

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BRANDON JENKINS,
[REDACTED]
[REDACTED]

Plaintiff,

v.

SANDRA KURTINITIS, individually and
in her official capacity as President,
COMMUNITY COLLEGE OF
BALTIMORE COUNTY
[REDACTED]
[REDACTED]

MARK MCCOLLOCH, individually and in
his official capacity as Vice President of
Instruction,
COMMUNITY COLLEGE OF
BALTIMORE COUNTY
[REDACTED]
[REDACTED]

RICHARD LILLEY, individually and in his
official capacity as Vice President of
Enrollment and Student Services,
COMMUNITY COLLEGE OF
BALTIMORE COUNTY
[REDACTED]
[REDACTED]

and

ADRIENNE DOUGHERTY, individually
and in her official capacity as Program
Director and Coordinator of Radiation
Therapy,
COMMUNITY COLLEGE OF
BALTIMORE COUNTY
[REDACTED]
[REDACTED]

CIVIL ACTION NO.

Defendants.

VERIFIED COMPLAINT

Plaintiff, Brandon Jenkins, by and through counsel, brings this action for relief against Sandra Kurtinitis, President of The Community College of Baltimore County, Baltimore, Maryland (“CCBC”); Mark McColloch, Vice President of Instruction at CCBC; Richard Lilley, Vice President of Enrollment and Student Services at CCBC; and Adrienne Dougherty, Program Director and Coordinator of Radiation Therapy at CCBC, and hereby states as follows:

INTRODUCTION

1. In April 2013, following Mr. Jenkins’s completion of the admission requirements and process for acceptance to CCBC’s Radiation Therapy Program, whereby he met the standards of a competitive candidate and scored the maximum points allowed during his observation, Mr. Jenkins was informed that he would not be admitted to the program in part because the college viewed religion to be a major part of Mr. Jenkins’s life, and, as one faculty member explained on behalf of CCBC, the “field [of radiation therapy] is not the place for religion.”

2. Mr. Jenkins made several attempts to address with Defendants the discriminatory reasoning upon which they denied Mr. Jenkins admission to the program: retaliation as a result of his expression of his religious views. Defendants, however, affirmed Defendant Dougherty’s initial determination not to admit Mr. Jenkins to the program and the reasoning upon which she relied.

3. This lawsuit seeks damages, a declaratory judgment, and injunctive relief requiring Defendants to accept Mr. Jenkins into CCBC’s Radiation Therapy Program and prohibiting them

from further retaliating and/or discriminating against Mr. Jenkins based on his religious views and/or his expressions thereof.

JURISDICTION AND VENUE

4. This action raises federal questions under the First Amendment to the United States Constitution and 42 U.S.C. § 1983.

5. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over the state claim pursuant to 28 U.S.C. § 1367. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201-02; and costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) because Defendants reside in this district and/or all of the acts described in this Complaint occurred in this district.

PARTIES

7. Brandon Jenkins is a private citizen and prospective student for the Radiation Therapy Program at CCBC.

8. Defendant Sandra Kurtinitis serves as the President of CCBC. President Kurtinitis is the official through whom the CCBC Board of Trustees carries out its policies. She is responsible for the conduct and operation of the college and for the administration and supervision of its departments.

9. Defendant Mark McColloch serves as the Vice President of Instruction at CCBC. According to the college's website, Defendant McColloch is a member of the President's Senior Staff and serves as an educational leader, not just a manager, functioning as part of a senior level

management team that fosters pride and excellence in the institution in a human, supportive environment. Defendant McColloch is responsible for, among other things, overseeing all instruction; bringing overall leadership to the development, maintenance, and improvement of quality instruction and academic support services across the college; creating and supporting a student-centered environment; supporting the principle that “diversity is everybody’s business” through the daily performance of duties and responsibilities; providing flexible, responsive, and high quality customer service to all students; and advancing the core principles of the college’s mission, vision, and strategic priorities.

