



capitol in Pierre, Hughes County, South Dakota.

9. Frye-Mueller is a duly elected state Senator and has served several terms in the South Dakota Legislature.

10. The South Dakota Senate conducts the business of the Senate in the State Capitol and conducts Committee hearings concerning proposed Bills, debates and votes on Bills on the floor of the South Dakota Senate, and is available to the public while the Legislature is in session and at other times via her state email account.

11. Upon information and belief, no member of the South Dakota Legislature has been suspended from their duties and participation in the Legislature without due process. There has been no due process availed to the Plaintiff prior to the action of suspension on January 26, 2023. In fact, the approved Rules of the Senate were suspended to accomplish this act outside of the scope of those Rules. The Defendant has singled out the Plaintiff to take these actions and no other member of the Senate or any other class of individuals are being treated in this manner.

12. The Senate meets for a specific number of days each year to conduct its official business. Preventing Senator Frye-Mueller from serving in her official capacity deprives the citizens of South Dakota District 30 from their representation in the South Dakota Senate.

13. Among other things, Plaintiff communicates with constituents, prepares possible legislation, sponsors Bills, participates in and votes in Committee hearings, and participates in and votes on Bills on the Senate floor.

14. Plaintiff has received no specific written information as to the basis for the Defendant's action toward her but understands from informal comments and news articles that the suspension of her Senate duties and access stem from a conversation she had with a member of the Legislative Research Council staff on or about January 24, 2023.

15. On Wednesday, January 25, 2023, on the Senate floor with members of the public present, it was announced that Frye-Mueller's duties and authority to serve in the Senate were being suspended.

16. Schoenbeck told Frye-Mueller that the alleged conduct took place at the State Capitol which is in Hughes County, South Dakota.

17. On January 26, 2023, during the floor session of the South Dakota Senate, a Motion was made to suspend the Rules and take action against Frye-Mueller. The President of the Senate ruled the Motion 'Out of Order,' but Defendant appealed the ruling, and a vote of the Senate overruled the President. Said vote was taken without Plaintiff having an opportunity to hear the specific issues involved or prepare any defense.

18. On January 27 and 28, 2023, Frye-Mueller requested a copy of whatever complaint existed against her, but she has not received any written information, nor has she received any response from Schoenbeck or any other Senate Leaders following her

emails to them as well as a text message to one of them requesting said information.

19. Defendant asserted authority to take the action to suspend Plaintiff but cited no specific authority or basis for his actions.

20. Frye-Mueller is unable to adequately represent the people of South Dakota Legislative District 30 without being able to carry out her previously assigned Committee duties or speak about or vote on Bills presented on the floor of the Senate.

21. Frye-Mueller is also unable to even participate in preparation of Bills or make use of the Legislative Research Council staff and resources due to the suspension.

22. Frye-Mueller has been stripped of her access to the Legislative email. A critical component of serving her constituents and participating in the South Dakota Senate is having access to the Legislative email and Legislative resources.

23. Frye-Mueller has no ability to carry out her duties due to this suspension.

24. One important aspect of serving as a Senator is presenting Bills via the Legislative Research Council website and engaging in communication with staff and other legislators through this website. This activity occurs in combination with personal interaction as well as via the website, but Plaintiff has now been denied access to that source of electronic / remote communication and has no access to her state legislative email account.

25. There are many deadlines approaching in regard to introduction of Bills and Resolutions which will potentially pass without access to the resources and information described herein. If deadlines are missed the Plaintiff as well as her constituents forever lose the opportunity to submit Bills.

26. By being barred from the Senate Committees, Senate Floor, Legislative Research Council, and Legislative email, Frye-Mueller and the citizens of District 30 permanently lose any opportunity to draft and propose legislation, obtain sponsors of Bills, and communicate with constituents, legislators, and interested parties about the Bills and related issues. As a result, Plaintiff's opinions and advocacy efforts are significantly limited and permanently lost.

27. South Dakota's 2023 legislative session will conclude in a matter of weeks, making access to the resources as well as engaging in voting and advocacy all the more critical.

28. The President Pro Tempore's action stripping Frye-Mueller of her Senate participation permanently and adversely impacts Frye-Mueller and the citizens of South Dakota Legislative District 30 at a critical time in the legislative process.

**CLAIM ONE  
FIRST AMENDMENT/FIRST AMENDMENT  
RETALIATION**

29. Plaintiff herein incorporates all allegations contained in the paragraphs above.

30. Defendant acted under the color of state law in prohibiting Plaintiff Frye-Mueller from carrying out her duties as a duly elected State Senator.

31. Defendant deprived Plaintiff of rights or privileges secured by the Constitution, namely, Plaintiffs' First Amendment right to free speech.

32. Defendant's actions restricted Plaintiff's expression because of its message, ideas, subject matter, or its content.

33. Defendant's conduct was not the least restrictive means to achieve a compelling governmental interest, and there is no compelling governmental interest at issue here.

34. In engaging in conversation with a Legislative Research Council staff member about both Legislative activity and personal conversation, Plaintiff was engaged in activity protected by the First Amendment, namely political speech and free speech.

35. Defendant took adverse action against Plaintiff that would chill a person of ordinary firmness from continuing the activity.

36. The adverse action was motivated at least in part by Plaintiff's protected activity.

37. Defendant's conduct otherwise violates the First Amendment as Plaintiff has been singled out and treated differently than other Senators or members of the public based upon their advocacy and have been prevented from exercising their free speech rights in the political process as well as personally.

#### **RELIEF**

WHEREFORE, Plaintiff prays that the Court enter judgment in her favor as follows:

1. That this Court assume jurisdiction;
2. That this Court declare that banning Frye-Mueller from her Senate duties violates Plaintiff's First Amendment right to free speech;
3. Grant preliminary and permanent injunctive relief by ordering the Defendant to reinstate Frye-Mueller's Legislative duties and privileges consistent with those of other Senators;
4. Grant Plaintiffs' reasonable attorney's fees, litigation expenses and costs pursuant to 42 U.S.C. § 1988;
5. Grant the Plaintiff any further relief which may in the discretion of the Court be necessary and proper to ensure Plaintiff's First Amendment rights.

Dated: January 30, 2023.

HAUGAARD LAW OFFICE, P.C.

A handwritten signature in black ink, appearing to read 'S. Haugaard', written over a horizontal line.

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Steve@Haugaardlaw.com

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFF

JULIE FRYE-MUELLER, a South Dakota Senator, District 30

(b) County of Residence of First Listed Plaintiff Pennington (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Haugaard Law Office, P.C. 1601 E. 69th Street, Suite 302 Sioux Falls, South Dakota 57108

DEFENDANTS

LEE SCHOENBECK, President Pro Tem of the South Dakota Senate

County of Residence of First Listed Defendant Codington (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, Federal Question (U.S. Government Not a Party), Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and codes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC 1983

Brief description of cause: Freedom of Speech

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 1/30/2023 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE