

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOHN FRESHWATER,)	CASE NO.: 2-11 CV 00190
)	
Plaintiff,)	JUDGE GREGORY L. FROST
)	
v.)	
)	<u>DEFENDANT MOUNT VERNON CITY</u>
MOUNT VERNON CITY SCHOOL)	<u>SCHOOL DISTRICT BOARD OF</u>
DISTRICT BOARD OF EDUCATION,)	<u>EDUCATION'S BRIEF EXPLAINING</u>
)	<u>WHY THIS CASE SHOULD NOT BE</u>
Defendant.)	<u>REMANDED</u>

I. INTRODUCTION

In its March 10, 2011 Order, this Court notified Defendant of its inclination to *sua sponte* remand this action and allowed Defendant until March 28, 2011, to provide a brief explanation why this action should not be remanded.

II. RELEVANT BACKGROUND

Plaintiff's Complaint asserts Defendant violated Plaintiff's rights under the Establishment Clause of the First Amendment to the United States Constitution (Complaint ¶¶ 27, 32, 59, 83), the Free Association Clause of the First Amendment to the United States Constitution (Complaint ¶ 88), the First Amendment to the United States Constitution for Viewpoint Discrimination and Religious Discrimination (Complaint ¶ 33, 79), the Due Process Clause of the Fourteenth Amendment to the United States Constitution (Complaint ¶¶ 13, 14, 15, 101), and other constitutional or federal statutory provisions, such as 42 U.S.C. § 1983, Title VII of the Civil Rights Act of 1964,¹ and the Equal Protection Clause of the Fourteenth Amendment to the

¹ Plaintiff filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission on February 10, 2011, alleging Defendant engaged in religious discrimination. A copy of the charge is attached as Exhibit 1. The charge is currently pending.

United States Constitution (Complaint ¶¶ 6, 13, 14, 21, 33, 102). Plaintiff uses these claims both as a basis for challenging his termination under Ohio Revised Code §3319.16 and as independent claims (Complaint ¶ 22 & 102). Plaintiff merely uses R.C. §3319.16 as a vehicle to reassert the same claims in another court.

On October 21, 2010, Plaintiff dismissed with prejudice a federal lawsuit against Defendant, styled *John D. Freshwater, et al. v. Mount Vernon City Sch. Dist. Bd. of Educ., et al.*, Case No. 2:09cv464 ("Lawsuit #1"), which concerned almost identical facts, allegations, and claims as the present case. Indeed, Plaintiff specifically used all of the state administrative hearing transcripts, exhibits, and briefs at issue in this case as the factual basis for his claims in Lawsuit #1.

Defendant encountered difficulty in securing discovery responses from Plaintiff in Lawsuit #1. Specifically, Plaintiff would not provide specific written responses to certain discovery requests and provided as a general response to the Interrogatories:

Plaintiff relies upon the voluminous amount of information detailed in the exhibits and transcripts produced at the state hearing to provide specific acts and omissions taken by the Defendant. Plaintiff in good faith believes Defendant has in its possession all of the exhibits and transcripts from the state hearing and will soon receive a brief as a result of the state hearing detailing with further specificity. (Lawsuit #1: Doc. 61 & 62)

and, as a general response to the Request for Production of Documents:

Plaintiff identifies documents to include all exhibits and transcripts produced at the state hearing involving John Freshwater. Plaintiff in good faith believe [sic] Defendant has it its possession all of the exhibits and transcripts from the state hearing. (Lawsuit #1: Doc. 61 & 62)

In its August 27, 2010 Order (Lawsuit #1: Doc. 62), the Court required Plaintiff to "make individualized response to each discovery request propounded to them by the moving defendants within seven (7) days."²

After this Order, Plaintiff provided responses. All of the responses specifically referenced the state hearing transcripts and the state hearing exhibits. A copy of the responses provided to Defendant³ is attached as Exhibit 2. There was nothing substantive outside of the state administrative hearing record that Plaintiff identified as a basis for his claims in Lawsuit #1. Indeed, during Plaintiff's deposition on October 15, 2010, Plaintiff brought with him a copy of *John Freshwater's Closing Statement Brief in the matter of John Freshwater before Referee R. Lee Shepherd* (Exhibit 3, p. 6 & 7)⁴ and *John Freshwater's Reply Brief to the Employer's Post-Hearing Brief in the matter of John Freshwater before Referee R. Lee Shepherd*. Id. At the deposition, Plaintiff was questioned on the specific factual basis for Count One of the Complaint:

Q: My question to you is: What specific act or omission do you claim Defendant Board of Education committed that serves as the basis for Count One of your Complaint?

A: Count One would be deprivation of free speech. And I have before me the, the briefs that was [sic] written, the closing briefs for the state hearing, I think everything is documented within those; the John Freshwater Closing Statement Brief, and Reply Brief to the Employer's Post-Hearing Brief, I do believe it's well established in here. (Exhibit 3, p. 78)

² During a deposition on October 15, 2010, Plaintiff acknowledged he understood his obligation to provide individualized responses to each of the discovery questions. (Exhibit 3, p. 31). The Court also ordered Plaintiff to identify withheld documents in a privilege log. (Lawsuit #1: Doc. 62).

³ Defendant has not included Plaintiff's responses to the other Defendants in Lawsuit #1, but states they are substantially similar to Exhibit 2.

⁴ A copy of Plaintiff's 10-15-10 deposition transcript has been filed with the Court and the portions referenced in this transcript are attached as Exhibit 3.

At the time Plaintiff chose to dismiss Lawsuit #1, the Referee's Report from the state administrative hearing had not yet been issued and the Board had not acted on the Referee's Report. Notably, the Referee's Report and Board action on it were not new "facts" but the natural consequence of the administrative procedure. In other words, Plaintiff incorporated the complete factual basis for the Referee and Board's consideration as the factual basis for Lawsuit #1 before Plaintiff dismissed Lawsuit #1.

II. LAW AND ARGUMENT

A. This Court Has Subject Matter Jurisdiction

In order for this Court to possess subject matter jurisdiction over this case, it must have original jurisdiction over substantial federal issues raised in the complaint arising under federal law. *Wright, Miller, Cooper & Amar*, FEDERAL PRACTICE AND PROCEDURE, §3566, p. 261 (West 2008).

Federal courts have subject matter jurisdiction over claims brought under the First and Fourteenth Amendments to the United States Constitution as well as statutory claims under Title VII of the Civil Rights Act of 1964. *28 U.S.C. §1331*. In Lawsuit #1, this Court acknowledged it had subject matter jurisdiction over Plaintiff's claims under the First Amendment (Lawsuit #1: Doc. 4 at Count 1, 2 & 3), Fourteenth Amendment (Lawsuit #1: Doc. 4 at Count 1, 2 & 3), and Title VII of the Civil Rights Act of 1964 (Lawsuit #1: Doc. 4 at Count 4, 5 & 6). These claims were based on the same facts used as the basis for Plaintiff challenging the Board's action under Ohio Revised Code §3319.16 and for the constitutional claims he asserted within the pending Complaint (Doc. 4). Specifically, Plaintiff relied upon the entire state administrative transcript and exhibits as well as the legal briefing of the case to the Referee as the factual basis for his claims in Lawsuit #1. These same facts also lay the basis for Plaintiff's pending EEOC Charge

(Exhibit 1) and religious discrimination assertions as stated in the pending Complaint (Doc. 4, ¶ 22, 33, 102).

In Lawsuit #1, the Court also exercised its discretion to assert supplemental jurisdiction over the following state law claims: Ohio Revised Code §4112.02 (religious harassment [Count 7]; religious hostile environment [Count 8]); Public Policy Violation [Count 9]; Civil Conspiracy [Count 10]; Defamation [Count 11]; Breach of Contract [Count 12]; Res Judicata [Count 13]; Negligent Retention, Supervision & Failure to Train [Count 14]; Malicious Purpose, Bad Faith, or Wanton or Reckless Behavior [Count 15]; Declaratory Judgment [Count 16]; False-Light Invasion of Privacy [Count 17]; Loss of Consortium [Count 18]. Plaintiff's current Complaint restates many of these same claims. And, as stated earlier, the exact same set of facts, transcripts, exhibits, and briefs used by Plaintiff in Lawsuit #1 is now being used to pursue the current Complaint. Since the Court already asserted supplemental jurisdiction in Lawsuit #1, the Court properly has subject matter jurisdiction over the state law claims raised in the current Complaint.

For the foregoing reasons, this Court has original jurisdiction over Plaintiff's federal question claims and Defendant may properly remove the action to this Court pursuant to 28 U.S.C. 1441(a). This Court also has supplemental jurisdiction, pursuant to Section 1367(a), over all other claims in the Complaint.

B. This Court May Exercise Its Jurisdiction Over This Action Without Violating The Abstention Doctrine.

There are several versions of what is known as the "Abstention Doctrine." The first version comes from *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643, 85

L.Ed. 971 (1941). Under Pullman abstention, "if there are unsettled questions of state law in a case that may make it unnecessary to decide a federal constitutional question, the federal court should abstain until the state court has resolved the state questions." *Wright, Miller, Cooper & Amar*, FEDERAL PRACTICE AND PROCEDURE, §4241, p. 295 (West 2008). Pullman abstention is inapplicable to this action because there are no unsettled questions of state law at issue here.

Pullman abstention is only applicable in situations where the resolution of the pertinent state law issue could moot the federal issues present. This abstention is available when it would be inefficient to resolve federal issues that could become irrelevant if the state court resolved the issue or if the state legislature changed the applicable rule in its next session.

The Court questions whether it has subject matter jurisdiction over this action based on Ohio Revised Code §3319.16. Pullman abstention does not apply to this case because this matter does not involve a situation where resolution of a state law issue could moot a federal issue before this Court.

Plaintiff bases his Ohio Revised Code §3319.16 challenge on alleged violations by Defendant of Plaintiff's First and Fourteenth Amendment rights under the U.S. Constitution. The federal claims against Defendant will not be mooted by the state court action. Rather, the federal claims are so intertwined with the appeal that they need to be resolved in order for the state court action to proceed. Plaintiff already chose the federal court forum to resolve these federal constitutional claims when he filed Lawsuit #1. And, Plaintiff chose to dismiss those federal constitutional claims with prejudice on October 21, 2010. Permitting Plaintiff to reassert these

same claims now in state court would prejudice Defendant.⁵ Furthermore, since this Court already asserted subject matter jurisdiction over these claims in Lawsuit #1, it stands in the better position to determine the impact the dismissal with prejudice has on Plaintiff's ability to pursue these federal constitutional claims independently or as a basis for the Ohio Revised Code §3319.16 appeal. This Court would similarly be in the better position to determine the viability of Plaintiff's state law claims, which are used as the basis for the Ohio Revised Code §3319.16 appeal and independently asserted, in light of the dismissal of Lawsuit #1. This Court may exercise jurisdiction over the present case without violating Pullman abstention.

