

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA**

-----X
SCOTT McCONNELL, :
 :
 :
 Plaintiff, :
 :
 :
 - against- :
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 :
 LE MOYNE COLLEGE, JOHN SMARELLI, JR., :
 individually and in his official capacity as Provost :
 of Le Moyne College, CATHY JO LEOGRANDE, :
 individually and in her official capacity as Chair :
 of the Le Moyne College Education Department, :
 and MARK J. TRABUCCO, individually and :
 in his official capacity as a Professor of Education :
 at Le Moyne College, and “John Does” 1 through :
 10 being those unknown members of the Le Moyne :
 College faculty and/or administration involved in :
 the illegal conduct alleged herein, :
 :
 Defendants :
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**VERIFIED
COMPLAINT**

Plaintiff, Scott McConnell, by his counsel undersigned, alleges as follows:

1. This is a civil action is brought pursuant to 42 U.S.C. § 1983 seeking equitable relief and monetary damages to defend and protect rights guaranteed by the First Amendment to the Constitution of the United States (there shall be “no law ... abridging the freedom of speech”) and Article I, Section 8 of the Constitution of the State of New York (“Every citizen may freely speak, write and publish his or her sentiments on all subjects ... and no law shall be passed to restrain or abridge the liberty of speech.”). Venue is proper in this Court as the parties reside in this County and the acts complained of occurred here.
2. Defendants Smarelli, Leogrande, Trabucco and “John Does” 1 through 10 are sued herein individually for recovery of money damages, and defendants Smarelli, Leogrande, and

Trabucco are sued in their official capacities for injunctive relief.

3. Defendant Le Moyne College is sued for money damages based on its policy of punishing students for their ideas, as carried out by the individual defendants herein. Defendant Le Moyne College is liable for the conduct and actions of its employees, defendants Smarelli, Leogrande, Trabucco and “John Does” 1 through 10 who carried out Le Moyne’s policies.

PARTIES

4. Plaintiff: Scott McConnell
 Address: 107 Bent Tree Lane
 Baldwinsville, New York 13027

5. Defendant: John Smarelli, Jr.
 Official Position: Le Moyne College Provost and
 President for Academic Affairs
 Address: 150 Edwards Drive
 Fayetteville, New York 13066-1004

- Defendant: Cathy Jo Leogrande
 Official Position: Chair, Education Department
 Director, Graduate Education Program
 Le Moyne College
 Address: 161 Geneses Street
 Auburn, New York 13021-4227

- Defendant: Mark J. Trabucco
 Official Position: Le Moyne College Professor
 Address: 5260 Potenza Drive
 Clay, New York 13041-8814

CHRONOLOGICAL FACTS GIVING RISE TO THE CAUSES OF ACTION ALLEGED

6. In 2004, plaintiff graduated from the State University of New York at Buffalo (“SUNY Buffalo”) and received his Bachelor of Arts degree.

7. Prior to graduation, plaintiff applied for admission to the Le Moyne College Master of Science for Teachers program (the “Le Moyne Teachers Program”).
8. On March 25, 2004, plaintiff was accepted to the Le Moyne Teachers Program.
9. Upon graduation from SUNY Buffalo, plaintiff enrolled as a student in the Le Moyne Teachers Program.
10. In the summer of 2004, plaintiff successfully completed his first semester in the Le Moyne Teachers Program and honored his tuition requirements.
11. In the fall of 2004, plaintiff successfully completed his second semester in the Le Moyne Teachers Program and honored his tuition requirements.
12. During his second semester, plaintiff was enrolled in a course entitled Planning, Assessing, and Managing Inclusive Classrooms (“PAMP”) taught by defendant Mark Trabucco.
13. Plaintiff submitted a written assignment dated November 2, 2004, entitled Classroom Management Plan (“CMP”) as part of his required course work in PAMI.
14. The CMP contained statements of plaintiff’s personal, philosophical beliefs, including the following quoted language:

