

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN DOE and JANE DOE, as the
Natural Parents and Next Friends of
Their Minor Child, JAMES DOE,

: CASE NO. _____

Plaintiffs,

: JUDGE _____

JUDGE FROST

MAGISTRATE JUDGE KING

v.

MOUNT VERNON CITY SCHOOL
DISTRICT BOARD OF EDUCATION
300 Newark Road
Mount Vernon, Ohio 43050

and

: JURY DEMAND ENDORSED

: HEREON

STEPHEN SHORT,
SUPERINTENDENT MOUNT
VERNON CITY SCHOOL DISTRICT
300 Newark Road
Mount Vernon, OH 43050
Individually and in his official capacity.

and

WILLIAM WHITE, PRINCIPAL
MOUNT VERNON CITY SCHOOL
DISTRICT
298 Martinsburg Road
Mount Vernon, OH 43050
Individually and in his official capacity.

and :
JOHN FRESHWATER :
7760 New Delaware Road :
Mount Vernon, OH 43050 :
Individually and in his official capacity. :
 :
Defendants. :

COMPLAINT

Plaintiffs, John Doe and Jane Doe, individually and as natural parents and next friends of their minor child, James Doe, respectfully represent as follows:

I. SUMMARY OF ACTION

1. This is a civil rights action seeking declaratory and injunctive relief and monetary damages, including punitive damages for constitutional violations within the Mount Vernon City School District involving violations of the Establishment Clause of the First Amendment of the United States Constitution, pursuant to 42 U.S.C. § 1983. Plaintiffs ask that these actions be declared unconstitutional and that the Defendants be enjoined from continuing the activity. Plaintiffs seek compensatory damages and punitive damages for the egregious actions alleged herein.

II. JURISDICTION

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4) for causes of action arising under the First and Fourth Amendments to the Constitution of the United States of America and 42 U.S.C. § 1983.

III. PARTIES

3. The Plaintiffs herein are John Doe and Jane Doe, both individuals of the full age of majority and who reside in Knox County, Ohio, and who are the natural parents and next friends of the minor child, James Doe.

4. Defendants are:

- a. Mount Vernon City School District Board of Education
- b. Stephen Short, who is the Superintendent of the Mount Vernon City School District.
- c. William White, who is the Principal of Mount Vernon Middle School.
- d. John Freshwater, an eighth grade science teacher at Mount Vernon Middle School.

5. Mount Vernon City School District is located within Knox County, Ohio. Defendants Stephen Short and John Freshwater are of the age of majority and reside and work in Knox County, Ohio. Defendant William White works in Knox County, Ohio and resides in Licking County, Ohio.

IV. STANDING

6. Plaintiffs John and Jane Doe have standing to pursue this matter.

7. Plaintiffs John and Jane Doe's son, James Doe, attended Mount Vernon Middle School, located within Knox County, Ohio, as an eighth grade student during the 2007-2008 school year.

8. John and Jane Doe and their son, James Doe, suffered actual injury as James Doe was present to and witnessed the Defendants' illegal actions alleged in this Complaint.

9. Complaints were made by John and Jane Doe to Defendants Stephen Short and William White during the 2007-2008 school year. Even then, the unconstitutional activity did not stop.

V. FACTUAL ALLEGATIONS

10. James Doe is an eighth grade student at Mount Vernon Middle School.

11. Mr. John Freshwater is an eighth grade science teacher at Mount Vernon Middle School and has, at all times, been employed by the Mount Vernon City School District and under the supervision of Superintendent Stephen Short and Principal William White.

12. James Doe is enrolled in Mr. Freshwater's eighth grade science class at Mount Vernon Middle School.

13. During the 2007-2008 school year, Mr. Freshwater violated policy of the Mount Vernon City School District.

14. During the 2007-2008 school year, Mr. Freshwater violated the United States Constitution.

15. Mr. Freshwater has not been disciplined in the 2007-2008 school year for his violations of Mount Vernon City School District policy.

16. Mr. Freshwater has not been disciplined in the 2007-2008 school year for his violations of the United States Constitution.

17. Previous to April 2008, Mr. Freshwater displayed the Ten Commandments, religious posters and Bible passages within his classroom and kept several Bibles in his classroom which were not for his personal use.