The second type of abstention is based upon *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943). Under Burford abstention, a court may abstain "in order to avoid needless conflict with the administration by a state of its own affairs." *Wright, Miller, Cooper & Amar*, FEDERAL PRACTICE AND PROCEDURE, §4244, p. 382 (West 2008). Burford abstention is applied where there exist "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at

⁵ This prejudice arises, in part, from the significant discovery deficiencies that arose in Lawsuit #1. Plaintiff chose to dismiss his case with prejudice the evening before his deposition was set to resume in Lawsuit #1. During the first day of deposition, Defendant uncovered significant discovery deficiencies by Plaintiff in addition to several already recognized by the Court in its June 1, 2010 Order in the related case *Doe, et al. v. Mount Vernon City School Dist. Bd. of Edn., et al.* U.S. District Court for the Southern District of Ohio Case No. 2:08cv575 (Doc. 106), as not having been produced by Plaintiff. For example, Plaintiff testified he did not identify in his privilege log nor produce 481 e-mails (Exhibit 3, p. 57-58). In addition, Plaintiff stated he threw out two of his personal computers (one as recent as six to ten months earlier) and took no steps to preserve electronically stored information (Exhibit 3, p. 33-38). Notably, Plaintiff acknowledged he knew of his preservation duties since June 13, 2008 (Exhibit 3, p. 32-33). This Court stands in a better position to ensure Defendant is not prejudiced by the discovery deficiencies and spoliation issues predating the current litigation – (i.e. the Tesla coil destroyed by Plaintiff with a brick, "pitched," and later found in Plaintiff's former attorney's freezer; Plaintiff's former attorney's computer and all electronically stored information as to Plaintiffs' affidavits, billing records, and other relevant documents being destroyed by a flood; and Plaintiff having thrown out two personal computers during the course of Lawsuit #1).

bar" or where the federal case "would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *DeSilva v. State Medical Board of Ohio*, 2010 U.S. Dist. LEXIS 40059, *19-20, citing *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 361, 109 S. Ct. 2506, 105 L. Ed. 2d 298 (1989), quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 814, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976).

None of the reasons to abstain under *Burford* applies. There are no difficult questions of state law bearing on policy problems of any degree. Also, this federal case would not disrupt any state efforts to establish a coherent policy. Indeed, failure to resolve the federal constitutional claims Plaintiff uses as the basis for the Ohio Revised Code §3319.16 appeal and asserted as independent claims before the state appeal proceeds would actually disrupt the state's efforts to establish a coherent policy. Further, there is no state regulatory scheme present that would be disrupted by the federal court addressing any "new" federal constitutional claims, the pending Title VII claim,⁶ and the impact of Lawsuit #1 dismissal prior to a court handling the §3319.16 appeal.⁷ This Court may exercise jurisdiction over the present case without violating *Burford* abstention.

⁶ Since Plaintiff is *pro se*, Defendant recognizes his Complaint may be construed as containing a Title VII claim because he filed his lawsuit after he filed a charge of discrimination with the EEOC and raises general allegations of discrimination or different treatment based on religion in his Complaint.

⁷ Defendant acknowledges this Court could remand the case *sua sponte* for disposition of the §3319.16 appeal after: (1) resolving the viability of the federal constitutional and statutory claims as well as state claims within Plaintiff's current Complaint that had been previously asserted in Lawsuit #1; and (2) disposing of any "new" federal constitutional or statutory claim in Plaintiff's current Complaint, whether brought as a basis for the §3319.16 appeal or as an independent claim. At that point, abstention and remand could be appropriate. As will be explained, however, the Court may choose to retain the entirety of the case under the doctrine of supplemental jurisdiction. See, *Gamel v. City of Cincinnati*, 2010 U.S. App. LEXIS 23181 (6th Cir. 2010).

A third doctrine was developed in *Younger v. Harris*, 401 U.S. 37 (1971), and its progeny, espouses "a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). Younger abstention, however, can be appropriate "in civil cases where the state is a party as well as criminal cases when an ongoing state judicial proceeding implicates important state interests and provides an adequate opportunity to raise constitutional challenges." *Id.* at 432. The application of *Younger* has been extended to pending state administrative proceedings so long as the federal plaintiff would have a full and fair opportunity to litigate his constitutional claim. See *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 106 S. Ct. 2718, 91 L. Ed. 2d 512 (1986). Younger abstention is based upon equitable principles, and should not be invoked where federal involvement is necessary to prevent great and immediate irreparable harm. *Younger*, 401 U.S. at 43.

The instant case presents a unique circumstance. Plaintiff already legally disposed of the federal constitutional and statutory and state law claims that he uses either as the basis for his Ohio Revised Code §3319.16 appeal or that are raised as "new" independent claims. While the state court proceeding could provide Plaintiff a full and fair opportunity to litigate his federal constitutional claims, Plaintiff has already litigated them. It would be prejudicial and inequitable to allow Plaintiff to reassert claims against Defendant that were already dismissed with prejudice in Lawsuit #1. Plainly, this Court is in the better position to ensure Defendant is not irreparably harmed by Plaintiff proceeding with these claims in the state forum. This Court may exercise jurisdiction over the present case without violating Younger abstention.

Assuming this Court dismissed all federal and state claims in the current Complaint that were dismissed with prejudice in Lawsuit #1 or that arose from the same set of facts, this Court could arguably retain jurisdiction over the entire Complaint without contravening the Younger abstention doctrine under the doctrine of supplemental jurisdiction. As recognized in *Younger*, a federal court does not violate the doctrine of abstention when it retains jurisdiction to prevent great and irreparable harm.

A federal court may choose to decline supplemental jurisdiction when it has "dismissed all claims over which it ha[d] original jurisdiction." *Musson Theatrical, Inc. v. Fed. Exp. Corp.*, 89 F.3d 1244, 1254-55 (6th Cir. 1996); *see also* 28 U.S.C. §1367(c)(3). Sometimes, however, circumstances warrant the federal court retaining supplemental jurisdiction even after dismissing all federal claims. *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343 (1988). In *Carnegie-Mellon* the Court identified several factors the federal court should consider in determining whether to retain jurisdiction,

- (1) Values of judicial economy, convenience, fairness, and comity
- (2) The avoidance of multiplicity of litigation
- (3) Balancing these interests against needlessly deciding state law issues
- (4) Whether the plaintiff engaged in any manipulative tactics(e.g. manipulation of the forum).

Carnegie-Mellon, 484 U.S. at 350 & 357.

This Court may choose to retain jurisdiction over the Ohio Revised Court §3319.16 claim and any "new" state law claims under the doctrine of supplemental jurisdiction without running afoul of the doctrine of abstention.

In *Harper v. AutoAlliance Int'l, Inc.*, 392 F.3d 195, 211-212 (6th Cir. 2004), the Court affirmed the judgment of the district court to retain a case under the doctrine of supplemental jurisdiction after no federal claims remained. Considering the *Carnegie-Mellon* factors in that

case, the *Harper* court found the plaintiffs had engaged in forum manipulation and that judicial economy would not be served by remanding the case. The court held that the district court did not abuse its discretion in retaining supplemental jurisdiction. Similarly, the court should retain jurisdiction in this case once it disposes of all federal claims based on the *Carnegie-Mellon* factors.

Plaintiff chose to dismiss Lawsuit #1 with prejudice. Despite that, Plaintiff filed the current lawsuit and used the same legal claims and factual bases for those claims either as a challenge of his termination through an Ohio Revised Code §3319.16 appeal or as a "new" independent claim. Plaintiff has so intertwined the federal and state claims dismissed in Lawsuit #1 within the current Complaint that this case is "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." 28 U.S.C. §1367(a).

The *Carnegie-Mellon* factors demonstrate the need for this Court to retain jurisdiction over the entire controversy. First, judicial economy, convenience, fairness and comity will be served. Defendant already defended itself against all of the non-§3319.16-appeal claims in Lawsuit #1. Defendant is now defending itself against the same claims and claims arising from the exact same set of facts, transcripts, exhibits, and briefs in the current lawsuit and in two state administrative agencies: the EEOC and the Ohio Civil Rights Commission.⁸ Put simply, there is no fairness to Defendant. Judicial economy would be served by having one court resolve the entire controversy. This Court is also in the better position to effectuate comity.

Next, Defendant is already the victim of multiplicity of litigation by Plaintiff. This Court stands in the better position to ensure fairness and prevent prejudice to Defendant based upon the

⁸ Plaintiff also filed a charge of discrimination with the Ohio Civil Rights Commission before filing the current Complaint. The OCRC charge is currently pending. Plaintiff brought Ohio Revised Code Chapter 4112 claims in Lawsuit #1. A copy of the OCRC charge is attached as Exhibit 4.

multiple lawsuits and administrative proceedings initiated by Plaintiff. By retaining jurisdiction, this Court would not be needlessly deciding state law issues. Plaintiff made these issues federal court issues when he chose to file Lawsuit #1 in federal court. It is by Plaintiff's hand these issues are before this Court. Plaintiff makes no attempt to conceal he is raising the same federal and state claims he raised in Lawsuit #1. Most of the same facts are recited in both complaints. Also, both complaints wholly rely upon the state administrative record: transcripts, exhibits, and briefing for their factual basis. Plaintiff's manipulation is more apparent when one considers the discovery game-playing, deficiencies, and spoliation issues that arose in Lawsuit #1.

Defendant will suffer undue prejudice if Plaintiff is allowed to reassert the federal and state claims in Lawsuit #1 as either the basis for his Ohio Revised Code §3319.16 appeal or as independent claims. Further, Defendant will be prejudiced to the extent "new" independent issues or claims are allowed to proceed that are collaterally estopped based upon the dismissal of Lawsuit #1. While Defendant recognizes Plaintiff has a right to file the appeal under Ohio Revised Code §3319.16, Plaintiff cannot use his appeal to re-litigate issues and claims disposed of by Lawsuit #1. The appeal must be narrowly construed as a matter of law.

III. CONCLUSION

For the foregoing reasons, this Court possesses subject matter jurisdiction over this action and is not prohibited by the abstention doctrine from retaining jurisdiction over this matter. If, however, the Court is still inclined to remand the case, Defendant requests this Court first dismiss any and all claims and issues disposed of by the dismissal with prejudice in Lawsuit #1 and issue an order enjoining Plaintiff from using these claims and issues as either a basis for the Ohio Revised Code §3319.16 appeal or as an independent claim.

