

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

<u>JEFFREY HERMAN,</u>	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION NO. 06-11891-RWZ.</b>
<b>v.</b>	)	
	)	
<b>JOSE DUARTE, in his individual and</b>	)	
<b>official capacities as Headmaster of</b>	)	
<b>Boston English High School</b>	)	
<u>    <b>Defendant.</b></u>	)	

**COMPLAINT**

**I. INTRODUCTION**

1. This is a First Amendment civil rights action on behalf of Jeffrey Herman (hereinafter, “Herman” or “the Plaintiff”), a substitute teacher for the Boston Public Schools, whom the Defendant, the Headmaster of Boston English High School, is excluding from teaching at English High School in violation of the First Amendment right to freedom of speech. At the direction of defendant Duarte, Herman has been placed on a “do not call” list for English High School substitute teachers. This action was taken against the Plaintiff because Headmaster Duarte disapproved of Herman’s public testimony at a Boston City Council hearing in opposition to the spending of \$1.2 million of public funds to support Junior ROTC (Reserve Officer Training Corps) programs in the Boston Public Schools. The headmaster disagrees with the Plaintiff’s views on the military and retaliated against the Plaintiff in violation of his rights as a citizen to speak out on matters of public concern, a right protected by the First Amendment. The Plaintiff seeks to be reinstated to the substitute teacher list for English High School and to recover damages for the violation of his First Amendment rights.

**II. JURISDICTION AND VENUE**

2. This court has jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper in this District Court pursuant to 28 U.S.C. § 1391(b), because the Plaintiff's claims arose in this District and, upon information and belief, the Defendant resides in this district.

### **III. PARTIES**

4. The Plaintiff, Jeffrey Herman, is an adult resident of the City of Boston, Suffolk County, Commonwealth of Massachusetts. He is employed by the School Committee of the City of Boston as a public school substitute teacher.

5. Defendant Jose Duarte (hereinafter, "the Defendant") is an individual having a usual place of business at English High School, 144 McBride Street, Jamaica Plain, MA and is employed by the School Committee of the City of Boston (hereinafter "the School Committee"). The Defendant is the Headmaster of English High School.

### **IV. ALLEGATIONS OF FACT**

6. The Plaintiff has been employed as a substitute teacher by the Boston School Department for approximately nine (9) years, commencing in or about 1997 and continuing to the present. At different times throughout the period of his service as a substitute teacher, Plaintiff has served at the Boston English High School as a per diem substitute and, also, on a regular and continuous basis as a long-term substitute teacher.

7. On March 13, 2006, the Plaintiff attended a Boston City Council hearing. The purpose of that hearing was to allow city councilors to consider the School Department providing \$1.2 million in funding for a Junior Reserve Officer's Training Corps (JROTC) program in the city's public schools. During the time for public comment at that hearing, the Plaintiff appeared and testified for the allotted three minutes against the funding of JROTC. He stated his belief that city education funds would be better spent teaching students how to reduce violence in Boston and he informed the City Councilors present that his experience at English High School

was that the headmaster played reveille, the military wakeup call, every day at the beginning of school. The Plaintiff delivered his testimony as a citizen, speaking on a matter of public concern; he was not speaking on behalf of English High School or the Boston School Department.

8. On March 17, 2006, the Jamaica Plain Gazette, a local newspaper, published a story about the hearing and included quotes from an interview with the Plaintiff. The article also contained the allegation by other critics, although denied by administrators, that at English High School some students were being forced into the JROTC course “in order to graduate.” The news story quoted Defendant Duarte as saying, “Tell those people [opponents of JROTC like Mr. Herman] to get a life. Just so you know my bias, I was in the military and it was the best experience of my life.”

9. On or about March 20, 2006, Plaintiff received a call from the School Department’s automated substitute teacher call system stating that Boston English High School needed a substitute teacher for that day. Plaintiff duly accepted the assignment and reported for work on time.

