

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

| | | |
|---|---|----------------------------|
| DOE 1, by Doe 1’s next friend and parent, |) | |
| DOE 2, who also sues on DOE 2’s own behalf, |) | |
| |) | |
| |) | |
| PLAINTIFFS, |) | CASE No. 7:11-cv-00435-MFU |
| |) | |
| v. |) | |
| |) | |
| SCHOOL BOARD OF GILES COUNTY, |) | |
| |) | |
| DEFENDANT. |) | |
| |) | |
| |) | |

DEFENDANT’S ANSWER TO PLAINTIFFS’ COMPLAINT

COMES NOW Defendant SCHOOL BOARD OF GILES COUNTY (“Defendant”), by and through the undersigned counsel, and hereby answers Plaintiffs’ Complaint for declaratory and injunctive relief and nominal damages as follows:

Introduction

1. Defendant acknowledges that prior displays of historical documents were removed from Giles County schools. The final sentence of Paragraph 1 states what the Plaintiffs are seeking in their Complaint and does not require a response. To the extent a response is necessary, Defendant denies that sentence and each and every remaining allegation in Paragraph 1.

Jurisdiction

2. Defendant admits the allegations in Paragraph 2 regarding the statutory and constitutional jurisdictional basis for Plaintiffs’ Complaint.

Parties

3. Defendant lacks sufficient knowledge to either admit or deny the allegations in Paragraph 3, and therefore denies them.

4. Defendant lacks sufficient knowledge to either admit or deny the allegations in Paragraph 4, and therefore denies them.

5. Defendant admits the allegations made in Paragraph 5.

Factual Allegations

6. Defendant admits that the prior display of historical documents contained two documents, the Ten Commandments and the United States Constitution. Defendant admits that the previous display, a display not at issue in this case, was donated by a local pastor. Defendant denies each and every remaining allegation in Paragraph 6.

7. Defendant admits that Dr. Terry Arbogast received a letter dated December 8, 2010 that stated it was from the Freedom From Religion Foundation. Defendant states that the contents of the letter speak for themselves and Defendant denies the allegations in Paragraph 7 regarding the nature and intent of the words or the truth of the statements contained in the letter.

8. Defendant admits that Dr. Terry Arbogast sent a letter dated December 17, 2010 to the Freedom From Religion Foundation. Defendant admits that the letter stated that the portion of the historical document display containing the Ten Commandments would be removed and replaced with another historical document “prior to us returning from our Christmas break.” Defendant denies each and every remaining allegation in Paragraph 8 regarding the nature and intent of the words contained in the letter.

9. Defendant admits that the Declaration of Independence was placed in the portion of the frame housing the Ten Commandments in the prior historical documents display. Defendant denies each and every remaining allegation in Paragraph 9.

10. Defendant admits that many people attended a school board meeting in January 2011. Defendant lacks sufficient information to admit or deny the remaining allegations and on that basis denies each and every remaining allegation in Paragraph 10.

11. Defendant admits that it voted unanimously to place the Ten Commandments back into the prior historical documents display. Defendant denies each and every remaining allegation in Paragraph 11.

12. Defendant admits that the photograph in Exhibit A depicts the prior historical document display. Defendant admits that the prior historical document display was placed in Giles County schools, including Narrows High School.

13. Defendant admits that the prior historical document display at Narrows High School was located inside the library. Defendant lacks sufficient information to admit or deny the remaining allegations of Paragraph 13 and on that basis denies them.

14. Defendant admits that the board held a special meeting on February 22, 2011 and voted unanimously to take down the prior historical document displays. Defendant admits that Superintendent Arbogast stated that Liberty Counsel stated that it would not represent Defendant if the displays were left up in their then-current form. Defendant denies any remaining allegations in Paragraph 14.

15. Defendant lacks sufficient information to admit or deny the allegations in Paragraph 15 and on that basis denies them. Defendant further states that the allegations in Paragraph 15 are immaterial in that they are actions by third parties not attributable to the board.

16. Defendant admits that on March 7, 2011, a group of students walked out of class. Defendant lacks sufficient information to admit or deny the remaining allegations and on that basis denies them. Defendant further states that the allegations in Paragraph 16 are immaterial in that they are actions by third parties not attributable to the board.

17. Defendant admits that at a meeting on March 15, 2011, Bob Lilly, a local attorney, proposed that the school board consider a resolution to permit displays of historical documents. Defendant denies each and every remaining allegation of Paragraph 17.

18. Defendant admits that Mr. Lilly formally presented a proposal to the school board on May 19, 2011. Defendant denies each and every remaining allegation in Paragraph 18. Defendant further states that the allegations in Paragraph 18 are immaterial in that they are actions by third parties not attributable to the board.

19. Defendant admits that a rally was held on May 20, 2011. Defendant lacks sufficient information to either admit or deny the remaining allegations in Paragraph 19 and on that basis denies them. Defendant further states that the allegations in Paragraph 19 are immaterial in that they are actions by third parties not attributable to the board.

20. Defendant admits that the school board held a meeting on June 7, 2011. Defendant admits that it voted 3-2 to approve a resolution regarding the display of historical documents. Defendant denies each and every remaining allegation in Paragraph 20.

21. Defendant admits that board members Drema McMahan and J. Lewis Webb voted against the resolution on June 7, 2011. Defendant admits that Mr. Webb made a statement during the vote, only a portion of which is paraphrased in Paragraph 21. Defendant denies each and every remaining allegation in Paragraph 21.