Respectfully submitted,

/s/ Sarah J. Moore

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*Attorneys for Defendant Mount Vernon City
School District Board of Education*

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2011, a copy of the foregoing *Defendant Mount Vernon City School District Board of Education's Brief Explaining Why This Case Should Not be Remanded* 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. Additionally, a true and correct copy of the foregoing was served via regular U.S. mail this 28th day of March 2011, upon the following:

John Freshwater
7760 New Delaware Road
Mount Vernon, OH 43050

Pro Se Plaintiff

/s/ Sarah J. Moore

*One of the Attorneys for Defendant Mount
Vernon City School District Board of
Education*

EEOC Form 5 (11/09)

<p align="center">CHARGE OF DISCRIMINATION</p> <p><small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small></p>	<p>Charge Presented To: Agency(ies) Charge No(s):</p> <p><input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC</p> <p align="right">532-2011-00549</p>
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Ohio Civil Rights Commission and EEOC
State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.) John D. Freshwater	Home Phone (Incl. Area Code) (740) 397-1172	Date of Birth 06-22-1956
---	---	------------------------------------

Street Address City, State and ZIP Code
7760 New Delaware Road, Mount Vernon, OH 43050

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name MOUNT VERNON CITY SCHOOLS	No. Employees, Members 201 - 500	Phone No. (Include Area Code) (740) 397-7422
--	--	--

Street Address City, State and ZIP Code
300 Newark Road, Mount Vernon, OH 43050

Name	No. Employees, Members	Phone No. (Include Area Code)
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Street Address City, State and ZIP Code

<p>DISCRIMINATION BASED ON (Check appropriate box(es).)</p> <p><input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input checked="" type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN</p> <p><input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION</p> <p><input type="checkbox"/> OTHER (Specify)</p>	<p>DATE(S) DISCRIMINATION TOOK PLACE</p> <p>Earliest Latest</p> <p>01-10-2011 01-10-2011</p> <p><input type="checkbox"/> CONTINUING ACTION</p>
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THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

I had been employed by above Respondent since 1987; recently as an 8th grade Science Teacher.

In Jun '08, I was suspended without pay for not removing a bible from my desk. I remained suspended without pay until my termination.

On 1/10/11, I was terminated by the school board due to my fervent and deep-seated Christian beliefs. The school board further stated that my beliefs and convictions, while admirable character traits in other settings, proved to be my downfall as an 8th grade science teacher in a public school.

Other teachers/administrators with identical beliefs were not terminated.

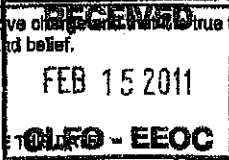
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT



SUBSCRIBED AND SWORN TO BEFORE ME (month, day, year)

02/10/2011 
Days Charging Party Signature

EEOC Form 6 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

FEPA
 EEOC

532-2011-00549

Ohio Civil Rights Commission

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (if additional paper is needed, attach extra sheet(s)):

I believe I have been discriminated against due to my religious beliefs (Christian), in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

2/02/10/2011
Date

[Signature]
Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS DATE
(month, day, year)

RECEIVED
FEB 15 2011
EEOC

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION**

JOHN D. FRESHWATER, et al.

Plaintiffs,

v.

MOUNT VERNON CITY SCHOOL
DISTRICT BOARD OF EDUCATION, et al.

Defendants.

Case No. 2:09cv464

JUDGE FROST

**PLANTIFF JOHN D. FRESHWATER'S THIRD RESPONSE TO DEFENDANT MOUNT
VERNON CITY SCHOOL DISTRICT BOARD OF EDUCATION'S FIRST SET OF
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff John Freshwater, by and through counsel, states his responses and objections to Defendant's First Request for Production of Documents.

GENERAL OBJECTIONS

1. Plaintiff John Freshwater objects to the Request for Production of Documents, and any implied or express instruction or direction in the request, that impose or seeks to impose burdens greater than those imposed by the Federal Rules of Civil Procedure.
2. Plaintiff John Freshwater objects to the Request for Production of Documents to the extent they seek disclosure of information protected under the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity.
3. Plaintiff John Freshwater objects to the Request for Production of Documents to the extent they are overly broad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.
4. Plaintiff John Freshwater reserves all objections as to the competence, relevance,

materiality, admissibility, or privileged status of any information provided in response to these Request for Production of Documents, unless specifically stated otherwise.

5. The following responses and objections are based upon information now known by Plaintiffs John Freshwater and Nancy Freshwater, who have not yet completed discovery or preparation for trial in this action and therefore will supplement these responses and objections to the extent required by these Rules of Civil Procedure.

THIRD RESPONSES

1. Any and all documents that are probative of Plaintiffs' allegation that Defendants' individually and/or collectively unjustly discriminated against you as a result of your 2003 proposal to modify Defendant Board's curriculum.

RESPONSE:

Plaintiff's production includes but is not limited to the following documents which are attached in an electronic format:

1. State Hearing Employee Exhibits 1-234 (Witness removed Employee Exhibit 71 from hearing with no copy left for record and there was not an Employee Exhibit marked 82)
 2. State Hearing Transcripts Days 1-38
 3. State Hearing brief titled, John Freshwater's Closing Statement Brief
 4. State Hearing brief titled, John Freshwater's Reply Brief to the Employer's Post-Hearing Brief
 5. Inspection Photos
 6. See file titled, Responses to No. 1 RPD to JF
2. Any and all documents that are probative of Plaintiffs' allegation that Defendants' individually and/or collectively unjustly discriminated against you as a result of your public statement of April 16, 2008.

RESPONSE:

In context Plaintiff produces all of the materials produced to respond to No. 1 herein as responsive to this request.

3. Any and all documents that are probative of Plaintiffs' allegation that Defendants have stated an opinion of your religious position.

RESPONSE:

Plaintiff's production includes but is not limited to the following documents which are attached in an electronic format:

1. State Hearing Employee Exhibits 1-234 (Witness removed Employee Exhibit 71 from hearing with no copy left for record and there was not an Employee Exhibit marked 82). Specifically, but not limited to Employee Exhibits 121 and 122
 2. State Hearing Transcripts Days 1-38. Specifically, but not limited to State Hearing Transcript Days 1, 2, 4, 5, 16, 33, 34
 3. State Hearing brief titled, John Freshwater's Closing Statement Brief
 4. State Hearing brief titled, John Freshwater's Reply Brief to the Employer's Post-Hearing Brief
 5. Inspection Photos
4. Any and all documents that are probative of Plaintiffs' allegation that Defendants discriminated against you for your religious beliefs.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-3 herein.

See file titled, Responses to No. 4 RPD to JF

5. Any and all documents that are probative of Plaintiffs' allegation that Defendants demonstrated an attempt to chill and stifle the freedom of speech and religious freedom of witness Lori Miller by adverse job action or threatening adverse job action.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-3 herein.

Specifically, but not limited to State Hearing Transcript Days 15, 16, 18, 23, 25, 38.

Specifically, but not limited to Employee Exhibits 106-109, 232-233.

6. Any and all documents that are probative of Plaintiffs' allegation that Defendants' violated your right to free speech, association and exercise of religion by retaliating against you for exercising those rights.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-5 herein.

7. Any and all documents that are probative of Plaintiffs' allegation that Defendants discriminated against you in a manner that constitutes disparate treatment.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-6 herein.

8. Any and all documents that are probative of Plaintiffs' allegation that Defendants treated you differently than other similarly situated persons on account of your perceived religious beliefs.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-7 herein.

Specifically, but not limited to State Hearing Transcript Days 11, 13, 18, 21, 22, 23, 31, 33, 34, 36, 37, 38.

Specifically, but not limited to Employee Exhibits 27-35, 106-109, 113, 228, 229, 232, 233.

9. Any and all documents that are probative of Plaintiffs' allegation that Defendants individually and/or collectively deprived you of your rights under the U.S. Constitution 14th Amendment right to equal protection under the law by intentionally discriminating against you on the basis of religion.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-8 herein.

See file titled, Responses to No. 9 RPD to JF

10. Any and all documents that are probative of Plaintiffs' allegation that Defendant Watson intentionally discriminated against you on the basis of your religion.

RESPONSE:

Plaintiff's production includes but are not limited to the statements made in both of Plaintiff's State Hearing brief titled, John Freshwater's Closing Statement Brief, and his State Hearing brief titled, John Freshwater's Reply Brief to the Employer's Post-Hearing Brief. Further, the State Hearing Transcript portions recorded on Day 4, 14, 17, 19, 20, 21, 24, 27 33 and 34, with the exhibits detailed therein, including but not limited to State Hearing Employee Exhibits 1, 2, 9, 10, 11, 13, 15, 16, 17, 18, 19, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 45, 50, 51, 52, 53, 54, 55, 56, 57, 60, 68, 70, 72, 73, 75, 76, 77, 78, 79, 80, 81, 83, 84, 86 - 108,

117, 118, 126, 127, 128, 130-137, 140, 141, 143, 144 – 159, 165, 166, 168, 169, 174, 177, 181, 184 – 218, 224, 227, 229 – 234, and Board Exhibit 6, 37.

11. Any and all documents that are probative of Plaintiffs' allegation that Defendant Goetzman intentionally discriminated against you on the basis of your religion.

RESPONSE:

Plaintiff's production includes but are not limited to the statements made in both of Plaintiff's State Hearing brief titled, John Freshwater's Closing Statement Brief, and his State Hearing brief titled, John Freshwater's Reply Brief to the Employer's Post-Hearing Brief. Further, the State Hearing Transcript portions recorded on Day 2, 5, 17, 18, 19 and 20, with the exhibits detailed therein, including but not limited to State Hearing Employee Exhibits 9, 10, 20, 21, 84, 118, 168, 169 and 214, and Board Exhibit 6.

Defendant Goetzman made statements to other witnesses and was advised by Mrs. Dennis of the use of the Tesla Coil and Goetzman failed to take action pursuant to R.C. 2151.421 and BOE Policy 9130.

12. Any and all documents that are probative of Plaintiffs' allegation that Defendant Short intentionally discriminated against you on the basis of your religion.

RESPONSE:

Plaintiff's production includes but are not limited to the statements made in both of Plaintiff's State Hearing brief titled, John Freshwater's Closing Statement Brief, and his State Hearing brief titled, John Freshwater's Reply Brief to the Employer's Post-Hearing Brief. Further, the State Hearing Transcript portions recorded on all hearing Days. Exhibits which detail Superintendent Short's actions and omissions are detailed therein, including but not limited to State Hearing Employee Exhibits 1, 2, 3, 5, 8 - 19, 23, 24, 25, 27 - 35, 43, 45, 46, 47, 50 - 57, 60, 68, 70, 72, 73, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85 - 109, 111 -119, 123 - 128, 130-137, 140 - 159, 165 - 171, 173, 174, 175, 177 - 184, 186, 187, 188, 190, 192, 193, 194, 196, 199, 200, 202, 204, 206, 207, 209, 210, 211, 224, 225, 227, 228, 229, 231, 232, 233, 234 and Board Exhibit 6, 37.

Testimony by experts demonstrated a public school official should know requirements of a their position and the basic response requirements to employment situations to include R.C. 2151.421. See specifically, but not limited to the state hearing briefs and State Hearing Transcript Days 15, 21, 22, 23, 25 and 33.

13. Any and all documents that are probative of Plaintiffs' allegation that Defendant White intentionally discriminated against you on the basis of your religion.

RESPONSE:

Plaintiff's production includes but are not limited to the statements made in both of Plaintiff's State Hearing brief titled, John Freshwater's Closing Statement Brief, and his

State Hearing brief titled, John Freshwater's Reply Brief to the Employer's Post-Hearing Brief. Further, the State Hearing Transcript portions recorded on all hearing Days except for Days 14 and 19. Exhibits which detail Principal White's actions and omissions are detailed therein, including but not limited to State Hearing Employee Exhibits 1, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 24, 25, 27 - 35, 43, 45, 50 - 57, 60, 68, 70, 72, 80, 81, 83, 84, 101, 103 - 108, 116, 118, 126, 128, 130 - 141, 143, 144 - 159, 168, 169, 170, 171, 174, 180, 181, 184, 186, 188, 190, 192, 193, 194, 196, 199, 200, 202, 204, 206, 207, 209, 210, 211, 224, 227, 232, 233 and Board Exhibit 6, 37.

