

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON
CIVIL ACTION NO. _____**

DR. RAYNOR MULLINS)	
)	
PLAINTIFF)	
)	
V.)	
)	
MARK D. BIRDWHISTELL, Individually)	
And in his Official Capacity as)	
Vice-President for Administrative and)	<u>COMPLAINT</u>
External Affairs for the University of)	
Kentucky HealthCare)	
)	
And)	
)	
STEPHANOS KYRKANIDES, Individually)	
And in his Official Capacity as)	
Dean of the University of Kentucky)	
College of Dentistry)	
)	
And)	
)	
JOHN DOE)	
)	
DEFENDANTS)	

Comes the Plaintiff, Dr. Raynor Mullins (hereinafter “Plaintiff” or “Dr. Mullins”),
by and through counsel, and for his Complaint against the Defendants, states as follows:

INTRODUCTION

This is a civil action for damages for violation of the Constitutional rights of Plaintiff by the Defendants, acting under color of state law. Plaintiff asserts that the Defendants, in their individual and official capacities, violated Plaintiff’s rights secured by the First Amendment to the United States Constitution, by subjecting Plaintiff to

retaliation for the purpose of silencing Dr. Mullins. After receiving pressure from the Governor of the Commonwealth of Kentucky and/or his agents, Defendants unconstitutionally sought to deter Dr. Mullins from exercising his First Amendment right to freedom of speech on matters of public concern, and thereafter retaliated against Dr. Mullins for exercising his rights to free speech on matters of public concern, which rights are protected by the First Amendment to the United States Constitution.

JURISDICTION AND VENUE

This Court has original jurisdiction over this action pursuant to 28 U.S.C. §1331, actionable by virtue of 42 U.S.C. §1983. In addition, the Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367. Venue is appropriate in this Court pursuant to 28 U.S.C §1391.

PARTIES

1. The Plaintiff, Dr. Mullins, was at all times relevant hereto employed by the University of Kentucky College of Dentistry on a post-retirement faculty appointment. Dr. Mullins is a resident of Fayette County, Kentucky.

2. Defendant, Mark D. Birdwhistell, was, at all times relevant to this Complaint, acting as Vice-President for Administrative and External Affairs for University of Kentucky HealthCare, as well as a member of Kentucky Governor Matt Bevin's Medicaid Waiver team. Upon information and belief Defendant, Mark D. Birdwhistell, is a resident of Franklin County, Kentucky.

3. At all times relevant hereto, the Defendant, Mark D. Birdwhistell, was acting under color of state law in performing the acts or omissions complained of in this Complaint.

4. Defendant, Stephanos Kyrkanides, was at all times relevant to this

Complaint acting as Dean of the University of Kentucky College Of Dentistry. Upon information and belief, Defendant, Stephanos Kyrkanides, is a resident of Fayette County, Kentucky.

5. At all times relevant hereto, the Defendant, Stephanos Kyrkanides, was acting under color of state law in performing the acts or omissions complained of in this Complaint.

6. The identity of Defendant, John Doe is unknown to Plaintiff at this time. However, upon information and belief, John Doe is a member of the staff of Governor Matt Bevin or a member of Governor Bevin’s administration.

7. At all times relevant hereto, the Defendant, John Doe, was acting under color of state law in performing the acts or omissions complained of in this Complaint

FACTUAL ALLEGATIONS

Paragraphs 1-7 are incorporated herein by reference as if fully set out.

8. Dr. Mullins is a public health dentist, who received a DMD from the University of Kentucky College of Dentistry, and an MPH from the School of Public Health at the University of North Carolina.

9. After completing a residency in Dental Public Health at the University of Kentucky (“UK”), Dr. Mullins was appointed to the faculty of the UK Department of Community Dentistry, and served as Department Chair from 1974-1988.

10. At UK, Dr. Mullins has also served as Head of the Education Program (with Academic Dean responsibilities)(1988-1994) and as Chief of the Division of Dental Public Health (1994-2004) for the UK College of Dentistry.

11. From 2004 to 2017, Dr. Mullins worked with the UK Center for Oral

Health Research, its community partners, and other UK colleges, to develop education, service, and research partnerships aimed at improving oral health literacy, dental public health programs, and reducing oral health disparities in counties across Kentucky.

12. Dr. Mullins has also received numerous professional honors including: President of the American Association of Public Health Dentistry (1981-82); induction into the Kentucky Public Health Hall of Fame (2006); the Presidential Citation Award for Outstanding Contribution to Health of Kentuckians from the Kentucky Dental Association (2008); the Kentucky Primary Care Association's Lois Baker Exemplary Service Award (2015); the UK College of Dentistry's Distinguished Alumnus of the Year Award (2015); and the University of Pikeville's Distinguished Alumnus of the Year Award (2015); among others.

