

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION – MINNEAPOLIS

---

JON WILLAND,

CASE NO. 01-

Plaintiff,

vs.

**COMPLAINT**

ROBERT ALEXANDER, in his  
individual and official capacities,

ANN WYNIA, in her official  
capacity as president of  
North Hennepin Community College,

WILL ANTELL, ANDREW BOSS, NANCY  
BRATAAS, BRENT CALHOUN, MARY CHOATE,  
DANIEL G. COBORN, DENNIS DOTSON,  
IVAN F. DUSEK, ROBERT ERICKSON,  
ROBERT H. HOFFMAN, JIM LUOMA,  
LEW MORAN, JOANN SPLONKOWSKI,  
JOSEPH SWANSON, and MICHAEL VEKICH,  
in their official capacities as  
members of the Board of Trustees of  
the Minnesota State Colleges and Universities,

DAVID FISHER, in his official capacity  
as commissioner of the Minnesota  
Department of Administration, and

JULIEN C. CARTER, in her official  
capacity as commissioner of the Minnesota  
Department of Employee Relations,

Defendants.

---

–

Plaintiff Jon Willand, for his complaint against defendants, alleges as follows:

Nature of the Action

1. This is an action for declaratory and injunctive relief, damages, attorneys' fees and costs, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201, arising from defendants' violations of the Constitution and laws of the United States. Defendants, acting under color of state law, have deprived plaintiff of rights, privileges, and immunities secured by the First and Fourteenth Amendments to the United States Constitution.

2. Defendants intentionally restricted plaintiff's exercise of his right to free speech and academic freedom under the First Amendment as set forth in more detail below.

Jurisdiction and Venue

3. This Court has jurisdiction over plaintiff's claims for relief under 28 U.S.C. §§ 1331 and 1343.

4. Venue in this Court is proper under 28 U.S.C. § 1391 and this court has personal jurisdiction over the defendants sued in their personal capacities in this matter because the events giving rise to the plaintiff's claims occurred in this district, and almost entirely in this division; the plaintiff resides in this district and division; and one or more of the defendants resides in this district and division.

Plaintiff

5. Jon Willand is a resident of Minneapolis and a citizen of Minnesota. Since 1966, and at all times relevant to the allegations in this Complaint, he has been an instructor in the History Department

at North Hennepin Community College, employed pursuant to a written employment contract between him and the College.

#### Defendants

6. Defendant Robert Alexander is the Interim Dean of Institutional Services at North Hennepin Community College ("NHCC"), which is located in Minneapolis and is part of Minnesota State Colleges and Universities ("MnSCU"). Until 2000, his position was Associate Dean of Liberal Education. Alexander is a resident of Minneapolis and a citizen of Minnesota. He is being sued in his individual and official capacities. Alexander acted under color of state law when taking the actions described in this Complaint. He was involved in the infringement of plaintiff's free speech rights as set forth in more detail below.

7. Defendant Ann Wynia is the President of NHCC. She is being sued in her official capacity.

8. Defendants Will Antell, Andrew Boss, Nancy Brataas, Brent Calhoun, Mary Choate, Daniel G. Coborn, Dennis Dotson, Ivan F. Dusek, Robert Erickson, Robert H. Hoffman, Jim Luoma, Lew Moran, Joann Splonkowski, Joseph Swanson, and Michael Vekich (collectively "The Board"), are members of the Board of Trustees of MnSCU. They are sued only in their official capacities.

9. Defendant David Fisher is Commissioner of the Minnesota Department of Administration. Defendant Julien C. Carter is Commissioner of the Minnesota Department of Employee Relations ("DOER"). The Department of Administration and DOER are responsible for adopting certain statewide personnel policies applicable to institutions such as NHCC. Both Fisher and Carter

are sued in their official capacity. Collectively they are referred to hereinafter as "the Commissioners."

### FIRST CLAIM

(Against Defendants Alexander, Wynia, and The Board)

10. Willand had displayed a George Custer poster on his office door for years, beginning in 1994. A reproduction of the poster is attached hereto as Exhibit A. It is a take-off of the World War I "Uncle Sam Wants You" poster which satirizes General Custer, depicting Custer inviting the public to enlist in the cavalry to "help [him] put down the Militant Sioux."

