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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN DOE and **JANE DOE**, as the Natural Parents and Next Friends of Their Minor Child, **JAMES DOE**,	:	Case No. 2:08 cv 575
Plaintiffs,	:	Judge JUDGE FROST
v.	:	
MOUNT VERNON CITY SCHOOL BOARD OF EDUCATION, *et al.*	:	MAGISTRATE JUDGE KING
Defendants.	:	

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER

Plaintiffs, through undersigned counsel, move this Court pursuant to Rule 26 of the Federal Rules of Civil Procedure to enter a Protective Order which protects the true identity of the Plaintiffs. Submitted is a Memorandum in support of this motion which undersigned counsel asks to be kept under seal pursuant to Local Rule 79.3 of the United States District Court for the Southern District of Ohio.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF PLAINTIFFS' PROTECTIVE ORDER

I. Introduction

Plaintiffs John Doe, Jane Doe, and James Doe seek a Protective Order protecting their identities in this matter. In consideration of the sensitive subject that this matter addresses, Plaintiffs fear repercussions from the community in all forms, physical and emotional. A family's community should be a safe haven and by requiring identification of the Plaintiffs, their safety will be taken away. Even more, there is a child involved in the matter and there is fear that by divulging their identities, the child will face harassment at school from other students and possibly teachers. Also, the disclosure of the identity of the parents would most surely reveal the identity of the child. Therefore, all Plaintiffs' identities should be protected.

II. Statement of Facts

Plaintiffs John Doe and Jane Doe are the natural parents of their son, James Doe. They currently reside within the city of Mount Vernon, Knox County, Ohio as do Defendants. James is an eighth grade student at Mount Vernon Middle School, where Mr. John Freshwater is an eighth grade science teacher. Defendant John Freshwater has worked at Mount Vernon Middle School for over 20 years and participates actively in the community. During the 2007-2008 school year, Mr. Freshwater taught and incorporated Christian beliefs in the classroom. He also used an electric device with an output of 50,000 volts to use an electric burn to place the shape of a cross onto the arm of James Doe during one of his classes.

III. Argument and Law

In *Doe v. Porter,* 370 F.3d 558 (6th Cir. 2004), the court sets out four conditions that must be weighed in order for a plaintiff to file pseudonymously. The four conditions include: (1) whether the plaintiffs seeking anonymity are suing to challenge governmental activity; (2)

whether prosecution of the suit will compel the plaintiffs to disclose information "of the utmost intimacy"; (3) whether the litigation compels plaintiffs to disclose an intention to violate the law, thereby risking criminal prosecution; and (4) whether the plaintiffs are children. *Id.* at 560. Although only one is necessary for the Court to allow a plaintiff to file pseudonymously, Plaintiffs, in this case, easily meet three of the four conditions.

A. Challenge of Governmental Activity

Being a public school, Mount Vernon Middle School is a governmental actor. John, Jane, and James Doe are bringing a claim against the Mount Vernon City School District, Superintendent Stephen Short, Principal William White, and Teacher John Freshwater for violating the Establishment Clause of First Amendment of the United States Constitution.

B. Information "of the Utmost Intimacy"

The court in *Doe v. Stegall,* 653 F.2d 180 (5th Cir. 1981), held that "religion is perhaps the quintessentially private matter. Although they do not confess either illegal acts or purposes, the [plaintiffs] have, by filing suit, made revelations about their personal beliefs and practices that are shown to have invited an opprobrium analogous to the infamy associated with criminal behavior." *Doe v. Porter,* 370 F.3d 558 (6th Cir. 2004) at 560, citing *Doe v. Stegall,* 653 F.3d at 186. Mr. Freshwater, being an active participator in the community and long time teacher, has garnered mass support from the community as evidenced from the rally thrown in support of him. (See, Exhibit A). This support has caused uproar in inappropriate behavior toward those who have not outwardly shown their support for Mr. Freshwater in the way that the community expects.

For example, the Mount Vernon News published an article relaying concerns for the safety of children who are not in support of Mr. Freshwater and his belief in Christianity. (See,

Exhibit B). Beth Murdoch, a parent of a student at Mount Vernon Middle School, shared stories of evidence of violence. (See, Exhibit B).