I do not feel that multicultural education has a philosophical place or standing in an American classroom, especially one that I will teach. I also feel that corporal punishment has a place in the classroom and should be implemented when needed.
15. Professor Trabucco gave plaintiff a grade of “A-“ on the CMP and included a cryptic, handwritten notation stating “*Interesting Ideas - I’ve shared these w/ Dr. Leogrande.*”
16. The Dr. Leogrande to which defendant, Mark Trabucco, referred is defendant Cathy Jo

Leogrande, Le Moyne College Education Department Chair and Director of the Graduate Education Program.

17. In the Fall of 2004, after successful completion of his second semester, plaintiff selected his course of study and registered for his third semester, Spring, 2005, in the Le Moyne Teachers Program.
18. On information and belief, defendant Mark Trabucco, defendant Cathy Jo Leogrande and defendant John Smarelli, Jr., and other unknown Le Moyne administrators and/or faculty designated as “John Does” 1 to 10, conferred about the above-quoted statements plaintiff made in the CMP and conspired to deprive him of his civil rights by expelling him from the Le Moyne College to punish him for his conservative beliefs, *viz.*, that he does not believe “multicultural education has a philosophical place or standing in an American classroom,” and that he does believe “corporal punishment has a place in the classroom and should be implemented when needed.”
19. At no time did plaintiff ever state – orally or in writing – to anyone at Le Moyne College, including the individual defendants named herein, that: (i) he would violate the law in any respect regarding his obligations as a teacher; (ii) he would violate teaching protocols established by any educational employer; (iii) he would refuse to obey any directives provided by his superiors in the education system; or (iv) he would do anything inconsistent with his obligations as a teacher certified by the State of New York or as a teacher employed by any school district within New York State.
20. Shortly before the beginning of his third semester classes, plaintiff was expelled from Le Moyne College.

21. Plaintiff first learned of his expulsion when he received a letter from defendant Cathy Jo Leogrande dated January 13, 2005.

22. Defendant Leogrande made clear in her letter that plaintiff's expulsion was based upon his personal beliefs:

I have grave concerns regarding the mismatch between your personal beliefs regarding teaching and learning and the Le Moyne College program goals. Based on this data, I do not believe that you should continue in the Le Moyne M.S.T. Program. You will not be allowed to register for any additional courses. Your registration for Spring 2005 courses has been withdrawn.

A copy of the letter annexed hereto as Exhibit 1 is incorporated herein pursuant to CPLR 3014.

23. The Le Moyne Teachers Program includes a state law requirement that students complete 100 hours of practicum teaching.

24. At the time, plaintiff had completed sixty-four hours of practicum teaching at the Franklin Elementary School in Syracuse, and received an evaluation of "excellent" in every category. In addition, the Field Placement Coordinator stated:

Scott has been a joy to have within a classroom. He has gone above and beyond the requirements and has established himself as a member of our classroom.

A copy of that evaluation is annexed hereto as Exhibit 2 and incorporated herein pursuant to CPLR 3014.

25. Plaintiff's expulsion received wide national press and media attention.

26. Defendant John Smarelli, Jr. made numerous public statements that were reported in print, and he provided interviews on national television networks, including Cable News

Network (“CNN”) and National Public Radio (“NPR”).

27. On March 15, 2005, Provost Smarelli was interviewed by Aaron Brown on CNN (the “Brown Interview”). A copy of the interview transcript published at CNN.com is annexed hereto as Exhibit 3 and incorporated pursuant to CPLR 3014.
28. In the course of the Brown Interview, Provost Smarelli explained the basis for plaintiff’s expulsion from Le Moyne College:

A. Brown: Scott says that the reason he was asked – or told – not to come back, continue his education at the school, is because in a paper he wrote, that he was supportive of the idea of corporal punishment. Is that the reason that the school asked him, told him not to come back?