11. On or about October 17, 1996, Alexander, without warning to Willand, removed the poster from Willand's office door.

12. Alexander justified his action in an October 17 letter to Willand by citing an unspecified complaint and his desire to "avoid students, employees, or visitors being offended." He did not identify any school rule that Willand had allegedly violated.

13. In his October 17 letter, Alexander issued Willand two directives. The first directive commanded Willand not to put the Custer "poster back up, either in [his] office, on [his] door, or in any other location on campus." The second directive commanded Willand not to "post any other materials which may be offensive to others."

14. The Custer poster was clearly protected by the First Amendment to the United States Constitution under well-established law, and both addressed matters of public concern and advanced legitimate pedagogical objectives.

15. By ordering the removal of the poster, banning its posting, and the posting of any other

posters perceived as "offensive," Alexander violated Willand's rights to free speech and academic freedom under the First Amendment.

16. Plaintiff appealed Alexander's directives to Yvette Jackson, defendant Wynia's predecessor as president of NHCC. Jackson upheld Alexander's unconstitutional directives on December 30, 1996. In her capacity as NHCC president, defendant Wynia now has the ultimate disciplinary authority over NHCC staff formerly wielded by Jackson.

17. In 2000, Alexander's job title changed from Associate Dean of Liberal Education to Interim Dean of Institutional Services. However, he continues to have authority over bulletin boards, photocopying, and other means of disseminating posters at NHCC.

18. Plaintiff was injured as a result of Alexander's actions, and suffered emotional distress, pain and suffering, loss of capacity for the enjoyment of life, humiliation, embarrassment, and injury to reputation. The precise amount of plaintiff's damages will be determined at trial.

19. Alexander knowingly, willfully, and maliciously disregarded the plaintiff's constitutional rights.

20. Plaintiff has been deterred, and continues to be deterred, from asserting his opinions and beliefs with respect to various historical, pedagogical, and political issues because of Alexander's broad and vague directive not to post any "materials which may be offensive" and fears additional adverse action by Alexander and agents of NHCC. This deterrence of plaintiff's expression constitutes a continuing and irreparable harm, and warrants injunctive relief.

## SECOND CLAIM

(Against Defendants Alexander, Wynia, and the Board)

21. On July 15, 1994, Alexander issued Willand a "letter of reprimand" for his alleged "use in the classroom of language and examples that promote misunderstanding by students and that do not manifest sufficient sensitivity to student sensibilities." Alexander did not allege that Willand had violated any specific school rule.

22. Nevertheless, Alexander issued the following directives to Willand, and Willand alone:

a. "You will avoid making comments and using phraseology which do not manifest a clear concern for student sensibilities and which may promote student misunderstandings."

b. "You will avoid making comments and using phraseology which may be interpreted by a reasonable person as articulating or promoting racism, sexism, or any other ideology which incorporates stereotypical, prejudicial, or discriminatory overgeneralizations that might intimidate or insult students."

Alexander's directive remains in effect and continues to chill Willand's speech.

23. On October 28, 1996, Alexander issued another letter of reprimand that suspended Willand "without pay for 10 days as a disciplinary action based on offensive comments made in your class."

24. Alexander did not cite any school rule to justify disciplining Willand. Nor did he describe any violation of school rules alleged by the complainant.

25. Alexander's order that Willand be suspended was subsequently rescinded on December

30, 1996, by NHCC's then-president Jackson, after causing Willand much embarrassment and inconvenience.

26. But Alexander also issued Willand certain directives, which threaten Willand with discipline to this very day, including the following:

a. "You will avoid making comments, nor will you use phraseology, which does not manifest a clear concern for student sensibilities and which may promote student misunderstandings."

b. "You will avoid making comments and using phraseology which may be interpreted by a reasonable person as articulating or promoting racism, sexism, or any other ideology which incorporates stereotypical, prejudicial, or discriminatory overgeneralizations that might intimidate or insult students."

c. "You will not use language or examples which are provocative or inflammatory, hence likely to give rise to offense in others."

d. "You will in all others[sic] ways manifest a sensitivity to the opinions of others in your dealings with students."