Testimony by experts demonstrated a public school principal should know requirements of a principal's position and the basic response requirements to employment situations to include R.C. 2151.421. See specifically, but not limited to the state hearing briefs and State Hearing Transcript Days 15, 21, 22, 23, 25 and 33.

14. Any and all documents that are probative of Plaintiffs' allegation that Defendants individually and/or collectively took actions against you which you allege constitute a violation of your property and liberty interests.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-13 herein.

15. Any and all documents that are probative of Plaintiffs' allegation that beginning with the 2007-2008 school year you began to experience increased scrutiny by Defendants because of your religion.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-14 herein.

16. Any and all documents that are probative of Plaintiffs' allegation that Defendants discriminated against you based on your involvement in the Fellowship of Christian Athletes.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-15 herein.

17. Any and all documents that are probative of Plaintiffs' allegation that you suffered substantial economic loss as a result of Defendants' actions.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-16 herein.

18. Any and all documents that are probative of Plaintiffs' allegation that you suffered
embarrassment as a result of Defendants' actions.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-17 herein.

See file titled, Responses to No. 18 RPD to JF

19. Any and all documents that are probative of Plaintiffs' allegation that you suffered emotional
distress as a result of Defendants' actions.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-18 herein.

20. Any and all documents that are probative of Plaintiffs' allegation that you suffered humiliation
and mental anguish as a result of Defendants' actions.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-19 herein.

21. Any and all documents that are probative of Plaintiffs' allegation that Defendant Board,
Defendant Short, and/or Defendant White engaged in despicable, malicious, fraudulent, or
oppressive acts.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-20 herein.

See file titled, Responses to No. 21 RPD to JF.

22. Any and all documents that are probative of Plaintiffs' allegation that Defendant Board,
Defendant Short, and/or Defendant White acted with improper or evil motive to injure you.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-21 herein.

23. Any and all documents that are probative of Plaintiffs' allegation that you sought clarification on the Defendant Board's position concerning "The Living Bible – Paraphrased" on your desk.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-22 herein.

Specifically, but not limited to State Hearing Transcript Days 26-30.

Specifically, but not limited to Employee Exhibits 143.

24. Any and all documents that are probative of your April 16, 2008 public statement.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-23 herein.

25. Any and all documents that are probative of Plaintiffs' allegation that Defendant Board knew or should have known the H.R. On Call investigation report was incomplete and included scandalous allegations which were intended to be or resulted in retaliation against you.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-24 herein.

Specifically, but not limited to State Hearing Transcript Days 16, 17, 36.

Specifically, but not limited to Employee Exhibits 1, 8, 9, 10, 44, 126, 148, 130 – 137, 70, 163-167, 141, 143, 144 – 159, the student affidavits and Board Exhibit 6.

26. Any and all documents that are probative of Plaintiffs' allegation that Defendant Board, Defendant Short, and Defendant White created, condoned, and encouraged a work environment that was hostile to you.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-25 herein.

27. Any and all documents that are probative of Plaintiffs' allegation that you were harassed by Mount Vernon City School District administrators and co-workers on account of your religion.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-26 herein.

Specifically, but not limited to Employee Exhibits 121 and 122.

28. Any and all documents that are probative of Plaintiffs' allegation that Defendant Board engaged in ongoing and continuous religious harassment since 2003.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-27 herein.

Specifically, but not limited to Employee Exhibits 121, 122 and 176.

29. Any and all documents that are probative of Plaintiffs' allegation that Defendants created a hostile work environment for you.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-28 herein.

30. Any and all documents that are probative of Plaintiffs' allegation that Defendants engaged in unlawful practices.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-29 herein.

See file titled, Responses to No. 30 RPD to JF.

Specifically, but not limited to Employee Exhibits 10 and 225.

31. Any and all documents that are probative of Plaintiffs' allegation that you protested Defendants' alleged unlawful practices.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-30 herein.

Specifically, but not limited to State Hearing Board Exhibit 19.

32. Any and all documents that are probative of Plaintiffs' allegation that Defendants, individually and/or collectively, maliciously combined and conspired to violate your civil rights.

RESPONSE:

Plaintiff identifies documents to include all exhibits and transcripts produced at the state hearing involving John Freshwater. Plaintiff in good faith believes Defendant has in its possession all of the exhibits and transcripts from the state hearing.

33. Any and all documents that are probative of Plaintiffs' allegation that Defendants, individually and/or collectively, communicated false statements.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-32 herein.

34. Any and all documents that are probative of Plaintiffs' allegation that Defendant Board, Defendant Short, and Defendant White breached contractual duties and policy purportedly due and owed to you.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-33 herein.

Specifically, but not limited to Employee Exhibits 9, 10, 70, 80, 81, 84, 168, 169.

35. Any and all documents that are probative of Plaintiffs' allegation that Defendant Board negligently retained, supervised, and trained Defendant Short, Defendant Weston, and Defendant White.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-34 herein.

Specifically, but not limited to Employee Exhibits 234.

36. Any and all communications between you and persons regarding your claims in this lawsuit and the facts underlying this lawsuit.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-35 herein.

See file titled, Responses to No. 36 RPD to JF.

37. Any and all communications between you and persons regarding your administrative termination proceeding.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-36 herein.

See file titled, Responses to No. 37 RPD to JF.

38. Any and all documents that are probative of a report, opinion, communication, memorandum, or thought by any individual Plaintiff contacted to secure an expert opinion or testimony, including but not limited to any expert report rendered on Plaintiffs' behalf whether intended to be introduced at trial or not.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-37 herein.

See file titled, Responses to No. 38 RPD to JF.

Specifically, but not limited to Employee Exhibits 210 and 213.

Specifically, but not limited to State Hearing Transcript Days 23 and 33.

39. Any and all documents that reflect communication between Plaintiffs' attorney and any individual contacted on Plaintiff's behalf to secure an expert opinion or testimony.

See response to number 38.

40. For any expert Plaintiffs intend on calling to testify, a copy of his/her curriculum vitae and any and all publications authored by said expert.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-39 herein.

See file titled, Responses to No. 38 RPD to JF.

41. Any and all documents that are probative of or bear relevance to the claims made by Plaintiffs in their Complaint, whether intended to be at trial or not.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-40 herein.

See attached electronic file Supplemental Responses.

44. All medical records, surgical records, mental illness records, x-rays, radiographic files, pathology materials, including but not limited to slides and other tissue samples, or any other record or material related to any diagnostic treatments, tests, or procedures, financial records, bills, invoices, writing, notes, or memoranda relating to all of your physical, medical, or mental conditions, illness, or disabilities including but not limited to the doctors, nurse, practitioners, hospitals, clinic, institutions, or other health care providers or third party private or governmental health or accident insurance, without regard to whether it is the Plaintiffs' contention that such physical, medical, or mental illness, or disabilities were caused in any way by Defendants or any agent or employee of Defendant Board:

- a. For a period of five years before and up to the date of the occurrences alleged in the Plaintiffs Complaint.
- b. For a period of time commencing on the date of the occurrences alleged in the Plaintiffs' Complaint up to and including present date.

RESPONSE:

See file titled, Responses to No. 44 & 45 RPD to JF.

45. With regard to any medical or hospital records, Defendants request you execute authorizations for each doctor or hospital where records exist, to allow the Defendants to obtain information and to examine copies of all records. Please execute the attached general medical release for each Healthcare Professional, returning the same to Defendant's counsel with your response.

RESPONSE:

See file titled, Responses to No. 44 & 45 RPD to JF.

46. Any and verbal or written statements and/or reports, signed or unsigned, of you in regard to matters alleged in Plaintiffs' Complaint or raised in your administrative termination hearing.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-45 herein.

See attached electronic file Supplemental Responses.

Plaintiff not aware of any other documents responsive to this request but will supplement if discovered.

47. Any and verbal or written statements and/or reports, signed or unsigned, of individuals in regard to matters alleged in Plaintiffs' Complaint or raised in your administrative termination hearing.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-47 herein.

See attached electronic file Supplemental Responses.

Plaintiff not aware of any other documents responsive to this request but will supplement if discovered.

48. Any and all audiotapes, videotapes, or other video, audio, or electronic storage medium containing statements of you in regard to matters alleged in Plaintiffs' Complaint or raised in your administrative termination hearing.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-47 herein.

See attached electronic file Supplemental Responses.

State Hearing Employee Exhibits 228, 232 and 148 reflect the only recorded statements in possession of the Plaintiffs and all have been previously provided. Any other recording is not possessed by Plaintiffs.

49. Any and all audiotapes, videotapes, or other video, audio, or electronic storage medium containing statements of individuals in regard to matters alleged in Plaintiffs' Complaint or raised in your administrative termination hearing.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-48 herein.

See attached electronic file Supplemental Responses.

State Hearing Employee Exhibits 228, 232 and 148 reflect the only recorded statements in possession of the Plaintiffs and all have been previously provided. Any other recording is not possessed by Plaintiffs. Teacher Lori Miller has possession of her audio recorded discussion between Teacher Miller and Principal Bill White.

51. Any and all documents or items you removed from Mount Vernon City School District buildings from December 1, 2007 to present.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-50 herein.

See attached electronic file Supplemental Responses.

52. Any and all documents you received from individuals from December 1, 2007 to present in regard to matters alleged in Plaintiffs' Complaint or raised in your administrative termination hearing.

RESPONSE:

Plaintiff relies upon the responses proposed in No. 1-51 herein.

See attached electronic file Supplemental Responses.

53. Any and all statements made by you on or through the radio, T.V., internet, newspaper, or any other form of media from January 1, 2008 to present.

RESPONSE:

Plaintiff has not maintained any record of such statements made in media outlets. Plaintiff produces the items contained in the State Hearing Employee Exhibits provide in the attached electronic file Supplemental Responses.

54. Any and all statements made by your attorney on or through the radio, T.V., internet, newspaper, or any other form of media from January 1, 2008 to present.

RESPONSE:

Plaintiff has not maintained any record of such statements made in media outlets. Plaintiff produces the items contained in the State Hearing Employee Exhibits provide in the attached electronic file Supplemental Responses.

55. Any and all statements made by any individual acting as your spokesman on or through the radio, T.V., internet, newspaper, or any other form of media from January 1, 2008 to present.

RESPONSE:

Plaintiff has not maintained any record of such statements made in media outlets. Plaintiff produces the items contained in the State Hearing Employee Exhibits provide in the attached electronic file Supplemental Responses.

56. Any and all statements made by your Pastor Don Matolyak on or through the radio, T.V., internet, newspaper, or any other form of media from January 1, 2008 to present.

RESPONSE:

Plaintiff has not maintained any record of such statements made in media outlets. Plaintiff produces the items contained in the State Hearing Employee Exhibits provide in the attached electronic file Supplemental Responses.

57. Any and all documents, correspondence, and voice-mail messages you received from the alleged anonymous tipster who sent you a letter in January, 2010.

