

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

SYDNEY T. BACCHUS,

Plaintiff,

v.

CASE NO.: _____

HOLLY BENSON, individually and
in her capacity as Secretary of the Florida
Department of Business & Professional
Regulation,

Defendant.

COMPLAINT

Plaintiff sues Defendant and states:

JURISDICTION and VENUE

1. This action for monetary damages, for declaratory and injunctive relief, and for other equitable and ancillary relief is brought pursuant to the First and Fourteenth Amendments to the Constitution of the United States of America; pursuant to 42 U.S.C. § 1983 (hereinafter “§ 1983”); and pursuant to 28 U.S.C. §§ 2201 and 2202.
2. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(3) and (4).
3. Plaintiff Sydney T. Bacchus (hereinafter “Bacchus” or “Plaintiff”), is a female citizen of the United States and a resident of Athens-Clarke County, Georgia, who has so resided at the times material hereto.
4. Defendant Holly Benson (hereinafter “Benson”), in her official capacity, is Secretary of the Florida Department of Business & Professional Regulation (hereinafter

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“DBPR”). DBPR is an agency of the State of Florida created by statute for the principal purpose of licensing and regulating certain businesses and professions in Florida, including the practice of professional geology. DBPR maintains its headquarters in Tallahassee, Leon County, Florida. Benson is the highest ranking official of DBPR, reporting only to the Governor.

5. Defendant Holly Benson in her individual capacity transacts business in Leon County, Florida.
6. Count I of this Complaint seeks injunctive and other equitable and ancillary relief against Benson in her official capacity. Count II seeks monetary damages against Benson in her individual capacity.

CONDITIONS PRECEDENT

7. All conditions precedent to institution of this action have been performed or have occurred.

GENERAL ALLEGATIONS

8. Plaintiff holds a Ph. D. and her area of expertise is hydroecology.
9. Plaintiff's interest is in ecology. She is affiliated with or has assisted various organizations and citizens seeking to protect the environment.
10. Plaintiff commonly addresses agencies of federal, state, and local government on matters pertaining to environmental protection in her capacity as a citizen and as a representative of organizations or informally organized groups of citizens responding to specific environmental hazards.
11. Plaintiff provided public comments in the form of presentations made to the Putnam

County Planning and Zoning Commission and the Putnam County Commission on June 8, 2005 and July 12, 2005, respectively, both of which bodies met in Palatka, Florida.

12. At these meetings, Plaintiff spoke in opposition to the county government authorizing sand mining activities that she and some local citizens considered environmentally hazardous.
13. On or about October 28, 2005, a professional geologist, employed by the mining company referenced above and licensed by DBPR, filed a complaint with DBPR. The complaint alleged that, in making these public-comment presentations, Plaintiff had practiced professional geology without a license in violation of § 492.112(1)(a), Florida Statutes.
14. Plaintiff had performed no professional geological services.
15. No client has ever engaged the services of Plaintiff, either in a fiduciary capacity or otherwise, for professional geological services.
16. Plaintiff has never held herself out or advertised herself as a professional geologist or as a geologist.
17. Plaintiff was no more practicing geology without a license than those speaking for or against disconnecting Terri Schiavo's feeding tube were practicing medicine without a license.
18. DBPR sent Plaintiff a letter dated January 26, 2006, advising her of the complaint filed against her by the mining company's professional geologist.
19. The letter threatened Plaintiff with criminal prosecution.

20. That letter was followed by a "cease-and-desist" order to Plaintiff issued by DBPR on February 15, 2006.
21. The "cease-and-desist" order specifically cited Plaintiff's public-comment presentations to the Putnam Planning and Zoning Commission and the Putnam County Commission as unlicensed practice of professional geology in violation of §§ 492.101-1165, Florida Statutes.
22. The "cease-and-desist" order further informed Plaintiff that she faced a fine of up to \$5,000.
23. After issuing the "cease-and-desist" order, DBPR undertook several months of processing and investigating the geologist's complaint.
24. On or about October 13, 2006, Plaintiff received an Administrative Complaint filed against her by DBPR, signed September 27, 2006, seeking various penalties including a fine up to \$5,000, taxation of costs, and a reprimand.
25. The Administrative Complaint was Exhibit "A" of an unsigned, undated Settlement Stipulation by DBPR also received by Plaintiff on or about October 13, 2006, with an "Election of Rights" form.
26. On October 13, 2006, Plaintiff completed the "Election of Rights" form, disputing the allegations against her in the Administrative Complaint and petitioning for a hearing involving the disputed issues of material fact before an Administrative Law Judge with the Division of Administrative Hearings (DOAH), pursuant to § 120.57(1), Florida Statutes.
27. DBPR declined to forward Plaintiff's case to DOAH for a hearing, as provided by

Florida law.

28. Instead, DBPR informed Plaintiff that it had retained another professional geologist from the private sector to conduct a second "investigation" of the complaint filed against her.
29. On February 12, 2007, DBPR issued a "Closing Order," stating that the evidence establishes that Plaintiff engaged in unlicensed practice of geology by speaking at the two Putnam County meetings.
30. The "Closing Order" added that DBPR determined that further prosecution is not warranted at this time.
31. The "Closing Order" concluded by stating that the case was closed "pursuant to the Notice to Cease and Desist, without prejudice to reopen."
32. A letter from DBPR's counsel of February 12, 2007, accompanying the Closing Order, warned Plaintiff to comply with the cease-and-desist order.
33. DBPR considers the cease-and-desist order still in effect.
34. DBPR believes Plaintiff's speeches to the two commissions in Putnam County constitute unlicensed practice of professional geology, which DBPR can punish.
35. For at least 30 years Plaintiff has provided comments to government bodies in Florida in a similar fashion on similar issues and she wishes to continue providing such information to the public.
36. The acts of DBPR have penalized Plaintiff for the exercise of her rights of freedom of speech and freedom to petition government, as protected by the First and Fourteenth Amendments to the U.S. Constitution.