13. Beginning on or about 2006 Dr. Mullins was employed, via post-retirement appointments, as a member of the Emeritus Faculty of the College of Dentistry at the University of Kentucky.

14. As the foregoing demonstrates, Dr. Mullins has had a long and successful career with the University of Kentucky, and was devoted to improving oral health literacy and reducing oral health disparities in Appalachia and rural Kentucky.

15. On or about June 22, 2016, Governor Matt Bevin announced a plan to make significant changes to Kentucky's Medicaid program, this plan being identified as the "Kentucky HEALTH Waiver Proposal."

16. Governor Bevin publicly thanked Defendant, Mark Birdwhistell, for his work on the Kentucky HEALTH waiver proposal, stating in a Cabinet for Health and Family Services press release, "I want to thank Mark Birdwhistell for devoting his time

and talents to the Commonwealth for the last six months. He has evaluated the most innovative of concepts across the country and tailored a plan that is uniquely Kentucky. We appreciate the support of the University of Kentucky for lending him to this initiative.”

17. Upon information and belief, Mark Birdwhistell was assigned by UK Healthcare to work closely with Governor Bevin and state agency officials to craft the Kentucky HEALTH Waiver Proposal.

18. The thirty-day period for submission of comments on the Kentucky HEALTH Waiver Proposal to the Department of Medicaid Services began on June 22, 2016, and ran through July 22, 2016.

19. In late June, 2016, in a brief unplanned hall encounter with Dr. Mullins before Defendant Kyrkanides left for a summer vacation in Greece, Defendant Kyrkanides told Dr. Mullins that he needed to stay “off radio” in relation to the Kentucky HEALTH Waiver Proposal. Defendant Kyrkanides also communicated that this direction came from “up top.”

20. Dr. Mullins reasonably interpreted these statements to mean that Defendant Kyrkanides and University of Kentucky leaders did not want Dr. Mullins to speak on radio or television about the Kentucky HEALTH Waiver Proposal. Dr. Mullins told Defendant, “I have not received any requests from the media, but I do have serious concerns about the proposed waiver.” He also alerted Defendant that he planned to further study the waiver proposal and that he definitely planned to submit comments during the state comment period. He also promised to forward his comments to the Defendant.

21. On or about July 12, 2016, Dr. Mullins, together with four other distinguished Kentucky dental scientists and health leaders, submitted public comments which were critical of the Kentucky HEALTH Waiver Proposal.

22. The public comments submitted by Dr. Mullins and the other four senior dental authors in their individual capacities were primarily drafted by Dr. Mullins. Dr. Mullins included suggested improvements from the other four individuals, who all ultimately agreed on the final document. The final submitted comments explicitly stated that the comments in no way represented the official positions of the University of Kentucky or any of its academic units.

23. On or about July 12, 2016, as a matter of professional courtesy, Dr. Mullins notified Defendants, Mark Birdwhistell and Stephanos Kyrkanides, that he submitted public comments in opposition to the Kentucky HEALTH Waiver Proposal.

24. Dr. Mullins' public comments were posted online by "Save Kentucky Healthcare," an effort led by former Kentucky Governor Steve Beshear.

25. Upon information and belief, Governor Bevin and/or officials in his administration reviewed Dr. Mullins' comments, and were displeased.

26. Upon information and belief, later in July, 2016, Governor Bevin and/or officials in his administration, including John Doe, communicated their displeasure with Dr. Mullins' public comments to Defendant Birdwhistell, and pressured Defendant Birdwhistell to retaliate against Dr. Mullins and the UK College of Dentistry.

27. Upon information and belief, on or about July, 2016, Governor Bevin, Defendant Birdwhistell, and/or officials in the Bevin administration, including John Doe, telephoned Defendant Kyrkanides while he was vacationing in Greece, and

communicated their displeasure with Dr. Mullins' public comments to Defendant Kyrkanides. Upon information and belief, the caller(s) also pressured Defendant Kyrkanides to retaliate against Dr. Mullins.

28. Upon information and belief, in late July and into August, 2016, Defendant Kyrkanides began approaching other College of Dentistry faculty and administrative leaders, including Dr. Ted Raybould, Dr. Larry Cunningham, and Dr. Robert Kovarik, about how to go about terminating the employment of Dr. Mullins, in retaliation for Dr. Mullins' public comments on the Kentucky HEALTH Waiver Proposal.