RESPONSE:

Plaintiff produces State Hearing Employee Exhibits 176 and 187.

58. Any and all email correspondence sent from or received by your email account infreshwater@yahoo.com and any other private email account maintained by you from

January 1, 2008 to present related to matters alleged in Plaintiffs' Complaint or raised in your administrative termination hearing.

RESPONSE:

Plaintiff expressly makes a claim excepting privileged communications between a client and attorney which are described in the attached list.

Plaintiff has received other emails from Darcy Miller to Steve Short, and from Kerri Mahan, Tammi Henry and Evy Oxenford which have been previously provided.

59. Any and all electronically stored information, inclusive of metadata, for documents related to matters alleged in Plaintiffs' Complaint or raised in your administrative termination hearing, including, but not limited to:

RESPONSE:

Plaintiff produces documents in the attached electronic file Supplemental Responses. The documents produced comprise the entirety of any electronic documents requested in No. 59 and 60.

- a. January 7, 2009 Affidavit of John Freshwater (marked as Employee Exhibit #8 in the administrative termination hearing);
- b. July 17, 2008 email from Tamara Henry to R. Kelly Hamilton (marked as Employee Exhibit #16 in the administrative termination hearing);
- c. February 26, 2009 Affidavit of Melanie Dobson (marked as Employee Exhibit #22 in the administrative termination hearing);
- d. February 26, 2009 Affidavit of Corbin Heck (marked as Employee Exhibit #23 in the administrative termination hearing);
- e. February 29, 2009 Affidavit of Nathan Thomas (marked as Employee Exhibit #24 in the administrative termination hearing);
- f. February 15, 2009 Affidavit of Riley Swanson (marked as Employee Exhibit #25 in the administrative termination hearing);

- g. February 15, 2009 Affidavit of Ben Nielson (marked as Employee Exhibit #45 in the administrative termination hearing);
- h. March 27, 2009 Affidavit of Jeff Cline (marked as Employee Exhibit #51 in the administrative termination hearing);
- i. March 31, 2009 Affidavit of Stephen Zirkle (marked as Employee Exhibit #52 in the administrative termination hearing);
- j. October 26, 2009 Affidavit of David Daubenmire (marked as Employee Exhibit #68 in the administrative termination hearing);
- k. October 26, 2009 Affidavit of Tim Keib (marked as Employee Exhibit #72 in the administrative termination hearing);
- l. October 29, 2009 Affidavit of Darcy Miller (marked as Employee Exhibit #83 in the administrative termination hearing);
- m. October 29, 2009 Affidavit of Jeff Kuntz (marked as Employee Exhibit #100 in the administrative termination hearing);
- n. October 21, 2009 Affidavit of Taylor Strack (marked as Employee Exhibit #101 in the administrative termination hearing);
- o. October 30, 2009 Affidavit of Lori Miller (marked as Employee Exhibit #108 in the administrative termination hearing);
- p. May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #126 in the administrative termination hearing);
- q. May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #128 in the administrative termination hearing);

- r. **May 23, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #141 in the administrative termination hearing);**
- s. **May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #143 in the administrative termination hearing);**
- t. **Alleged Transcript of May 15, 2008 H.R. On Call Interview of John Freshwater (marked as Employee Exhibit #148);**
- u. **May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #149 in the administrative termination hearing);**
- v. **May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #150 in the administrative termination hearing);**
- w. **May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #151 in the administrative termination hearing);**
- x. **May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #152 in the administrative termination hearing);**
- y. **May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #153 in the administrative termination hearing);**
- z. **May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #154 in the administrative termination hearing);**
- aa. **May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #155 in the administrative termination hearing);**
- bb. **May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #156 in the administrative termination hearing);**

- cc. May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #157 in the administrative termination hearing);
- dd. May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #158 in the administrative termination hearing);
- ee. May 25, 2008 Affidavit of John Freshwater (marked as Employee Exhibit #159 in the administrative termination hearing);
- ff. April 22, 2010 Affidavit of Angelita Conkel (marked as Employee Exhibit #193 in the administrative termination hearing);
- gg. April 16, 2010 Affidavit of Allison Ruhl (marked as Employee Exhibit #194 in the administrative termination hearing);
- hh. April 15, 2010 Affidavit of Maggie Wayne (marked as Employee Exhibit #196 in the administrative termination hearing);
- ii. April 20, 2010 Affidavit of Josh Grubaugh (marked as Employee Exhibit #199 in the administrative termination hearing);
- jj. April 19, 2010 Affidavit of Miranda Baer (marked as Employee Exhibit #184 in the administrative termination hearing);
- kk. April 24, 2010 Affidavit of Lori Hubbell (marked as Employee Exhibit #181 in the administrative termination hearing);
- ll. April 15, 2010 Affidavit of Kayla Wells (marked as Employee Exhibit #186 in the administrative termination hearing);
- mm. April 20, 2010 Affidavit of Cody Smith (marked as Employee Exhibit #202 in the administrative termination hearing); and,

nn. April 16, 2010 Affidavit of Jake Stotts (marked as Employee Exhibit #207 in the administrative termination hearing).

60. Any and all electronically stored information, inclusive of metadata, for all drafts, versions, or copies of the documents referenced in paragraph 59 (a) through (nn).

RESPONSE:

See response to number 59.

RESPONSE:

See attached.

63. Defendants request to inspect and copy any and all original affidavits obtained by Plaintiffs related to matters alleged in Plaintiffs' Complaint or raised in your administrative termination hearing.

RESPONSE:

Each original was submitted in the State Hearing with the exception of the affidavit completed by Ted Kiger which is attached hereto.

65. Any and all documents containing an itemization of hours spent by your attorney in instituting the Complaint and pursuing this lawsuit on your behalf.

RESPONSE:

See attached.

66. Any and all photographs taken by you or your attorney related to matters alleged in Plaintiffs' Complaint or raised in your administrative termination hearing, including but not limited to those taken during inspection of the items removed from your classroom by Defendant and maintained in storage. Please provide the photographs in the digital format(s) as originally taken.

RESPONSE:

See file titled, Responses to No. 66 RPD to JF.

R. Kelly Hamilton

Respectfully submitted,

s/ R. Kelly Hamilton *RKH*

The Law Office of R. Kelly Hamilton (0066403)

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Attorney for John Freshwater and Nancy Freshwater *J.F.*

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2010, a copy of the foregoing was served to the following counsel by ordinary U.S. mail.

Sarah J. Moore, Esq., BRITTON, SMITH, PETERS & KALAIL, CO., LPA

3 Summit Park Drive, Suite 400, Cleveland, Ohio 44131

Attorney for Mount Vernon City School District Board of Education, Ian Watson, Jody Goetzman, Steve Short and William White

Nicole M. Donovsky, Means, Bichimer, Burkholder & Baker, 2006 Kenny Road, Columbus, Ohio 43221, *Co-Counsel for Defendant Lynda Weston*

Larry C. Greathouse, Esq., GALLAGHER SHARP, 1501 Euclid Avenue, Sixth Floor, Bulkley Building, Cleveland, Ohio 44115, *Attorney for Defendants H.R. On Call, Inc., Julia F. Herlevi and Thomas J. Herlevi*

C. Joseph McCullough, Esq., WHITE, GETGEY & MEYER CO., LPA

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Co-Counsel for Defendant Lynda Weston

R. Kelly Hamilton

R. Kelly Hamilton (0066403)

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION**

JOHN D. FRESHWATER, et al.	:	
	:	Case No. 2:09cv464
Plaintiffs,	:	
	:	JUDGE FROST
v.	:	
	:	
MOUNT VERNON CITY SCHOOL	:	
DISTRICT BOARD OF EDUCATION, et al.	:	
	:	
Defendants.	:	

**PLANTIFF JOHN D. FRESHWATER'S THIRD RESPONSE TO INTERROGATORIES
FROM DEFENDANT BOARD OF EDUCATION**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff John Freshwater, by and through counsel, state his responses and objections to Defendant BOE's First Set of Interrogatories.

GENERAL OBJECTIONS

1. Plaintiffs John Freshwater and Nancy Freshwater object to the Interrogatories, and any implied or express instruction or direction in the Interrogatories that impose or seeks to impose burdens greater than those imposed by the Federal Rules of Civil Procedure.
2. Plaintiffs John Freshwater and Nancy Freshwater object to the Interrogatories to the extent they seek disclosure of information protected under the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity.
3. Plaintiffs John Freshwater and Nancy Freshwater object to the Interrogatories to the extent they are overly broad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.
4. Plaintiffs John Freshwater and Nancy Freshwater reserve all objections as to the

competence, relevance, materiality, admissibility, or privileged status of any information provided in response to these Interrogatories, unless specifically stated otherwise.

6. The following responses and objections are based upon information now known by Plaintiffs John Freshwater and Nancy Freshwater who have not yet completed discovery or preparation for trial in this action and therefore will supplement these responses and objections to the extent required by these Rules of Civil Procedure.

THIRD RESPONSES

2. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count One of the First Amended Complaint.

ANSWER:

Plaintiff asserts the acts and omissions by Defendant BOE include but are not limited to:

1. **Failure by the BOE to follow BOE policies. See both of Plaintiff's State Hearing brief titled, John Freshwater's Closing Statement Brief, and his State Hearing brief titled, John Freshwater's Reply Brief to the Employer's Post-Hearing Brief.**
2. **Reliance upon HR on Call, Inc's work incomplete, inaccurate and inflammatory work-product and failure to conduct a thorough investigation.**
3. **Any and all matters related to John Freshwater's use of a Tesla Coil were adjudicated by Principal William White's letter to John Freshwater dated January 22, 2008.**
4. **The Academic Content Standards were not applicable in the Mount Vernon City School District until the beginning of the 2004-2005 school year.**
5. **John Freshwater taught his 8th grade students exactly as he was required as evidenced by the only known assessment tool authorized in the State of Ohio; the Ohio Achievement Tests. John Freshwater's students received proper instruction resulting in him being the only 8th grade teacher whose students achieved a proficient rating of seventy-seven (77%) percent on the Ohio Achievement Tests despite his classes containing the same number or more special education students.**
6. **Ten (10) eyewitness students, two (2) teachers and one (1) principal testified John Freshwater never instructed on the topics of creationism nor intelligent design.**
7. **John Freshwater complied with all of the known parameters as he facilitated, monitored and supervised the Fellowship of Christian Athletes (FCA).**
8. **Witness testimony from credible sources clearly demonstrates John Freshwater did not conduct nor lead any prayers during FCA meetings.**
9. **Witness testimony from credible sources clearly demonstrates John Freshwater never asked non-familial students to lead prayer in FCA meetings.**

10. **Witness testimony from credible sources clearly demonstrates John Freshwater did not exceed his role as facilitator, monitor and supervisor of the FCA.**
11. **John Freshwater exercised a constitutional right to have a personal Bible in his classroom on his desk.**
12. **John Freshwater removed all items he was lawfully asked to remove.**
13. **John Freshwater did not receive any instruction from Principal William White or anybody else to remove the patriotic poster, which was distributed through the Mount Vernon Middle School office, depicting former President George Bush and Colin Powell.**
14. **John Freshwater never intended or tried to "make a point" by bringing additional "religious articles" into his classroom but rather he was both curious about the differences between his personal, green Bible and that of the school's library Bible.**
15. **During the hearing representatives for the BOE completely abandoned the established policies of the BOE. In the *Post-Hearing Brief for Mount Vernon City School District* the BOE makes limited reference to one policy. Five (5) POLICIES of the BOE granted Teacher Freshwater the authority to take action as he did: 2270 RELIGION IN THE CURRICULUM, 8800 - RELIGIOUS/PATRIOTIC CEREMONIES AND OBSERVANCES, 8800B - RELIGIOUS EXPRESSION IN THE DISTRICT, 2240 - CONTROVERSIAL ISSUES, and 3218 ACADEMIC FREEDOM OF TEACHERS.**
16. **John Freshwater relies upon the totality of the State Hearing Employee Exhibits and the State Hearing Transcripts.**

3. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Two of the First Amended Complaint.