18. Mr. Freshwater taught students in his eighth grade science class his own religious beliefs.

19. Mr. Freshwater taught the meaning of Easter and Good Friday in his science class.

20. In the course of his teaching, Mr. Freshwater advised his students that, although he is forced to teach from the textbooks, the teachings are wrong or not proven according to the Bible.

21. Mr. Freshwater uses code words in his classroom to inform his students when he disagrees with the classroom teachings based upon his own religious beliefs.

22. During the 2007-2008 school year, Mr. Freshwater used the code word "here" in his classroom.

23. Mr. Freshwater taught intelligent design in his classroom at least as early as 2003 and continued to teach intelligent design as recent as April 2008.

24. In 2003, Mr. Freshwater petitioned the Mount Vernon City Schools School Board to allow him to teach intelligent design in the classroom.

25. Although Mr. Freshwater was advised that he could not teach intelligent design in the classroom in 2003, he continued to teach the same to his eighth grade science class.

26. Defendants Stephen Short and William White were aware that Mr. Freshwater disregarded their instructions not to teach religion in the classroom, but allowed Mr. Freshwater to continue teaching without discipline.

27. Defendants Stephen Short and William White were aware that the posters and religious information displayed in Mr. Freshwater's classroom for more than a decade was in direct violation of Mount Vernon City School District policy and the United States Constitution.

28. Defendants allowed Mr. Freshwater to display this information in his classroom despite the fact that doing so was unconstitutional and in violation of the school's own policy.

29. On December 6, 2007, Mr. Freshwater burned a cross into James Doe's arm using an electric device manufactured by Electro-Technic Products, Inc., Model BD-10A.

30. The manufacturer of Model BD-10A warns that the electric device has a high voltage output that should never be used to touch human skin.

31. Mr. Freshwater applied the electric device of Model BD-10A to the arm of James Doe on December 6, 2007.

32. Mr. Freshwater applied the electric device to the arm of at least one other eighth grade student on December 6, 2007.

33. The area burned with Model BD-10A resulted in an easily identifiable cross consisting of red welts with blistering, swelling and blanching in the surrounding area.

34. On December 7, 2007, John and Jane Doe notified Defendant Superintendent Short regarding Mr. Freshwater's inappropriate activity in his eighth grade science class.

35. Mr. Freshwater was not disciplined for his actions of December 6, 2007 with regard to the misuse of Model BD-10A.

36. Defendant Principal William D. White wrote a letter to Mr. Freshwater in January 2008, stating that Mr. Freshwater was not to shock children with the device.

37. Defendant Principal White's letter noted that it would not be placed in Mr. Freshwater's personnel file unless he shocked his students again.

38. Mr. Freshwater knew that the electric device, model BD-10A, could cause harm if placed in contact with human skin.

39. As the eighth grade science teacher, it is Mr. Freshwater's duty to understand and follow the manufacturer's advice regarding proper use of science instruments.

40. During most of the 2007-2008 school year, Mr. Freshwater was the teaching advisor to the Fellowship of Christian Athletes.

41. Mr. Freshwater conducted and led prayer in Fellowship of Christian Athletes (FCA) meetings.

42. Mr. Freshwater has asked students to lead prayer in FCA meetings.

43. At one FCA meeting, Mr. Freshwater conducted a “healing session” in which he held his hands above a non-school speaker’s head, and had students in attendance hold hands around the speaker while Mr. Freshwater “removed Satan” from the man.

44. At other meetings, Mr. Freshwater made statements in violation of Mount Vernon’s permission slip policy by saying that permission slips are “stupid” and that he is breaking God’s law if he turns away children that do not have a permission slip.

45. On January 15, 2008, permission slips were not collected at the FCA event, a violation of school policy.

46. John Doe notified Superintendent Short about this, and Superintendent Short indicated that he would go to the school board with that information.

47. On January 22, 2008, permission slips were again not required or distributed for another FCA event.

48. Mr. Freshwater was present where a guest speaker at an FCA meeting told students present that they are saved, whereas the other students playing on the playground are going to Hell.

49. At FCA meetings, Mr. Freshwater distributed Bibles for the students present to give to other students at the school who were not present.

50. Students in FCA meetings were told by an invited speaker that they should disobey the law to further their own religion, even if it means going to jail.

