

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

SEAN SMALL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:19-cv-100
	)	
SCOTT COUNTY SCHOOL DISTRICT 2,	)	
RIC MANNNS and JEFF COX, in their individual	)	
capacities, the SHERIFF OF SCOTT COUNTY,	)	
in his official capacity, and JOE BAKER,	)	JURY TRIAL DEMANDED
in his individual capacity,	)	
	)	
Defendants.	)	

**Complaint for Declaratory and Injunctive Relief and Damages**

**Introduction**

1. Sean Small, a senior in high school at the time of the events underlying this lawsuit, played a video game while on his lunch period at Scottsburg High School. After posting a video of himself playing the game to his personal Facebook page, Mr. Small was subjected to a search of his person and his backpack without probable cause or reasonable suspicion. After being detained in the principal’s office by the defendants, he was handcuffed, arrested, and held in jail, also without probable cause or reasonable suspicion. He was later expelled from Scottsburg High School. All of these actions were taken based solely on Mr. Small’s expressive activity of his game-play and Facebook post. The actions of the defendants violate the First and Fourth Amendments to the United States Constitution, as well as constituting torts under Indiana state law. Appropriate injunctive and declaratory relief and damages should be awarded.

**Jurisdiction, venue, cause of action**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C § 1343.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by Fed. R. Civ. P. 57 and 28 U.S.C § 2201 and 28 U.S.C. § 2202.
5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.
6. This Court has supplemental jurisdiction over all state-law claims pursuant to 28 U.S.C. § 1367.

**Parties**

7. Sean Small is an adult resident of Scott County, Indiana.
8. Scott County School District 2 operates a number of schools in Scott County, including Scottsburg High School.
9. At all relevant times, Ric Manns and Jeff Cox were employed by Scott County School District 2 as principals of Scottsburg High School.
10. The Sheriff of Scott County supplies law enforcement services to Scott County, Indiana.
11. At all relevant times, Joe Baker was employed as a deputy with the Scott County Sheriff's Department.

**Factual allegations**

12. On August 21, 2018, Mr. Small was a senior at Scottsburg High School, and had just returned from completing basic training with the Army National Guard.

13. On that day, Mr. Small was standing in the lunchroom playing a video game through an application, or “app,” on his phone.

14. Scottsburg High School did not have a policy prohibiting students from accessing or using their phones while not in class.

15. Students routinely played video games and engaged in other online activities, such as accessing Facebook, on their phones during school hours.

16. The particular game app he was playing featured a location-based “augmented reality” mode.

17. Augmented reality, in the context of video games, superimposes computer-generated graphics over the player’s real-world environment, as captured through the camera on the player’s smart phone.

18. Pokémon GO, released in 2016, is considered the breakthrough augmented-reality app game.

19. The game Mr. Small was playing, called “The Walking Dead: Our World,” is based on a popular television show and, like the show, is set in the midst of a fictitious zombie apocalypse.

20. In the game, each player is assisted by a character from the television show, who is visible on the player’s screen. That character is not directly controlled by the player.

21. The game’s augmented reality mode allows a player to fight computer-generated zombies that are superimposed over images of the player’s real physical world, as captured by the camera on his smart phone.

22. In the game, the player’s goal is to stop hostile zombies by shooting them.

23. Players “shoot” by tapping a finger on the device’s screen.

24. The game also captures video of the player's game-play, and it encourages the player to publish those videos to social media platforms in exchange for extra "resources" that can be used in the game.

25. Mr. Small was playing the game in augmented-reality mode, and he captured an image of the hallway outside the lunchroom.

26. The game then generated and superimposed images of zombies onto the backdrop of that hallway.

27. The game captured a seven-second video of Mr. Small's game-play.

28. At 11:16 a.m., he posted that video to his Facebook account, where he stated in an accompanying caption, "Finally something better than pokemon go."

29. Playing the game, the video, its posting, and the accompanying text constitute expressive activities.

30. In the video, a cluster of approximately six zombies can be seen on the left side of the screen, in front of the "helper" character, who is holding a firearm.

31. Mr. Small tapped the screen several times to shoot the zombies, and the helper character fired his weapon several times into the cluster of zombies.

32. During the course of the video, several "real" individuals are visible in the backdrop of the game.

33. At the beginning of the video, one individual is visible on the far right side of the screen. He or she is sitting on the floor in the hallway, many feet beyond the cluster of zombies. That individual is too far away for his or her face to be discernable, and he or she is partially obstructed by a stationary object.

34. At approximately three seconds into the video, a second individual enters the frame on the far right side of the screen. He is walking down the hallway with his back to the camera, and his face is never visible.

35. At approximately six seconds into the video, a third individual enters the frame on the far right side of the screen. Only a portion of that individual's left arm and left leg are ever visible.

36. At all times during the video, an icon reading "Walking Dead Our World" is visible on the lower right portion of the screen.

37. At no point does the helper character point his weapon at anything other than the cluster of zombies, and it is never pointed in the direction of the images of "real" individuals on the right side of the screen.

38. Later that day, Mr. Small was removed from class by Deputy Baker, then-principal Mr. Manns, and Mr. Cox. Mr. Small was not initially informed as to why he was being removed from class. Deputy Baker was in full uniform, and it was obvious to the class full of students that Mr. Small was being seized.

