

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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**DOCKETING STATEMENT**

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Appeal Number	23-1306
Case Name	Corey McNellis, Appellant v. Douglas County School District, Appellee
Party or Parties Filing Notice of Appeal Or Petition	Corey McNellis, Plaintiff-Appellant
Appellee(s) or Respondent(s)	Douglas County School District, Defendant-Appellee
List all prior or related appeals in this court with appropriate citation(s).	N/A

**I. JURISDICTION OVER APPEAL OR PETITION FOR REVIEW**

**A. APPEAL FROM DISTRICT COURT**

1. Date final judgment or order to be reviewed was **entered** on the district court docket: 08/28/2023.
2. Date notice of appeal was **filed**: 09/27/23.
3. State the time limit for filing the notice of appeal (cite the specific provision of Fed. R. App. P. 4 or other statutory authority): 30 days (Fed. R. App. P. 4(a)(1)(A)).
  - a. Was the United States or an officer or an agency of the United States a party below? No.
  - b. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing the notice of appeal: No.

4. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).
- a. Give the filing date of any motion that tolls the time to appeal pursuant to Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A):

N/A.

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- b. Has an order been entered by the district court disposing of any such motion, and, if so, when?

N/A.

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5. Is the order or judgment final (i.e. does it dispose of **all** claims by and against **all** parties)? *See* 28 U.S.C. § 1291. Yes.

**(If your answer to Question 5 is no, please answer the following questions in this section.)**

- a. If not, did the district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?

- b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. ' 1292(a)? \_\_\_\_\_

- c. If none of the above applies, what is the **specific** legal authority for determining that the judgment or order is appealable? \_\_\_\_\_

6. Cross Appeals.

- a. If this is a cross appeal, what relief do you seek beyond preserving the judgment below? *See United Fire & Cas. Co. v. Boulder Plaza Residential, LLC*, 633 F.3d 951, 958 (10th Cir. 2011) (addressing jurisdictional validity of conditional cross appeals).

N/A.

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- b. If you do not seek relief beyond an alternative basis for affirmance, what is the jurisdictional basis for your appeal? *See Breakthrough Mgt. Group, Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173, 1196-98 and n.18 (10th Cir. 2010) (discussing protective or conditional cross appeals). N/A.





**III. GIVE A BRIEF DESCRIPTION OF THE NATURE OF THE UNDERLYING CASE AND RESULT BELOW.**

On September 20, 2022, Corey McNellis (“McNellis”) filed his First Amended Complaint alleging that Douglas County School District (“DCSD”) terminated him on October 29, 2020, because he exercised his First Amendment Rights and shared his religious affiliation on October 2, 2020. McNellis was employed by DCSD for approximately fourteen (14) years without any disciplinary action.

On October 2, 2020, Mr. McNellis expressed concern regarding a school-sponsored play that was being produced by the theater department, which was being advertised for “mature audiences” due to the language and content discussed in the show. A school-wide email invited staff members to provide feed back and specifically indicated that the show was designed to be about “perspectives.” Responding to the email McNellis specifically asked what his options were as a “[Dad] of a student” at the school. After back and forth among many teachers offering to provide different perspectives, McNellis offered to provide a Christian perspective.

On October 5, 2020, without investigating and relying solely on McNellis’ statements regarding his religious affiliation, DCSD suspended McNellis. When McNellis was suspended DCSD told him that there was nothing unprofessional about his comments but indicated that he was being instructed to stay home due to his “religious comments.”

Between October 5, 2020, and October 29, 2020, DCSD investigated McNellis, and at the conclusion of the investigation terminated McNellis due to his “emails,” which was in reference to the “religious comments.” During the investigation McNellis complained to management that he was being singled out based on his religion. No investigation was conducted into McNellis’ complaint, and the investigation expanded to include other individuals, none of whom identified their religious affiliations, and none of whom were subject to any discipline. McNellis was ultimately terminated based on his religious views and his decision to exercise his First Amendment rights to express the same.

On August 28, 2023, the District Court entered an Order Granting DCSD’s Motion to Dismiss. The Court held that McNellis failed to establish plausible claims for retaliation under the First Amendment, discrimination under CADA and Title VII, and for retaliation under CADA and Title VII. This appeal followed.

**IV. IDENTIFY TO THE BEST OF YOUR ABILITY AT THIS STAGE OF THE PROCEEDINGS, THE ISSUES TO BE RAISED IN THIS APPEAL. You must attempt to identify the issues even if you were not counsel below. See 10th Cir. R. 3.4(B).**

- (1) Whether the district court properly applied the plausibility pleading standard by making findings of fact and dismissing McNellis' First Amendment Retaliation claim.
2. Whether the district court properly applied the plausibility pleading standard by making findings of fact and dismissing McNellis' religious discrimination claims under Title VII and CADA.
3. Whether the district court properly applied the plausibility pleading standard by making findings of fact and dismissing McNellis' religious retaliation claims under claims under Title VII and CADA.

**V. ATTORNEY FILING DOCKETING STATEMENT:**

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/s/ Spencer J. Kontnik

10/12/2023

Signature

Date

**NOTE:** The Docketing Statement must be filed with the Clerk via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF can be found on the court's website, [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov).

The Docketing Statement must be accompanied by proof of service. The following Certificate of Service may be used.

### CERTIFICATE OF SERVICE

I, Spencer Kontnik, hereby certify that on  
[attorney for appellant/petitioner]

10/12/2023, I served a copy of the foregoing **Docketing Statement**, to:  
[date]

Michael Brent Case, Jonathan Fero, and Scott Alexander Goodstein, at Semple, Farrington, Everall & Case, P.C.  
[counsel for/or appellee/respondent]

1120 Lincoln Street, Suite 1308, Denver, Colorado 80203,  
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\_\_\_\_\_, the last known address/email address, by

Using the Court's CM/ECF system which will automatically serve a copy.  
[state method of service]

/s/ Spencer J. Kontnik  
Signature

10/12/2023  
Date

Spencer Kontnik  
Kontnik | Cohen, LLC  
201 Steele Street, Suite 210  
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Full name and address of attorney