if not exclusively, unprotected conduct. The terms of the policy, though imprecise, were sufficiently comprehensible. The prior policy served legitimate state university interests, was narrowly tailored to serve those interests, and left ample alternatives for free expression.

The current interim policy improves on each of the constitutional features addressed above. All defendants could believe their conduct was constitutional under the circumstances, and consequently are shielded by qualified immunity to Roberts' claims for damages.

II.

FACTUAL AND LEGAL GROUNDS FOR SUMMARY JUDGMENT

The incontrovertible facts entitling the defendants to summary judgment are set out in the accompanying Defendants' Brief in Support of Summary Judgment ("Brief") at 2-13 ("Facts") and are supported by the evidence assembled in the Appendix in accordance with N.D. Tex. L.R. 7.1(i).

As shown in the Brief at 13-16 (Argument part I-A), the Texas Tech campus is a limited designated public forum in which the defendants are entitled to impose reasonable restrictions on the time, place, and manner of public expression by students. As shown in the Brief at 16-31 (I-B), the Texas Tech policies, operating procedures, and student handbook in effect when Roberts pursued his grounds use request in May-June 2003 were reasonable content/viewpoint-neutral time/place/manner restrictions. They were not a form of prior restraint (16-21), they were content/viewpoint-neutral (21-22), they did not vest decisionmakers with unfettered discretion (22-25), and they were not unconstitutionally overbroad or vague (25-31).

Because, as shown in part I-C, the former regulations were narrowly tailored to serve significant state university interests and left ample alternative channels of expression available, they satisfied the relevant constitutional scrutiny (32-36). As shown in part II, the current policy strengthens the features that rendered the former policy constitutional (36-39).

Because, as shown in part III, even if the plaintiff had identified an arguable constitutional deprivation, it is not a matter of clearly established law and not every reasonable official in any defendant's position would realize that the conduct in question violated a constitutional right (39-42), the defendants are entitled to qualified immunity.

III.

CONCLUSION

Accordingly, defendants respectfully request that summary judgment be granted in their favor on all of Roberts' claims against them.

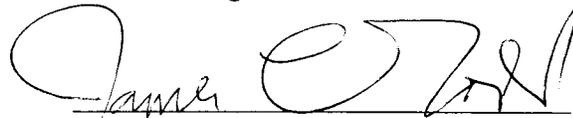
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

JEFF L. ROSE, Chief
General Litigation Division



JAMES C. TODD
Texas Bar No. 20094700
Assistant Attorney General
General Litigation Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120 (Telephone)
(512) 320-0667 (Facsimile)
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been sent, via United States Mail, to all counsel of record on this the ~~30th~~ ^{3rd} day of ~~October~~ ^{November}, 2003.

Ronnie L. Agnew
AGNEW & THOMPSON, LLP
8200-C Nashville Ave., Suite 201
Lubbock, Texas

Benjamin W. Bull
Jordan W. Lorence
Joshua Carden
ALLIANCE DEFENSE FUND LAW CENTER
15333 N. Pima Road, Suite 165
Scottsdale, AZ 85260

Kelly Shackelford
Hiram S. Sasser, III
LIBERTY LEGAL INSTITUTE
903 E. 18th St., Suite 230
Plano, Texas 75074

J. Michael Johnson
ALLIANCE DEFENSE FUND
Louisiana Regional Service Ctr.
410 Market Street, Ste. 900
Shreveport, LA 71101

Via Overnight Delivery
Kevin H. Theriot
Alliance Defense Fund
Midwest Regional Service Center
15660 West 135th Street, Suite 300
Olathe, Kansas 66062



JAMES C. TODD
ASSISTANT ATTORNEY GENERAL

