

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN DOE AND JANE DOE, AS THE) CASE NO.: 2:08 CV 575
NATURAL PARENTS AND NEXT)
FRIENDS OF THEIR MINOR CHILD,) JUDGE GREGORY FROST
JAMES DOE,)
) MAGISTRATE JUDGE KING
)
Plaintiffs,)
) **DEFENDANT JOHN FRESHWATER'S**
vs.) **MOTION FOR PARTIAL SUMMARY**
) **JUDGMENT**
)
MOUNT VERNON CITY SCHOOL)
DISTRICT BOARD OF EDUCATION, ET)
AL.,)

Defendants.

NOW COMES Defendant, John Freshwater, by and through his trial attorneys, Robert H. Stoffers and Jason R. Deschler of the law firm of Mazanec, Raskin, Ryder & Keller Co., L.P.A., and pursuant to Fed. R. Civ. P. 56, and hereby moves this Honorable Court for an Order granting him summary judgment on Plaintiffs' battery claim against him. There are no genuine issues of material fact and Defendant Freshwater is entitled to judgment as a matter of law. A Memorandum in Support is attached hereto and incorporated herein.

Respectfully submitted,

MAZANEC, RASKIN, RYDER & KELLER CO., L.P.A.

s/ Robert H. Stoffers

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MEMORANDUM IN SUPPORT

I. STATEMENT OF THE CASE

The Plaintiffs John, Jane, and James Doe filed their Complaint on June 13, 2008 (Document No. 2). Plaintiffs' alleged claims against Defendant Mt. Vernon City School District Board of Education, Steven Short, Superintendent of Mt. Vernon City School District and William White, Principal of Mt. Vernon Middle School and Defendant John Freshwater, a teacher in the Mt. Vernon Middle School. Specifically, Plaintiffs alleged two causes of action against Defendants, a violation of the Establishment Clause of the First Amendment and a First Amendment Retaliation Claim. Plaintiffs also asserted they were entitled to injunctive relief and a declaratory judgment that "Defendants' actions are in violation of the Establishment Clause of the First and Fourteenth Amendments of the United States Constitution." (Document No. 2 at ¶84).

On August 11, 2008, Plaintiffs filed an Amended Complaint (Document No. 11). Within their Amended Complaint, the Plaintiffs asserted two new causes of action in addition to the First Amendment Establishment Clause claim and First Amendment Retaliation Claim. Specifically, Plaintiffs alleged in their Third Cause of Action, a battery claim against John Freshwater and a negligent supervision and negligent retention claim against the Mt. Vernon City School District Board of Education.

On September 2, 2008, John Freshwater filed a counterclaim against Plaintiffs alleging claims of defamation and intentional infliction of emotional distress. (Document No. 19).

On August 26, 2009, the Plaintiffs and Mt. Vernon City School District, Steven Short and William White entered into a Settlement Agreement. Pursuant to that Settlement Agreement, the

Plaintiffs agreed to dismiss their claims against Mt. Vernon City School District Board of Education, Steven Short, and William White. (Document No. 51).

On October 1, 2009, this Court granted the aforementioned Joint Motion to Dismiss (Document No. 52). Thus, the claims remaining are Plaintiffs' First Amendment Establishment Clause claim, Plaintiffs' First Amendment retaliation claim and Plaintiffs' battery claim against John Freshwater. John Freshwater's counterclaims against the Plaintiffs also remain pending. As the school district has been dismissed, any claims against John Freshwater in his official capacity have, therefore, been dismissed as well.¹ As such Plaintiffs' pending claims against Mr. Freshwater remain only in his individual capacity.

In regard to Plaintiffs' request for injunctive relief (Document No. 11, ¶¶ 100-101), it appears that such relief is only asserted against the Mount Vernon City School District. However, should Plaintiffs maintain that they are entitled to injunctive relief against Mr. Freshwater, such injunctive relief is moot. Specifically, pursuant to *Doermus v. Board of Education of Borough of Hawthorne*, 342 U.S. 429 (1952), *Doe v. Wilson County School System*, 564 F. Supp. 2d 766 N.D. Tenn. (2008), and *Alderman v. Bedford Central School District*, 245 F. 3d 49 (2nd Cir. 2001), the Plaintiffs' claims do not have the requisite standing to seek injunctive relief against John Freshwater because Plaintiffs' Establishment Clause challenge to the activities and other conduct that occurred at Mt. Vernon Middle School cannot occur again as James Doe graduated from eighth grade, the Plaintiffs have moved out of Mt. Vernon's district and Mr. Freshwater is no longer teaching in the Mount Vernon School District. Therefore, as the

¹ It is well settled within the circuit that a suit against a government employee in an official capacity is nothing more than a suit against the governmental entity for which he works. *Kentucky v. Graham*, 473 U.S. 159 (1985): see also, *Matthews v. Jones*, 35 F. 3d 1046, 1049 (6th Cir. 1994).

Plaintiffs cannot be exposed to the specific challenged conduct of John Freshwater again, their requested injunctive relief should be disregarded by this Court.

In regard to the within Motion, Defendant Freshwater will only address Plaintiffs' battery claim against him.

II. STATEMENT OF MATERIAL FACTS REGARDING BATTERY

Plaintiffs allege in their Amended Complaint that Defendant John Freshwater applied an electric device manufactured by Electro Technic Products to the arm of his eighth grade student, James Doe. (Document No. 11, ¶88). Plaintiffs further assert that "the contact by Defendant Freshwater in using the electric device was offensive to Plaintiffs in the reasonable sense of personal dignity." *Id* at ¶90. Mr. Freshwater asserts that Plaintiff James Doe consented to the application of the electric device hereinafter referred to as a tesla coil such that Plaintiffs cannot recover an action for tort for the conduct of John Freshwater based on the allegations by Plaintiffs that Mr. Freshwater applied the tesla coil to James Doe's arm.

James Doe was an eighth grade student in Mr. Freshwater's science class. On December 6, 2007, during Mr. Freshwater's eighth period science class, he was demonstrating an experiment with the tesla coil where he would electrically charge gases in test tubes. *See Exhibit A, Deposition of James Doe*, pp.132-133. The students' desks were arranged in Mr. Freshwater's class in a double horseshoe shape such that the test tubes were in the middle of the horseshoe (where the experiment was taking place). *Id.* at 137 – 139. James sat to the left of the middle in the first horseshoe closest to the experiment. *Id.* at 139. The students' assignment was to learn the different colors of the different gases that light up once they are electrically charged. *Id.* James Doe testified that he knew an electric charge was heating up the gases because you could see a "little lightening bolt." *Id.* at 134. The "little lightening bolt" extended three to four

inches from the tip of the tesla coil. *Id.* at 135. Mr. Freshwater he would shock the test tubes where the gases were located inside and the gases would give off a color so that gases could be properly identified. *Id.* at 133 – 136.

After the experiment was over, Mr. Freshwater asked Student No. 7 to pick up a test tube off the middle of the floor and bring it to him. *Id.* at 136. Student No. 7 was sitting at the left end of the outer horseshoe and had to walk by Mr. Freshwater to pick up the test tube. *Id.* at 139. When Student No. 7 bent over to pick up the test tube, Mr. Freshwater used the tesla coil and shocked him in the lower back. *Id.* at 136 and 140. Student No. 7 “kind of jumped around,” “was rubbing his back,” and “didn’t take that too well.” *Id.* Student No. 7 stated, “Ah, that kind of hurt.” *Id.* at 140.

Subsequently, Mr. Freshwater asked James to pick one of the test tubes off of the ground in the middle of the classroom. *Id.* at 136 and 141. James was under the assumption that Mr. Freshwater was going to shock him with the tesla coil in the back like student No. 7 was shocked. *Id.* at 136. However, James, seeing what happened to Student No. 7 didn’t want to be shocked in the back so James changed his approach² to pick up the test tube off of the ground so Mr. Freshwater wouldn’t have the opportunity to shock him. *Id.* at 141.