J. Smarelli: Mr. McConnell did write this particular paper for a particular course that he enrolled in last semester.

He expressed his views about a teaching philosophy. At this point, we collected this as one piece of evidence. And, in fact, the paper was graded on the merits of the paper itself. Subsequently, however, this paper was part of the portfolio that was evaluated by various professors at Le Moyne in a very systematic way. And in doing so, we felt it was our responsibility, the responsibility of Le Moyne College, that *we could not certify Scott to teach in New York State*.

A. Brown: Beyond the question of corporal punishment, can you tell me what other views are incompatible with the law?

J. Smarelli: New York state requires one to have a multicultural classroom. In Mr. McConnell’s case, there was strong evidence that he did not support a multicultural classroom, *a second violation of New York state laws*.

29. On March 21, 2005, NPR aired its popular program, “All Things Considered” (“ATC”), moderated by Robert Siegel.
30. ATC included a segment discussing Le Moyne College’s expulsion of plaintiff from the Le Moyne Teachers Program.
31. Provost Smarelli was interviewed for the ATC segment, published in streaming audio at <http://www.npr.org/templates/story/story.php?storyId=4544747>, and stated:

We have a responsibility as an accrediting body for teachers, to be confident that these individuals when they go out and teach, are going to obey the laws of New York state, and in this and other instances, which I can’t go into to specifics, *we could not be confident that this individual would abide by the laws of New York state.*

The transcript of the ATC interview is annexed hereto as Exhibit 4 and incorporated herein pursuant to CPLR 3014.

32. Defendants acted under color of state law, *viz.*, their reasonable belief widespread among Le Moyne’s administrators and faculty that the Education Department of the State of New York would not accept Le Moyne’s accreditation of plaintiff as a teacher, and thus, required them to expel him from the Le Moyne Teachers Program.
33. Defendants are state actors because they expelled plaintiff from the Le Moyne Teachers Program based on the requirements of New York law governing education and teacher certification.
34. However, notwithstanding defendants’ belief, their actions under color of state law violated well-established constitutional authority, as the rights to freedom of speech guaranteed under the First Amendment of the United States Constitution, and Article I,

- Section 8 of the Constitution of the State of New York, are well established legal rights.
35. The rights to freedom of thought and speech as part of academic freedom likewise are well established legal rights under the First Amendment of the United States Constitution, and Article I, Section 8 of the Constitution of the State of New York.
 36. New York Education Law § 6430 mandates that all colleges and universities adopt and file with the Department of Education written rules and policies governing public order, and that such rules and policies are deemed part of the by-laws of the college or university.
 37. Specifically, the statute provides in pertinent part that:

Such rules shall govern the conduct of students, faculty and other staff.... The penalties for violations of such rules shall be clearly set forth therein and shall include ..., in the case of a student or faculty violator his or her suspension, expulsion, or other appropriate disciplinary action.
 38. Pursuant to New York Education Law § 6430, Le Moyne College publishes a handbook which sets forth procedures for imposing non-academic discipline on persons in the Le Moyne community (the “Le Moyne Handbook”).
 39. A copy of the relevant pages setting forth Le Moyne’s prohibitions and due process procedures for non-academic discipline, including suspension and expulsion, along with the cover page and table of contents, is annexed hereto as Exhibit 5 and incorporated pursuant to CPLR 3014.
 40. Under the heading “College Judicial System,” due process rights are published at pages 83-86 “to insure that students involved in such cases realize that their case has been processed in a fair and judicious manner,” and include the following: (i) presumption of

innocence; (ii) advance, written notice of charges; (iii) entitlement to a judicial board hearing; (iv) entitlement to representation at the hearing by a Le Moyne student, faculty or staff member of the student's choice; (v) freedom from discipline pending the outcome of the hearing except in cases of "a danger to the immediate well-being of the College community"; (vi) entitlement to present evidence and call witnesses; (vii) the hearing shall be recorded; (viii) entitlement to written notice of the outcome based solely on the evidence; and (ix) an appellate process.