39. In the hallway, Deputy Baker conducted a pat-down of Mr. Small's person, required him to empty his pockets, and searched his backpack without either probable cause or reasonable suspicion.

40. Defendants required Mr. Small to accompany them to the principal's office.

41. Mr. Manns informed Mr. Small that a student had accused him of posting a threatening video to Facebook.

42. Mr. Small indicated that the only video he posted was of himself playing a video game and that it was in no way threatening.

43. He offered to show defendants the Facebook post, but they declined to view it.

44. Defendants informed Mr. Small that he was in “real trouble,” and they placed him in Mr. Cox’s office while they called Mr. Small’s parents.

45. At no time did defendants have either reasonable suspicion or probable cause to believe that a crime had been committed or that a school regulation had been violated.

46. Mr. Small’s stepmother arrived first at the principal’s office. After she arrived, Deputy Baker informed her that he intended to arrest Mr. Small for committing felony intimidation.

47. Deputy Baker also stated that Mr. Small had an anger problem and should not be around guns.

48. As noted, Mr. Small, while in high school, completed basic training with the Army National Guard, and now has enlisted with the National Guard.

49. After Mr. Small’s father arrived, he was moved, along with his parents, into Mr. Manns’ office, where Deputy Baker informed him that he was being arrested.

50. Mr. Manns indicated that he would immediately recommend that Mr. Small be expelled from Scottsburg High School.

51. Mr. Small was led to Deputy Baker’s vehicle, handcuffed, and taken to the Scott County Jail.

52. At no time did Deputy Baker have probable cause to believe that a crime had been committed.

53. Mr. Small was searched, detained, and arrested solely on the basis of his expressive activities.

54. Because he was a high school student, Mr. Small was held at the Jail in solitary confinement for two days, until his initial hearing took place.

55. His initial hearing was held on August 23, 2018, and following that hearing, he was released on bond.

56. Mr. Manns and Mr. Cox made an official recommendation that Mr. Small be expelled from Scottsburg High School, predicated solely on their disapproval of Mr. Small's expressive activities.

57. At no point did the school or its representatives contend that Mr. Small had violated a school rule, regulation, or policy by playing or posting a video game during school hours.

58. Prior to this incident, Mr. Small had experienced only one disciplinary infraction—a detention—during his high school career.

59. On August 30, 2018, Scott County School District 2 officials held a hearing to consider the proposed expulsion. Mr. Manns, Mr. Cox, Mr. Small, and his parents were all present at that hearing. Mr. Small was not allowed to have counsel in the proceeding.

60. On September 4, 2018, the expulsion examiner issued a written decision expelling Mr. Small from Scottsburg High School.

61. The sole justification for the expulsion decision was Mr. Small's expressive activity—*i.e.*, creating and posting the video and accompanying caption to Facebook.

62. The examiner offered Mr. Small the option to apply for a “partial waiver” of expulsion, through which he could earn Scottsburg High School credits by participating in online classes. In order to do so, he was required to state that he believed his due process rights had been afforded and that he accepted the outcome of the expulsion process.

63. Mr. Small declined that offer and completed the remainder of his high school credits through the Indiana Virtual Academy.

64. Criminal proceedings were brought against Mr. Small, but they were dismissed with prejudice on April 23, 2019.

65. Mr. Small has been damaged by the actions of the defendants, including but not limited to being forcibly removed from his class in front of his peers, involuntarily searched, interrogated, arrested, and incarcerated.

66. Due to his expulsion, Mr. Small was prevented from receiving the benefits of attending Scottsburg High School, including but not limited to interactions with friends and teachers, and continuing his involvement on the wrestling team.

67. Mr. Small has suffered anxiety, stress, sadness, fear and other forms of emotional distress as a result of defendants' actions.

68. He has also suffered reputational harm as a result of the defendants publicly alleging that he engaged in threatening or intimidating behavior.

69. Although Mr. Small has graduated, the disciplinary record and expulsion based upon this incident are likely to cause him future harm, and for this there is no adequate remedy at law.

70. Mr. Small has complied with all requirements of notice required by the Indiana Tort Claims Act.

71. At all times defendants have acted under color of state law.

**Jury trial requested**

72. Plaintiff requests a jury trial on all claims so triable.

**Legal claims**

73. The actions of the individual defendants and Scott County School District 2 violate the rights guaranteed to Mr. Small by the First Amendment to the United States Constitution.



74. The individual defendants' actions constitute unlawful search and seizure in violation of the Fourth Amendment to the United States Constitution.

75. Defendants' actions constitute torts under Indiana law, including but not limited to, false arrest, false imprisonment, and negligence, rendering Scott County School District 2 and the Scott County Sheriff liable for the torts.

**Request for relief**

WHEREFORE, plaintiff requests that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. Declare that the actions of the defendants were unlawful for the reasons detailed above.
3. Enter a preliminary injunction, later to be made permanent, requiring defendant Scott County School District 2 to expunge all official and unofficial records relating to this incident.
4. Award plaintiff his damages following a jury trial in this case.
5. Award plaintiff his costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
6. Award all other proper relief.

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