29. In mid-August, 2016, Defendant Kyrkanides met with Dr. Mullins in the presence of Dr. Greg Zeller, and reported that because of the public comments submitted in opposition to the Kentucky HEALTH Waiver Proposal, the UK College of Dentistry had been threatened, and Dr. Mullins needed to go "off the radar" and keep a low profile. Defendant Kyrkanides also reported that Defendant Birdwhistell had intervened to "protect the college."

30. Upon information and belief, Defendant Kyrkanides made these statements for the purpose of controlling, manipulating, and silencing Dr. Mullins, while Defendant determined how to end Dr. Mullins' faculty appointment.

31. Upon information and belief, on or about the evening of August 16, 2016, Defendant Kyrkanides approached Dr. Ted Raybould, Professor and Chief for the UK Division of Adult, Pediatric & Public Health Dentistry. At this time Defendant Kyrkanides notified Dr. Raybould that he had received a call while he was in Greece "from the Governor's office" about Dr. Mullins and his public comments on the

Kentucky HEALTH Waiver Proposal, and that Dr. Mullins “has to go.”

32. Upon information and belief, on or about the morning of August 17, 2016, Defendant Kyrkanides notified UK College of Dentistry Division Chief, Dr. Ted Raybould, and Department Chairmen, Dr. Larry Cunningham and Dr. Robert Kovarik that he had to “figure out how to get rid of Raynor Mullins” and stated that he got a call “from the Governor’s office” about Dr. Mullins’ public statements.

33. On or about August 24, 2016 Dr. Mullins met with Dr. Raybould at which time Dr. Raybould notified Dr. Mullins that Defendant Kyrkanides approached him and told him that he intended to “figure out how to get rid of Raynor Mullins,” and that Dr. Mullins “has to go.” Assistant Professor Joanna Aalboe was also present at this meeting, and witnessed this communication.

34. Upon information and belief, sometime in late August, 2016, Defendants Kyrkanides and Birdwhistell met to discuss the Medicaid waiver program, and discussed Dr. Mullins’ comments in opposition to same.

35. Once, in late August, and again on or about September 7, 2016, Dr. Mullins met with Defendant Kyrkanides. At the late August meeting, Defendant Kyrkanides told Dr. Mullins, “They are not buying your dental Medicaid comments or the KDA’s.” (referring to Kentucky Dental Association officers). Upon information and belief, this feedback flowed directly from Defendant Birdwhistell or Defendant John Doe to Defendant Kyrkanides.

36. At both of these meetings:

- a. Dr. Mullins shared his deep concerns about the relayed threats and intrusion by state officials into university affairs;

- b. Dr. Mullins was informed directly by Defendant Kyrkanides that these threats flowed from the Governor's office;
- c. Dr. Mullins communicated his belief that Governor Bevin and/or his agents, including Defendant John Doe, intended to intimidate the UK College of Dentistry and coerce and silence him.

37. Upon information and belief, Governor Bevin and/or his agents improperly tampered with a legally required federal and state public Medicaid waiver process.

38. Following Dr. Mullins' comments at the September 7, 2016, meeting, Defendant Kyrkanides told Dr. Mullins that it was a very bad strategy "to piss the Governor off," and that Dr. Mullins' public comments had indeed "pissed off" the Governor. Defendant Kyrkanides also cautioned Dr. Mullins that as a state employee, "we all work for the Governor," and threateningly told Dr. Mullins that Governor Bevin is ultimately Dr. Mullins' "boss."

39. At this September 7, 2016 meeting, Dr. Mullins also questioned Defendant Kyrkanides about the phone call he received from the Governor's office, while in Greece. Defendant Kyrkanides was adamant that while he could have fired Dr. Mullins, instead he "protected" and "covered for" Dr. Mullins.

40. At this September 7, 2016 meeting, Defendant Kyrkanides informed Dr. Mullins that his employment was discussed with an unidentified UK Vice-President, who, upon information and belief, is Defendant Birdwhistell.

41. At this September 7, 2016, meeting, Defendant Kyrkanides also stated, "We cannot continue to have these conversations unless I know you are on my team,"

and continued to encourage Dr. Mullins to be “off the radar.”

42. Dr. Mullins believes that Defendant Kyrkanides’ statements at both of the above-referenced meetings were made for the purpose of chilling or silencing Dr. Mullins from exercising his First Amendment right to free speech on matters of public concern in the future.

43. Upon information and belief, Defendant Birdwhistell, both personally and at the behest of Governor Bevin and/or his agents, including Defendant John Doe, directed Defendant Kyrkanides to chill and silence Dr. Mullins.