10. Defendant Richard Lilley serves as the Vice President of Enrollment and Student Services at CCBC. According to CCBC’s website, Defendant Lilley is a member of the President’s Senior Staff and is responsible for the leadership, direction, coordination, and supervision of all service areas under the auspices of Enrollment and Student Services, which include academic advising, testing, student retention services, and admissions.

11. Defendant Adrienne Dougherty serves as the Program Director and Coordinator of the Radiation Therapy Program at CCBC. Defendant Dougherty is responsible for overseeing and coordinating the processing of applications for the Radiation Therapy Program, academic advising, testing, and evaluation; and admissions to the program.

STATEMENT OF FACTS

12. CCBC is a public community college organized and existing under the laws of the State of Maryland.

13. CCBC is governed by the Board of Trustees, the President, and Vice Presidents. CCBC's mission, as published on its website, is to "provide[] an accessible, affordable, and high-quality education that prepares students for transfer and career success, strengthen the regional workforce, and enrich[] [the] community."

14. CCBC and its representatives are required to abide by the following nondiscrimination policy, as published on CCBC's website:

Nondiscrimination and Equal Opportunity

The Community College of Baltimore County does not discriminate against any individual for reason of race, sex, color, religion, national or ethnic origin, age, sexual orientation or conditions of handicap in the admission and treatment of students, educational programs and activities, scholarship and loan programs, hiring of faculty and staff, or any terms and conditions of employment.

CCBC recognizes the value of a diverse work force that is reflective of the students and of the community we serve, and as such, the college is committed to welcoming, respecting and embracing the differences and similarities of our employees and our students.

We acknowledge the richness of multiculturalism and diversity. We hold each member of the college community responsible and accountable for fostering a climate of acceptance, inclusion, respect and dignity of all persons.

15. In January 2013, and in accordance with CCBC's guidelines for admission, Mr. Jenkins submitted his application for admission to the Radiation Therapy Program for the upcoming Fall 2013 semester.

16. According to CCBC's college catalog, the academic credentials of the most competitive candidates for CCBC's Radiation Therapy Program include a minimum 2.5 overall GPA and completion of select courses (including BIOL 109 or BIOL 220 & BIOL 221, MATH 135, PHYS 101 and RTTT 101) with a grade of "C" or above.

17. According to CCBC's college catalog, "Radiation Therapy utilizes radiation and radioactive isotopes in the treatment of disease, primarily cancer. [A] Radiation Therapist provides services for treatment of malignant and non-malignant disease. [A] Radiation Therapist is responsible for localizing the tumor, implementing the treatment plan, observing and evaluating clinical progress of the patient."

18. At the time of his application for admission, Mr. Jenkins had completed each of the required courses and had obtained the following grade in each course: "B" in BIOL 109, "A" in MATH 135, "C" in PHYS 101, and "A" in RTTT. Mr. Jenkins's overall GPA of approximately 3.2 exceeded the GPA criteria of a competitive candidate for the program.

19. Shortly after the submission of his application, Mr. Jenkins was invited to continue with the admissions process, which included an observation and interview with program officials and/or representatives, as well as completion of a writing sample and critical thinking exam.

20. CCBC's admission policy to the Radiation Therapy program is based on a three-part point system with the following weighted areas: (1) Prerequisite GPA – 30%; (2) Interview & Observation Day – 40%; and (3) Writing Sample and Critical Thinking Exam – 30%.

21. Following completion of the writing sample and critical thinking exam on or about March 21, 2013, Mr. Jenkins was invited to interview with program officials to compete for a spot in the program for the upcoming Fall 2013 semester.

22. During his interview, a panel of five representatives of CCBC, which included Defendant Dougherty, asked Mr. Jenkins a series of questions.