41. Page 83 of the Le Moyne Handbook describes "Level B" offenses which make the offender "subject to the maximum penalty of suspension or dismissal from the College."
42. Item 17 of the Level B offenses is: "Intentional or reckless interference with the freedom of expression of others."
43. The following appears on pages 84 and 86 of the Le Moyne Handbook:

Sanctions of Suspension or Dismissal - The decision by the board to impose a sanction of suspension or dismissal must be made by a unanimous vote. Suspension and dismissal are severe sanctions that are imposed *only in cases where there is a serious or persistent violation of the written community expectations and standards.*

Dismissal from the College - Dismissal from the College is imposed in cases of *extremely serious misconduct when it is believed that the student charged should be permanently removed from the College community.* This penalty implies that a request for readmission would not be granted....

44. Nowhere in the Le Moyne Handbook are students warned that their personal, philosophical or ideological beliefs may constitute "extremely serious misconduct" for which they may be "permanently removed from the College community," whether with a hearing, or as

happened in this case, without a hearing.

45. Nowhere in the Le Moyne Handbook are personal, philosophical or ideological views deemed a violation of “written community expectations and standards.”
46. To the contrary, in expelling plaintiff from Le Moyne to punish him for his personal, philosophical beliefs, the defendants Smarelli, Leogrande, Trabucco and other unknown “John Doe” defendants committed a Level B offense in their intentional and/or reckless interference with plaintiff’s freedom of expression for which they should have faced suspension or expulsion from their academic positions.
47. Plaintiff was not accorded any due process in connection with his expulsion which was utterly capricious and arbitrary.
48. Pursuant to New York Civil Practice Law and Rules § 7803(3), this court may reinstate plaintiff as a student at Le Moyne College because defendants’ action in expelling him was "made in violation of lawful procedure" and/or was "arbitrary and capricious or an abuse of discretion."
49. Plaintiff’s claim for equitable reinstatement under CPLR 7803(3) is timely pursuant to CPLR 217(1), and presented in combination with this plenary action for damages because CPLR 7806 limits damages to those “incidental to the primary relief sought by the petitioner,” and claims arising in tort and § 1983 have been deemed not “incidental” to Article 78 relief.
50. Historically, the education system has been the medium for assimilation of immigrants into American political, economic, and social life. Many scholars believe the public education system is under pressure from a growing immigrant population, an increasingly

isolated group of poor students from racial minority groups, and increasing challenges to the idea of assimilation into the mainstream. Multiculturalism in education raises public policy concerns about the role of the education system (and by implication, taxpayers regarding public education) to remedy the social, cultural, linguistic, and economic circumstances confronting new immigrants. Core policy concerns are: (i) English-only versus bi-lingual classroom instruction; and (ii) ethnocentrism versus mainstream or “shared values” culture instruction. In the words of one scholar:

Raging debate over multiculturalism has permeated virtually every facet of academic endeavor. Appropriately, political philosophers and philosophers of education are as embroiled in these discussions as any other academicians. Theoretical traditions are being reexamined in light of demands for group representation in political participation and resource distribution.¹

51. Although the First Amendment protects even unreasonable beliefs, plaintiff’s skepticism about multiculturalism in education is neither a radical nor an unreasonable belief, but to the contrary, is well supported by an extensive academic and scholarly literature challenging multiculturalism in education.² There is even an academic journal devoted

¹ Stacy Smith, “Liberalism, Multiculturalism, and Education: Is There a Fit?” 1995 *Philosophy of Education Yearbook*, published at http://www.ed.uiuc.edu/EPS/PES-Yearbook/95_docs/smith.html.