Toward the end of class, Mr. Freshwater asked whether anybody wanted to see what the tesla coil felt like. *Id.* at 142. James testified that he was the last of five or so students to go up to the front of the class to have the tesla coil applied to him. *Id.* at 142 – 143. Prior to going up to have the tesla coil applied to him, James watched the other students get the tesla coil applied to their arm. *Id.* at 144. James witnessed the electric charge touch the other students’ skin. *Id.*

² James described his approach as a “crab-walk.” *Deposition of James Doe*, at 136.

at 145. The application of the tesla coil on the other students was similar to the application that happened to James. *Id.*

James volunteered by approaching Mr. Freshwater in the front of the class and placed his right arm on an overhead projector. *Id.* at 146 – 147. Mr. Freshwater used his left wrist and laid it on top of James’ right wrist and Mr. Freshwater took his right hand to guide the tesla coil on James’ arm making two horizontal lines and two vertical lines. *Id.* at 147 – 148. The application of the tesla coil on James skin lasted around five seconds. *Id.* at 148. The application of the tesla coil on James’ skin was similar to a “static shock” and “kind of burned a little bit and itchy.” *Id.* at 151 – 153. After the application of the tesla coil occurred on James, Mr. Freshwater asked students if they wanted to be involved in another experiment with the tesla coil. *Id.* at 152. The students got in a line and held hands and Mr. Freshwater touched the first person in line in an effort to see how far the shock could travel would be conducted through the students. *Id.* at 152. James volunteered for this experiment as well. *Id.* at 153.

III. LAW AND ARGUMENT

A. Summary Judgment Standard

Summary judgment is proper when “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). In responding to a summary judgment motion, a plaintiff must produce specific facts demonstrating a genuine issue of material fact for trial. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986); Fed. R. Civ. P. 56(e). The nonmoving party must “present affirmative evidence in order to defeat a properly supported motion for summary judgment.” *Id.*

It is well established that summary judgment is appropriate if the opposing party fails to make a showing sufficient to establish the existence of an element essential to that party’s case

and upon which that party will bear the burden of proof at trial. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Furthermore, in responding to a summary judgment motion, the nonmoving party “cannot rely on the hope that the trier of fact will disbelieve the movant’s denial of a disputed fact.” *Liberty Lobby, Inc.*, 477 U.S., at 257. Summary judgment will be granted when the nonmoving party merely rests upon conclusory allegations, improbable inferences, and unsupported speculations. See *Medina-Munoz v. R.J. Rentals Tobacco*, 896 F.2d. 5 (1st Cir. 1990).

The Sixth Circuit has also emphasized the quantum of evidence required to defeat summary judgment: “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 581 (6th Cir. 1992). The Plaintiffs are unable to meet this burden and accordingly, since there exist no genuine issues of material fact, Defendant John Freshwater is entitled to judgment as a matter of law on Plaintiffs’ Battery claim.

B. Battery

“A person is subject to liability for battery when he acts intending to cause a harmful or offensive contact, and when a harmful contact results.” *Love v. City of Port Clinton*, 37 Ohio St. 3d 98, 99 (1988) (*citing* Restatement of the Law 2d, Torts (1965) 25, Section 13). “Contact which is offensive to a reasonable sense of personal dignity is offensive contact.” *Love* at 99 (*citing* Restatement of the Law 2d, Torts, *supra*, at 35, Section 19). Consistent with Rule 56, the facts of the within motion are set forth in a light most favorable to the Plaintiffs. However, Mr. Freshwater asserts that James consented to the application of the tesla coil such that Mr. Freshwater is not liable to Plaintiffs for battery.

The Restatement (Second) of Torts §892A (1979) sets forth the applicable standard regarding consent as a defense to a battery. As defined within Restatement (Second) of Torts §892 (1979), consent is willingness in fact for conduct to occur and consent may be manifested by action or inaction and need not be communicated to the actor. *REST 2d TORTS* §892. The Supreme Court of Ohio has only commented once regarding §892A which occurred in a case dissimilar to the within case. In *Marchetti, v. Kalish*, 53 Ohio St.3d 95 (1990), Supreme Court of Ohio set forth:

We therefore decline to adopt the analysis under the Restatement of Torts 2d, Sections 50 and 892A. Traditional tort concepts place the emphasis on the conduct or actions of the tortfeasor. Thus, we join the weight of authority set forth above and require that before a party may proceed with a cause of action involving injury resulting from a recreational or sports activity, reckless or intentional conduct must exist. We hold that where individuals engage in recreational or sports activities, they assume the ordinary risks of the activity and cannot recover for any injury unless it can be shown that the other participant's actions were either “reckless” or “intentional” as defined in Sections 500 and 8A of the Restatement of Torts 2d.

Marchetti at 99-100.

Marchetti concerned a recreational activity where a child broke her leg during a game of “kick the can.” The court construed *Marchetti* based on the defense of voluntary assumption of the risk and declined to adopt §892A in the context of a recreation or sports activity. The court did not reject the application of §892A with respect to other situations, such as a school science experiment in the within case. Since the within case does not concern a recreational or sports activity and since Plaintiffs have not asserted claims based on negligence, the holding in *Marchetti* does not apply to the within case. Defendant Freshwater asserts that §892A is

applicable regarding consent to a science experiment and requests this Court to adopt §892A for the subject alleged battery in the within case.

Under §892A,

(1) One who effectively consents to conduct of another intended to invade his interests cannot recover in an action of tort for the conduct or for harm resulting from it.³

(2) To be effective, consent must be

(a) by one who has the capacity to consent or by a person empowered to consent for him, and

(b) to the particular conduct, or to substantially the same conduct.⁴

In the within case, the undisputed material facts demonstrate that James was the last of “five or so” volunteers to have the tesla coil applied to their arms. *See Exhibit A, Deposition of James Doe*, pp. 142-143. Thus, James volunteered to have Mr. Freshwater apply an electric device to his arm which shoots out “little lightning bolts” *Id.* at 134. James viewed the application of the tesla coil on 4 other students prior the application on himself. *Id.* at 143. Moreover, the application of the tesla coil on James was similar to the application of the other 4 students. *Id.* at 145. Thus, James witnessed the electric charge from the tesla coil touch the skin of the other students and proceeded to have the electric charge touch his skin. *Id.*

³ This rule is applied in cases in which the plaintiff has consented to acts intended to invade his interests. The consent is to conduct but is confined to conduct that the plaintiff knows the other is engaging in with the intent of invading the plaintiff's interests. This may be equivalent to consent to the invasion itself and would be so treated in the great majority of cases. It is not necessary, however, to make a specific finding to this effect for the consent to be applicable. *Comment on Subsection 1, REST 2d TORTS §892A.*

⁴ In order to be effective, the consent must be to the particular conduct of the actor, or to substantially the same conduct. Thus consent to a fight with fists is not consent to an act of a very different character, such as biting off a finger, stabbing with a knife, or using brass knuckles. Very often the question whether the particular conduct is within the scope of the consent given becomes a question of degree. Minor differences in degree or extent, such as the fact that the force exerted by the actor in delivering a blow is slightly greater than would ordinarily have been contemplated, usually will not be held to exceed the consent, although a much greater force would clearly exceed it. *Comment on Subsection 2, REST 2d TORTS §892A.*

James' "willingness in fact for conduct to occur" is demonstrated by his conduct in approaching Mr. Freshwater after Mr. Freshwater asked for volunteers to have the tesla coil applied to students' arms. Moreover, the application on James was in the same manner as other students who volunteered before him. Consequently, James witnessed other students having their interests invaded by Mr. Freshwater in the form of an electrical shock to their arms. James proceeded to volunteer and have his interests invaded by Mr. Freshwater in the form of an electrical shock. "The consent that is legally important is consent to the conduct of the actor or to substantially the same conduct, rather than consent to its consequences." *Comment on Subsection 1, REST 2d TORTS §892B*. Consequently, James' consent to the specific conduct, an electrical shock, effectively bars an action against Mr. Freshwater for battery.