51. From December 7, 2007, when Defendants were placed on notice of Mr. Freshwater having burned a cross into James Doe's arm, and through to the date of the filing of this Complaint, Defendants have failed to discipline Mr. Freshwater.

52. After four months of Defendants' ignoring Plaintiffs' concerns, Plaintiffs again notified Defendants, in writing, of the policy violations and unconstitutional activities taking place at Mount Vernon Middle School.

53. On April 14, 2008, Plaintiffs notified Superintendent Short and Principal White in writing of the events taking place at Mount Vernon Middle School.

54. Mr. Freshwater was not disciplined as a result of the concerns raised in Plaintiffs' correspondence of April 14, 2008.

55. Mr. Freshwater was permitted to continue teaching at Mount Vernon Middle School even after Plaintiffs' correspondence of April 14, 2008.

56. Mr. Freshwater continued to teach religion, violate school policy, and violate the U.S. Constitution after Plaintiffs' concerns which were raised April 14, 2008.

57. After April 14, 2008, Mr. Freshwater assigned "extra credit" to his students for homework related to intelligent design.

58. On April 21, 2008, Superintendent Short and Principal White were again notified in writing of the fact that Mr. Freshwater was continuing his religious teachings.

59. Defendants still did not remove Mr. Freshwater from the eighth grade classroom.

60. At some time in April 2008, Defendants placed a human "monitor" in Mr. Freshwater's classroom to advise Defendants of any concerns in Mr. Freshwater's classroom.

61. After April 21, 2008, and despite a monitor in the classroom, Mr. Freshwater continued to violate school policy and the U.S. Constitution in his teachings.

62. Plaintiffs put Defendants on notice of their concern that their son would be retaliated against for their right to complain of the constitutional violations occurring at Mount Vernon Middle School.

63. Superintendent Short promised Plaintiffs that Mr. Freshwater would not be told the identity of the complaining parents.

64. Even after Superintendent Short's promise, Principal William White disclosed the identity of the Plaintiffs to Mr. Freshwater.

65. After Plaintiffs raised concerns with the school, a field trip was scheduled in May 2008. Plaintiff James Doe was scheduled to attend the field trip with an individual serving as leader of James Doe's small group. Upon information and belief, Defendants then changed the schedule and knowingly placed James Doe in a small group with teacher John Freshwater.

66. As a result, Plaintiffs John and Jane Doe were forced to prohibit their son from attending the school field trip so that he would not be forced to spend a day out of town in a group led by teacher John Freshwater.

VI. POLICIES AND PROCEDURES

67. The Defendants, through their customs, policies, patterns and practices have each acted negligently, intentionally, recklessly, and with deliberate indifference to the constitutional rights of the Plaintiffs.

68. The action by the Defendants reflect an arbitrary use of governmental power.

69. The policies, customs, patterns and practices of Defendants were the moving force behind the constitutional violations suffered by the Plaintiffs.

70. The policy makers were on notices of the obvious need to prohibit teachers from imposing religious teachings and beliefs on students through lesson plans and teaching methods. The policy makers failed to develop and institute adequate regulations, policies and procedures

to regulate teachers imposing religion on to students. As such, Defendants were deliberately indifferent to the rights of their students, including Plaintiffs.

VII. FIRST CAUSE OF ACTION-(VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT)

71. Plaintiffs hereby incorporate all of the allegations contained in the previous paragraphs.

72. 42 U.S.C. § 1983 prohibits Defendants from depriving Plaintiffs of “rights, privileges and immunities secured by the constitutional laws” in the United States.

73. The language of the Establishment Clause of the First Amendment of the United States Constitution provides that a state “shall make no law respecting an establishment of religion.” Through the Fourteenth Amendment of the United States Constitution, the First Amendment is made applicable to local public schools.

74. The Establishment Clause of the First Amendment of the United States Constitution forbids the enactment of any law or practice “respecting an establishment of religion.” The United States Supreme Court in *The People of Illinois, ex rel. v. McCollum v. Board of Education of School District No. 71*, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649 (1948), stated that because of the Establishment Clause, “neither a state, nor the federal government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa.” 333 U.S. at 210-211, 68 S.Ct. 461.

75. The Establishment Clause requires “government neutrality with respect to religion.” See *Feishefressor v. Directors of School District 200*, 15 F.3d 680, 608 (7th Cir. 1994).