"My daughter Arie told me about a Jewish child who brought his Torah to school when other students brought Bibles in support of Freshwater," she continued. "He thought he was supporting freedom of religious expression, and the other kids just ripped him apart. 'What are you doing?' they asked. "You can't support Mr. Freshwater, you're Jewish." (See, Exhibit B).

Murdoch also said one of Arie's friends wore a T-shirt to school that read, "I don't need to wear a special T-shirt to be a Christian." That individual was reportedly pushed into the lockers and called a "stupid atheist b****." (See, Exhibit B).

Christine Hamilton, who also has two students at Mount Vernon Middle School, also shows concern. "They have gotten harassed," she said, "because they are friends with the boy [whose parents filed the complaint against Freshwater]. (See, Exhibit B).

If any of the plaintiffs' identities were revealed, this type of behavior will most certainly escalate and be directed toward them.

C. Children Plaintiffs

Finally, the Court has allowed plaintiffs to file pseudonymously in circumstances where there are children plaintiffs. The Court grants heightened protection for children. *Doe v. Porter,* at 560. Here, James Doe is still a member of the minority and the interest in keeping his identity anonymous is very high compared to the interest in having an open judicial proceeding. If his identity is revealed either directly by naming him or indirectly by naming his parents, he is prone to attacks from his classmates and the community. This protection greatly outweighs the need for the public to know the identity of the plaintiffs.

IV. Conclusion

Under the considerations set out in *Doe,* Plaintiffs meet three of the four, although only one is needed. They are challenging a governmental activity, the matter regards religion, which is a private matter, and the case involves a child, who requires special consideration. Since the Plaintiffs reside in Mount Vernon, Knox County, Ohio, where Mr. Freshwater also resides and has much community support, the safety of the Plaintiffs is at stake and a Protective Order should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2008, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Jessica K. Philemond (0076761)

Mount Vernon News

Students rally in support of science teacher

By Pamela Schehl, *News* Staff Reporter
Saturday, April 19, 2008
MOUNT VERNON — Hundreds of students, joined by some parents and community members, gathered at the Spirit Rock outside of Mount Vernon High School in a show of support for middle school teacher John Freshwater.

Freshwater complied with requests from the school administration to take down a display of the Ten Commandments, but refuses to remove a Bible from his desk at school. Freshwater said the administration's order is a violation of his First Amendment rights. The Bible is a source of personal inspiration to him, Freshwater said, and helps him get through the day.

Twenty sheets of paper with lines for 48 signatures each were being signed by the students, some from the high school and some from the middle school. The petition read: "By signing this petition I am showing my support for Mr. John Freshwater and his stance for displaying his Bible. He had all rights to do so, and we stand by his side."

Numerous students were wearing custom- or handmade shirts expressing their support of Freshwater. Earlier in the day, many students brought Bibles to school, exercising their own right of freedom of expression. Cars driving past the rally honked their horns in a further show of support.

Eighteen-year-old Caleb McCoy, one of the student organizers of the afterschool rally, said he had no idea the display of support would get so big. He explained the reason for the students' actions.

"We are bothered by the fact that Freshwater's reputation and his job is on the line for standing up for what he believes in. He has never forced his beliefs on us and has been a personal role model for myself. He is a great man and we stand by him. ... It's in our First Amendment rights — we have the right to assemble, which we did, and the freedom to petition. We are expressing our love for the Constitution and our love for Mr. Freshwater."

Former student Stephanie Smith, and her mother, Barbara Smith, were at the rally, holding signs in support of Freshwater. Barbara said she was there because she has children in the school system.

"If he was doing something wrong I could understand it. He's not doing anything wrong," she said. "They have taken everything away out of the schools. ... When I was in school, we prayed in the morning. Now, they don't. That's what's wrong with the schools today. The discipline has gotten so out of control. The kids have gotten so out of control. They've taken everything [the values] out."

Many of the students said they agreed with Smith.

McCoy said he did not understand why the presence of a Bible on a teacher's desk is such a big deal.

"I'm sure many people have their problems with it," he said, "but, why now? He's had it for 20-some years. ... It's his God-given right. Under the Constitution he's allowed to do so. ... We just love Mr. Freshwater and everything he has ever done for the students. He has been such a good role model and a real light in the community. We're just trying to give back to him what we can."