27. Willand's statements for which he was disciplined were all made in teaching the curriculum he is assigned to teach, specifically, American History and the history of World War II. He was disciplined for those statements because they all contradict a political orthodoxy known as "political correctness."

28. Willand told his class the following, in substance, which gave rise to the defendants' wrongful action alleged herein:

- a. That the Nazis engaged in "human recycling" of their victims;
- b. That Stalin's regime was responsible for more murders than Hitler;
- c. That Pocahontas did handsprings nude through Jamestown;
- d. That "Native American" is an inaccurate term to describe any race;
- e. Quoting an often repeated historical quip, that "God is on the side of the guys with the guns."

29. Willand appealed Alexander's directives to NHCC's then-president Jackson, who upheld Alexander's directives on December 30, 1996.

30. The directives remain in effect today and continue to chill Willand's speech.

31. Alexander's October 28, 1996 letter of reprimand constituted punishment for the plaintiff's exercise of his rights to free speech and academic freedom under the First Amendment of the United States Constitution.

32. By unreasonably restricting plaintiff's classroom speech, the directives contained in Alexander's October 28, 1996 letter violate plaintiff's right to free speech and academic freedom under the First Amendment.

33. Plaintiff was injured as a result of Alexander's actions, and suffered emotional distress,

pain and suffering, loss of capacity for the enjoyment of life, humiliation, embarrassment, and injury to reputation. The precise amount of plaintiff's damages will be determined at trial.

34. Defendant Alexander knowingly and willfully disregarded plaintiff's well-established constitutional rights in taking the above actions.

35. Plaintiff has been deterred, and continues to be deterred, from asserting his opinions and beliefs with respect to various historical, pedagogical, and political issues because he fears additional adverse action by Alexander and agents of NHCC. This deterrence of plaintiff's expression constitutes a continuing and irreparable harm, and warrants injunctive relief.

### THIRD CLAIM

(Against Defendants Wynia, the Board, and the Commissioners)

36. North Hennepin Community College notified employees in the August 22, 2000 issue of the newsletter *Building Campus Community* that they would be required to comply with the *Statewide Electronic Communication and Technology Ethics*, effective November 15, 1997, which ban the use of computer equipment for the "[r]eceipt, storage or transmission of offensive, racist, [or] sexist . . . information."

37. The *Statewide Electronic Communication and Technology Ethics*, were issued jointly by Karen Carpenter, defendant Carter's predecessor as Commissioner of the Minnesota Department of Administration, and Elaine Hansen, defendant Fisher's predecessor as Commissioner of the Minnesota Department of Employee Relations.

38. By unreasonably restricting plaintiff's ability to conduct research and access to

information, the computer regulations violate plaintiff's right to free speech and academic freedom under the First Amendment of the United States Constitution.

39. Plaintiff has been deterred, and continues to be deterred, from accessing and storing information relevant to various historical, pedagogical, and political issues of interest to him because he fears adverse action against him under the computer use restrictions. This deterrence of plaintiff's expression constitutes a continuing and irreparable harm, and warrants injunctive relief.

WHEREFORE, plaintiff respectfully requests judgment:

A. Enjoining and declaring unlawful all directives issued by the Defendants or any of them to Plaintiff restricting his display of posters, all directives issued by the Defendants or any of them to Plaintiff restricting his classroom speech, and the computer speech code; precluding defendants from applying these directives to him; and requiring the defendants to remove any and all reprimands (or similar references) based on his speech from his employment file and any NHCC records;

B. Awarding damages, both compensatory and punitive, against defendant Alexander, in an amount to be proven at trial, and any interest available thereon;

C. Granting attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and any other applicable authority; and

D. Granting any other appropriate relief.

DATED this \_\_\_\_ day of July, 2001.

Respectfully submitted,

By: \_\_\_\_\_

Daniel N. Rosen #250909  
J Christopher Johnston #303793  
ROSEN & ROSEN, L.L.C.  
150 South Fifth Street, Suite 3250  
Minneapolis, MN 55402  
(612) 692-2777  
and  
Michael E. Rosman  
Hans F. Bader  
CENTER FOR INDIVIDUAL RIGHTS  
1233 20th Street, NW, Suite 300  
Washington, D.C. 20036  
(202) 833-8400