James, in his answers to Mr. Freshwater's request for admissions, admitted that he volunteered to have the tesla coil applied to his arm, but asserted that he did not have "the ability to consent at his minor age" and denied that he "was aware of the risk of harm." *See Exhibit B, Plaintiffs' Responses to John Freshwaters First Set of Interrogatories, Request for Production of Documents and Requests for Admissions*. In regard to the capacity to consent, "[t]o be effective, the consent must be given by one who has the capacity to give it or by a person empowered to consent for him. If the person consenting is a child or one of deficient mental capacity, the consent may still be effective if he is capable of appreciating the nature, extent and probable consequences of the conduct consented to ..." *Comment on Subsection 2, REST 2d TORTS §892A*.

Mr. Freshwater submits that James was not of a diminished capacity and cannot be said of have the mental capacity of a child. Mr. Freshwater does not argue that James was not a minor, however, being a minor does not make James have a diminished capacity or the mental

capacity of a child. The Plaintiffs are unable to set forth any evidence that demonstrates that James maintained a diminished capacity or a capacity of a child for the subject school year (2007-2008).

Nonetheless, although James asserts that he did not have the capacity to consent to the application of the tesla coil, the undisputed material facts demonstrate the contrary. James testified that he saw Defendant Freshwater use the tesla coil “shock” test tubes filled with gas. *See Exhibit A, Deposition of James Doe*, pp. 132. James understood that an electric charge identified as a “little lightning bolt” was coming out of the tesla coil to heat up the gases. *Id.* at 134. James also had full knowledge that the electric charge coming out the tesla coil could hurt, based on the reaction from Student No. 7 when he was shocked in the back prior to other students, including James, volunteering. *Id.* at 136-141. Further, James initially did not want to be shocked because of the reaction of Student No. 7 because he altered his approach to pick up the test tube from the ground, but subsequently changed his mind thereby appreciating the harm that could result. *Id.* at 141. James also witnessed the electric charge which he described as a “little lightning bolt” touching the arms of other students who volunteered for the tesla coil application before him. *Id.* at 145. Thus, it is apparent due to James’ conduct, in avoiding the electric shock in the back and observing the tesla coil application on the other student volunteers, that he appreciated the potential risk of harm in the form of an electrical shock and the probable consequences therefrom prior to volunteering. Accordingly, the Plaintiffs cannot assert lack of capacity to nullify James’ consent to the application of the tesla coil on his arm.

IV. CONCLUSION

It is undisputed that James (1) witnessed an electric charge extending from the tip of the tesla coil; (2) witnessed the reaction of a fellow student shocked in the back by the tesla coil; (3) witnessed other students having the electric charge from the tesla coil applied to their arms; and (4) volunteered to have an electric charge from the tesla coil applied to his arm. Therefore, by volunteering, James consented to the tesla coil application on his arm. It is further undisputed that James appreciated the nature, extent and probable consequences of volunteering to have a “little lightning bolt” touch his skin. Accordingly, there does not exist any material facts regarding the tesla coil application on James Doe, such that Mr. Freshwater is entitled to judgment as a matter of law on Plaintiffs’ battery claim.

WHEREFORE, Defendant John Freshwater respectfully requests this Court issue an order granting him summary judgment on Plaintiffs’ battery claim.

Respectfully submitted,

MAZANEC, RASKIN, RYDER & KELLER CO., L.P.A.

s/ Robert H. Stoffers

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Counsel for Defendant John Freshwater

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2009, a copy of the foregoing Defendant John Freshwater's Motion for Partial Summary Judgment was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Robert H. Stoffers

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Counsel for Defendant John Freshwater

OCG-08C053\Motion for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

John Doe, et al.,
Plaintiffs,

vs. Case No. C2:08 CV 575

Mount Vernon City School
District Board of
Education, et al.,

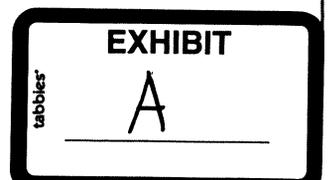
Defendants.

- - -

Deposition of James Doe, a Plaintiff
herein, called by the Defendants under the
applicable Federal Rules of Civil Procedure,
taken before me, Jane M. Ferrante, a Notary
Public in and for the State of Ohio, pursuant to
notice, at the offices of Jones Day, 325 John H.
McConnell Boulevard, Columbus, Ohio, on Tuesday,
August 18, 2009, at 9:00 a.m.

- - -

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27 On behalf of Defendant John
28 Freshwater.

29 ALSO PRESENT:

30 John Doe
31 Jane Doe

32

33

34

- - -

1 Q. Who was your 7th grade science teacher?

2 A. 7th grade would be Mrs. Allerding.

3 Q. Allerding?

4 A. Yes.

5 Q. And she didn't use the Tesla coil in
6 class?

7 A. No.

8 Q. What unit was the Tesla coil used for?

9 A. I am not exactly sure of the unit, but
10 we were talking about gases and stuff.

11 Q. Well, how was it brought up?

12 A. He had little tubes that were clear and
13 he said there are gases inside. And when he
14 shocked them, it lit up like neon.

15 Q. How did this get brought up? Did he
16 just walk in the class, say, "Hey, I got some gases
17 in these tubes and" --

18 A. Yeah.

19 Q. "And I am going to light them up"?

20 A. Yeah.

21 Q. And it didn't occur at the beginning of
22 class, did it?

23 A. I'm not sure how it came up, but --

24 Q. And you have no idea how it related to

1 what you were learning?

2 A. No.

3 Q. Do you know what you were studying in
4 December of -- the beginning of -- or December
5 2007?

6 A. No, I could not remember. I mean it
7 might have been around when he had us memorize
8 periodic table. So it could have been related to
9 that.

10 Q. So what was your assignment while
11 observing Mr. Freshwater?

12 A. Learn the colors of the different gases
13 that light up.

14 Q. And what was your understanding of the
15 Tesla coil at that time with respect to using it on
16 the gases or the tubes?

17 A. It was -- I really -- I think it's just
18 like a neon sign would use it.

19 Q. Did Mr. Freshwater tell you what the
20 Tesla coil was?

21 A. Not really. He just said, "This is a
22 Tesla coil and" --

23 Q. He didn't introduce it any further?

24 A. No, not really.

1 Q. Did he say what he was doing?

2 A. He told us he was going to light the
3 gases with it.

4 Q. Did he explain to you what was heating
5 up the gases?

6 A. No, not really.

7 Q. Did you know what was heating up the
8 gases?

9 A. The electric charge. You could see the
10 little lightning bolt.

11 Q. Is that what you described it as? A
12 lightning bolt?

13 A. Yes.

14 Q. I think before you have described it as
15 an electric volt, I think.

16 A. Well, it looks like lightning when it
17 shoots down. It looks like that except it's just
18 smaller.

19 Q. And how far -- I know there was some --
20 you had testified to this previously. How far did
21 the electric charge come off of the end of the
22 Tesla coil?

23 A. I think like around three inches or
24 something like that.

1 Q. I believe you testified previously it's
2 four, but -- is it even a better understanding it
3 might be closer to three?

4 A. I -- somewhere around three or four.

5 Q. The point is something came out of the
6 tip?

7 A. Yes. A lightning bolt came out of the
8 tip.

9 Q. What are some of the gases that were
10 charged?

11 A. I think hydrogen, helium maybe. That's
12 all I can remember right now.

13 Q. Do you remember what colors they turned?

14 A. I don't remember what gases turned what
15 color.

16 Q. Was it a neat experiment?

17 A. Yeah.

18 Q. Did you enjoy it?

19 A. Yeah.

20 Q. Was there a test on it?

21 A. I don't think so.

22 Q. Can you sort of describe for me how he
23 began the experiment and then closed the
24 experiment?

1 A. He had the test tubes laying on the
2 ground. And he shocked it. And it lit up. And he
3 was doing that for a while. And then he had
4 Student No. 7 pick up a tube. And Student No. 7
5 bent over, and he shocked him in the lower back.
6 Student No. 7 didn't take that too well.

7 And then he asked me to pick up one of
8 the tubes. And I figured he was going to shock me
9 with it like Student No. 7. So I kind of
10 crab-walked like forward and grabbed it and got
11 out. And he didn't shock me.

12 And then later on he asked for
13 volunteers to see what it felt like. And a few
14 kids went, and I was the last to go. And he had us
15 put our arms on the overhead, and he put his arm
16 across my wrist and then he had the Tesla coil in
17 the other hand and went up and down like two or
18 three times and across a few times.