² **In General:** Arthur Schlesinger, *The Disuniting of America* (Norton 1992); Michael Lind, *Are We a Nation?* *Dissent* (Summer 1995 at 355-362); William Watkins, *Multicultural Education*, 44 *Educational Theory*, (Winter 1994); New York State United Teachers 1991 Education Opinion Survey; Final Report; Nathan Glazer, *Is Assimilation Dead?* and Peter Rose, *"Of Every Hue and Caste"* both in *530 Interminority Affairs in the United States*, *Annals of the American Academy of Political and Social Science* (1993); James Banks, *Fostering Language and Cultural Literacy in the Schools, Learning in Two Languages* (Gary Imhoff, ed. Transaction Pub., 1990); *Empowerment through Multicultural Education* (Christine Sleeter, ed., SUN, 1995); Francis Ryan, *The Perils of Multiculturalism*, *Educational Horizons*, (Spring 1993 at 134-138);
(continued...)

exclusively to this topic, "The Journal of Multiculturalism in Education," published at

²(...continued)

Gary Clabaugh, *The Limits and Possibilities of "Multiculturalism,"* Educational Horizons (Spring 1993 at 117-119); John Higham, *Multiculturalism and Universalism: A History and Critique*, 45 American Quarterly, at 195-219 (June 1993)

Schools and Immigrants: Rights and Responsibilities: *Changing Populations, Changing Schools* (Erwin Flaxman, ed., U. of Chicago Press 1993); David Stewart, *Immigration and Education* at chaps. 5-10 (Lexington Books 1993); Ronald Bayer, *Historical Encounters* and Alejandro Portes and Min Zhou, *The New Second Generation*, both in *530 Interminority Affairs in the U.S.*, of the *Annals of the American Academy of Political and Social Science* (1993); Richard Rodriguez, *Hunger of Memory* (David Godine 1982); Lorraine McDonnell and Paul Hill, *Newcomers in American Schools: Meeting the Educational Needs of Immigrant Youth* (Rand Corp. 1993).

Curricular Content and Multiculturalism: Diane Ravitch, *Multiculturalism: E Pluribus Plures*, 59 American Scholar at 337-354 (1990); Molefi Asante and Diane Ravitch, *Multiculturalism: An Exchange*, 60 American Scholar at 267-276 (1991); Richard Merelman, *Representing Black Culture* at 17, 25-36 (Routledge 1995); Peter Kiang and Vivian Lee, *Education K-12 Policy*, in *The State of Asian Pacific America* at 25-49 (LEAP Asian Pacific American Public Policy Institute 1993); Kevin Brown, *Do African Americans Need Immersion Schools? The Paradoxes Created by the Legal Conceptualization of Race and Public Education*, 78 Iowa L. Rev. 813 (1993); *Infusion of African and African American Content in the School Curriculum* (Asa Hilliard, et al., eds, Aaron Press 1990); Portland [OR] Public Schools, *African American Baseline Essays*, (1990); Lisa Delpit, *Other People's Children* (The New Press 1995); Pat Guild, *The Culture/Learning Style Connection*, 51 Educational Leadership, at 16-21 (May 1994).

Bilingual Education: *Language Loyalties*, (James Crawford, ed., U. of Chicago Press 1992); David Stewart, *Immigration and Education*, chaps. 12-15; in *Learning in Two Languages* (Gary Imhoff, ed. Transaction Pub. 10); Part III *Language Issues in Literacy and Bilingual/Multicultural Education* (Masahiko Minami and Bruce Kennedy, eds, Harvard Educational Review 1991).

Multiculturalism in Higher Education: *Campus Wars* (John Arthur, ed., Westview Press 1995); Russell Jacoby, *Dogmatic Wisdom* (Doubleday 1994); Merelman, *Representing Black Culture*, *supra*, chaps. 5-6; David Stewart, *Immigration and Education*, *supra*, chap. 17; *Beyond a Dream Deferred: Multicultural Education and the Politics of Excellence* (Becky Thompson and Sangeeta Tyagi, eds, U. of Minnesota Press); Richard Rorty, *Demonizing the Academy*, Harper's Magazine (Jan. 1995 at 13-18); Richard Bernstein, *Dictatorship of Virtue: Multiculturalism and the Battle for American's Future* (Knopf 1994).