ANSWER:

In addition to the answer to Interrogatory No. 2 herein, Plaintiff asserts Defendant BOE treated him differently than the treatment received by Teachers Lori Miller, Wes Elifritz, Andrew Thompson and others.

4. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Three of the First Amended Complaint.

ANSWER:

In addition to the answer to Interrogatory No. 2 herein, Plaintiff asserts Defendant BOE denied him due process by failure to ensure a fair, complete and accurate investigation was completed pursuant to Employee Exhibit No. 10.

5. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Four of the First Amended Complaint.

ANSWER:

In addition to the answer to Interrogatory No. 2 herein, Plaintiff asserts Defendant BOE permitted a continuing pattern promoted by Lynda Weston to make reference to Plaintiff's religious position which was subsequently acknowledged by Steve Short and Bill White.

6. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Five of the First Amended Complaint.

ANSWER:

In addition to the answer to Interrogatory No. 2 herein, Plaintiff asserts Defendant BOE relied upon erroneous information supplied by Lynda Weston.

7. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Six of the First Amended Complaint.

ANSWER:

In addition to the answer to Interrogatory No. 2, 5, and 6 herein, Plaintiff asserts Defendant BOE permitted impermissible speculation and action to be taken against Plaintiff based upon perceptions about Plaintiff's religious position.

8. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Seven of the First Amended Complaint.

ANSWER:

Plaintiff relies upon the answers asserted in Interrogatory No. 2-7 herein.

9. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Eight of the First Amended Complaint.

ANSWER:

Plaintiff relies upon the answers asserted in Interrogatory No. 2-8 herein.

10. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Nine of the First Amended Complaint.

ANSWER:

Plaintiff relies upon the answers asserted in Interrogatory No. 2-9 herein.

11. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Ten of the First Amended Complaint.

ANSWER:

In addition to the answer to Interrogatory No. 2 herein, Plaintiff asserts Defendant BOE impermissibly relied upon uncorroborated assertions by Ian Watson, Lynda Weston, HR on Call, Inc. and Steve Short to take detrimental action against Plaintiff.

12. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Eleven of the First Amended Complaint.

ANSWER:

In addition to the answer to Interrogatory No. 2 herein, Plaintiff asserts Defendant BOE with reckless disregard for the truth as evidenced by its carte blanche delegation to HR on Call, Inc. errantly relied upon the uncorroborated assertions of a singular witness failing to follow its own policy as established for complaints.

13. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Twelve of the First Amended Complaint.

ANSWER:

In addition to the answer to Interrogatory No. 2 herein, Plaintiff asserts Defendant BOE failed to follow the MVEA contract as identified in Employee Exhibit 10. Defendant BOE ratified Steve Short's action with Lori Miller, Wes Elifritz, Andrew Thompson and other teachers while excluding Plaintiff by the failure of the administration to make known contract provisions as done with Lori Miller, resulting in differential treatment and failure to follow Article 402.

14. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Fourteen of the First Amended Complaint.

ANSWER:

In addition to the answer to Interrogatory No. 2 herein, Plaintiff asserts Defendant BOE failed to recognize or supervise the administration's January 22, 2008 letter, the change in curriculum which necessarily resulted in change of curriculum delivery and attempted to penalize Plaintiff for teaching materials which were permissible prior to adoption of ACS.

15. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Fifteen of the First Amended Complaint.

ANSWER:

In addition to the answer to Interrogatory No. 2 herein, Plaintiff asserts Defendant BOE intentionally or with wanton disregard failed to follow policy which resulted in differential treatment of Plaintiff.

16. Please identify the specific acts or omissions taken by Defendant Board that constitute the factual basis for your claims against Defendant Board under Count Seventeen of the First Amended Complaint.

ANSWER:

In addition to the answer to Interrogatory No. 2, 11 and 12 herein, Plaintiff asserts Defendant BOE relied upon false statements which were not corroborated or fairly and accurately investigated.

19. Identify any and all Healthcare Professionals you have seen from January 1, 2003 to present.

ANSWER:

Dr. Gregory Cush, 1451 Yauger Road, Mount Vernon, Ohio 43050, 740.393.9898

20. Please identify all individuals you intend to have testify at trial, hearing or other proceeding in this matter.

ANSWER:

Gerald Kuzelis, Steve Short, William White, Kerri Mayhan, Jordan Freshwater, Nancy Freshwater, Dino Dettore, Barb Spitzer, Deb Strouse, Tamara Henry, Brian Cook, James Marth, Sara Malone, John Frye, Brian Gastin, Ben Sanders, Steven Farmer, Ken Wiles, David Carter, Donald Newcomer, Scott Dapprich, Corbin Heck, Nathan Thomas, Riley Swanson, Sue Swanson, Jeff Maley, Lori Miller, Lynda Weston, Ben Nielson, Mark Nielson, Thomas Herlevi, Melanie Dobson, Julia Herlevi, Jeff Cline, Stephen Zirkle, Wes Ellifritz, Andrew Thompson, David Daubenmire, Tim Keib, Jeff Kuntz, Darcy Miller, Robert Bender, Patricia Dice, Finn Laursen, John Freshwater, Ricky Warren, Sherri Perry, Lori Ann Hubble, Miranda Baer, Tokayla Redman, Kayla Wells, Ruth Frady, Taylor Strack, Angelita Conkel, Allison Ruhl, Maggie Wayne, Joshua Grubaugh, Cody Smith, Aaron Morris, Jake Stotts, Michael Molnar, Patrick Johnston, Ian Watson, Steve Hughes, Ted Kiger, Deb McDaniel, Sherry Wells.

23. Please identify any expert witness(es) who you anticipate will testify on your behalf at the trial on this case and please provide the following additional information:

- a. The subject matter upon which each expert is expected to testify;
- b. The mental impressions and opinions held by each expert;
- c. The facts known to each expert which relate to or form the basis of the expert's mental impressions or opinions; and

- d. Whether each expert has rendered a written report or reports in connection with his or her services.

ANSWER:

Finn Laursen

- a. See State Hearing Transcript Day 23
- b. See State Hearing Transcript Day 23
- c. See State Hearing Transcript Day 23
- d. No written report

Michal Molnar

- a. See State Hearing Transcript Day 33
- b. See State Hearing Transcript Day 33
- c. See State Hearing Transcript Day 33
- e. See See State Hearing Employee Ex 210

Dr. Patrick Johnston

- a. See State Hearing Transcript Day 33
- b. See State Hearing Transcript Day 33
- c. See State Hearing Transcript Day 33
- d. See State Hearing Transcript Employee Ex 211

David Daubenmire

- a. See State Hearing Transcript Day 21
- b. See State Hearing Transcript Day 21
- c. See State Hearing Transcript Day 21
- d. See State Hearing Transcript Employee Ex 68-70

Tim Kelb

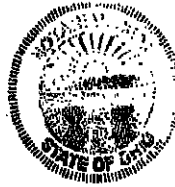
- a. See State Hearing Transcript Day 21-22
- b. See State Hearing Transcript Day 21-22
- c. See State Hearing Transcript Day 21-22
- d. See State Hearing Transcript Exhibit 72,73, 75-80

VERIFICATION

Plaintiff John D. Freshwater, being first duly sworn, deposes and states that the foregoing Answers to *Defendant BOE's First Set of Interrogatories* are true and accurate to the best of my belief and knowledge.


John D. Freshwater

STATE OF OHIO)
COUNTY OF Knox) SS:



RECEIVED
CLERK OF COURT
COURT HOUSE
1000 EAST BROADWAY
CINCINNATI, OHIO 45219
SEP 28 2010

SWORN TO BEFORE ME and subscribed in my presence this 5th day of September, 2010.

R. Kelly Hamilton
Notary Public

Respectfully submitted,
s/ R. Kelly Hamilton
The Law Office of R. Kelly Hamilton (0066403)
Office: 4030 Broadway, Grove City, Ohio 43123
Mail to: P.O. Box 824, Grove City, Ohio 43123
Phone 614-875-4174 **Fax**
Email: hamiltonlaw@sbcglobal.net
Attorney for John Freshwater and Nancy Freshwater

CERTIFICATE OF SERVICE

I hereby certify that on September 5th, 2010, a copy of the foregoing was served to the following counsel via ordinary U.S. mail.

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R. Kelly Hamilton
R. Kelly Hamilton (0066403)

1 IN THE UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF OHIO

3 EASTERN DIVISION

4 -----

5 JOHN FRESHWATER, :

6 ET. AL., :

7 Plaintiffs, :

8 -vs- : CASE NO. 2:09 cv 464

9 MOUNT VERNON CITY : JUDGE FROST

10 SCHOOL DISTRICT BOARD : MAGISTRATE JUDGE KING

11 OF EDUCATION, :

12 ET. AL., :

13 Defendants. :

14 -----

15 Deposition of JOHN D. FRESHWATER, a

16 Plaintiff herein, taken by the Defendants as upon

17 Cross-Examination and pursuant to the Federal Rules

18 of Civil Procedure as to the time and place and

19 stipulations hereinafter set forth, at the offices

20 of Means, Bichimer, Burkholder & Baker, 1650 Lake

21 Shore Drive, Suite 285, Columbus, Ohio, at 10:00,

22 a.m., on Friday, October 15, 2010, before Catherine

23 L. Schutte-Stant, a Registered Merit Reporter, and

24 Notary Public within and for the State of Ohio.

25 * * * * *

1 10:01:18 1 to verbalize our thoughts rather than have
2 10:01:24 2 nonverbal cues, that would be great. And then I'm
3 10:01:27 3 going to assume that you understand my questions
4 10:01:29 4 unless you indicate otherwise.

5 10:01:31 5 A. Okay.

6 10:01:31 6 Q. So if for some reason what I'm saying
7 10:01:36 7 doesn't make sense, please just stop, indicate so,
8 10:01:39 8 and we'll do our best to address that situation.

9 10:01:42 9 A. Yes.

10 10:01:42 10 Q. Okay?

11 10:01:43 11 A. Yes.

12 10:01:43 12 Q. I notice that you have with you some
13 10:01:45 13 documents today; is that correct?

14 10:01:48 14 A. Yes, I do.

