

STATE OF MINNESOTA  
COUNTY OF DAKOTA

DISTRICT COURT  
FIRST JUDICIAL DISTRICT

David Berger,

Court File No: \_\_\_\_\_  
Case Type: Employment

Plaintiff,

**COMPLAINT**

v.

**(JURY TRIAL DEMANDED)**

Timothy Wynes, President of Inver Hills  
Community College, in his official and  
individual capacity; Inver Hills Community  
College; and Minnesota State College and  
Universities,

Defendants.

The Plaintiff, David Berger ("Plaintiff"), for his Complaint against the Defendant, Timothy Wynes, President of Inver Hills Community College, in his official and individual capacity; and Defendant Minnesota State College and University System ("MnSCU") (together "Defendants"), states and alleges as follows:

**PARTIES, JURISDICTION & VENUE**

1. Plaintiff is and, at all relevant times to this action, has been an individual resident of Hennepin County in the State of Minnesota. Plaintiff is employed by Defendant MnSCU at Inver Hills Community College and works in Dakota County.

2. Defendant Timothy Wynes is a resident of Dakota County, State of Minnesota and, at all relevant times, was and is the President of Inver Hills Community College and Dakota County Technical College, which are members of and controlled by MnSCU. As President, Defendant Wynes serves as the chief executive officer and reports to the chancellor of MnSCU.

3. Defendant Inver Hills Community College (“Inver Hills”) is and was at all relevant times the employer of both Plaintiff and Defendant Wynes. Inver Hills is a member of and is also controlled by MnSCU.

4. Defendant MnSCU is system of State College and Universities in the State of Minnesota, and at all relevant times, was and is the employer of both Plaintiff and Defendant Wynes. Minnesota State Colleges and Universities is headquartered in St. Paul, MN.

5. This Court has jurisdiction over the parties and the causes of action alleged by Plaintiff because Defendant MnSCU employs Plaintiff in Minnesota and the events alleged herein occurred in the State of Minnesota.

6. Venue is proper in this Court because the unlawful actions alleged herein occurred in Dakota County, State of Minnesota.

#### FACTS

7. Plaintiff has worked at Inver Hills Community College for more than 25 years as a sociology instructor. Plaintiff is highly regarded at Inver Hills Community College both as a leader of the faculty union and as an instructor and in April 2016, Plaintiff was named the “Faculty Member of the Year”.

8. As a sociology instructor, Plaintiff is a member in the Inver Hills State College Faculty Association (“IHSCFA”), which is affiliated with Education Minnesota, the union of more than 80,000 educators throughout Minnesota.

9. Plaintiff is a Union Grievance Representative.

10. In 2010, Defendant Wynes became the President of Inver Hills Community College. In 2012, Defendant Wynes also became the President of Dakota County Technical College.

11. On January 26, 2016, the IFSCFA voted and supported a resolution of no confidence in the leadership of Inver Hills Community College President Tim Wynes. The resolution was supported by more than 80 percent of the votes cast.

12. The resolution of no confidence was in response to falling morale among campus employees, high staff turnover, questionable spending decisions, cutting of student services which adversely affected students with disabilities and of diversity.

13. Plaintiff was a vocal supporter of the resolution and a leader of the vote of no-confidence.

14. Steven Rosenstone, chancellor of MnSCU has provided unwavering support for Defendant Wynes, prior to, during and after the vote of no-confidence.

15. On February 12, 2016, Plaintiff was placed on an investigatory leave in response to a complaint that had been made against him by someone associated with Inver Hills Community College.

16. Whether or not a complaint against faculty warrants investigation is a determination left to the discretion of Defendant Wynes.

17. During the investigatory leave, Plaintiff has not been allowed to be on campus.

18. Despite repeated requests for information regarding the investigation, Plaintiff had been on investigatory leave for over two months before the allegations against him were communicated in any manner.

19. In the Fall of 2015, Plaintiff had been placed on investigative leave related to a complaint made against him that related to Plaintiff asserting union rights of one of the members.

20. There were no findings of inappropriate conduct after the investigation of the Fall 2015 complaint.

21. Following the no-confidence vote, Wynes was named one of four finalists for President of Illinois Central College in East Peoria, Illinois.

22. During an on-campus question and answer session with faculty at Illinois Central College, Defendant Wynes was asked about the no-confidence vote at Inver Hills Community College.

23. During that questioning at Illinois Central College, without any questioning about Plaintiff's leave, Defendant Wynes brought up Plaintiff's leave and stated that the complaint about Plaintiff was related to "sexual harassment."

24. At the time that Defendant Wynes stated the allegations against Plaintiff were related to sexual harassment, no one had communicated to Plaintiff the nature of the complaints being made against him.

25. On April 28, 2016, Plaintiff was questioned by Pamela VanderWiel, an investigator hired by Defendant MnSCU.

26. During the investigative interview, Plaintiff was informed of allegations being made against him.

27. None of allegations made against Plaintiff were pertaining to sexual harassment.

### COUNT I

#### 1983 First Amendment Violation – Retaliation for Exercise of Free Speech Against Defendant Wynes in his Individual Capacity

Plaintiff re-alleges each and every paragraph of this Complaint.

28. When he participated in and assisted to lead the vote of no-confidence through his union, Plaintiff was engaged in constitutionally protected activity as a private citizen.

