

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

INGE BERGE,

Plaintiff,

v.

SCHOOL COMMITTEE OF
GLOUCESTER; BEN LUMMIS, in his
personal capacity; ROBERTA A. EASON,
in her personal capacity; and STEPHANIE
DELISI, in her personal capacity,

Defendants.

Civil Action No. _____

VERIFIED COMPLAINT

This is a Civil Action brought by Plaintiff Inge Berge against Defendants School Committee of Gloucester, Ben Lummis, Roberta A. Eason, and Stephanie Delisi. Mr. Berge brings a claim under 42 U.S.C. § 1983 for Defendants' violation of Mr. Berge's First Amendment rights, and alleges as follows:

THE PARTIES

1. Plaintiff Inge Berge is an individual and citizen journalist who resides in Gloucester, Massachusetts.

2. Defendant School Committee of Gloucester is a school committee organized pursuant to G.L. c. 43, sec. 31 and Article 4, Section 4-1(a) of the Code of Ordinance, City of Gloucester, Massachusetts, that exercises control and management of the public schools of the City of Gloucester.

3. Defendant Ben Lummis is the Superintendent of Gloucester Public Schools and, at all relevant times, resided in Gloucester, Massachusetts.

4. Defendant Roberta A. Eason is the Human Resources Director of Gloucester Public Schools and, at all relevant times, resided in Gloucester, Massachusetts.

5. Defendant Stephanie Delisi is the Executive Secretary of Gloucester Public Schools and, at all relevant times, resided in Gloucester, Massachusetts.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this civil action per 28 U.S.C. § 1331 as this is a civil action arising under 42 U.S.C. § 1983 and the First Amendment to the U.S. Constitution. Personal jurisdiction and venue should be obvious.

FACTUAL BACKGROUND

7. Inge Berge is a citizen journalist residing in Gloucester, Massachusetts who publicly discusses Massachusetts and local governments' COVID-19 restrictions and other political issues.

8. On March 3, 2022, Inge Berge entered the office of the Superintendent of Gloucester Public Schools, Ben Lummis. He went there to discuss an issue wherein Gloucester Public Schools were limited seating capacity at school events purportedly for the purpose of public safety, despite all statewide COVID-19 mandates in Massachusetts having been lifted. These restrictions were making it difficult to purchase tickets for him to attend his daughter's middle school play.

9. The Superintendent's office is a public building that is accessible to the general public.

10. When Mr. Berge entered the building, he was directed to Executive Secretary Stephanie Delisi and began to speak with her. He began this conversation by stating "I'm filming this, I'm doing a story on it."

11. Gregg Bach, the Assistant Superintendent of Teaching & Learning, then approached Mr. Berge and spoke with him regarding Mr. Berge's attempt to attend his daughter's play. The two had a pleasant conversation, after which Mr. Berge left the building.

12. The same day, Mr. Berge then uploaded his recording of the above encounter to his publicly accessible Facebook page, adding commentary.¹

13. Also on the same day, Mr. Berge received a letter from Gloucester Public Schools signed by Roberta A. Eason, its Director of Human Resources. This letter claimed that Mr. Berge was in violation of the Massachusetts wiretapping statute, Mass. Ann. Laws ch. 272, § 99 (the

¹ Available at: <https://www.facebook.com/inge.berge.9/videos/1571702173204109>.

“Wiretapping Law”), because he recorded his conversation with Delisi without her consent and uploaded the video to Facebook.

14. The letter concludes with a demand that Mr. Berge “immediately remove the post from your Facebook account and/or any other communications to prevent the pursuit of legal in this matter.” (See demand letter from Gloucester Public Schools, attached as Exhibit 1.)

15. Mr. Berge did not violate the Wiretapping Law. The law only forbids the “interception” of communications, which is defined as “to *secretly* hear [or] *secretly* record . . . the contents of any wire or oral communications” Mass. Gen. Laws ch. 272, § 99(B)(4) (emphasis added). The law thus prohibits only the surreptitious recording of conversations.

16. There was nothing “secret” about Mr. Berge’s recording; he prominently displayed his recording device and informed Ms. Delisi he was recording.

17. Any reasonable person would know that Mr. Berge did not violate the Wiretapping Law. Any level of review of the law would inform the average person that recording a conversation with the knowledge of all participants does not violate it.

18. Though the March 3 letter does not specify what legal action Defendants were threatening to take, violation of the Wiretapping Law can bring a fine of \$10,000 and up to five years in prison for secretly recording a conversation, and a fine of \$5,000 and two years in jail for using such a recording. Mass. Ann. Laws ch. 272, § 99(C)(1) & (3)(b). Furthermore, any aggrieved person may bring a civil action for violation of the law, with possible remedies including (1) actual damages of up to \$1,000; (2) punitive damages; and (3) attorneys’ fees. *Id.* at § 99(Q).