15 10:01:48 15 Q. Could I take a look at those?

16 10:01:50 16 A. Yes, you may.

17 10:02:36 17 Q. I've quickly gone through two of the
18 10:02:39 18 documents. The first is John Freshwater's Reply
19 10:02:44 19 Brief to the Employer's Post-Hearing Brief in the
20 10:02:48 20 matter of John Freshwater before Referee R. Lee
21 10:02:52 21 Shepherd. It appears to be a 75-page document that
22 10:03:15 22 does not have handwriting or marks within it, but
23 10:03:17 23 is tabbed on the side with some purple tabs; is
24 10:03:22 24 that fairly accurate?

25 10:03:23 25 A. Yes.

1 10:03:23 1 Q. And the second document is a document
2 10:03:27 2 entitled, "John Freshwater's Closing Statement
3 10:03:30 3 Brief in the matter of John Freshwater before
4 10:03:35 4 Referee R. Lee Shepherd." It appears to be a
5 10:03:40 5 166-Page document that does not have any written
6 10:03:44 6 marks or notes within the document; however, has
7 10:03:50 7 numerous purple tabs on the side of the document;
8 10:03:55 8 is that correct?
9 10:03:55 9 A. That would be correct.
10 10:03:56 10 Q. And at the bottom of this document, it
11 10:03:59 11 says, "Copy Number 4"; what does that mean?
12 10:04:03 12 A. Plain language, it says, Copy Number 4.
13 10:04:10 13 Q. Okay. How many copies are there of
14 10:04:13 14 that document that are labeled with numbers?
15 10:04:15 15 A. I wouldn't be able to answer that.
16 10:04:18 16 Q. And then the last document is the NIV
17 10:04:23 17 Study Bible, and it appears to be just exactly what
18 10:04:26 18 it says; would that be accurate?
19 10:04:31 19 A. That would be correct.
20 10:04:34 20 Q. When we take a break, I'm going to be
21 10:04:35 21 asking that the first two documents I mentioned be
22 10:04:40 22 copied, inclusive of the tabs and where the tabs
23 10:04:44 23 are, so that I ask during the course of the day
24 10:04:47 24 that you not change where the tabs are and leave
25 10:04:52 25 them in their respective places; is that fair?

1 10:42:33 1 question?

2 2 (WHEREUPON, the court reporter

3 10:43:08 3 read back the requested portion of the record.)

4 10:43:08 4 THE WITNESS: Yeah, I mean the

5 10:43:12 5 plain language says, here, "Propounded to them by

6 10:43:15 6 the moving defendants within seven days of the date

7 10:43:17 7 of the Opinion and Order," yes.

8 10:43:20 8 BY MS. MOORE:

9 10:43:21 9 Q. What did you understand the term,

10 10:43:23 10 "individualized response to each discovery request"

11 10:43:26 11 to mean?

12 10:43:34 12 A. Just what the plain language says

13 10:43:36 13 there.

14 10:43:37 14 Q. Well, what does that mean to you?

15 10:43:42 15 A. Individualized responses to each

16 10:43:44 16 discovery, each individual that was named in the,

17 10:43:51 17 in the suit, or the claim.

18 10:43:58 18 Q. Okay. Did you understand that that

19 10:43:59 19 meant you needed to provide an individual response

20 10:44:02 20 to each of the questions that were in the discovery

21 10:44:06 21 requests that were propounded on you by my clients?

22 10:44:15 22 A. Could you repeat that?

23 23 (WHEREUPON, the court reporter

24 24 read back the requested portion of the record.)

25 10:44:35 25 THE WITNESS: Yes, just in plain

1 10:44:36 1 language, yes.

2 10:44:36 2 BY MS. MOORE:

3 10:44:36 3 Q. Were you also aware in the last line
4 10:44:39 4 there that you had an obligation to identify in a,
5 10:44:45 5 quote, "privilege log," end quote, any documents
6 10:44:48 6 you would be withholding on the basis of privilege?

7 10:44:59 7 A. The plaintiffs are reminded that, if
8 10:45:00 8 they withhold any evidence on the basis of
9 10:45:02 9 privilege, they must identify these documents in a
10 10:45:05 10 privilege log, yes.

11 10:45:07 11 Q. Mr. Freshwater, have you known that
12 10:45:17 12 since June 13th, 2008, you've had an obligation to
13 10:45:21 13 preserve any and all documents, files, and
14 10:45:25 14 information, whether in paper, or electronic
15 10:45:29 15 format, inclusive of all medium, data, regarding
16 10:45:33 16 your employment at the Mount Vernon City School
17 10:45:36 17 District Board of Education, and the reasons
18 10:45:38 18 underlying the termination proceedings?

19 10:45:46 19 A. Is that a document I received?

20 10:45:50 20 MS. MOORE: Can you repeat the
21 10:45:51 21 question, please?

22 22 (WHEREUPON, the court reporter
23 10:46:28 23 read back the requested portion of the record.)

24 10:46:28 24 THE WITNESS: The date was June
25 10:46:31 25 13th, 2008?

1 10:46:33 1 BY MS. MOORE:

2 10:46:33 2 Q. Correct.

3 10:46:34 3 A. Yes, I would say yes to -- yes.

4 10:46:43 4 Q. And have you known that since June
5 10:46:46 5 13th, 2008?

6 10:46:53 6 A. Yes, I complied with that, yes.

7 10:46:54 7 Q. Your wife testified earlier this week
8 10:46:59 8 about the computers at your home. Can you tell us
9 10:47:02 9 what computer you currently have?

10 10:47:04 10 A. I've got a, I've got one computer.
11 10:47:21 11 It's a laptop.

12 10:47:23 12 Q. What kind?

13 10:47:24 13 A. I was going to look today to see what
14 10:47:30 14 it was, and I didn't, so I cannot answer that.

15 10:47:32 15 Q. Where did you purchase it?

16 10:47:35 16 A. That would have been, that would have
17 10:47:42 17 been, that would have been Best Buy. I was hoping
18 10:47:48 18 to get a Dell, but I didn't have the school backing
19 10:47:58 19 to get a cheaper Dell.

20 10:48:00 20 Q. Which Best Buy?

21 10:48:06 21 A. From my recall, I do believe Polaris.

22 10:48:10 22 Q. Cash or credit card?

23 10:48:12 23 MR. HOLMAN: I'm sorry, would you
24 10:48:13 24 mind asking him to speak up for me?

25 10:48:15 25 THE WITNESS: Oh, okay.

1 10:48:16 1 MR. HOLMAN: Thanks.

2 10:48:18 2 THE WITNESS: I'm sorry.

3 10:48:18 3 BY MS. MOORE:

4 10:48:19 4 Q. Cash or credit card?

5 10:48:20 5 A. That would be cash.

6 10:48:22 6 Q. And when did you buy this laptop at

7 10:48:28 7 Best Buy?

8 10:48:29 8 A. Six -- six- to- 10 months ago.

9 10:48:50 9 MR. ROSS: You're going to have to

10 10:48:51 10 speak up.

11 10:48:52 11 THE WITNESS: Six- to- 10 months

12 10:49:00 12 ago. I apologize.

13 10:49:00 13 MR. ROSS: Thank you.

14 10:49:00 14 BY MS. MOORE:

15 10:49:00 15 Q. Do you have a receipt?

16 10:49:00 16 A. No.

17 10:49:08 17 Q. Where did you get the money to purchase

18 10:49:10 18 the computer?

19 10:49:16 19 A. I mean I hate to be, but, my wallet,

20 10:49:21 20 but, it's just money I had in my wallet.

21 10:49:25 21 Q. Okay. Did you withdraw that money from

22 10:49:28 22 a bank?

23 10:49:30 23 A. No. No, I did not.

24 10:49:32 24 Q. Where did you get the money?

25 10:49:34 25 A. I don't remember.

1 10:49:44 1 Q. Did you receive the money from a third
2 10:49:46 2 party?
3 10:49:49 3 A. Not that I remember.
4 10:49:50 4 Q. Is there anything that would help you
5 10:49:55 5 refresh your recollection in terms of where you
6 10:49:57 6 received that money?
7 10:50:07 7 A. No.
8 10:50:09 8 Q. Did you start using the laptop
9 10:50:11 9 immediately?
10 10:50:15 10 A. Within a few days.
11 10:50:20 11 Q. Did you register the laptop?
12 10:50:27 12 A. No.
13 10:50:28 13 Q. When you started using it in a few
14 10:50:32 14 days, was it used only in your home or other
15 10:50:36 15 places?
16 10:50:37 16 A. Home.
17 10:50:38 17 Q. Is there anything that would help you
18 10:50:46 18 be able to refresh your memory in terms of the date
19 10:50:51 19 that you started using that computer?
20 10:51:00 20 A. No. Like I say, sometimes I'm out
21 10:51:12 21 mowing or picking apples or whatever, things pop in
22 10:51:16 22 my head when I'm not in a -- no.
23 10:51:24 23 Q. Why did you buy the new computer?
24 10:51:26 24 A. The other one couldn't get turned on;
25 10:51:30 25 it wasn't working.

1 10:51:31 1 Q. Okay. When did that occur that the
2 10:51:35 2 other one didn't turn on and wasn't working?

3 10:51:38 3 A. About the same time period when I
4 10:51:43 4 bought the new one.

5 10:51:52 5 Q. How did you come to learn that the
6 10:51:54 6 computer would not turn on and wasn't working?

7 10:52:00 7 A. When I tried to turn it on.

8 10:52:02 8 Q. Okay. And when you saw that it didn't
9 10:52:05 9 turn on, what did you do?

10 10:52:07 10 A. Tried to turn it on a few times, I
11 10:52:15 11 mean, it's not working and I went and bought a new
12 10:52:19 12 one.

13 10:52:19 13 Q. Did you take the computer to a repair
14 10:52:21 14 shop to see what was wrong with it?

15 10:52:22 15 A. No, not with an old computer, no.

16 10:52:25 16 Q. What did you do with that old computer?

17 10:52:31 17 A. It got thrown away.

18 10:52:39 18 Q. What do you mean by the term "Thrown
19 10:52:42 19 away"?

20 10:52:44 20 A. It would be different than pitch, okay.
21 10:52:48 21 It was thrown away.

22 10:52:50 22 Q. When you say you threw it away, where
23 10:52:52 23 did you put it?

24 10:52:53 24 A. Trash.

25 10:53:06 25 Q. When you say trash, what does that

1 10:53:09 1 mean?

2 10:53:10 2 A. That means that trash ended up at the
3 10:53:14 3 end of my lot, and it went to the refuse, to the
4 10:53:19 4 garbage man.

5 10:53:21 5 Q. Okay. Did you personally put the
6 10:53:23 6 computer in a trash can or a trash bag, as best you
7 10:53:28 7 recall?

8 10:53:31 8 A. I do not remember.

9 10:53:32 9 Q. Are you certain that you put it in some
10 10:53:36 10 sort of receptacle that you placed at the end of
11 10:53:39 11 your driveway for the trash people to pick up?

12 10:53:44 12 A. From what I remember, yes.