19 Q. When you -- let's see. First of all,
20 how big were the tubes on the ground?

21 A. It's like small skinny tubes, probably
22 six inches, maybe, or something like that.

23 Q. And you said he kept doing it to the
24 gases. How did -- did he refill the gases in

1 there?

2 A. No.

3 Q. So the gas just stayed in there?

4 A. I think so.

5 Q. Was there a certain amount of charges
6 that you could get to each particular tube before
7 the gas was expired?

8 A. I don't know.

9 Q. Where was everybody standing then?

10 A. We were sitting in our seats.

11 Q. Because class was like a horseshoe? The
12 seats were?

13 A. Right.

14 Q. So he was in the middle?

15 A. Yes.

16 Q. That's where he had his test tubes?

17 A. Yeah.

18 Q. How long was the experiment with the
19 test tubes going on?

20 A. Probably half the class period.

21 Q. Did you take notes on that stuff?

22 A. I think so.

23 Q. Did you maintain a copy of those notes?

24 A. No. I threw all my stuff away.

1 Q. You did?

2 A. Yeah.

3 Q. Okay. How did -- so after he was done
4 with the test tubes, he asked Student No. 7, you
5 said?

6 A. Yes.

7 Q. Who was Student No. 7? Was that one of
8 your friends?

9 A. Not really. He was just a kid in my
10 class. He had an IEP.

11 Q. Do you know what it's for?

12 A. No.

13 Q. Behavior?

14 A. I don't know what it's for. I assume
15 academic.

16 Q. Go ahead. He got asked to pick up a
17 test tube?

18 A. Yes.

19 Q. Just one of them? I mean --

20 A. One of them. And he picked it up. He
21 was bending over to pick it up, and Mr. Freshwater
22 zapped him in the lower back.

23 Q. So the tubes were in the middle of the
24 horseshoe?

1 A. Yes.

2 Q. How many were on the ground?

3 A. I don't know.

4 Q. Ten? Twelve? I mean --

5 A. Probably more like five.

6 Q. Okay. Five. Did he -- Mr. Freshwater
7 ask Student No. 7 to pick up a specific one?

8 A. I don't think so.

9 Q. Where was Student No. 7 sitting in that
10 horseshoe?

11 A. Closest to the door in the back part of
12 the --

13 Q. It was like a double horseshoe, right?

14 A. Yeah. In the second horseshoe.

15 Q. Where were you sitting in relation to
16 Student No. 7?

17 A. I was to the left of the middle in the
18 first horseshoe.

19 Q. Okay. So he was behind you to the left?

20 A. Yeah.

21 Q. Mr. Freshwater says, "Student No. 7, go
22 get me a test tube"?

23 A. Uh-huh. Yes.

24 Q. Student No. 7 goes, picks up a test

1 tube. And when he is bending over to pick it up --

2 A. Yes.

3 Q. -- Mr. Freshwater applied the Tesla coil
4 to his back?

5 A. Yes.

6 Q. And what was Student No. 7's reaction?

7 A. He kind of jumped around and was rubbing
8 his back and --

9 Q. Did he say anything?

10 A. He was like, "Ah, that kind of hurt."
11 And was running around. Student No. 7 is kind of a
12 goofy kid, so --

13 Q. This happened right in front of you
14 then?

15 A. Yeah. It was to the left a little bit.

16 Q. Did you see the electric volt come out
17 and touch Student No. 7 in his back?

18 A. No. I wasn't paying attention really at
19 that time until I heard -- he was like, "Student
20 No. 7, come here." And I was writing something, I
21 think. And then I looked up and Student No. 7 was
22 bending over, and he pushed down the Tesla coil
23 like and went down and did a -- Student No. 7 kind
24 of reacted.

1 Q. He said, "Ouch. That hurts a little
2 bit"?

3 A. Yeah. I didn't see the -- the electric
4 volt.

5 Q. And then he asked you next to go --

6 A. Yes.

7 Q. -- pick up a test tube?

8 A. Yes.

9 Q. And you, seeing what happened to Student
10 No. 7, didn't want to be shocked in the back?

11 A. Yeah.

12 Q. So you changed your approach to pick up
13 a tube so that wouldn't happen?

14 A. Yes.

15 Q. Did anybody else get asked to pick up a
16 test tube?

17 A. Not that I can remember.

18 Q. So if there were five on the ground,
19 were there still three test tubes then laying on
20 the ground?

21 A. Yeah.

22 Q. Did anybody pick those up?

23 A. I don't know.

24 Q. So explain to me again how it occurred

1 after you handed the test tube to Mr. Freshwater
2 and then he -- then the next stage, I mean he asked
3 for volunteers?

4 A. Yeah.

5 Q. Can you explain that to me again? Did
6 that just happen like one after the other? You
7 hand him the test tube and he said, "Hey, by the
8 way"? How did that --

9 A. I think we did something else like maybe
10 a worksheet or something. I can't remember. And
11 then toward the end of the class he was like,
12 "Anybody want to see what this feels like? Come up
13 here." And a few kids went up. And I was the last
14 one to go. And he applied the Tesla coil to my
15 arm.

16 Q. Let me go back a little bit. You said
17 he did some kind of worksheet, but you don't recall
18 exactly?

19 A. Yes.

20 Q. This is after the gas in the test tubes
21 was heated and the experiment was completed?

22 A. Yes.

23 Q. Before the end of class?

24 A. Yes.

1 Q. Did he say, "Hey, anybody want to touch
2 this Tesla coil," holding it up or anything?

3 A. I don't know if he was holding it up.

4 Q. Did he apply it to himself?

5 A. Later on he half-applied it to himself,
6 I guess.

7 Q. Before he asked for volunteers?

8 A. No. This was, I think, after all the
9 volunteers.

10 Q. So who was the first person that got --
11 that volunteered?

12 A. I don't know.

13 Q. How many people were there that
14 volunteered?

15 A. I think it was around like five or
16 something.

17 Q. And you were the last one?

18 A. Yeah.

19 Q. Do you remember anybody specifically
20 going up before you?

21 A. Student No. 5 went.

22 Q. And what -- from where your viewpoint
23 was -- scratch that. Mr. Freshwater asked for
24 volunteers. Some kids raised their hands. Did you

1 raise your hand or did you --

2 A. Just kind of went up.

3 Q. You just went up?

4 A. Yeah.

5 Q. Was there a line?

6 A. No.

7 Q. Were people waiting in a line to go to
8 do it?

9 A. No. Kids went up after the person did
10 it.

11 Q. So did anybody initially raise their
12 hands and Mr. Freshwater called on somebody?

13 A. I don't know.

14 Q. So he goes, "Anybody want to touch
15 this?" Somebody just went up. No one raised their
16 hand?

17 A. I don't know.

18 Q. Okay. You don't remember?

19 A. I don't remember.

20 Q. Did you watch when the other kids got
21 the Tesla coil applied to their arm?

22 A. Yes.

23 Q. And from your viewpoint, what did you
24 see?

1 A. Just the back of their heads and I guess
2 the front of Mr. Freshwater, and the Tesla coil
3 went on their arms.

4 Q. So you could see the Tesla coil going on
5 their arm?

6 A. Yeah.

7 Q. You saw the electric volt touch the
8 skin?

9 A. Yeah.

10 Q. And was the application on other people
11 similar to the application on you?

12 A. Yes.

13 Q. Did you see if Mr. Freshwater -- I think
14 you stated that Mr. Freshwater held your arm down?

15 A. Yes.

16 Q. Did you see if other students had their
17 arms held down?

18 A. No, I didn't see.

19 Q. Okay. So you could see the Tesla coil
20 being applied to their arm?

21 A. Yes.

22 Q. But you couldn't see if Mr. Freshwater
23 was holding their arm down?

24 A. I can't remember if he did or not.

1 Q. Do you know what side of people's arms
2 were used before you --

3 A. I just know that Student No. 5's was the
4 top and mine was the top.

5 Q. "Top," meaning like --

6 A. Top of my forearm.

7 Q. Top of your forearm?

8 A. Top of my forearm.

9 Q. Not the under part?

10 A. Not the under part.

11 Q. Did anybody have it applied to their
12 underarm of their forearm?

13 A. Not that I can remember.

14 Q. Do you know who immediately went right
15 before you?

16 A. No.

17 Q. Whoever that was, that person sat down?

18 A. Yes.

19 Q. Then you just got up?

20 A. Yes.

21 Q. You didn't raise your hand?

22 A. I don't think so.

23 Q. You approached? I think we already
24 established at the termination hearing that it was

1 on top of an overhead projector?