23. Mr. Jenkins recalls that during the interview, he was asked what led him to pursue a career in radiation therapy, to which Mr. Jenkins responded that he first considered pursuit of a

degree in the medical field following the suggestion of a friend and mentor that his skills made him an ideal candidate for nursing or a similar profession in the medical field.

24. At the time Mr. Jenkins applied to the Radiation Therapy Program (and beginning in July 2011), Mr. Jenkins served as the Director of Harvest House, Inc., a faith-based home for men working to overcome life-controlling problems, whose purpose is to help residents achieve spiritual, emotional, mental, and physical well-being through counseling, mentoring, job and financial training programs, and the development of supportive networks designed to help men set and reach goals, and overcome generational cycles of poverty, lack of education and unemployment.

25. Mr. Jenkins communicated to the panelists that two of his greatest strengths include that he is “a people person” and a “team player.”

26. Also during the interview, the panelists asked Mr. Jenkins the broad question, “What is the most important thing to you?” Mr. Jenkins simply answered, “My God.”

27. The panel did not follow up with further questions regarding Mr. Jenkins’s religious beliefs, and Mr. Jenkins did not mention his religious beliefs in response to the panelists’ questions regarding the attributes that he felt made him most suitable for the program.

28. On or about April 19, 2013, Mr. Jenkins received notice that he had not been selected for admission to the Radiation Therapy Program.

29. This came as a surprise to Mr. Jenkins because his overall GPA exceeded the standards of a “competitive candidate” for the program, as described in CCBC’s admissions catalog. In addition, Mr. Jenkins had received the maximum points allowed on the observation portion of the interview day (which consisted of 40% of his overall score for admission).

30. On April 21, 2013, in an attempt to obtain clarity regarding CCBC's decision not to admit him, Mr. Jenkins emailed Defendant Dougherty requesting "the reason(s) [he] was not chosen for the radiation therapy program," and explained that he might consider applying for the program again. *See* E-mail between Brandon Jenkins and Adrienne Dougherty dated April 21, 2013, attached hereto as Exhibit A.

31. On that same day, approximately forty-five (45) minutes later, Defendant Dougherty responded to Mr. Jenkins's email. *See* Exhibit A.

32. Defendant Dougherty explained that while Mr. Jenkins may have been directed to contact Charles Martino, Case Manager for the Radiation Therapy program, she would be happy to respond to his question and include Mr. Martino in her response.

33. In her email, Defendant Dougherty identified two areas in which Mr. Jenkins scored lower than other candidates: (1) his GPA and (2) his interview.

34. Specifically, Defendant Dougherty explained that while Mr. Jenkins's grades were good, "there were other students who had higher GPA scores, which [accounts for] 30% of the evaluation process." *See* Exhibit A.

35. Defendant Dougherty then listed the reasons why Mr. Jenkins lost points during his interview, offering the following explanation:

I understand that religion is a major part of your life and that was evident in your recommendation letters, however, this field is not the place for religion. We have many patients who come to us for treatment from many different religions and some who believe in nothing at all. If you interview in the future, you may want to leave your thoughts and beliefs out of the interview process.

Id.

36. Defendant Dougherty explained that the “the other reason [for lost points] is your desire to stay in Maryland”:

I feel that I would be doing you a disservice if I allowed you into the program and you are not able to find a job based on your past. When you first contacted me, you wanted me to be honest, I don't want you to waste 2 years pursuing a career you won't be able to work in. I have seen it happen in the past. Although jobs are opening in the near future, it is primarily through two employers in Maryland and it is highly likely these insitiutions [sic] will not hire you based on your past. They will not directly say it, but it has happened in the past.

Id.

37. Defendant Dougherty noted, however, that she was not sure “how other states are,” should Mr. Jenkins decide to leave Maryland. *Id.*

38. Defendant Dougherty's reasoning was somewhat puzzling to Mr. Jenkins because, although Defendant Dougherty referred to aspects of Mr. Jenkins's past that she felt might make it difficult for him to gain employment in Maryland, neither these areas of his past nor Mr. Jenkins's willingness to work outside the State of Maryland following completion of the Radiation Therapy Program were raised in his admissions interview. Instead, during the interview, Mr. Jenkins was asked only if he *preferred* to stay in Maryland after school, to which he simply replied, “Yes.”