13 10:53:47 13 Q. And are you certain that, in fact, the
14 10:53:49 14 trash company came and picked up the receptacle
15 10:53:53 15 holding your home computer and took it away?

16 10:53:57 16 A. I am not out there when he's out there.
17 10:53:59 17 But I took empty containers back to the house.

18 10:54:04 18 Q. And based on that, do you have any
19 10:54:07 19 reason to believe that your home computer did not
20 10:54:10 20 go from the trash receptacle into the trash truck?

21 10:54:14 21 A. I have no -- that's what took place.

22 10:54:19 22 Q. Did you take any steps to attempt to
23 10:54:26 23 preserve the information, documents, and
24 10:54:30 24 electronically stored data that was contained on
25 10:54:34 25 that old computer before you placed it at the end

1 10:54:36 1 of your driveway to be thrown out?

2 10:54:39 2 A. Can you repeat that again?

3 3 (WHEREUPON, the court reporter

4 4 read back the requested portion of the record.)

5 10:55:02 5 THE WITNESS: I didn't make any

6 10:55:02 6 attempt, no, it wasn't working.

7 10:55:05 7 BY MS. MOORE:

8 10:55:06 8 Q. Who did you tell your computer had

9 10:55:08 9 died?

10 10:55:11 10 A. Wife and kids.

11 10:55:13 11 Q. Anyone else?

12 10:55:14 12 A. I don't remember anyone else.

13 10:55:17 13 Q. Did you ever tell your attorney?

14 10:55:19 14 A. I'm sure he became aware of it.

15 10:55:21 15 Q. At the time, or later?

16 10:55:31 16 A. I do not recall.

17 10:55:33 17 Q. Did you transfer any of the information

18 10:55:38 18 that was on your old computer onto your new

19 10:55:43 19 computer before you threw the old computer out?

20 10:55:46 20 A. No, I couldn't turn it on. Much like

21 10:55:49 21 my, my other computer, my, the one before that one.

22 10:55:55 22 Q. Did you take any steps to remove the

23 10:55:57 23 hard drive from your old computer and preserve it?

24 10:56:02 24 A. No.

25 10:56:11 25 Q. Are you okay?

1 11:46:32 1 Q. Well, let's do this, why don't you
2 11:46:34 2 number each of the pages in the top right-hand
3 11:46:37 3 corner, and then it will be easier for us to refer
4 11:46:39 4 to them?

5 11:46:40 5 A. (Witness complies.)

6 11:47:17 6 Q. Now, if our numbers are the same, then
7 11:47:21 7 what I have here indicates that Pages 1, 4 and 7
8 11:47:24 8 are exactly the same. And my question will be, is
9 11:47:34 9 that correct?

10 11:48:21 10 A. Yes, they appear to be the same.

11 11:48:24 11 Q. And, in fact, would you also agree with
12 11:48:28 12 me that Pages 2, 5 and 8 appear to be the same
13 11:48:32 13 page?

14 11:49:24 14 A. Yes, it does look like 2, 5 and 8.

15 11:49:30 15 Q. Are the same?

16 11:49:30 16 A. Are the same page, yes.

17 11:49:31 17 Q. Let's just focus on Pages 1, 2, and 3
18 11:49:36 18 of Defendant's Exhibit 13?

19 11:49:58 19 A. Okay.

20 11:50:02 20 Q. On Page 1, I'll represent I count 38
21 11:50:05 21 E-mails; on Page 2, I'll represent to you I count
22 11:50:15 22 78 E-Mails with one apparently cut off on the
23 11:50:15 23 bottom right-hand column; on Page 3, I'll represent
24 11:50:19 24 to you it appears to contain 79 E-mails. The total
25 11:50:28 25 I come to is 196. So my question is: Where are

1 11:50:34 1 the other 481 E-mails that you have not listed in
2 11:50:38 2 your privilege log?
3 11:51:02 3 A. I did the best I could do.
4 11:51:10 4 Q. Do you still have those E-mails?
5 11:51:25 5 A. I didn't delete anything, so --
6 11:51:30 6 Q. Okay, as I understand it, you have one
7 11:51:33 7 E-mail account, jnfreshwater@yahoo.com; is that
8 11:51:38 8 correct?
9 11:51:38 9 A. Yes, that's correct.
10 11:51:39 10 Q. And from December 6th, 2007, to present
11 11:51:42 11 day, have you deleted any E-mails that you sent
12 11:51:44 12 from that account, or received into that account
13 11:51:47 13 other than SPAM E-mails?
14 11:51:51 14 A. Repeat that, those dates again, will
15 11:51:54 15 you please?
16 11:51:54 16 (WHEREUPON, the court reporter
17 17 read back the requested portion of the record.)
18 11:52:11 18 THE WITNESS: No.
19 11:52:11 19 BY MS. MOORE:
20 11:52:14 20 Q. We heard earlier this week that your
21 11:52:17 21 wife, Nancy, has access to that account, as well,
22 11:52:20 22 correct?
23 11:52:20 23 A. Yes, she does.
24 11:52:23 24 Q. Are you personally aware of anyone else
25 11:52:25 25 having the password to that E-mail account?

1 13:18:02 1 Q. My question to you is: What specific
2 13:18:07 2 act or omission do you claim Defendant Board of
3 13:18:11 3 Education committed that serves as the basis for
4 13:18:15 4 Count One of your Complaint?

5 13:18:24 5 A. Count One would be deprivation of right
6 13:18:29 6 to free speech. And I have before me the, the
7 13:18:38 7 briefs that was written, the closing briefs for the
8 13:18:49 8 state hearing, I think everything is documented
9 13:18:49 9 within those; the John Freshwater Closing Statement
10 13:18:50 10 Brief, and Reply Brief to the Employer's
11 13:18:54 11 Post-Hearing Brief, I do believe it's well
12 13:18:57 12 established in here.

13 13:18:59 13 MS. MOORE: Could you read the
14 13:19:00 14 question back for the witness, please?

15 15 (WHEREUPON, the court reporter
16 16 read back the requested portion of the record.)

17 13:19:24 17 THE WITNESS: Again, they're
18 13:19:24 18 documented in here. I'll give the specifics to --
19 13:19:30 19 specifics are in here. I was asked to, I was asked
20 13:19:38 20 to remove my Bible from my desk from Mr. White back
21 13:19:43 21 here. He also asked another employee -- I believe
22 13:19:47 22 he singled me out. I was told by Mr. Short, again,
23 13:19:57 23 to remove my Bible from off my desk and out of the
24 13:20:01 24 room. The harassment from both those two in, in
25 13:20:11 25 the hearing, where they both looked at my

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C E R T I F I C A T E

STATE OF OHIO
SS.
COUNTY OF MONTGOMERY

I, CATHERINE L. SCHUTTE-STANT, the undersigned, a Registered Merit Reporter, and Notary Public within and for the State of Ohio, do hereby certify that before the giving of aforesaid deposition said JOHN D. FRESHWATER, was by me first duly sworn to state the truth, the whole truth, and nothing but the truth; that the foregoing is the deposition given at said time and place by said JOHN D. FRESHWATER; that said deposition was taken in stenotypy by the court reporter and transcribed into typewriting under her supervision; the court reporter was neither a relative of nor attorney for any of the parties to this case nor relative of nor employee for any of the counsel; neither the court reporter nor the affiliated court reporting firm has a financial interest under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office this 18th day of October, 2010.

Catherine L. Schutte-Stant / KWO
CATHERINE L. SCHUTTE-STANT, RMR
Notary Public, State of Ohio
My Commission Expires 7-23-2013

AKR73(35559)01242011

OHIO CIVIL RIGHTS COMMISSION CHARGE OF DISCRIMINATION EMPLOYMENT	Agency Use Only	CHARGE NUMBER: (Agency Use Only)
	<input type="checkbox"/> FEPA <input type="checkbox"/> EEOC	

Completely Fill in the Following

John David Freshwater
 Name of Charging Party (First Middle Last)
 7760 New Delaware Road
 Address
 Mt. Vernon Ohio 43050 Knox
 City State Zip Code County
 740-397-1172
 Telephone Number
 1/10/11
 Date(s) of Discrimination

Mount Vernon City School
 Name of Company
 300 Newark Road
 Address
 Mt Vernon, Ohio 43050 Knox
 City State Zip Code County
 740-397-7422
 Telephone Number
 600+ Total Number of Employees
 7/15/87 Date of Hire

I believe I was discriminated against because of my: (Please identify)

- | | |
|--|--|
| <input type="checkbox"/> Race/Color | <input checked="" type="checkbox"/> Religion Religious Beliefs |
| <input type="checkbox"/> Sex | <input type="checkbox"/> National Origin/Ancestry |
| <input type="checkbox"/> Disability | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Military Status | |
| <input type="checkbox"/> Age (Over 40 years old only - List Date of Birth) | |

FOR AGE CASES ONLY: I have not commenced any action under sections 4112.14 or 4112.02(N), Revised Code with respect to the subject matter of the affidavit. I understand that upon filing of this charge with the Ohio Civil Rights Commission, I am barred from instituting any such civil action and that any monetary award or financial benefit I may receive may be limited to back pay and/or restoration of employment fringe benefits and may not include other damages to which I may be entitled as a result of such civil action.

Type of Discrimination:

- | | | |
|--|---|---|
| <input type="checkbox"/> Demotion | <input checked="" type="checkbox"/> Discharge/Termination | <input type="checkbox"/> Discipline |
| <input type="checkbox"/> Failure to Hire | <input type="checkbox"/> Forced to Resign | <input type="checkbox"/> Harassment/Sexual Harassment |
| <input type="checkbox"/> Layoff | <input type="checkbox"/> Promotion | <input type="checkbox"/> Reasonable Accommodation |
| <input type="checkbox"/> Other (Specify) | | |

Please write a brief but detailed statement of the facts that you believe indicate an unlawful discriminatory practice. Please write legibly.

-01/10/2011-Was Terminated by Mount Vernon City School Board findings/ ruling were "John Freshwater 's bias grew from his fervent and deep seated Christian beliefs. Such beliefs and convictions, while admirable character traits in other settings,proved to be John Freshwater's downfall as an eighth grade science teacher in a public school."
 -Employed by Mount Vernon City School as 8th grade Science Teacher this was was my 21st year, total 24 years of teaching
 -Discharged/ Terminated by the Mount Vernon City School Board
 - 06/2008 suspended without pay because of not removing my Bible sitting on my desk
 -At the present time there are over 5 Teachers in the same school with Bibles sitting on their desk with no reprimand/or disciplinary action by the Board

RECEIVED

JAN 24 2011

O.C.R.C. INTAKE-AKRON

I declare under penalty of perjury that I have read the above charge and that it is true to the best of my knowledge, information and belief. I will advise the agency(ies) if I change my address or telephone number and that I will cooperate fully with them in the processing of my charge in accordance to their procedures.

Charging Party Signature

Date

01/21/2011

Notary or Ohio Civil Rights Commission Representative

Subscribed and sworn to before me on this

21 day of JAN 20 11

Diane Bash
 Notary or Commission Representative

DIANE BASH, NOTARY
 STATE OF OHIO

MY COMMISSION EXPIRES 08/01/14