<http://www.multiculturaljournal.com/home.htm>.

52. Likewise, although the First Amendment protects even unreasonable beliefs, plaintiff's endorsement of appropriate corporal punishment is neither a radical nor an unreasonable belief, but to the contrary, is well supported by scientific and medical literature challenging those who could ban corporal punishment both in the home and schools, and further supported by public policy declared by twenty-two state legislatures.³

³ From time immemorial, corporal punishment has been deemed a critical part of child development: "Those who spare the rod hate their children, but those who love them are diligent to discipline them." Book of Proverbs [13:24], *New Revised Standard Bible*.

Perhaps the leading social scientific advocate of banning corporal punishment in society, including families and schools, is Dr. Murray A. Strauss, author of *Beating the Devil Out of Them: Corporal Punishment in American Families* (Lexington Books 1994). However, a body of scholarly literature has developed challenging the research of Strauss and others in the anti-spanking camp who equate corporal punishment with harm on which much anti-spanking legislation is based. See, Den A. Trumbull, M.D. and S. DuBose Ravenel, M.D., "Spare the Rod?", *Pediatrics*, 98, 828-831 (also published at http://people.biola.edu/faculty/paulp/spare_the_rod.htm.) These board-certified pediatricians concluded that articles by psychologists condemning corporal punishment are "merely opinion-driven editorials, reviews or commentaries, devoid of new empirical findings;" S.D. Holloway, *Beating the Devil Out of the Reader: A Review of M. A. Straus, 'Beating the Devil Out of Them,'* *Contemporary Psychology*, 41:604; D. Baumrind, R.E. Larzelere & P.A. Cowan, *Ordinary Physical Punishment: Is it Harmful? Comment on Gershoff*, 128 *Psychological Bulletin* at 580-589 (2002), published at www.apa.org/journals/bul/press_releases/july_2002/; S. B. Friedman & S.K. Schonberg, *Proceedings of a Conference on "The Short and Long Term Consequences of Corporal Punishment,"* 98 *Pediatrics* at 803-860 (1996); R.E. Larzelere, *Child Outcomes of Nonabusive and Customary Physical Punishment by Parents: An Updated Literature Review*, 3 *Clinical Child and Family Psychology Review*, 199-221 (2000); R.E. Larzelere, *Weak Evidence for a Smacking Ban*, 320 *British Medical Journal* 1538 (2000); R.E. Larzelere, D. Baumrind & K. Polite, *Two Emerging Perspectives of Parental Spanking from Two 1996 Conferences*, 152 *Archives of Pediatrics and Adolescent Medicine*, 303-305 (1998); R.E. Larzelere & B.R. Kuhn, *Comparing Child Outcomes of Physical Punishment and Alternative Disciplinary Tactics: A Meta-analysis*, 8 *Clinical Child and Family Psychology Review*, 1-37 (1996); R.E. Larzelere, C. Silver & K. Polite, *Nonabusive Spanking: Parental Liberty or Child Abuse?* 17(4) *Children's Legal Rights Journal*, 7-17 (1997); S. Vandenbosch, *Political Culture and Corporal Punishment in Public Schools*, 21(2) *Publius-The Journal of Federalism*, 117-121.

(continued...)