McCoy and a handful of other students will be making the petition available for more signatures over the weekend. When all the sheets are compiled, McCoy will present them to the Mount Vernon Board of Education.

Parents who talked with the *News* after the petition-signing said they were proud of their children.

"This was awesome. People should stand up for what they believe in," one parent said.
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EXHIBIT
A

Mount Vernon News

Parents express concern about environment at school

By Pamela Schehl, *News* Staff Reporter
Tuesday, May 06, 2008
MOUNT VERNON — Many Mount Vernon Middle School students have been vocal in their support of science teacher John Freshwater in his claims to a First Amendment right to display a Bible on his desk. But are those students willing to grant someone else equal rights to remain neutral or to disagree?

Several comments from students and parents indicate that acceptance and religious tolerance is a one-way street for many concerned.

Beth Murdoch, whose daughter attends the middle school, is one of the parents who has expressed concerns about the sometimes hostile environment at the middle school.

"You're either for Mr. Freshwater or you're against Mr. Freshwater. There's no in between," Murdoch said. "In the kids' minds, I think, it is just the Bible issue. And who is going to go against the Bible? Nobody. But it seems like the 'Christians' are using that es an excuse to gang up on the 'atheists.'

"My daughter Arie told me about a Jewish child who brought his Torah to school when other students brought Bibles in support of Freshwater," she continued. "He thought he was supporting freedom of religious expression, and the other kids just ripped him apart. 'What are you doing?' they asked. 'You can't support Mr. Freshwater, you're Jewish.' So they don't get it.

"I don't think people realize the depth of what's going on between the students. It's a mob mentality right now. It's peer pressure. To not wear a T-shirt and to not bring your Bible when they say bring your Bible and wear a T-shirt, you're asking for trouble."

Murdoch said one of Arie's friends wore a T-shirt to school that reed, "I don't need to wear a special T-shirt to be a Christian." That individual was reportedly pushed into the lockers and called a "stupid atheist b****." That is not acceptable in Murdoch's mind.

"No matter who it is, they have a right to their opinion," she said. "That's what freedom is all about. As Christians ourselves, we support freedom of religion 100 percent. But freedom of religion means freedom for all religions, not just one.

"My daughter knows that if someone shows up on the scene with a Bible, you need to find out more before you jump on the bandwagon. You need to find out what it is they really support. What are their beliefs? What'a their root belief system? A lot of people do things 'in the name of God.' But it doesn't always mean that. They mean it's a particular belief they support."

Murdoch said that Arie sometimes wears a cross necklace to school. Another student, according to Murdoch, asked Arie why she wore the cross if she doesn't support Freshwater.

"The cross doesn't stand for Freshwater," Murdoch said. "That's ridiculous."

Several people, Murdoch said, have asked what the response would be if a teacher had a wiccan book or a Koran on the desk.

"Would the students be supporting a teacher under those circumstances?" she asked. "I don't think so. I understand [Freshwater] wants to protect his rights, I so understand that. But you have to be compassionate to other people, too. ... Everybody has flaws, and problems and sins. We're full of sin. When you get up and be so self-righteous, you're on a slippery slope."

Christine Hamilton has two sons in the middle school.

"They have gotten harassed," she said, "because they are friends with the boy [whose parents filed the complaint against Freshwater]. In our country, everyone's allowed their religious opinion, but some of the middle school kids are just jumping on a bandwagon. If you're not for Mr. Freshwater, you are going to be harassed. That is flat out what is happening in the middle school. Therefore, I think a lot of kids are for Mr. Freshwater because they don't want to be harassed, they don't want to be singled out. And who wants to be against the Bible? Nobody.

"This whole thing has divided the community," Hamilton added. "I think a lot of kids who don't blindly support Freshwater have decided, 'Boy, friends that we thought we had, are not friends.' It's even coming out on the soccer field. ... This is the United States of America. You're supposed to accept everybody for who they are, and none of this is supposed to matter. That is very frustrating to me. As a Christian, you shouldn't judge anybody. ... We all believe in different things. I personally might not agree with the way you believe or the way you practice, but we can still be friends."
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EXHIBIT
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