39. Notably, CCBC advertises its Radiation Therapy Program as one that “is nationwide in scope” and thus is not limited to serving only those students who will ultimately practice in the state of Maryland. *See* CCBC letter to ACLJ dated July 18, 2013, attached hereto as Exhibit C.

40. Defendant Dougherty's reasoning is also inconsistent with prior communications Mr. Jenkins had with her.

41. Early in the admission process, and prior to Mr. Jenkins's submission of his application to the Radiation Therapy Program, Mr. Jenkins had specifically inquired of Defendant Dougherty whether a single criminal charge he received more than ten (10) years ago would interfere with his ability to obtain a job following completion of the Radiation Therapy Program.

42. Defendant Dougherty assured Mr. Jenkins that a former student of the Radiation Therapy Program had successfully obtained a job in Washington, D.C., despite his criminal record.

43. At that time, Defendant Dougherty further assured Mr. Jenkins that any uncertainty regarding his ability to obtain a job in Maryland would *not* be a reason not to accept him into the program.

44. Despite these prior statements, Defendant Dougherty ended her April 21, 2013 e-mail response to Mr. Jenkins by offering to put him in contact with a director of another department/program that might be more suitable for him than the Radiation Therapy Program.

45. Following receipt of Defendant Dougherty's e-mail, on April 30, 2013, Mr. Jenkins contacted Miriam Milsom, Executive Director of CCBC Human Resources, in order to appeal his non-admission to the Radiation Therapy Program based upon his expression of his religious beliefs during his interview, and in his recommendation letters. *See* E-mail between Brandon Jenkins and Penny Milsom dated May 3, 2013, attached hereto as Exhibit B

46. Upon information and belief, based upon Ms. Milsom's statements in her May 1, 2013 e-mail response to Mr. Jenkins's April 30, 2013 e-mail, which specifically referenced

Defendant Dougherty's April 21, 2013 e-mail (Exhibit A), Mr. Jenkins's complaint was forwarded to the Vice President of Student Services, Defendant Richard Lilley, for review.

47. Mr. Jenkins never received any response from Defendant Lilley.

48. On May 3, 2013, Ms. Milsom responded again to Mr. Jenkins's email and explained that she had discussed his complaint with Vice President of Instruction, Mark McColloch, and that "religion was not a factor in any decision regarding your course of study at CCBC." Ms. Milsom continued by suggesting, "I believe Ms. Dougherty was attempting to give you some helpful advice." *See* Exhibit B.

49. On June 28, 2013, Mr. Jenkins, by and through his attorneys, and in accordance with Maryland's Local Government Tort Claims Act, Md. Courts and Judicial Proceedings Code Ann. § 5-301, *et seq.*, contacted CCBC President, Defendant Kurtinitis, and Defendant Dougherty, recited the facts regarding the conduct by CCBC and its employees during the admissions and interview process, and informed them that such conduct violated the First Amendment and CCBC's nondiscrimination policy. *See* Letter from ACLJ to Sandra Kurtinitis dated June 28, 2013, attached hereto as Exhibit D.

50. On July 18, 2013, CCBC, by and through its attorney, responded to ACLJ's June 28, 2013 letter of and, fully supporting Defendant Dougherty's decision and explanation, denied any wrongdoing and offered additional discriminatory explanation for CCBC's decision not to admit Mr. Jenkins to the Radiation Therapy Program. *See* Exhibit C.

51. Specifically, CCBC explained that Dr. Dougherty's advice to Mr. Jenkins to "leave your thoughts and beliefs out of the interview process", "stated bluntly . . . is not bad advice" and

that Defendant Dougherty was simply suggesting that Mr. Jenkins “not wear [his religious views] on his sleeve.” *Id.* at 5.

