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4th Circuit tosses teacher's political retaliation and conspiracy lawsuit

Robert Iafolla

(Reuters) - A federal appeals court on Tuesday tossed a North Carolina high school teacher's lawsuit alleging he was disciplined in retaliation for his political activities rather than for inappropriate comments he made to students.

A unanimous three-judge panel of the 4th U.S. Circuit Court of Appeals ruled that Stanley Penley did not offer enough evidence to back his claims that McDowell County High School officials and a state lawmaker conspired to punish him for working on political campaigns trying to unseat the lawmaker.

Robert King of Brooks Pierce McLendon Humphrey & Leonard, an attorney for the school officials and the lawmaker, said it was unfortunate Penley ever filed the lawsuit, which "has been a waste of the school's and courts' resources."

Penley's lawyer did not respond to requests for comment.

Penley taught at the high school from 2006 to 2013. He also worked as a media strategist in 2004, 2006 and 2008 for politicians running against Mitch Gillespie, then a Republican member of North Carolina's House of Representatives.

Gillespie told school officials that he despised Penley and would not enter his classroom during a 2012 tour of the school due to his previous political work, the panel said.

While teaching an AP Government class in 2013, Penley made a comment to students about the frequency that men think about sex that drove a female student to tears, the panel said. The student's mother reported Penley's comment to the school.

The school investigated and uncovered an exchange Penley had on Facebook with a student consisting of comments on a shirtless photo of the student, the panel said. Penley asked the student if he was trying to join an advocacy group for pedophilia.

In an interview with school officials about his inappropriate comments in class and on Facebook, Penley expressed his wish to "take back everything," the panel said.

The school suspended Penley and recommended his dismissal, but an administrative hearing officer found that termination was not justified, the panel said. Penley was transferred to another high school in the county.

Penley in 2014 sued the McDowell County Board of Education, three school officials and Gillespie in the U.S. District Court for the Western District of North Carolina. He claimed they violated his free speech rights protected by the First Amendment of the U.S. Constitution by disciplining him in retaliation for his political work. Penley also accused Gillespie and the school officials of conspiring to violate his free speech rights.

U.S. District Judge Max Cogburn in Asheville dismissed the lawsuit in 2016. Cogburn ruled that Penley's political work in 2004 through 2008 was too distant from his discipline in 2013 to show they were linked. He also found that Penley offered no evidence to prove a conspiracy.

Penley appealed, arguing Cogburn ignored evidence of retaliation and conspiracy, such as Gillespie's comments about Penley less than a year prior to his discipline.

In Tuesday's opinion written by Circuit Judge Stephanie Thacker, the panel, which also included Circuit Judges Harvie Wilkinson and Allyson Duncan, found that Penley did not offer enough evidence to back his claims.

The case is Penley v. McDowell County Board of Education, 4th U.S. Circuit Court of Appeals, No. 16-2034.

For the appellant: David Kula of the Law Office of David Kula

For the appellees: Robert King of Brooks Pierce McLendon Humphrey & Leonard

---- **Index References** ----

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