22. Defendant admits that Exhibit B depicts the Foundations of American Law and Government Display that is in place at Narrows High School. Defendant lacks sufficient knowledge to admit or deny the allegations made in the second sentence of paragraph 22, and therefore denies them.

23 Defendant is without sufficient knowledge to admit or deny the allegations made in the remaining sentences of paragraph 23, and therefore denies them.

24. Defendant is without sufficient knowledge to admit or deny the allegations made in the remaining sentences of paragraph 24, and therefore denies them.

Causes of Action

25. There are no allegations made in Paragraph 25 that require either admission or denial. Defendant hereby adopts each and every previous answer in responses numbered 1 through 24 as if fully set forth herein.

26. Defendant denies the allegations made in Paragraph 26.

27. Defendant admits that the quoted language in Paragraph 27 comes from *Stone v. Graham*, 449 U.S. 39, 41-42 (1980). However, the quoted language does not contain factual allegations that can be admitted or denied and as such Defendant cannot admit or deny the allegations.

28. Defendant denies the allegations made in Paragraph 28.

29. Defendant denies the allegations made in Paragraph 29.

30. Defendant denies the allegations made in Paragraph 30.

31. Defendant denies the allegations made in Paragraph 31.

32. Defendant denies the allegations made in Paragraph 32.

WHEREFORE, Defendant respectfully requests that this Court deny Plaintiffs' request for relief, and grant judgment in favor of the Defendant and dismiss Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

COMES NOW, Defendant School Board of Giles County, by and through the undersigned counsel and hereby asserts the following Affirmative Defenses:

1. Plaintiffs' Complaint should be dismissed because it fails to state a claim upon which relief may be granted.

2. Plaintiffs' Complaint should be dismissed because Plaintiffs lack standing to bring a challenge to Defendant's approval of a resolution permitting the placement of historical document displays.

3. Plaintiffs fail to allege sufficient facts to state a claim that Plaintiffs have suffered any injury whatsoever and in particular any injury attributable to any action by Defendant in that the statements made and the actions complained of by Plaintiffs were statements and actions by third parties which are not attributable to Defendant. Defendant's only action material to Plaintiffs' claims was the approval of a Resolution permitting the placement of historical document displays in Giles County schools.

4. Plaintiffs cannot state a claim for violation of the Establishment Clause in that a third party's placement of a Foundations of American Law and Government Display in Narrows High School does not constitute state action which triggers the Establishment Clause.

5. Plaintiffs cannot state a claim that Defendant has violated the Establishment Clause in that the only action taken by Defendant was the enactment of a resolution that permits

the placement of historical documents displays in Giles County schools, which is a resolution with a secular purpose.

6. Plaintiffs cannot state a claim that Defendant has violated the Establishment Clause in that Defendant's action in approving a resolution that permits the display of historical documents in Giles County schools does not advance, endorse, or otherwise benefit any religion nor have the effect of doing so.

7. Plaintiffs cannot state a claim that Defendant has violated the Establishment Clause in that Defendant's action in approving a resolution that permits the display of historical documents in Giles County schools does not result in any excessive entanglement with religion by the government.

8. Plaintiffs cannot state a claim that Defendant has violated the Establishment Clause in that Defendant's action in approving a resolution that permits the display of historical documents in Giles County schools does not create the perception in the Giles County community that the government is endorsing religion.

9. Defendant has created a designated or limited public forum for the display of historical documents placed by private parties, which does not implicate the Establishment Clause.

10. Plaintiffs have not suffered any irreparable injury, nor any injury whatsoever to justify injunctive relief.

WHEREFORE, Defendant respectfully requests that this Court grant judgment in favor of the Defendant.

Dated: December 12, 2011.

/s/ Mary E. McAlister
Mary E. McAlister VSB # 76057
Richard L. Mast, Jr. VSB # 80660
Liberty Counsel
P.O. Box 11108
Lynchburg, VA 24506
(434) 592-7000 Telephone
(434) 592-7700 Fax
court@lc.org email.
Attorneys for Defendant

Mathew D. Staver*
Liberty Counsel
1055 Maitland Center Commons, 2d Floor
Maitland, FL 32751
(800) 671-1776 Telephone
(407)875-00770 Fax
court@lc.org Email
Attorney for Defendant
*Admitted pro hac vice

CERTIFICATE OF SERVICE

On December 12, 2011, I electronically filed this document through the ECF system, which will send a notice of electronic filing to the following:

Rebecca K. Glenberg
Thomas O. Fitzpatrick
American Civil Liberties Union of Virginia
Foundation, Inc.
530 E. Main Street, Suite 310
Richmond, Virginia 23219
(804) 644-8080
Fax: (804) 649-2733
rglenberg@acluva.org

Frank M. Feibelman
Cooperating Attorney for the ACLU of
Virginia
5206 Markel Rd., Suite 102
Richmond, Virginia 23230
(804) 355-1300
FAX: (804) 355-4684
frank@feibelman.com

Patrick C. Elliott
Freedom From Religion Foundation
304 W. Washington Ave
Madison, Wisconsin 53703
(608) 256-8900
Fax: (608) 204-0422
patrick@ffrf.org

/s/Mary E. McAlister
Mary E. McAlister VSB # 76057
Richard L. Mast, Jr. VSB # 80660
P.O. Box 11108
Lynchburg, VA 24506
(434) 592-7000 Telephone
(434) 592-7700 Fax
court@lc.org email
Attorneys for Defendant