52. CCBC provided further support for its discriminatory decision, taking the position that “Mr. Jenkins’s reliance for motivation upon his religious beliefs during the interview was not the best answer to the motive question.” *Id.* at 5.

53. CCBC concluded its letter by stating that while Dr. Dougherty’s “words may have been inartfully stated,” they were justified because “the fact is that in any secular job or program interview it is better to have a concrete reason for wanting to undertake the training at hand than to say only that God directed one to do it. That is true for every job from astronaut to attorney.” *Id.* at 6.

54. As a result of CCBC’s discrimination and retaliation against Mr. Jenkins for expression of his religious beliefs, Mr. Jenkins was unable to receive the proper training and education required at CCBC for a career in radiation therapy.

55. As a result of CCBC’s discrimination and retaliation against Mr. Jenkins for expression of his religious beliefs, and with the knowledge that Defendants were of the opinion that such beliefs and opinions did not belong in the radiation therapy field, Mr. Jenkins was deterred from submitting a new application for admission to the Radiation Therapy Program for the upcoming Fall 2014 semester.

56. As a result of each of the Defendants’ actions, Plaintiff has suffered, and continues to suffer, economic injury and irreparable harm and is therefore entitled to an award of monetary damages, including punitive damages, and equitable relief.

CAUSES OF ACTION

COUNT I

(Violations of the First Amendment – Freedom of Speech)

57. The allegations of Paragraphs 1 through 56 above are incorporated by reference herein as if fully set out.

58. The First Amendment protects private speech from government interference, restriction, or discrimination when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction or discrimination.

59. Plaintiff's expression of religious views enjoys First Amendment protection.

60. Defendant Dougherty unlawfully deprived Plaintiff of his First Amendment rights in connection with and arising from his application for admission to CCBC's Radiation Therapy Program by denying Plaintiff admission on the basis of his expression of his religious beliefs and viewpoint.

61. Defendants Kurtinitis, McColloch, and Lilley, who are designated as executives of, and/or authorities for, CCBC, unlawfully deprived Plaintiff of his First Amendment rights by endorsing and approving Defendant Dougherty's actions and upholding her original determination not to admit Plaintiff to the Radiation Therapy Program, when each was notified at an early stage of Defendant Dougherty's unlawful discrimination and retaliation against Plaintiff.

62. Each Defendant, individually and acting on behalf of their governmental employer, CCBC, violated Plaintiff's First Amendment rights by refusing to admit Plaintiff to the Radiation Therapy Program because of his religious associations and expression, and have used shifting justifications as a pretext to conceal improper and unlawful motives.

63. Each of the Defendants, individually and acting on behalf of their governmental employer, CCBC, explicitly and implicitly discriminated against Plaintiff for exercising his clearly established right to free speech on matters of religion as secured by the First Amendment to the United States Constitution.

COUNT II
(Violation of the First Amendment – Establishment Clause)

64. The allegations of Paragraphs 1 through 63 above are incorporated by reference herein as if fully set out.

65. The First Amendment requires governmental entities and employees, including those of the various states, to be neutral in their relations with groups of religious believers and non-believers and forbids state action that has the effect of disapproving, inhibiting, or evincing hostility toward religion. As the Supreme Court of the United States held in *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984), the Constitution “affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any”

66. Defendant Dougherty’s decision to deny Plaintiff admission to the Radiation Therapy Program because of his religious expression and beliefs, and the decisions of Defendants Kurtinitis, McColloch, and Lilley to approve and uphold that denial, constitute unlawful disapproval and hostility toward religion.

67. Defendant Dougherty’s decision to deny Plaintiff admission to the Radiation Therapy Program because of his religious expression and beliefs, and the decisions of Defendants Kurtinitis, McColloch, and Lilley to approve and uphold that denial, did not have a secular purpose.