2 A. Uh-huh.

3 Q. Did you -- what hand did you give him?

4 Or arm?

5 A. I think it was my right. I am trying to
6 think here. I think it was my right arm.

7 Q. Did he ask you for a specific arm?

8 A. No.

9 Q. So you put your right arm with your
10 forearm up?

11 A. Yes.

12 Q. And then what arm did Mr. Freshwater use
13 to hold your right arm down?

14 A. I think he used his left arm to hold my
15 right arm down.

16 Q. Okay. Was it his wrist or was it his
17 arm? I mean how far over?

18 A. I think it was his wrist like on my
19 wrist.

20 Q. So then that goes without saying that
21 his right arm was the one that -- or his right hand
22 was -- if he held it down with his -- held your arm
23 down with his left hand? Is that what you said?

24 A. Yes.

1 Q. Then he used his right hand to --

2 A. Guide it.

3 Q. Okay. And you said it was two vertical
4 and two horizontal?

5 A. I think so. Something like that.

6 Q. Do you know how long in seconds it was
7 applied to you?

8 A. Probably around like five or something
9 like that.

10 Q. So like one, two, three, four, five?
11 That's how long it was?

12 A. Probably something around there.

13 Q. So it wasn't -- you know, so these were
14 somewhat longer strokes then?

15 A. It would be like one, two, three, four
16 -- four or five.

17 Q. Okay. I'm just trying to get an idea.
18 I mean whatever you recall, that's fine.

19 A. Uh-huh.

20 Q. And what shape would you feel the mark
21 was in?

22 A. A cross.

23 MR. DESCHLER: Okay. I know these
24 haven't been introduced yet, so if we could get

1 some -- we have got seven pictures. Let's go off
2 the record if you want.

3 (Discussion off the record.)

4 (Defendants' Exhibits A-G, Photocopied Photographs
5 marked.)

6 Q. Student No. 1, I am going to hand you
7 Defendant's Exhibits A through G, which were
8 previously introduced in discovery in this case by
9 your attorney.

10 Do you recognize all those pictures? If
11 you want to lay them out, that's fine.

12 MS. MOORE: Counsel, do you have any
13 objection to me standing behind you and looking?

14 MR. MANSFIELD: No. That's fine.

15 MS. MOORE: Thanks.

16 Q. Do you recognize those pictures?

17 A. Yes.

18 Q. Are those all of your, I guess, top
19 right forearm?

20 A. Yes.

21 Q. Do you know when those were taken?

22 A. The day Mr. Freshwater did the Tesla
23 coil experiment.

24 Q. Go down each exhibit and tell me what

1 you remember when that was taken and who it was
2 taken by.

3 A. Okay. E was taken by my dad after
4 hockey practice.

5 F was taken by my dad after hockey
6 practice at the ice rink. Both of them.

7 D, I think it was taken in my dad's car
8 after hockey practice.

9 G was taken by my dad at hockey
10 practice.

11 C, B and A were taken by my mom and my
12 -- and B and A were in my parents' bathroom. And C
13 is in my room.

14 Q. Does the picture that -- you tell me
15 what picture gives the best portrayal of your mark
16 on your arm, that you feel.

17 MR. MANSFIELD: Note an objection.

18 A. I think D shows it pretty well. A shows
19 it pretty well. C shows it pretty well.

20 Q. Well, I mean I know you think they
21 all --

22 A. They all show it.

23 Q. They all show something. Is there one
24 in particular?

1 A. No. They all look the same.

2 Q. Okay. That's fine. And this was the
3 mark that Mr. Freshwater put on you --

4 A. Yes.

5 Q. -- during that -- I believe it was
6 December 6, 2007. Is that correct?

7 A. Yes.

8 Q. Going back to the incident, Student No.
9 1, did Mr. Freshwater initiate who wanted to
10 volunteer or did the students ask, "Hey, do we get
11 a chance to touch that?"

12 A. I think he initiated it.

13 Q. When you were watching the other
14 students have the Tesla coil applied to them did
15 you get any reaction from the students?

16 A. Not really.

17 Q. Did you see them flinch or say, "Ouch.
18 That hurts"?

19 A. Not that I can remember. Only from
20 Student No. 7.

21 Q. So you went up, had the Tesla coil
22 applied to you. What did you feel when the Tesla
23 coil was applied to you?

24 A. It felt like a static shock, worse --

1 excuse me. And it was -- kind of burned a little
2 bit and itchy.

3 Q. Now, this is during it?

4 A. Yeah.

5 Q. It was burning and itching while it was
6 being applied to you?

7 A. Yeah.

8 Q. Okay.

9 A. And --

10 Q. Is that it?

11 A. That I can think of.

12 Q. When it was being applied did you ever
13 think twice about making the decision to volunteer?

14 A. Yes.

15 Q. After you had the Tesla coil applied to
16 you how did the next experiment transpire?

17 A. He -- he said, Let's see how many -- how
18 far you can like feel the static shock. So he had
19 us like get in a line and hold hands and then he
20 touched the first person in line, and see if we
21 could see how far it could run through. How many
22 people.

23 Q. Now, he asked for volunteers again?

24 A. Yes.

1 Q. You volunteered again?

2 A. Yeah.

3 Q. Even though you said when you were
4 having the Tesla coil applied to you that you
5 thought twice about, you know, after it was being
6 applied to you --

7 A. Yeah.

8 Q. -- you would rethink your decision.
9 Okay.

10 Did you feel the shock when you were on
11 the chain of students?

12 A. No -- or I felt a little bit. But it
13 wasn't much.

14 Q. I believe you testified earlier that you
15 were toward the end?

16 A. Yeah.

17 Q. Do you know who you were holding hands
18 with?

19 A. I think Student No. 82 might have been
20 one. I can't remember right now.

21 Q. Prior to, I guess, volunteering to have
22 the Tesla coil applied to your arm -- strike that.

23 MR. DESCHLER: Do you want to break now?
24 I mean I can keep going. That's fine. I mean you

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

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

Plaintiffs,

vs.

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

Defendants.

) CASE NO.: 2:08 CV 575

) JUDGE GREGORY FROST

) MAGISTRATE JUDGE NORAH MCCANN KING

) RESPONSES TO DEFENDANT'S FIRST
) SET OF INTERROGATORIES,

) REQUESTS FOR PRODUCTION OF
) DOCUMENTS AND REQUESTS FOR

) ADMISSIONS PROPOUNDED TO

) PLAINTIFF JOHN DOE, AND JANE DOE

) AS THE NATURAL PARENTS AND

) NEXT FRIENDS OF THEIR MINOR

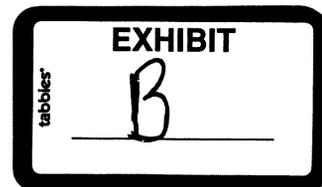
) CHILD, JAMES DOE

Now come Plaintiffs John Doe, Jane Doe and James Doe and hereby respond to Defendant John Freshwater's First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions Propounded to Plaintiffs John Doe, and Jane Doe as the Natural Parents and Next Friends of their Minor Child, James Doe as follows:

INTERROGATORY NO. 1:

Please provide the name and address of each person who participated in answering these Interrogatories and Document Requests.

**Answer: Stephen Dennis
Jenifer Dennis
1420 Club Drive
Mount Vernon, Ohio 43050**



INTERROGATORY NO. 2:

Please state the name, address and telephone numbers of all persons that have knowledge and/or will testify at trial with regard to the claim that 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 personal use.