10. When Plaintiff arrived at the school that day, he encountered Headmaster Duarte who blurted out words to the following effect: “Get out of here. We don’t want you here anymore.” Mr. Herman explained to the headmaster that he had been assigned to substitute for the day at the school. He asked to be allowed to notify Helen Jacobson, Supervisor of Substitute Teachers for the school, that he was being ordered out of the school. After Plaintiff spoke to Ms. Jacobson, she asked him to remain at the school and apparently received permission for the Plaintiff to teach that day. Plaintiff worked the rest of the day without incident.

11. Two days after this incident, Plaintiff received another call from the automated substitute teacher call system again stating that English High School needed a substitute for that day. Plaintiff accepted the assignment and reported to work on time.

12. When the Plaintiff entered the school that morning, he again encountered the headmaster who appeared visibly upset to see Mr. Herman there and ordered him out of the school, stating something like, "Didn't you understand? I told you not to come back here anymore." Plaintiff again spoke to Ms. Jacobson, who apparently persuaded Defendant to allow Plaintiff to work that day.

13. During the week following March 20, 2006, Plaintiff received a third automated call stating that English High School needed a substitute teacher. Plaintiff again accepted this assignment and reported to work on time.

14. This time, upon entering the school, Plaintiff did not immediately encounter the headmaster. He received his assignment and went to the classroom. Soon after, a student appeared in the room and informed Plaintiff that Defendant wanted to see him in his office immediately. When Plaintiff reported to Defendant's office as requested, the Defendant demanded to know why Plaintiff was still coming to the school, asking, "What don't you get about the word, 'no'? We don't want you here." Defendant informed Plaintiff that he had told School Department authorities to put Plaintiff on a "do not call" list for English High School. Defendant relieved Plaintiff of his classroom duties for the day and assigned him to answer telephones in the office for the entire day.

15. Defendant has placed Plaintiff on a list of substitute teachers who should not be called by the automated system to work at English High School. Despite existing work opportunities for substitutes that have arisen, Plaintiff has not been called once after completing his duties as alleged in Paragraph fifteen (15).

16. Upon information and belief, the Defendant has given military recruiters extensive access to English High School students, including allowing them to set up displays in the cafeteria, provide pencils with recruiter information to students, and hand out Frisbees and leaflets with military recruiting information. At the same time, the Defendant reprimanded two teachers who sponsored a talk for students by veterans who had served in Iraq and were critical of the U.S. presence there. The Defendant has favored those who express views encouraging students to enlist in the military and has punished those, including the Plaintiff, who have voiced concerns about recruitment of students into the military and the use of education tax dollars for military-related programs like JROTC.

17. Prior to the Plaintiff's testimony before the Boston City Council and subsequent news reports of his testimony, he had frequently taught at English High School for more than six years and was given responsibilities that are not usually given to substitute teachers, including being paid an extra stipend to mentor failing students and another stipend to help students after school with their homework assignments. It was only after Plaintiff testified at the City Council hearing on JROTC that the headmaster ordered him out of the school.

### **COUNT I**

#### **(Violation of First Amendment and 42 U.S.C. § 1983)**

18. The Plaintiff reavers every allegation contained in paragraphs 1 – 17 contained herein.

19. The Defendant, acting under the color of law, refused and continues to refuse to allow the Plaintiff to work at English High School because of the views the Plaintiff expressed as a citizen on a matter of indisputable public concern in testimony before a hearing of Boston City Councilors. In so acting, the Defendant has infringed upon the Plaintiff's right to freedom of speech guaranteed by the First Amendment and made actionable by 42 U.S.C. § 1983.

**V. REQUESTS FOR RELIEF**

WHEREFORE, the Plaintiff prays that the Court grant him the following relief:

- (1) A declaration that the Defendant has violated the Plaintiff's rights under the First Amendment by excluding him from teaching at English High School because of Plaintiff's expression of views on the military;
- (2) A permanent injunction against the Defendant, ordering him to cease barring the Plaintiff from English High School because of his expression of views on matters of public concern;
- (3) Compensatory, nominal and punitive damages;
- (4) Reasonable attorney's fees and costs of the action; and
- (5) Such other legal and equitable relief as the Court deems proper.

**VI. JURY DEMAND**

The Plaintiff requests trial by jury on all counts so triable.

For the Plaintiff,  
**JEFFREY HERMAN,**  
By his attorneys,

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Dated: October 17, 2006

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