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## **CONNECTICUT COURT REJECTS TEACHER'S CHALLENGE THAT TERMINATION FOR INAPPROPRIATE MATERIAL ON SOCIAL NETWORKING SITE IS UNCONSTITUTIONAL**

*Spanierman v. Hughes, et al.*, 2008 WL 4224483 (D. Conn. Sept. 16, 2008).

The Connecticut District Court rejected a challenge by Jeffrey Spanierman ("the Plaintiff"), a former English teacher at a Connecticut high school whose employment contract was not renewed pursuant to a determination by the school administration that his MySpace website was inappropriate and presented a disruption to the students. The Court granted summary judgment in favor of the defendants, Superintendent of the Connecticut Technical High School system, Assistant Superintendent of the Connecticut Technical High School system, and principal of Emmet O'Brien High School (collectively, "the Defendants"), on the Plaintiff's claims that the Defendants' decision not to renew his contract violated his rights under the First and Fourteenth Amendments to the United States Constitution.

The Plaintiff was hired on January 2, 2003 to be an English teacher at Emmet O'Brien High School ("Emmet O'Brien"). During the summer of 2005 the Plaintiff created an account with a social networking website ("MySpace"), with the intention of using the account "to communicate with students about homework, to learn more about the students so he could relate to them better, and to conduct casual, non-school related discussions." In the fall of 2005, another teacher at Emmet O'Brien ("Michaud") claimed to have received student complaints about the Plaintiff's MySpace page. The fellow teacher stated that she was "disturbed" by what she saw on the page, which included pictures of naked men, inappropriate comments, and "peer-to-peer like" conversations between the Plaintiff and his students. After viewing the Plaintiff's MySpace page Michaud spoke with the Plaintiff about its contents and also suggested that the Plaintiff avoid using the school email system for communications unrelated to school. The Plaintiff deactivated the page after the conversation; however, he subsequently created a new page under a different profile name shortly thereafter. Upon discovering the new page, Michaud reported the situation to the principal, who placed the Plaintiff on administrative leave on pay while an investigation was conducted. The Plaintiff deactivated his new page when he was placed on leave. On March 30, 2006, the Plaintiff was informed that his contract would not be renewed. His request for a hearing was granted; however, the decision not to renew his contract was nevertheless upheld.

The Plaintiff filed suit against the Defendants, alleging that his Fourteenth Amendment rights to equal protection, procedural due process, and substantive due process were violated. He also alleged that the Defendants violated his First Amendment rights to freedom of speech and freedom of association. The Defendants filed a motion for summary judgment as to each of the Plaintiff's claims. The motion was granted in its entirety by the Court.

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The Court rejected the Plaintiff's equal protection claim, which was based on the theory that no other teacher in the school system had suffered an adverse employment action "because of his or her choice of a particular website for lawful electronic communications." The Court found that the Plaintiff failed to demonstrate that he was treated differently from other employees similarly situated to him in all material respects. The Plaintiff specifically compared himself to two other Emmet O'Brien teachers who also had MySpace accounts. The Court noted, however, that the Plaintiff submitted no evidence of either of the other employees' activities on their respective MySpace pages, including whether these teachers interacted with students via their MySpace accounts. The mere fact that these individuals had MySpace accounts was deemed to be insufficient to demonstrate that they were all similarly situated. Rather, the Court stated that it was their conduct that was relevant.

The Court also dismissed the Plaintiff's due process claims with relative ease by focusing largely on the fact that he was not tenured and, therefore, finding that he did not have a legitimate claim of entitlement to the renewal of his contract. The Court further rejected the Plaintiff's argument that under the Connecticut Teacher Tenure Act (Conn. Gen. Stat. § 10-151), the non-renewal of a non-tenured teacher must be for just cause, finding no support in the statutory language. Finally, the Plaintiff's First Amendment claims failed, as the Court decided that the only portion of his MySpace page that constituted protected speech was a poem about the Plaintiff's opposition to the Iraq War. The Plaintiff was unable to provide sufficient evidence that this poem played any part in the Defendants' decision not to renew the contract. Furthermore, the Defendants presented evidence strengthening their position that their decision was based on other material contained on the Plaintiff's page, including specific conversations between the Plaintiff and students that contained sexual references.

The decision raises questions as to an employers' ability to regulate electronic communications that occur off the employers' property and outside of work hours. Although the Court does not specify when and where the Plaintiff accessed his MySpace page, it is likely that some of the activity occurred off school grounds and during off hours, in light of the fact that he created the page in the summer. Furthermore, although there is no discussion of an electronic monitoring policy, this decision raises questions as to whether a policy must incorporate electronic communications that take place off of the premises and do not involve the use of company property (i.e. computers, telephones, fax machines) or company email systems.

With the increasing popularity of social networking sites such as MySpace and Facebook comes an increasing concern about the content of the information that is being posted. It is imperative that employers understand what their boundaries are with respect to regulating the material and punishing employees who engage in such conduct.

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For further information on this case or any other employment related question, please contact Christopher L. Brigham of the Employment Law Practice Group at (203) 786-8310 or [cbrigham@uks.com](mailto:cbrigham@uks.com) or Angel Peterson of the Employment Law Practice Group at (203) 786-8311 or [apeterson@uks.com](mailto:apeterson@uks.com).

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