Answer:

- **James Doe**
- **Assistant Principal Ritchey, 298 Martinsburg Rd., Mount Vernon, OH 43050**
- **Defendant Principal William White, 298 Martinsburg Rd., Mount Vernon, OH 43050**
- **Teacher Katie Beach, 298 Martinsburg Rd., Mount Vernon, OH 43050**
- **Jim Stockdale, current address unknown.**
- **All students whom have attended John Freshwater's science class.**
- **All individuals identified in Plaintiffs' Rule 26(a) Disclosures**
- **All students whose identities have been provided in the case student pseudonym list**

REQUEST FOR PRODUCTION NO. 1:

Please produce any and all documents that support your allegation that 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 personal use.

Response: See photographs produced by Mount Vernon City School District, board administrative exhibits No. 25, 26, 27, 28, and 29 as well as document D000292.

Further answering, a Bible which was kept by Mr. Freshwater not for his own personal use is currently in the possession of either David Millstone or the hearing reporter.

INTERROGATORY NO. 3:

Please state the name, addresses and telephone numbers of all persons that have knowledge and/or will testify at trial with regard to the claim that Mr. Freshwater taught the students in his eighth grade science class his own religious beliefs.

Answer:

- **All individuals whom have been identified in Plaintiffs' Rule 26(a) disclosures.**
- **All students whose identities are provided in the student pseudonym list applicable in this case.**

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2:

Please produce any and all documents that support your claim that Mr. Freshwater taught students in his eighth grade science class his own religious beliefs.

Response: See documents produced by Mount Vernon City School District, at bates D000292-D000652.

See Board administrative exhibits 15, 30, 33, and 42. See also documents produced by Mount Vernon City School District at D000806-D000811.

In addition, see all documents which have been requested in discovery from Defendant Freshwater but have either been destroyed or not produced.

INTERROGATORY NO. 4:

Please state the name, address, and telephone numbers of all persons that have knowledge and/or will testify at trial with regard to the claim that Mr. Freshwater taught the meaning of Easter and Good Friday in his science class.

Answer:

- **James Doe**
- **Defendant Principal William White, 298 Martinsburg Rd., Mount Vernon, OH 43050**
- **Defendant Superintendent Stephen Short, 298 Martinsburg Rd., Mount Vernon, OH 43050**
- **Thomas Herlevi, HR On Call, 8500 Station St., #240, Mentor, OH 44060**
- **Katie Beach, 298 Martinsburg Rd., Mount Vernon, OH 43050**
- **All students present in Freshwater's 2007-2008 science classes, as identified in the applicable student pseudonym list**

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3:

Please produce any and all documents that support your claim that Mr. Freshwater taught the meaning of Easter and Good Friday in his science class.

Response: See the HR On Call Report and any notes from Defendant William White that may exist but are not in the possession of Plaintiffs.

INTERROGATORY NO. 5:

Please state the names, addresses, and telephone numbers of all persons that have knowledge and/or will testify at trial with regard to the claim that Mr. Freshwater uses code words in his classroom to inform students when he disagrees with the classroom teachings based upon his own religious beliefs.

Answer: These individuals include every student Defendant Freshwater has ever taught, the identities of whom are not all currently known to Plaintiffs, but see the applicable student pseudonym list for many of those individuals.

Also, those individuals include the following:

- James Doe
- Teacher Debbie Strauss, 298 Martinsburg Rd., Mount Vernon, OH 43050
- Teacher Katie Beach, 298 Martinsburg Rd., Mount Vernon, OH 43050
- Student #71
- Student #2
- Student #4
- Student #5
- Thomas Herlevi, HR On Call, 8500 Station St., #240, Mentor, OH 44060
- Defendant Superintendent Stephen Short, 298 Martinsburg Rd., Mount Vernon, OH 43050
- Defendant Principal William White, 298 Martinsburg Rd., Mount Vernon, OH 43050

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4:

Please produce any and all documents that support your claim that Mr. Freshwater uses code words in his classroom to inform his students when he disagrees with the classroom teachings based upon own religious beliefs.

Response: See HR On Call report and notes of Debbie Strauss, Board Administrative Exhibit 15. There may be additional documents which support this claim, including homework assignments, worksheets, and other documents produced by students, which Plaintiffs do not possess but may be within the control of Defendant Mount Vernon City School District.

INTERROGATORY NO. 6:

Please state the names, addresses, and telephone numbers of all persons that have knowledge and/or will testify at trial with regard to the allegation that 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.

Answer:

- All members of Defendant Board of Education, 300 Newark Rd., Mount Vernon, OH 43050
- All students in Defendant Freshwater's science class from 2003 to the present.
- Defendant John Freshwater, 7760 New Delaware Rd., Mount Vernon, OH 43050
- Father of Student #2
- Student #2
- Student #71
- Principal Kathy Kasler, 298 Martinsburg Rd., Mount Vernon, OH 43050
- Prior Superintendent Maley, address unknown

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5:

Please produce any and all documents that support your allegation that Mr. Freshwater taught intelligent design in his classroom at least as early as 2003 and continued to teach intelligent design as a recently as April, 2008.

Response:

- See complaint by parent of Student #3, attachment 10 to Board Administrative Exhibit 6.
- See HR On Call Report.
- See surveys collected by teacher Bonnie Schutte, produced by Defendant Mount Vernon City School District at D000841-D001307.
- See Expelled extra credit assignment, attached.

INTERROGATORY NO. 7:

Please state the names, addresses and telephone numbers of all persons that have knowledge and/or will testify at trial with regard to the claim that Mr. Freshwater applied an electric device manufactured by Electro Technic Products to the arm of James Doe.

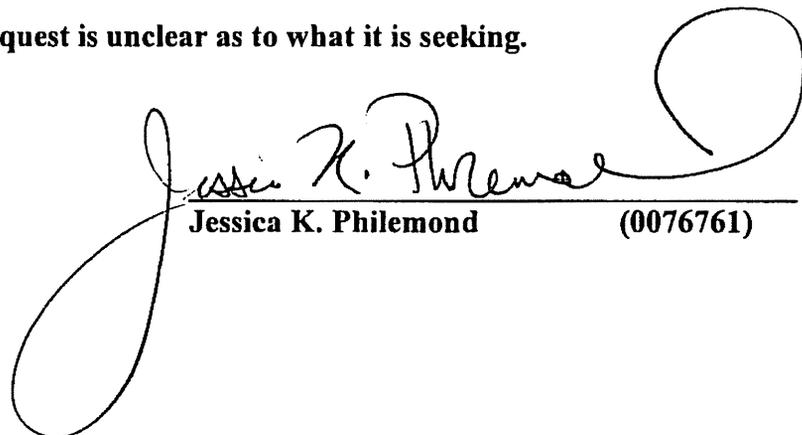
Answer: All students present in Defendant Freshwater's 2007-2008 8th period science class. See applicable student pseudonym list for identities of those individuals.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6:

Please produce any and all documents that support your claim that Mr. Freshwater an electric device manufactured by Electro Technic Products to the arm of James Doe.

Response: Objection, this request is unclear as to what it is seeking.

As to Objection:



Jessica K. Philemond (0076761)

INTERROGATORY NO. 8:

Please state the names, addresses and telephone numbers of all persons that have knowledge and/or will testify at trial with regard to the claim that Mr. Freshwater applied the electric device manufactured by Electro Technic Products to the arm of at least one other eighth grade student on December 6, 2007.

Answer:

- **All students in Defendant Freshwater's 2nd period science class, whose identities are not all known by Plaintiffs.**
- **All students in Defendant Freshwater's 8th period science class, whose identities are not all known by Plaintiffs.**
- **Defendant Freshwater, 7760 New Delaware Rd., Mount Vernon, OH 43050**
- **James Doe**
- **Student #4**
- **Student #5**
- **Student #7**

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7:

Please produce any and all documents that support your allegation that Mr. Freshwater applied the electric device manufactured by Electro Technic Products to the arm of at least one other eighth grade student on December 6, 2007.

Response: See HR On Call Report. See Interrogatory Responses by Defendant Freshwater to Plaintiffs' Interrogatory Requests. See Deposition transcripts of Student #4 and Student #5.

INTERROGATORY NO. 9:

Please state the names, addresses, and telephone number of all persons that have knowledge and/or will testify at trial with regard to the alleged damages that James Doe suffered from the alleged application of the electric device by Mr. Freshwater to James Doe's arm on December 6, 2007.