68. Defendant Dougherty’s decision to deny Plaintiff admission to the Radiation Therapy

Program because of his religious expression and beliefs, and the decisions of Defendants Kurtinitis, McColloch, and Lilley to approve and uphold that denial, had the primary effect of inhibiting religion.

69. Defendant Dougherty's decision to deny Plaintiff admission to the Radiation Therapy Program because of his religious expression and beliefs, and the decisions of Defendants Kurtinitis, McColloch, and Lilley to approve and uphold that denial, excessively entangled the government with religion.

COUNT III
**(Violation of Constitution of Maryland,
Declaration of Rights, Article 36 – Religious Freedom)**

70. The allegations of Paragraphs 1 through 69 above are incorporated by reference herein as if fully set out.

71. Article 36 of the Declaration of Rights of the Constitution of Maryland ("Article 36") provides that all persons are equally entitled to protection in their religious liberty, and declares that no person ought be molested by any law on account of his religious persuasion, or profession, or for his religious practice.

72. Interpreted by federal courts as interchangeable with the First Amendment, Article 36 protects private speech from government interference, restriction, or discrimination when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction or discrimination.

73. Plaintiff's expression of religious views enjoys protection under Article 36.

74. Defendant Dougherty unlawfully deprived Plaintiff of his Article 36 rights in connection with and arising from his application for admission to CCBC's Radiation Therapy

Program by denying Plaintiff admission on the basis of his expression of his religious beliefs and viewpoint.

75. Defendants Kurtinitis, McColloch, and Lilley, who are designated as executives of, and/or authorities for, CCBC, unlawfully deprived Plaintiff of his Article 36 rights by endorsing and approving Defendant Dougherty's actions and upholding her original determination not to admit Plaintiff to the Radiation Therapy Program, when each was notified at an early stage of Defendant Dougherty's unlawful discrimination and retaliation against Plaintiff.

76. Each of the Defendants, individually and acting on behalf of their governmental employer, CCBC, violated Plaintiff's Article 36 rights by refusing to admit Mr. Jenkins to the Radiation Therapy Program because of his religious associations and expression, and have used shifting justifications as a pretext to conceal improper and unlawful motives.

77. Each of the Defendants, individually and acting on behalf of their governmental employer, CCBC, explicitly and implicitly discriminated against Plaintiff for exercising his clearly established right to free speech on matters of religion as secured by Article 36.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Brandon Jenkins respectfully requests that the Court enter judgment against Defendants, and provide Plaintiff with the following relief:

(A) An injunction requiring Defendants to grant Mr. Jenkins admission to CCBC's Radiation Therapy Program and prohibiting Defendants and all those in concert with them from further retaliating and/or discriminating against Mr. Jenkins based on his religious views and/or his expressions thereof;

(B) A declaratory judgment that Defendants' actions violated Mr. Jenkins's rights as protected by the First Amendment to the United States Constitution and Article 36 of the Declaration of Rights of the Maryland Constitution;

(C) Monetary damages (including punitive damages for Defendants' actions in their individual capacities) in an amount to be determined by the jury;

(D) Reasonable attorneys' fees, costs and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988; and

(E) All further relief to which Mr. Jenkins may be entitled.

JURY TRIAL DEMAND

Plaintiff requests a jury trial on all questions of fact raised by his Complaint.

Respectfully Submitted,

GARZA, REGAN & ASSOCIATES P.C.
JOHN GARZA

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

AMERICAN CENTER FOR LAW & JUSTICE
DAVID A. FRENCH*

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[REDACTED]
[REDACTED]

Attorneys for Plaintiff

*Admission *pro hac vice* pending

VERIFICATION OF COMPLAINT

I, Brandon Jenkins, a citizen of the United States and resident of the State of Maryland, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this _____ day of April 2014, at _____, Maryland.

Brandon Jenkins