

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:16-cv-00318-RM-CBS

DANIELE LEDONNE,

Plaintiff,

v.

DR. BEVERLEE MCCLURE, in her official capacity as
President of Adams State University, and PAUL
GROHOWSKI, in his official capacity as Chief of Adams
State Police Department,

Defendants.

**MOTION FOR EXPEDITED BRIEFING SCHEDULE AND EXPEDITED HEARING
ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION
(FORTHWITH CONSIDERATION REQUESTED)**

Plaintiff Danny Ledonne respectfully asks the Court to set an expedited briefing schedule and expedited hearing on Mr. Ledonne's pending motion for a preliminary injunction.

Undersigned counsel certifies that he has conferred by telephone with litigation counsel for Defendants, Senior Assistant Attorney General Kit Spalding, who opposes the instant request.

This lawsuit arises out of an October 14, 2015, No Trespass Order (the "Order"), issued without notice or a pre-deprivation hearing by Adams State University's newly-appointed President, Dr. Beverlee McClure, against Mr. Ledonne, a former adjunct and visiting Professor at Adams State University ("ASU"). Two days before, on October 12, 2015, Mr. Ledonne had published on a public website articles critical of Adams State University's administration. In

connection with the issuance of the Order, Defendants McClure and Adams State Police Chief Grohowski issued public statements (including Defendant McClure giving an address to the ASU Faculty Senate) where they accused Mr. Ledonne of “terrorism,” personal “harassment,” and making threats of violence. None of these defamatory statements are true. The Order was issued without notice or a pre-deprivation opportunity to be heard in direct violation of the Colorado Supreme Court’s ruling in *Watson v. Regents of University of Colorado*, 512 P.2d 1162, 1165 (Colo. 1973) (recognizing a non-student’s liberty interest in access to Colorado public university campus and invalidating ban order that was issued without notice or a hearing).

On February 10, 2016, undersigned counsel, in cooperation with the ACLU Foundation of Colorado, filed suit on Mr. Ledonne’s behalf alleging that the Order was issued without due process and in retaliation for Mr. Ledonne’s First Amendment-protected conduct. Simultaneous with the Verified Complaint, Mr. Ledonne filed a motion for preliminary injunction asking the Court to enjoin enforcement of the Order on the basis that it was issued in violation of Mr. Ledonne’s due process rights.

Every day that passes while the unconstitutional Order stands is another day that Mr. Ledonne’s constitutional rights are being infringed and the damage to his reputation is exacerbated. His livelihood is also being threatened. As described in the Verified Complaint and Motion for Preliminary Injunction, as a professional videographer, Mr. Ledonne has continuing business obligations that require his presence on the Adams State University campus. *See* Verified Complaint ¶¶ 45-52. He has no assurance that the University will grant any form of limited permission for him to access campus, especially now that this lawsuit has been initiated. Even the act of having to ask for permission or having an organization for which he works ask

for permission, illustrates this fact: the University continues to single out Mr. Ledonne from the crowd and treat him differently than any other person in Alamosa. He wears a figurative Scarlet Letter.

In addition, spring semester is in full swing and educational, intellectual, and cultural programs are taking place on the University campus weekly, if not daily. As described in the Verified Complaint, the effect of the Order is to deny Mr. Ledonne access to what is effectively the only cultural and intellectual institution in the San Luis Valley and also the broader Adams State University academic community. (Verified Complaint ¶¶ 54-56). He appears to have been black-listed. Each time a program is held to which Mr. Ledonne would like to attend, his First Amendment right to access ideas and information is deprived. *See Doe v. City of Albuquerque*, 667 F.3d 1111, 1118 (10th Cir. 2012). The Supreme Court has consistently recognized that First Amendment deprivations, even for limited amounts of time, *unquestionably* constitute irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Mr. Ledonne's constitutional right to access ideas and information will continue to be deprived until a hearing can be granted. Defendants' retaliatory conduct creates an even broader chilling effect on other members of the community who may wish to criticize Adams State's administration.