Answer:

- **John Doe**
- **Jane Doe**
- **James Doe**
- **Student #5**
- **Student #4**
- **Student #561**
- **Mother of Student #561**
- **Student #399**
- **All students present in Defendant Freshwater's 8th period science class.**
- **Other individuals will be identified.**

INTERROGATORY NO. 10:

Please itemize each damage with regard to the alleged damages that James Doe suffered from the alleged application of the electric device by Mr. Freshwater to James Doe's arm on December 6, 2007.

Answer: See computation provided on February 4, 2009, wherein damages are computed and itemized.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 8:

Please produce any and all documents that support James Doe's damages as a result of the alleged application of the electric device to the arm of James Doe on December 6, 2007.

Response: See photographs, attached as P-0001 – P-0008.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 9:

Please produce any and all medical reports and records relating to the alleged burn mark on the skin of James Doe as a result of the alleged application of the electric device to the arm of James Doe on December 6, 2007.

Response: See letter from Dr. Ogle, attached.

INTERROGATORY NO. 11:

Please state the names, addresses, and telephone numbers of all persons that have knowledge and/or will testify at trial with regard to the claim that Mr. Freshwater conducted and led prayer in Fellowship of Christian Athletes meetings.

Answer:

- **Defendant John Freshwater, 7760 New Delaware Rd., Mount Vernon, OH 43050**
- **Teacher Ruth Frady, 298 Martinsburg Rd., Mount Vernon, OH 43050**
- **Teacher Dino D'Etorre, 298 Martinsburg Rd., Mount Vernon, OH 43050**
- **All students who have ever participated or attended Fellowship of Christian Athletes meetings. These individuals were identified by Defendant Mount Vernon City School District in the applicable student pseudonym list.**

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 10:

Please produce any and all documents that support your claim that Mr. Freshwater conducted and led prayer in Fellowship of Christian Athlete meetings.

Response: See HR On Call Report.

INTERROGATORY NO. 12:

Please state the names, addresses, and telephone numbers of all persons that have knowledge and/or will testify at trial with regard to the claim that Mr. Freshwater asked students to lead prayer in Fellowship of Christian Athlete meetings.

Answer:

- **James Doe**
- **Thomas Herlevi, HR On Call, 8500 Station St., #240, Mentor, OH 44060**
- **All students who have ever participated or attended Fellowship of Christian Athletes meetings. These individuals were identified by Defendant Mount Vernon City School District in the applicable student pseudonym list.**

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 11:

Please produce any and all documents that support your claim that Mr. Freshwater asked students to lead prayer in Fellowship of Christian Athlete meetings.

Response: See HR On Call Report.

INTERROGATORY NO. 13:

Please state the names, addresses, and telephone numbers of all persons that have knowledge and/or will testify at trial with regard to the claim that at one Fellowship of Christian Athlete 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 Satin” [sic.] from the man.

Answer:

- **James Doe**
- **Ruth Frady, 298 Martinsburg Rd., Mount Vernon, OH 43050**
- **All students who have ever participated or attended Fellowship of Christian Athletes meetings. These individuals were identified by Defendant Mount Vernon City School District in the applicable student pseudonym list.**

REQUEST FOR PRODUCTION OF DOCUMENTS NO 12:

Please produce any and all documents that support your claim that at one Fellowship of Christian Athlete 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.

Response: See HR On Call Report.

INTERROGATORY NO. 14:

Please state the names, addresses and telephone numbers of all persons that have knowledge and/or will testify at trial with regard to the claim that after April 14, 2008, Mr. Freshwater assigned extra credit to his students for homework related to intelligent design.

Answer:

- **James Doe**
- **Defendant William White, 298 Martinsburg Rd., Mount Vernon, OH 43050**
- **Defendant John Freshwater, 7760 New Delaware Rd., Mount Vernon, OH 43050**
- **All students who attended Defendant Freshwater’s eighth grade science class for the year 2007-2008, whose identities have been provided in the applicable student pseudonym list.**

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 13:

Please produce any and all documents that support your claim that after April 14, 2008, Mr. Freshwater assigned extra credit to his students for homework related to intelligent design.

Response: See Expelled extra credit assignment, attached hereto.

INTERROGATORY NO. 15:

Please state the names, addresses, and telephone numbers of all individuals that have knowledge and/or will testify at trial with regard to the claim that Mr. Freshwater refused to teach the school's required curriculum including failing to teach evolution to this 2007-2008 eighth grade science class.

Answer:

- **James Doe**
- **All students who attended Defendant Freshwater's eighth grade science class for the year 2007-2008, whose identities have been provided in the applicable student pseudonym list.**
- **Defendant John Freshwater, 7760 New Delaware Rd., Mount Vernon, OH 43050**

REQUEST FOR PRODUCTION OF DOCUMENT NO. 14:

Please produce any and all documents that support your claim that Mr. Freshwater refused to teach the school's required curriculum including failing to teach evolution to his 2007-2008 eighth science class.

Response: Will supplement.

INTERROGATORY NO. 16:

Please state the names, addresses, and telephone numbers of all persons that have knowledge and/or will testify at trial with regard to the claims and alleged damages in your First Cause of Action of your Amended Complaint that Mr. Freshwater violated the Establishment Clause of the First Amendment of the U.S. Constitution.

Answer: All individuals identified in Plaintiffs' Rule 26(a) disclosures.

INTERROGATORY NO. 17:

Please itemize the damages with regard to the claim and alleged damages in your First Cause of Action of your Amended Complaint that Mr. Freshwater violated the Establishment Clause of the First Amendment of the U.S. Constitution.

Answer: See itemization and computation of damages, submitted February 4, 2009.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 15:

Please produce any and all documents that support your claims and damages in your First Cause of Action that Mr. Freshwater violated the Establishment Clause of the First Amendment of the U.S. Constitution.

Response: See attached documents. See also all documents produced by Defendant Mount Vernon City School District in discovery.

INTERROGATORY NO. 18:

Please state the names, addresses, and telephone numbers of all persons that have knowledge and/or will testify at trial in regard to the claim that Mr. Freshwater endorsed Christianity over other religious beliefs.

Answer: All individuals identified in Plaintiffs' Rule 26(a) disclosures.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 16:

Please produce any and all documents that support your claim that Mr. Freshwater endorsed Christianity over other religious beliefs.

Response: See attached. See also all documents produced by Defendant Mount Vernon City School District.

INTERROGATORY NO. 19:

Please state the names, addresses, and telephone numbers of all persons that have knowledge and/or will testify at trial in regard to the claims and alleged damages in your Second Cause of Action, retaliation, of your Amended Complaint.

Answer:

- **Defendant Principal William White, 298 Martinsburg Rd., Mount Vernon, OH 43050**
- **Defendant John Freshwater, 7760 New Delaware Rd., Mount Vernon, OH 43050**
- **Plaintiff James Doe**
- **Student #401**
- **Mount Vernon Middle School Librarian, identity unknown**
- **Defendant Mount Vernon City School District Board of Education, 300 Newark Rd., Mount Vernon, OH 43050**
- **All students present at the April 7, 2008 FCA meeting, whose identities are unknown at this time**
- **Every student in Defendant Freshwater's 2007-2008 eighth grade science class, whose identities are provided in the applicable student pseudonym list**

INTERROGATORY NO. 20:

Please itemize all damages with regard to the claims and alleged damages in your Second Cause of Action, retaliation, of your Amended Complaint.

Answer: See itemization and computation of damages, submitted February 4, 2009.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 17:

Please produce any and all documents that support your claims and alleged damages in your Second Cause of Action, retaliation, as alleged in your Amended Complaint.

Response: See attached. See also all documents produced by Defendant Mount Vernon City School District.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 18:

Please produce any and all documents that support your claim that James Doe has suffered significant injuries and damages including physical and emotional pain and suffering, anxiety and distress.

Response: See attached. Will supplement.

INTERROGATORY NO. 21:

Please itemize all damages that arise out of your claim that James Doe has suffered significant injuries and damages including physical, emotional pain and suffering, anxiety and distress.