76. The Defendants’ actions alleged above have the purpose and effect of endorsing religion over non-religion and Christianity over other religious beliefs.

77. The Defendants' actions of endorsing Christianity are in violation of the Establishment Clause of the First and Fourteenth Amendments of the United States Constitution.

VIII. SECOND CAUSE OF ACTION-(RETALIATION)

78. Plaintiffs hereby incorporate all of the allegations contained in the previous paragraphs.

79. Plaintiffs were engaging in the activity of free speech as protected under the First Amendment of the United States Constitution when showing their concern with regard to the unconstitutional actions of Mr. Freshwater teaching his religious views in his science class.

80. The Defendants' actions caused the Plaintiffs to suffer injury by depriving James Doe of a valuable educational experience

81. The injury to the Plaintiffs has discouraged them from continuing to exercise their right to free speech as evidenced from their desire to file pseudonymously.

82. The Defendants' actions were motivated in part as a response to the Plaintiffs' engagement of their free speech right.

IX. DECLARATORY JUDGMENT

83. Plaintiffs hereby incorporate all of the allegations contained in the previous paragraphs.

84. Plaintiffs are entitled to declaratory judgment pursuant to 28 U.S.C. § 2201 and in accordance with the Federal Rules of Civil Procedure 57 that the Defendants' actions are in violation of the Establishment Clause of the First and Fourteenth Amendments of the United States Constitution.

XI. INJUNCTIVE RELIEF

85. Plaintiffs have suffered, and will continue to suffer immediate harm if the Defendants are allowed to continue their actions of teaching religious views within the Mount Vernon City School District.

86. Plaintiffs seek a preliminary and, in due course, a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, which enjoins all Defendants from allowing and participating in the teaching of religious views in class, burning religious emblems on students, conducting prayer meetings, conducting healing sessions, and displaying the Ten Commandments and Bibles in classrooms.

XII. DAMAGES

87. As a direct and proximate result of Defendants' conduct, Plaintiff James Doe has suffered significant injuries and damages including, but not limited to, physical and emotional pain and suffering, anxiety and distress.

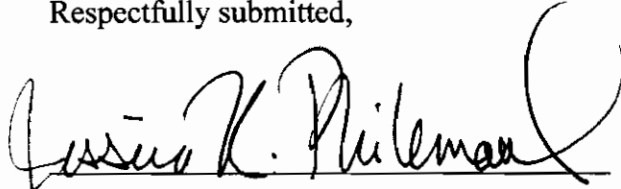
XIII. ATTORNEY'S FEES

88. Plaintiffs request and are entitled to an award of attorney's fees and litigation related costs pursuant to 42 U.S.C. § 1988.

XIV. REQUEST FOR RELIEF

89. WHEREFORE, Plaintiffs request that this Court:
- A. Award Plaintiffs compensatory damages;
 - B. Award Plaintiffs punitive damages;
 - C. Award Plaintiffs reasonable attorneys fees pursuant to 42 U.S.C. § 1988 and other applicable law;
 - D. Award Plaintiffs prejudgment interest and post judgment costs;
 - E. Award Plaintiffs such other and further relief the Court deems appropriate.

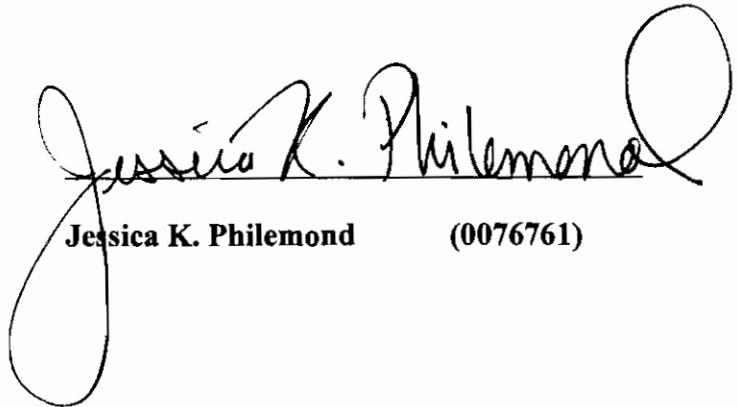
Respectfully submitted,



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JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable herein.



Jessica K. Philemond (0076761)