In addition, until a preliminary injunction hearing is held, Mr. Ledonne continues to suffer irreparable reputational harm. *See Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1156-57 (10th Cir. 2001). Defendant McClure has publicly accused Mr. Ledonne of being a terrorist and a violent person. Defendant Grohowski has repeatedly, publicly referred to mass school shootings and violence on college campuses as part of his justification for banning Mr. Ledonne without notice or a hearing. (Verified Complaint ¶¶ 57-65). These

false and defamatory statements will continue to hang around Mr. Ledonne like a black, stigmatizing cloud, harming his reputation in his professional life and personal relations.

Had Defendants sought an *ex parte* civil protection order from a Colorado state court based on tangible evidence that Mr. Ledonne posed an “imminent” danger to the campus, they would have been required to submit a verified complaint, detailing the specific acts that would constitute grounds for such an order (*see* C.R.S. § 13-14-104.5 (8)), and, within fourteen days, Mr. Ledonne would have been able to challenge the order before an impartial judge. (C.R.S. § 13-14-104.5(10)). Had they followed the due process rules laid in *Watson v. Regents*, they would have been required to give Mr. Ledonne fair notice and an opportunity to be heard prior to any ban. 512 P.2d at 1165. Had they followed the then-existing Adams State University Code of Conduct relating to *persona non grata* orders for non-students, again, they would have been required to give Mr. Ledonne reasonable notice and an opportunity to be heard prior to the issuance of any ban. *See* Verified Complaint ¶¶ 41-43 and Exh. 4 at 19.

Instead of following well-accepted law and normal procedures, Defendants resorted to non-judicial, unilateral conduct. To this date, they continue to refuse to give Mr. Ledonne any notice of what he allegedly did to merit the ban. He was not afforded the right to a meaningful hearing. After conferral, they now oppose prompt judicial consideration of the preliminary injunction motion which would be the first real opportunity for Mr. Ledonne to challenge this unconstitutional order. The continuing infringement on Mr. Ledonne’s rights can only be addressed by prompt action by this Court.

WHEREFORE, Mr. Ledonne prays that this Court:

- set an expedited briefing schedule, giving Defendants no more than ten days to respond to Plaintiff’s Motion for Preliminary Injunction, five days for a reply, and

- set a one-day evidentiary hearing on the Motion for Preliminary Injunction as soon as practicable thereafter.

Undersigned counsel represents that counsel for the Defendants was provided courtesy copies of the Complaint and Motion for Preliminary Injunction no later than February 11, 2016 and will also be provided a copy of this Motion for Expedited Consideration.

Dated: February 19, 2016

Respectfully submitted,

s/ N. Reid Neureiter

N. Reid Neureiter
Kayla Scroggins
Wheeler Trigg O'Donnell LLP
370 Seventeenth Street, Suite 4500
Denver, CO 80202-5647
Telephone: 303.244.1800
Facsimile: 303.244.1879
Email: neureiter@wtotrial.com
scroggins@wtotrial.com

*AS COOPERATING ATTORNEYS FOR THE
ACLU FOUNDATION OF COLORADO*

Mark Silverstein
Sara R. Neel
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF COLORADO
303 E. 17th Avenue, Suite 350
Denver, CO 80203
Telephone: 720.402.3114
Email: msilverstein@aclu-co.org
sneel@aclu-co.org

Attorneys for Plaintiff Daniele Ledonne

CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on February 19 2016, I electronically filed the foregoing **MOTION FOR EXPEDITED BRIEFING SCHEDULE AND EXPEDITED HEARING ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system. A copy of this motion was provided by e-mail to Assistant Attorney General Kit Spalding.

- N. Reid Neureiter
neureiter@wtotrial.com
- Kayla Scroggins
scroggins@wtotrial.com
- Mark Silverstein
msilverstein@aclu-co.org
- Sara R. Neel
sneel@aclu-co.org

s/ Karen L. Brock

Karen L. Brock