Response: See itemization and computation of damages, submitted February 4, 2009.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 19:

Please produce any and all medical and mental health reports and records relating to the emotional and physical injuries claimed by James Doe in this matter.

Response: See letter by Dr. Ogle, attached hereto.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 20:

Please produce any and all copies of statements, sworn or unsworn, signed or unsigned, recorded or written made by any Defendant in this matter and by any witness that the Plaintiffs plan to call to testify at trial in this matter.

Response: None other than the recorded statement of Defendant Freshwater, produced by Defendant Mount Vernon City School District at D001511. Additionally, some board meetings may have been recorded and placed on the internet, but Plaintiffs are not in possession of any other statements.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 21:

If you are claiming lost wages or income as damages, please produce any and all personal or business forms W-2, 1099 statements and income tax returns file by Plaintiffs, John and Jane Doe for the past five years.

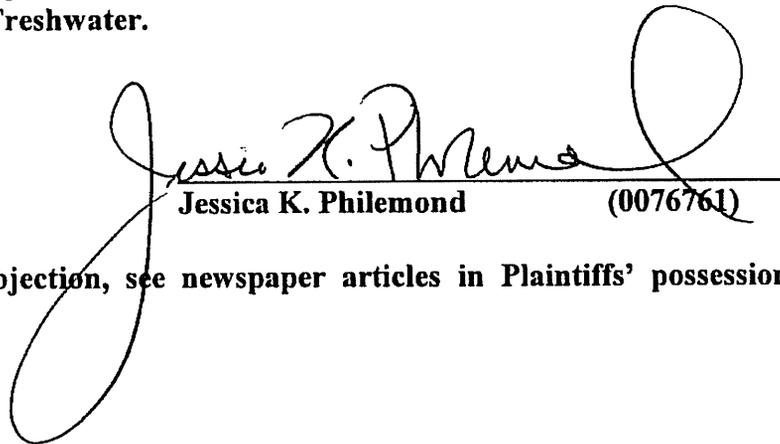
Response: Will supplement as necessary.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 22:

Please produce any and all public issued statements, newspaper articles, magazine articles, TV video recordings and/or public bulletins that mention or concern the subject matter of the Does' Complaint, Mt. Vernon School District or John Freshwater.

Response: Objection, as this request is overbroad and unduly burdensome. Plaintiffs simply cannot know all of the media references that exist in this world regarding the subject matter of the Does' Complaint, Mt. Vernon School District, or John Freshwater.

As to Objection:


Jessica K. Philemond (0076761)

Without waiving said objection, see newspaper articles in Plaintiffs' possession, attached.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 23:

Please produce any and all notes, memorandum and diaries made by Plaintiffs, John, Jane or James Doe regarding the conduct of the Mt. Vernon School District and/or Defendant John Freshwater.

Response: See attached.

INTERROGATORY NO. 22:

Please described [sic.] how Plaintiffs Does have suffered and will continue to suffer future damages if the Defendants are allowed to continue their actions of religious views within the Mt. Vernon City School District.

Answer: Plaintiffs have suffered emotional damages and humiliation and will continue to suffer the same.

INTERROGATORY NO. 23:

Please provide the names and birth dates of all children of John and Jane Doe who will be entering the Mt. Vernon School District in the near future as alleged in paragraph 7 of your Amended Complaint.

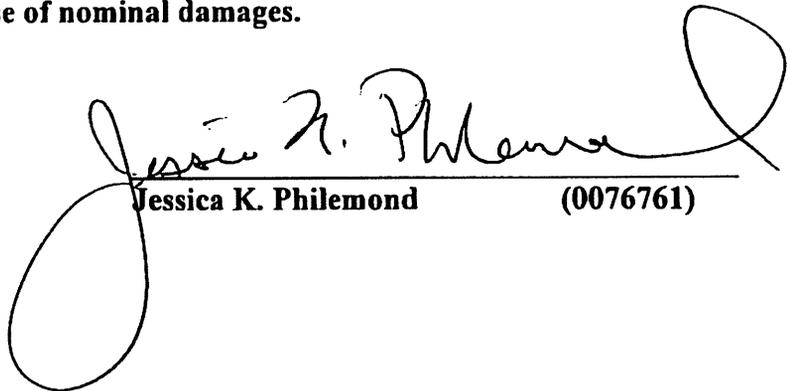
Answer: Plaintiffs have a son, whose identity should not be disclosed pursuant to the applicable protective order in this case dated November 7, 2008. Any party using these discovery responses for any reason is obligated to protect his identity. His name is [REDACTED], date of birth [REDACTED]

INTERROGATORY NO. 24:

Please describe how Plaintiff Does have suffered damages as alleged in paragraph 97 of the Plaintiffs' Amended Complaint.

Answer: Objection, as this interrogatory seeks a legal conclusion and confuses the definition and purpose of nominal damages.

As to Objection:



Jessica K. Philemond (0076761)

INTERROGATORY NO. 25:

Please itemize the damages as alleged in paragraph 97 of the Plaintiffs' Amended Complaint.

Answer: See itemization and computation of damages, submitted February 4, 2009.

REQUEST FOR ADMISSION NO. 1:

Admit that James Doe completed and/or graduated from the Mt. Vernon Middle School.

Response:

Admit Deny

Admit James Doe is no longer a middle school student.

REQUEST FOR ADMISSION NO. 2:

Admit that James Doe volunteered to have the electronic device manufactured Electro Technic Products applied to his arm on December 6, 2007, in John Freshwater's eighth grade science class.

Response:

Admit Deny

Admit that James Doe volunteered, but deny that James Doe had the ability to consent at his minor age and deny any allegation that James Doe was aware of the risk of harm.

REQUEST FOR ADMISSION NO. 3:

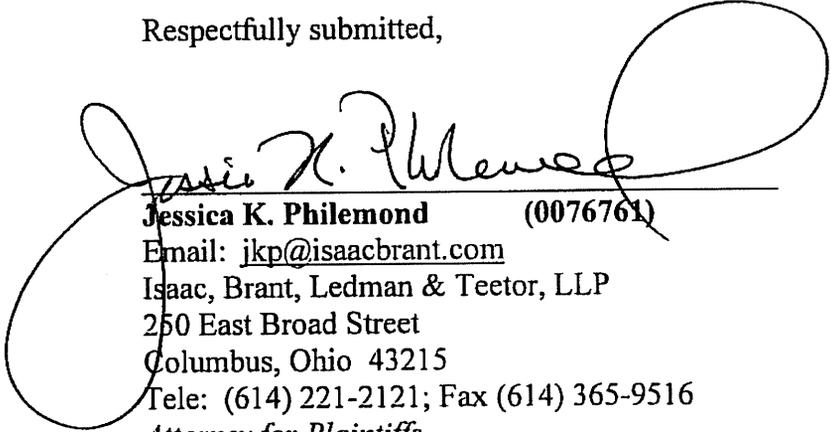
Admit that other students prior to James Doe volunteered to have the electronic device manufactured Electro Technic Products applied to their arms on December 6, 2007 in John Freshwater's eighth grade science class.

Response:

Admit Deny

Plaintiffs cannot admit or deny with certainty and, therefore, deny at this time. Will supplement as necessary.

Respectfully submitted,



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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2009 a copy of the foregoing was served to the following counsel via ordinary U.S. mail and by electronic mail.

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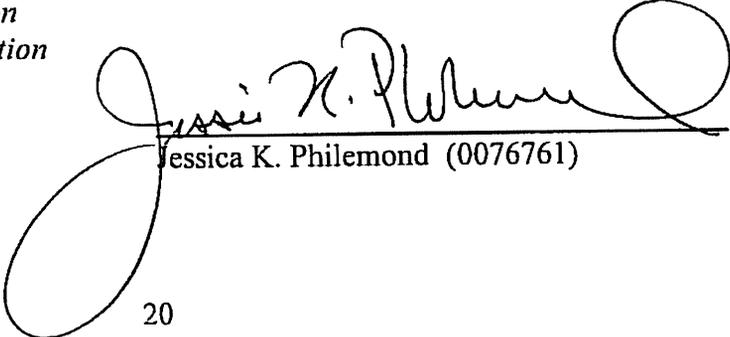
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