37. The continued existence of DBPR's cease-and-desist order against Plaintiff is an ongoing and continuing violation of her constitutional rights to freedom of speech.
38. The conduct of DBPR described above has a chilling effect on Plaintiff's exercise of her First Amendment rights.
39. Plaintiff faces the threat and the fear of DBPR subjecting her to criminal prosecution, administrative prosecution, fines of up to \$5,000, further cease-and-desist orders, and even more severe penalties for violation of the existing cease-and-desist order any time she exercises her rights to freedom of speech and freedom to petition government in her principal areas of expertise and interest.
40. Defendant Benson in her official capacity and in her individual capacity has authorized, approved, and ratified the violation of Plaintiff's constitutional rights as stated herein.
41. Plaintiff has had to retain counsel and owes a reasonable attorney fee to vindicate her rights in these matters.

**COUNT I -- 42 U.S.C. § 1983
FIRST AND FOURTEENTH AMENDMENT VIOLATION
OFFICIAL CAPACITY**

42. Plaintiff realleges Paragraphs 1 through 41.
43. The foregoing facts establish a basis for an order from this court dissolving DBPR's cease-and-desist order against Plaintiff and other injunctive and equitable and ancillary relief against Defendant Benson in her official capacity.
44. Defendant Benson, in her official capacity, is a "person" within the meaning of § 1983.

45. The acts of Defendant Benson as described herein were taken under color of state law, custom, or usage.
46. The acts of Defendant Benson as described herein were purposeful and arise from an official policy or custom.
47. The Fourteenth Amendment of the United States Constitution guarantees that no state shall deprive any person of liberty without due process of law. The First Amendment of the United States Constitution, applicable to the states under the Fourteenth Amendment, guarantees the right of freedom of speech and the right to petition government -- rights which stand at the very apex of constitutional protection when exercised, as here, in political speech aimed at influencing the conduct of government.
48. Defendant's conduct in threatening Plaintiff with criminal prosecution, issuing a cease-and-desist order against Plaintiff, instituting administrative procedures against her, and threatening her with fines and other punishments, is a policy and practice which, on its face and as applied to Plaintiff, has deprived Plaintiff of her rights under the First and Fourteenth Amendments of the United States Constitution by interfering with her fundamental rights to freedom of speech and freedom to petition government.
49. In violating Plaintiff's constitutional rights to freedom of speech and her right to petition government, Defendant has caused and continues to cause damage to Plaintiff.

**COUNT II -- 42 U.S.C. § 1983
FIRST AND FOURTEENTH AMENDMENT VIOLATION
INDIVIDUAL CAPACITY**

50. Plaintiff realleges Paragraphs 1 through 41.
51. The foregoing facts establish a basis for damages and ancillary relief against Defendant Benson in her individual capacity.
52. The acts of Defendant Benson as described herein were taken under color of state law, custom, or usage.
53. The acts of Defendant Benson as described herein were purposeful and arise from an official policy or custom.
54. The Fourteenth Amendment of the United States Constitution guarantees that no state shall deprive any person of liberty without due process of law. The First Amendment of the United States Constitution, applicable to the states under the Fourteenth Amendment, guarantees the right of freedom of speech and the right to petition government -- rights which stand at the very apex of constitutional protection when exercised, as here, in political speech aimed at influencing the conduct of government.
55. Defendant's conduct in threatening Plaintiff with criminal prosecution, issuing a cease-and-desist order against Plaintiff, instituting administrative procedures against her, and threatening her with fines and other punishments, is a policy and practice which, on its face and as applied to Plaintiff, has deprived Plaintiff of her rights under the First and Fourteenth Amendments of the United States Constitution by interfering with her fundamental rights to freedom of speech and freedom to petition

government.

56. Defendant knew, or a reasonable official in Defendant's position would have known, that the acts of Defendant as described herein, violated clearly established law.
57. In violating Plaintiff's constitutional rights to freedom of speech and her right to petition government, Defendant has caused and continues to cause damage to Plaintiff.
58. The acts of Defendant were malicious, willful and wanton.

Prayer for Relief

WHEREFORE, Plaintiff prays for the following relief:

- (a) that process issue and this Court take jurisdiction over this case;
- (b) judgment against the Defendant in her individual capacity and for Plaintiff awarding compensatory and punitive damages against Defendant for the violations of law enumerated herein;
- (c) judgment against the Defendant in her official capacity and for the Plaintiff permanently enjoining Defendant from future violations of law enumerated herein, dissolving and voiding the cease-and-desist order, and compelling adoption of policies and procedures for regulation of professional geology that do not infringe the First and Fourteenth Amendment rights of citizens;
- (d) prejudgment interest;
- (e) nominal damages as may be just and appropriate;
- (f) judgment against the Defendant and for the Plaintiff awarding the Plaintiff her attorney's fees and costs pursuant to 42 U.S.C. § 1988; and
- (g) such further relief as is equitable and just.

Jury Demand

Plaintiff demands trial by jury on all issues so triable.

Respectfully submitted,

/s/ Richard E. Johnson
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Florida Bar No. 858323

Andrea L. Reino
Florida Bar No.427233

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