19. In short, a government official, on government stationery, demanded that Berge censor his First Amendment protected footage and speech, or further legal action would be taken. Since the law that they invoked was criminal in nature, this amounts to a threat of criminal prosecution, which would only be foregone if Berge ceased enjoying his First Amendment rights.

20. On information and belief, Defendants Lummis, Delisi, and Eason jointly decided to draft and send the March 3 letter to Mr. Berge.

21. On information and belief, Defendants Lummis, Delisi, and Eason were all aware of the March 3 letter and approved of it being sent.

22. On information and belief, Defendants Lummis, Delisi, and Eason all approved of the March 3 letter being sent for the specific purpose of silencing Mr. Berge's speech and removing content from the internet that they found personally embarrassing or unflattering.

CAUSES OF ACTION

Count I

(42 U.S.C. 1983 – First Amendment)

23. Plaintiff hereby repeats and realleges the preceding paragraphs of the Complaint as if set out in full herein.

24. Mr. Berge openly, after announcing that he was doing so, recorded conversations he had with Defendants Lummis and Delisi in a building accessible to the general public, and then published a video of these conversations on his publicly accessible Facebook page. He had a First Amendment right to record and publish these conversations.

25. Mr. Berge's purpose in publishing this video was to expose and comment on the unreasonableness of a government policy.

26. Defendants retaliated against Mr. Berge's protected speech by threatening to refer him for criminal prosecution and/or bring a civil suit for violation of the Wiretapping Law, despite no reasonable person possibly thinking Mr. Berge violated the law.

27. Defendants threatened Mr. Berge for the specific purpose of silencing his protected speech and removing the general public's ability to view this speech. Mr. Berge now fears the possibility of criminal prosecution and defending himself from a civil lawsuit. While such legal proceedings would be frivolous, it would be potentially ruinously expensive to defend himself against such actions.

28. English is not Mr. Berge's first language, and he is an immigrant unfamiliar with the legal system. Upon information and belief, the Defendants were aware of this, and attempted to take

advantage of this fact to intimidate him with a bogus legal threat, intended to frighten him into suppressing his own First Amendment rights. This conduct was discriminatory in nature.

29. Upon information and belief, Defendants each jointly agreed to draft and send the March 3 letter. Each individual Defendant had actual knowledge at the time the letter was sent that Mr. Berge had not violated the Wiretapping Law.

30. It is clearly established that there is a First Amendment right to openly record government officials in publicly-accessible areas acting in the course and scope of their duties.

31. Defendants' restriction on Plaintiff's speech, namely threatening him with criminal or civil proceedings for publishing speech protected by the First Amendment, is content- based and is in violation of the Free Speech Clause of the First Amendment.

32. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, Plaintiff has suffered irreparable harm, including potential loss of his constitutional rights, entitling Mr. Berge to declaratory and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Court:

- A. To declare that Defendants' restriction on Plaintiff's speech violates the First Amendment to the U.S. Constitution as set forth in this Complaint;
- B. To preliminarily and permanently enjoin Defendants' restriction and forbid them from further threats and coercion as set forth in this Complaint;
- C. To award Plaintiff damages for the past loss of his constitutional rights;
- D. To award Plaintiff his reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and any other applicable law; and,
- E. To award such other relief as this Honorable Court may deem just and proper.

Dated: March 7, 2022

Respectfully Submitted,

/s/ Marc J. Randazza

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Attorneys for Plaintiff
Inge Berge

RANDAZZA | LEGAL GROUP

VERIFICATION OF COMPLAINT

I, Inge Berge am the Plaintiff in the above-captioned matter. I have reviewed the foregoing allegations in this Verified Complaint, and I hereby declare under the penalty of perjury that the foregoing allegations are true and correct to the best of my knowledge and understanding.

Dated: 3/7/2022

DocuSigned by:
By: 
2578F10E4A2344F...
Inge Berge

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Inge Berge

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Randazza Legal Group, PLLC
2764 Lake Sahara Drive, #109

DEFENDANTS

SCHOOL COMMITTEE OF GLOUCESTER; BEN LUMMIS;

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	PERSONAL PROPERTY	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 385 Property Damage Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 210 Land Condemnation	<input checked="" type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983

VI. CAUSE OF ACTION

Brief description of cause:
Defendants' violation of Plaintiff's First Amendment Rights

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

March 7, 2022

/s/ Marc J. Randazza

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) INGE BERGE v. SCHOOL COMMITTEE OF GLOUCESTER

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 160, 400, 410, 441, 535, 830*, 835*, 850, 880, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.

II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.

III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 485, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

No related cases

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO 7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES NO A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division

Central Division

Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division

Central Division

Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Marc J. Randazza

ADDRESS 2764 Lake Sahara Drive, Ste. 109, Las Vegas, NV 89117

TELEPHONE NO. 702-420-2001