44. On or about October 6, 2016, Dr. Mullins and his four colleagues also submitted comments critical of the Kentucky HEALTH Waiver Proposal to the federal government, which has been asked to approve the Kentucky HEALTH Waiver Proposal.

45. Upon information and belief, these comments to the federal government further infuriated Governor Bevin and other administration officials, including Defendant John Doe.

46. Upon information and belief, through the fall of 2016 and into the spring of 2017, Defendant Kyrkanides notified Dr. Mullins’ colleagues that they could no longer work with Dr. Mullins on new grant funded projects, in retaliation against Dr. Mullins.

47. Upon information and belief, through the fall of 2016 and into the spring of 2017, Defendant Kyrkanides told Dr. Mullins’ colleagues to stop speaking to Dr. Mullins in an effort to ostracize and retaliate against Dr. Mullins for exercise of his First Amendment rights.

48. On or about October, 2016, Dr. Mullins notified the Director of the UK Office of Institutional Equity and Equal Opportunity, Patty Bender, with a written

statement that he was personally being singled out for retaliation after making public comments critical of the Kentucky HEALTH Waiver Proposal. He also informed Ms. Bender then about his concerns about improper intrusion by Governor Bevin and/or his agents, including Defendant John Doe, into the affairs of the University of Kentucky.

49. Upon information and belief, the UK Office of Institutional Equity and Equal Opportunity failed to conduct a complete investigation into Dr. Mullins' complaints, and while an internal investigation was opened, Dr. Mullins was never notified by the UK office of the final outcomes and official conclusions of the investigation.

50. Dr. Mullins also never received any written or email response concerning the status or findings of the internal investigation from the UK Office of Institutional Equity and Equal Opportunity. From October 2016, when he first notified the UK office about his concerns, until August, 2017, Dr. Mullins' only additional communication with the UK office was one brief phone conversation with the Director, Patty Bender (December 15, 2016). Dr. Mullins requested an opportunity to present and discuss additional information in an email to Patty Bender on January 3, 2017, following up on the December 15 phone call. No opportunity to provide additional information or any official reply to his January email was ever forthcoming from the UK Office.

51. Upon information and belief, Defendant Kyrkanides, referencing the UK Office of Institutional Equity and Equal Opportunity's investigation into Dr. Mullins' complaint, communicated by email to faculty leaders and staff in Dr. Mullins' academic department (Oral Health Science) about Dr. Mullins' reappointment. His summary instruction was: "This case is closed." He directed departmental leaders and staff not to

proceed with processing a 2017-2018 faculty re-appointment form for Dr. Mullins. Patty Bender was copied on this email. Dr. Mullins was not copied.

52. Upon information and belief, Defendant Kyrkanides made false and negative statements on multiple occasions about Dr. Mullins to Joanna Aalboe, a junior faculty member, in an effort to create hostility, uncertainty, and mistrust between Dr. Mullins and his colleague.

53. By email and by certified letter dated January 17, 2017, Dr. Mullins was notified that his post-retirement appointment would not be renewed with the University of Kentucky College Of Dentistry, and effective June 30, 2017, Dr. Mullins' employment with UK was terminated.

54. The January 17, 2017, letter inaccurately stated that the UK College of Dentistry was not aware of any effort by Dr. Mullins to secure grants or other external funding regarding his position, and inaccurately stated that the current budget climate made it impossible to support Dr. Mullins' position from other funding streams. These stated bases for terminating Dr. Mullins were a pretext for the real reason for his employment termination – retaliation against Dr. Mullins for exercise of his First Amendment rights.

55. Upon information and belief, this January 17, 2017, letter was prepared by Defendant Kyrkanides, who then requested that Dr. Larry Cunningham and Dr. Ted Raybould also sign it.

56. Dr. Mullins had a long track record of successfully bringing significant external funding into the UK College of Dentistry to support public dental health initiatives.

57. Prior to his termination, Dr. Mullins' employment and research with the UK Center of Oral Health Research was funded through state and federal grants, which Dr. Mullins himself helped secure for the benefit of UK College of Dentistry.

58. At all times relevant to this action, Dr. Mullins desired to continue working as an emeritus faculty member with the UK College of Dentistry, and this desire was articulated, communicated, and known to the Defendant Kyrkanides, Dr. Jeff Ebersole, Director of the UK Center for Oral Health Research and Dr. Ted Raybould, Dr. Mullins' Division Chief in the Department of Oral Health Science.

