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Fired math teacher's retaliation claim nixed

[David L. Hudson Jr.](#)

First Amendment Scholar
Thursday, October 27, 2011

A former junior [high school teacher](#) in Harvard, Ill., did not have a First Amendment retaliation claim after he was dismissed for filing a disorderly-conduct complaint against one of his students, a federal district court has ruled.

Sean Gschwind, a math teacher at Harvard Junior High School, claimed that a [student](#) had threatened him when he sang the following song in class in December 2005:

“Woke up quick at noon I stab Gschwind and he flew like a balloon I got to get up cause to day began I have to my [home work](#) and get it done. I am gonna do my home work here I go I’m gonna do my fractions and so so so.”

Gschwind claimed that the reference to his being stabbed was a threat to his safety. He told Principal Linda Heiden and Assistant Principal Frank Shields that he wanted to [file](#) a complaint against the student. The school officials cautioned him against doing so, but Gschwind went ahead and filed a disorderly-conduct complaint with local police in January 2006.

Later that month, according to court papers, Shields met with Gschwind about a poor classroom evaluation Gschwind had received. In March, he received another poor performance review and Heiden told him it would be best if he resigned.

Gschwind resigned but then sued the school officials, alleging they had violated his First Amendment free-speech rights by retaliating against him for filing the complaint against the student.

On Oct. 25, U.S. District Judge Philip G. Reinhard dismissed the teacher’s lawsuit in [Gschwind v. Heiden](#).

“A public employee does not check his First Amendment rights at the workplace door,” Reinhard acknowledged, but he said a public employee had to show that he was punished for engaging in speech on a matter of public importance (or public concern) rather than speech of a purely private interest.

“In this case, the undisputed facts overwhelmingly demonstrate that plaintiff signed the complaint purely as a matter of private interest,” the judge wrote. “While he makes a concerted effort after the fact to characterize the signing of the complaint as a matter of public concern, it is evident that at the time he did so as a perceived victim of a crime and out of concern for his own personal safety.”

The decision shows that public employees have to make sure in their legal papers that they allege and explain how their speech affected more than

just themselves – that their speech touched on larger societal or public issues. Otherwise, their lawsuit might meet the same fate as that of this former math teacher.

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The First Amendment Center is an educational organization and cannot provide legal advice.



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Gene Policinski, senior vice president and executive director of the First Amendment Center, is a veteran journalist whose career has included work in newspapers, radio, television and online.

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John Seigenthaler founded the First Amendment Center in 1991 with the mission of creating national discussion, dialogue and debate about First Amendment rights and values.

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The center serves as a forum for the study and exploration of free-expression issues, including freedom of speech, of the press and of religion, and the rights to assemble and to petition the government.

Founded by [John Seigenthaler](#), the First Amendment Center is an operating program of the [Freedom Forum](#) and is associated with the [Newseum](#) and the [Diversity Institute](#). The center has offices in the John Seigenthaler Center at Vanderbilt University in Nashville, Tenn., and at the Newseum in Washington, D.C.

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