

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**KATHERINE DEAN, a Minor, through her
Mother and Next Friend, COLEEN ELSARELLI,**

Plaintiff,

v.

**UTICA COMMUNITY SCHOOLS, and
JOAN C. SERGENT, in her official and
individual capacities,**

Defendants.

Case No.

Hon.

Andrew Nickelhoff (P37990)
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of Michigan
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COMPLAINT

Plaintiff, through her attorneys, states as follows for her complaint:

INTRODUCTION

1. The defendants censored the plaintiff's news article from the Utica High School newspaper, the *Arrow*, without any valid educational purpose. The defendants' action violated plaintiff Dean's freedom of speech and press under the First and

Fourteenth Amendments to the U.S. Constitution. Plaintiff seeks a declaration that defendants' actions were unconstitutional, nominal damages, and attorneys fees.

JURISDICTION AND VENUE

2. Plaintiff brings this action pursuant to the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. §§ 1983 and 1988. This Court has jurisdiction over the claim pursuant to 28 U.S.C. §§ 1331, 1343, and 28 U.S.C. § 2201.
3. The acts which form the basis of plaintiff's cause of action occurred within Macomb County, Michigan. Venue is properly laid in the Eastern District of Michigan, Southern Division, pursuant to 28 U.S.C. § 1391(b) and Local Rule 83.10.

PARTIES

4. Plaintiff Katherine Dean is a senior at Utica High School. Plaintiff Dean is seventeen years old, and pursues this action through her mother and next friend, Coleen Elsarelli.
5. Defendant Utica Community Schools is a public school district and a body corporate organized under the laws of the State of Michigan, located within Macomb County, Michigan and the Eastern District of Michigan.
6. Defendant Joan C. Sergent was at all material times the Superintendent of the Utica Community Schools and is sued in her official and individual capacities.

FACTUAL ALLEGATIONS

7. The Utica Community Schools operates a school newspaper at Utica High School called the *Arrow*. The *Arrow* is staffed and published by students, under the direction of a faculty advisor. The newspaper is an officially sponsored publication

of the Utica Community Schools and student participation in the newspaper is part of the educational curriculum of Utica High School.

8. In March, 2002, during her Junior year at Utica High School, plaintiff was the sports co-editor of the *Arrow*; currently she is the Managing Editor.
9. In February, 2002, plaintiff decided to write an article for the *Arrow* on a lawsuit filed against defendant Utica Community Schools by a Shelby Township resident. The resident lived next to the school district's bus garage, and complained that diesel fumes from idling busses had caused him to become ill. Plaintiff obtained approval for the subject of the news article from her faculty advisor, Gloria Olman, and from the Utica High School Principal, Richard Machesky. The lawsuit had previously been reported in the local news media.
10. Plaintiff Dean proceeded to carefully research her news story. Along with another student who worked as a photographer, plaintiff spent several hours interviewing the resident. Plaintiff also interviewed neighbors of the resident, and she examined and photographed the bus garage area. She attempted to obtain information and comments for her story from a number of school district officials, including from the Transportation Department and the Superintendent's office, as well as from Shelby Township officials. All of these officials declined to comment on the matter. Plaintiff used the Internet to gather information on scientific research into the health effects of diesel fumes.
11. Plaintiff's news story was thoroughly researched, well-written, balanced, and accurate. The story could not reasonably have been attributed to the school district

or interpreted to reflect the school district's views; the story accurately reported that school district officials had declined to comment on the lawsuit.

12. Plaintiff wrote her news story for the March 15, 2002 edition of the *Arrow*. Plaintiff's faculty advisor reviewed the story and approved it for publication. A copy of plaintiff's news story in galley form is attached as Exhibit A.
13. On March 6, 2002, one day before the March 15, 2002 edition of the *Arrow* was to go to press, Principal Richard Machesky asked to see plaintiff's story, although it was not his normal practice to review student news stories.
14. On March 7, 2002, Principal Machesky ordered plaintiff's story to be stricken from the *Arrow*. As a result, the March 15, 2002 edition of the *Arrow* went to press without plaintiff's story on the lawsuit.
15. Despite appeals by the student editorial staff of the *Arrow* to Principal Machesky and defendant Sergent, the decision to censor plaintiff's news story remained in effect and her story was never published in the *Arrow*.

CAUSE OF ACTION:

FIRST AMENDMENT AND 42 U.S.C. § 1983

16. Plaintiff incorporates by reference all prior paragraphs as though repeated herein.
17. By prohibiting plaintiff from publishing her news story in the *Arrow*, defendants violated plaintiff's right to free speech and freedom of the press, guaranteed by the First Amendment and the Fourteenth Amendments to the U.S. Constitution.
18. Defendants' decision to censor plaintiff's news story was not reasonably related to legitimate pedagogical concerns and it had no valid educational purpose.

RELIEF REQUESTED

WHEREFORE, plaintiff requests that this Court grant the following relief:

1. Issue a declaratory judgment to the effect that defendants violated plaintiff Dean's First Amendment right to free speech and freedom of the press by prohibiting her news story from being published in the *Utica High School Arrow*;
2. Issue an injunction compelling defendant Utica Community Schools to publish the plaintiff's news article in the *Arrow* with a suitable explanation that the article was unconstitutionally censored from a previous edition;
3. Order that defendants pay nominal damages to plaintiff;
4. Order that defendants pay plaintiff's costs and attorneys fees pursuant to 42 U.S.C. § 1988; and
5. Grant such other relief that the court deems just and equitable.

Respectfully submitted,

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Dated: April 4, 2003

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