59. At the time he was notified of his employment termination, Dr. Mullins was working with his project team, and with university and community partners, to acquire new external funding for Appalachian, public health, and primary care research projects for the UK Center for Oral Health Research. Upon information and belief, Defendants sabotaged these efforts in retaliation against Dr. Mullins.

60. Dr. Mullins' professional reputation, ability to participate in future projects at UK, and ability to maintain gainful employment in his field, have been severely impaired as the result of Defendants' retaliatory actions.

COUNT I
(First Amendment Violations)

Paragraphs 1 - 60 are incorporated herein by reference as if fully set out.

61. Dr. Mullins' public comments on the Kentucky HEALTH Waiver Proposal constitute protected speech on matters of public importance under the First Amendment to the U.S. Constitution.

62. Dr. Mullins' public comments on the Kentucky HEALTH Waiver Proposal were made in his capacity as a private citizen, and not pursuant to Dr. Mullins'

official duties, as was clearly stated on the public comments themselves.

63. As a result of his protected speech on matters of public importance under the First Amendment to the U.S. Constitution, Dr. Mullins was subjected to adverse employment action of a nature that would chill or silence a person of ordinary firmness from future speech on matters of public importance protected by the First Amendment.

64. The adverse employment action included, but is not limited to, the nonrenewal of Dr. Mullins' employment contract.

65. The adverse employment action included, but is not limited to, the ostracization of Dr. Mullins from his colleagues at the UK College of Dentistry.

66. The above-described actions of Defendants constitute a violation of Plaintiff's rights protected by the First Amendment to the United States Constitution, which violation is actionable pursuant to 42 U.S.C. § 1983.

67. Plaintiff is entitled to recover compensatory damages against Defendants in an amount sufficient to fully compensate him for the damages he suffered as a result of this violation of his First Amendment rights.

68. The Defendants willfully, wantonly, recklessly, and maliciously engaged in the unconstitutional conduct described above.

69. Plaintiff is entitled to recover punitive damages against Defendants, in their individual capacities, in an amount sufficient to punish Defendants for the Constitutional violation, as well as deter them and others similarly situated from committing such violations in the future.

COUNT II
(42 U.S.C. Section 1983 Conspiracy to Violate Civil Rights)

Paragraphs 1 - 69 are incorporated herein by reference as if fully set out.

70. Defendant Kyrkanides, Defendant Birdwhistell, and Defendant Doe shared in the general conspiratorial objective to violate Dr. Mullins' constitutional right to free speech.

71. Defendant Kyrkanides, Defendant Birdwhistell, and Defendant Doe conspired for the purpose of subjecting Dr. Mullins to adverse employment action of a nature that would chill or silence a person of ordinary firmness from future speech on matters of public importance protected by the First Amendment.

72. Through overt acts, including numerous threats and demands that Dr. Mullins be terminated from employment at UK in retaliation for exercising his First Amendment rights, Defendants furthered the conspiracy that caused Plaintiff's injury.

73. Plaintiff is entitled to recover compensatory damages against Defendants in an amount sufficient to fully compensate him for the damages he suffered as a result of this violation of his First Amendment rights.

74. The Defendants willfully, wantonly, recklessly, and maliciously engaged in the unconstitutional conduct described above.

75. Plaintiff is entitled to recover punitive damages against Defendants, in their individual capacities, in an amount sufficient to punish Defendants for the Constitutional violation, as well as deter them and others similarly situated from committing such violations in the future.

76. Plaintiff is entitled to a trial by jury on all issues so triable.

WHEREFORE, the Plaintiff respectfully demands the following relief:

- A. An award of compensatory damages against the Defendants in an amount sufficient to compensate Plaintiff for damages suffered as a result of the

Constitutional violations described herein;

- B. An award of punitive damages against Defendants, individually, in an amount sufficient to punish the Defendants and deter them, as well as others similarly situated, from engaging in unlawful and unconstitutional conduct in the future;
- C. An award of Plaintiff's costs incurred in prosecuting this action, including reasonable attorneys' fees and expert fees pursuant to 42 U.S.C. § 1988;
- D. An award of any and all other relief to which Plaintiff may appear entitled, and
- E. A trial by jury on all issues so triable.

Respectfully submitted,

/s/ Joe F. Childers

JOE F. CHILDERS

BETHANY N. BAXTER

JOE F. CHILDERS & ASSOCIATES

The Lexington Building

201 West Short Street

Suite 300

Lexington, Kentucky 40507

Telephone: (859) 253-9824

Facsimile: (859) 259-1909

childerslaw81@gmail.com

bethanybaxterlaw@gmail.com

COUNSEL FOR PLAINTIFF,

RAYNOR MULLINS