29. The union's support or lack thereof of Defendant Wynes was and is a matter of public concern.

30. When Defendant Wynes placed Plaintiff on administrative leave it was an adverse employment action.

31. Defendant Wynes' adverse action caused Plaintiff to suffer an injury that would likely chill a person of ordinary firmness from continuing to engage in protected speech.

32. The adverse action was motivated as a response to Plaintiff's exercise of his constitutional rights, which angered Defendant Wynes.

33. The interest of Plaintiff as a citizen and member of the faculty union, in commenting on matters of public concern, outweighs MnSCU's interest dictating the operations of its college through its employees.

34. Defendant Wynes' conduct violated clearly established rights belonging to Plaintiff, of which reasonable persons in his position knew or should have known.

35. Defendant Wynes' acts were done under the color of state law as the President of a public community college.

36. Defendant Wynes engaged in the conduct described above intentionally, knowingly, willfully, wantonly, maliciously, and in reckless disregard of Plaintiff's federally protected constitutional rights.

37. Defendant Wynes' conduct proximately caused injuries, damages and losses to Plaintiff, including but not limited to lost compensation, lost career opportunities, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress, litigation expenses including attorneys' fees, and other compensatory damages, in an amount in excess of \$50,000, to be determined by a jury and the Court.

#### COUNT II

#### **1983 First Amendment Violation – Retaliation for Exercise of Free Speech Against Defendant Wynes in his Official Capacity and MnSCU**

Plaintiff re-alleges each and every paragraph of this Complaint.

38. Defendant Wynes' conduct in placing Plaintiff on administrative leave after he engaged in constitutionally-protected activity violated clearly established rights belonging to Plaintiff, of which reasonable persons in his position knew or should have known.

39. Defendant Wynes' acts were done under color of state law and in his official capacity as President of Inver Hills Community College.

40. Defendant Wynes is the final policymaker with regard to handling of complaints against college faculty.

41. MnSCU and Inver Hills have a policy of giving Defendant Wynes unfettered discretion to make employment decisions, even where those decision violate the law.

42. MnSCU and Inver Hills are jointly and severally liable for Defendant Wynes' illegal decisions.

43. Defendant Wynes engaged in the conduct described above intentionally, knowingly, willfully, wantonly, maliciously, and in reckless disregard of Plaintiff's federally protected constitutional rights.

44. Defendant Wynes' conduct proximately caused injuries, damages and losses to Plaintiff, including but not limited to lost compensation, lost career opportunities, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress, litigation expenses including attorneys' fees, and other compensatory damages, in an amount in excess of \$50,000, to be determined by a jury and the Court.

### COUNT III

#### **Data Practices Act Violation under Minn. Stat. §§13.04; 13.08**

Plaintiff re-alleges each and every paragraph of this Complaint.

45. The actions and statements of the Defendants, individually and collectively, as described in the paragraphs above of this Complaint, constitute willful violations of Minn. Stat. § 13.04 Subd. 2, which forbids governmental units from making public specific reasons for employee discipline until the final disposition of the discipline has concluded.

46. Under the statute, "Final disposition" occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time period provided by the Collective Bargaining Agreement.

47. Defendant Wynes willfully and publicly broadcast the specific reasons for Plaintiff's discipline before final disposition occurred in this case.

48. Plaintiff is entitled to damages, costs and attorney's fees pursuant to the statute.

**COUNT IV**  
**Defamation**

Plaintiff re-alleges each and every paragraph of this Complaint.

49. Defendant Wynes statement that Plaintiff is under investigation for sexual harassment is untrue and casts Plaintiff in a negative light and has a defamatory meaning.

50. Defendant Wynes statement harms Plaintiff's reputation and lowers him in the estimation of the community.

51. Defendant Wynes failed to exercise reasonable care in making the false and defamatory statements.

52. Defendant Wynes made the defamatory statements with full knowledge that the statements were false, and with reckless disregard of the truth or falsity of the statements.

53. Defendant Wynes published the defamatory statements with a deliberate disregarding for the rights of Plaintiff.

54. Defendant Wynes made the statement in both his individual and official capacity, therefore both he and Defendants MnSCU and Inver Hills are liable.

55. Plaintiff has suffered compensatory damages, emotional pain and suffering, and special damages.



PRAYER FOR RELIEF


WHEREFORE, Plaintiff respectfully prays:

- a. That the practices complained of herein be adjudged, decreed and declared to be in violation of the rights secured to Plaintiff by law.
- b. That Defendants be required to make Plaintiff whole for its adverse, retaliatory, and unlawful actions through restitution in the form of back pay, including any lost wages for summer school.
- c. That Plaintiff be reinstated to his position or, in the alternative, awarded front pay and the monetary value of any employment benefits he would have been entitled.
- d. That Plaintiff is awarded compensatory damages in an amount to be determined at trial.
- e. That the Court award Plaintiff his reasonable attorneys' fees, costs and disbursements pursuant federal law.
- f. That the Court grants such other and further relief as it deems fair and equitable.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS

Dated: May 9, 2016

COLLINS, BUCKLEY, SAUNTRY &  
HAUGH, PLLP

  
\_\_\_\_\_  
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ACKNOWLEDGMENT

Plaintiff, by its attorneys, hereby acknowledges that costs, disbursements and reasonable attorneys' and witness fees may be awarded to the opposing parties if Minn. Stat. § 549.211 is found to apply.

Dated: May 9, 2016 COLLINS, BUCKLEY, SAUNTRY, & HAUGH, PLLP

  
Sarah J. McEllistrem, No. 388053