53. Corporal punishment, specifically spanking and similar actions, is regarded by many as an effective deterrent for childish misbehavior which disrupts classes and interferes with the educational process. Advocates of corporal punishment believe that, when children do not respond to verbal warnings or other restrictions, then a short, sharp stimulus, which inflicts pain but no lasting damage, causes the child to associate misbehavior with punishment – a crucial association in child development.
54. This belief is held by many Western societies. For example, recently, the Canadian Supreme Court rejected a challenge under the Canadian Charter of Rights and Freedoms, the Canadian equivalent to the United States Constitution, to Section 43 of the Canadian Criminal Code which authorizes corporal punishment in schools as follows: “Every schoolteacher ...is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care” The Supreme Court found a

³(...continued)

Indeed, a review of all English-language evaluations of Sweden’s ban on corporal punishment in schools expanded to families in 1979 found that child abuse rates and violence by minors skyrocketed from 1981 to 1994. J. Lyons & R.E. Larzelere, *Where is Evidence That Non-Abusive Corporal Punishment Increases Aggression?* published at <http://people.biola.edu/faculty/paulp/sweden.html>; R.E. Larzelere & B. Johnson, *Evaluations of the Effects of Sweden's Spanking Ban on Physical Child Abuse Rates: A Literature Review*, 83 *Psychological Reports*, 381-392 (1999). In his studies, Dr. Robert Larzelere of the University of Nebraska Medical Center documented a 489% increase in physical child abuse cases classified as criminal assaults in Sweden between 1981 and 1994. He notes that, while the number of assaults on children under the age of seven remained low and relatively stable, “perpetration of criminal assaults against 7-14 year-olds is increasing most rapidly among those who were brought up after the law against smacking was passed.” Dr. Diana Baumrind of the Institute of Human Development, University of California at Berkeley, has concluded: “Methodologically strong studies have not established that normative physical punishment is a causal risk factor for child outcomes with which it may be associated A blanket injunction against disciplinary spanking is not warranted by causally relevant scientific evidence,” *Child Outcomes of Nonabusive and Customary Physical Punishment by Parents: An Updated Literature Review*,” 3(4) *Clinical Child and Family Psychology Review*, 199-221 (December 2000 issue).

substantial social consensus on what is reasonable correction, supported by comprehensive and consistent expert evidence ... that exempting parents and teachers from criminal sanction for reasonable correction does not violate children's equality rights.... Children also depend on parents and teachers for guidance and discipline, to protect them from harm and to promote their healthy development within society. A stable and secure ... school setting is essential to this growth process. Section 43 is Parliament's attempt to accommodate both of these needs. It provides ... teachers with the ability to carry out the reasonable education of the child without the threat of sanction by the criminal law.

Canadian Foundation for Children, Youth & the Law v. Canada, 2004 S.C.C. 4, 16 C.R. (6th)

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55. Likewise, in the United Kingdom, parents are demanding a return to corporal punishment in education which has been outlawed. *See, e.g.*, "Parents Back Corporal Punishment," BBC News, Friday, January 7, 2000:

More than half of parents want to see a return to corporal punishment in schools, according to a poll. The survey shows that two thirds believe school discipline has got worse over the past 10 years. Almost a quarter of the 1,000 parents polled thought disruptive and badly behaved children were among the biggest problems in Britain's schools.

published at <http://news.bbc.co.uk/1/hi/education/593949.stm>.

56. In the United States, public policy regarding corporal punishment in education is reflected by the laws extant in twenty-two states. The following table sets forth the state jurisdictions which permit and forbid corporal punishment in schools.

Corporal Punishment Permitted	Corporal Punishment Banned
Alabama, Arizona, Arkansas Colorado, Florida, Georgia Idaho, Indiana, Kansas Kentucky, Louisiana Mississippi, Missouri New Mexico, North Carolina Ohio, Oklahoma, Pennsylvania South Carolina, Tennessee Texas, Wyoming	Alaska, California, Connecticut, Delaware Hawaii, Illinois, Iowa Maine, Maryland, Massachusetts, Michigan Minnesota, Montana Nebraska, Nevada New Hampshire, New Jersey New York, North Dakota Oregon, Rhode Island (restricted), South Dakota Utah, Vermont, Virginia Washington, West Virginia Wisconsin

57. Plaintiff has no adequate remedy at law.

FIRST CAUSE OF ACTION
[Equitable Reinstatement - *Tedeschi* Claim]

58. Pursuant to CPLR § 3014, plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "57" of the complaint with the same force and effect as if separately alleged herein.

59. Plaintiff is entitled to immediate reinstatement of his position as a student in the Le Moyne Teachers Program.

SECOND CAUSE OF ACTION
[Civil Rights Claim Under § 1983]

60. Pursuant to CPLR § 3014, plaintiff repeats and realleges each and every allegation

contained in paragraphs "1" through "57" of the complaint with the same force and effect as if separately alleged herein.

61. Defendants retaliated against plaintiff for exercising his constitutionally guaranteed rights to freedom of thought and freedom of speech in expressing his personal, philosophical beliefs by expelling him from the Le Moyne Teachers Program.
62. Accordingly, defendants are liable to plaintiff in damages of \$5 million.

THIRD CAUSE OF ACTION
CAUSE OF ACTION
[Intentional Infliction of Emotional Distress]

63. Pursuant to CPLR § 3014, plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "57" of the complaint with the same force and effect as if separately alleged herein.
64. Defendants have intentionally inflicted emotional distress upon plaintiff, thereby damaging him in the sum of \$5 million.

FOURTH CAUSE OF ACTION
[Reckless Infliction of Emotional Distress]

65. Pursuant to CPLR § 3014, plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "57" of the complaint with the same force and effect as if separately alleged herein.
66. Defendants have recklessly inflicted emotional distress upon plaintiff, thereby damaging him in the sum of \$5 million.

FIFTH CAUSE OF ACTION
[Negligent Infliction of Emotional Distress]

67. Pursuant to CPLR § 3014, plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "57" of the complaint with the same force and effect as if separately alleged herein.
68. Defendants have negligently inflicted emotional distress upon plaintiff, thereby damaging him in the sum of \$5 million.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests the Court grant the following relief:

- on the First Cause of Action, immediately reinstating him as a student at Le Moyne College;
- enjoining defendants from further retaliating against plaintiff upon his reinstatement;
- \$5,000,000 on the Second Cause of Action, plus \$5,000,000 in punitive damages;
- \$5,000,000 on the Third Cause of Action, plus \$5,000,000 in punitive damages;
- \$5,000,000 on the Fourth Cause of Action, plus \$5,000,000 in punitive damages;
- \$5,000,000 on the Fifth Cause of Action, plus \$5,000,000 in punitive damages;
- statutory attorneys fees pursuant to 42 U.S.C. § 1988;
- the costs and disbursements of this action; and
- such further and different relief which the Court deems just and proper.

Dated: New York, New York
May 4, 2005

Law Offices of Samuel A. Abady and Associates, P.C.
Lead Counsel for Scott McConnell

By: _____

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216 East 49th Street - 5th Floor
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- and -

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA**

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SCOTT McCONNELL, :
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Plaintiff, :
:
- against- :
:
LE MOYNE COLLEGE, JOHN SMARELLI, JR., :
individually and in his official capacity as Provost :
of Le Moyne College, CATHY JO LEOGRANDE, :
individually and in her official capacity as Chair :
of the Le Moyne College Education Department, :
and MARK J. TRABUCCO, individually and :
in his official capacity as a Professor of Education :
at Le Moyne College, :
:
Defendants. :
-----X

VERIFICATION

Samuel A. Abady, an attorney duly admitted to practice before the courts of the State of New York, affirms pursuant to CPLR 3020(d) that:

He is the attorney for the plaintiff in the above-entitled action; he has read the foregoing complaint and the same is true of his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, he believes them to be true; the reason this verification is not made by the plaintiff is that he is not within the county where the deponent maintains his law office.

Deponent further says that the grounds of his belief as to all matters stated on information and belief are derived from the public admissions of the defendants as quoted in the complaint; information received from the plaintiff; and information independently developed by the undersigned in the course of investigating this case.

Samuel A. Abady