

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

FREEDOM FROM RELIGION	:	
FOUNDATION, INC., DOE 1, by DOE	:	Case 2:12-cv-01319-TFM
1's next friend and parent, MARIE	:	
SCHAUB, who also sues on her own	:	
behalf, DOE 2, by Doe 2's next friend and	:	
parent DOE 3, who also sues on Doe 3's	:	
own behalf.	:	
	:	
Plaintiffs,	:	
vs.	:	
	:	
NEW KENSINGTON-ARNOLD	:	
SCHOOL DISTRICT,	:	
	:	
Defendant.	:	

PLAINTIFFS' CONCISE STATEMENT OF MATERIAL FACTS

The Origins of the Ten Commandments Monument

1. In late 1956, the New Kensington Fraternal Order of Eagles, Aerie 533, offered a stone monument inscribed with the Ten Commandments to the New Kensington School District Authority (hereinafter the "Ten Commandments Monument"). (Pl. Ex. A, Defendant's Response to Plaintiff's First Set of Interrogs., 2-3; Pl. Ex. B, Dec. 3, 1956 Minutes of New Kensington School Board meeting, NewKen-Arnold 00222-00223).

2. The New Kensington School District Authority accepted the Ten Commandments Monument by letter dated December 4, 1956. (Pl. Ex. A, 3; Pl. Ex. C, Dec. 17, 1956 minutes of meeting of New Kensington School District Authority, NewKen-Arnold 00213-00214).

3. The Ten Commandments Monument, which still stands today in its original location, is 6 feet tall and weighs approximately 2,000 pounds. (Pl. Ex. A, 3; Pl. Ex. D, Daily Dispatch Sept. 19, 1957 news article, New-Ken Arnold 00145-00146).

4. The text of the Ten Commandments Monument reads

*The Ten Commandments
I AM the LORD thy God.*

- I. Thou shalt have no other gods before me.*
- II. Thou shalt not take the Name of the Lord thy God in vain.*
- III. Remember the Sabbath day, to keep it holy.*
- IV. Honor thy father and thy mother, that thy days may be long upon the land which the Lord thy God giveth thee.*
- V. Thou shalt not kill.*
- VI. Thou shalt not commit adultery.*
- VII. Thou shalt not steal.*
- VIII. Thou shalt not bear false witness against thy neighbor.*
- IX. Thou shalt not covet thy neighbor's house.*
- X. Thou shalt not covet thy neighbor's wife, nor his manservant, nor his maidservant, nor his cattle, nor anything that is thy neighbor's*

(Pl. Ex. E, Photographs of Ten Commandments Monument, P5, P17, P136, P141-P143, NewKen-Arnold 01142-01155, 01169-01171; ECF No. 1-2).

5. The Ten Commandments Monument also displays two small tablets inscribed with unreadable text at the top of the Monument. Between and slightly below these small tablets is an all-seeing eye. Below the all-seeing eye and immediately above the Ten Commandments is a bird, appearing to be an eagle, clutching an American Flag. At the bottom of the Commandments, are two Stars of David and the Chi-Rho symbol. Below these symbols a scroll is carved that contains text indicating that the Monument was presented to the New Kensington School District by the Eagles. (Pl. Ex. E).

6. The Ten Commandments Monument was designed to represent the kind of stone the first commandment was written on and given to Moses. (Pl. Ex. D).

7. The Ten Commandments Monument was placed on the grounds of the New Kensington High School. (Pl. Ex. D).

8. An unveiling ceremony was held at the high school building on September 20, 1957. (Pl. Ex. D; Pl. Ex. F, Daily Dispatch Sept. 21, 1957 news article, NewKen-Arnold 00147).

9. Rabbi Herbert Panitch was scheduled to perform a short service at the unveiling. (Pl. Ex. D)

10. The unveiling program was scheduled to include participation by the New Kensington band, an invocation by Reverend R. Vincent Hartman, and a benediction by Father Joseph Sullivan. (Pl. Ex. D).

11. The Ten Commandments Monument was scheduled to be presented by William E. Mitchell of the Eagles and accepted by Bruce Shaw, the New Kensington senior class president. (Pl. Ex. D; Pl. Ex. F).

12. Prior to the ceremony, William Mitchell announced that the Eagles' youth guidance program—of which the gift of the Ten Commandments Monument was part—“wanted to give something to youth that they can remember through life.” (Pl. Ex. D).

13. James Whalen (past president of the Eagles), O. Leroy Morris, (speaker at a student assembly that followed the unveiling), William Mitchell, Frank Oliver (high school principal), Bruce Shaw, Ed Flynn (secretary of the Eagles), Rabbi Herbert Panitch, Father Jonathan Sullivan, Fran Parry (chairman of the Monolith Committee), and Garfield Jones (New Kensington school director) attended the unveiling. (Pl. Ex. E).

14. The Eagles made numerous other presentations of Ten Commandments monuments to municipalities around the same time period, including one at nearby Connellsville Joint School District in June of the same year. (Pl. Ex. G, The Daily Courier June 1957 news article, Connellsville 00079; Pl. Ex. H, The Daily Courier June 3, 1957 news article, Connellsville 00080).

15. During the presentation at Connellsville, George Strine, a representative of the grand aerie of the Fraternal Order of Eagles presented the monument and stated

Without a moral code; men fail to be good neighbors and nations do not live at peace with one another. Without a moral code, we are soon lost in personal or notional frustration. But, given a firm morality, peace inside men and among nations can become a reality. Such a code is the Commandments, written with the fingers of God.

(Pl. Ex. H).

16. A dedication of the New Kensington High School where the Ten Commandments Monument was placed occurred in 1957. (Pl. Ex. I, Dedication Program for New Kensington High School from Nov. 18, 1957, NewKen-Arnold 00149-162).

17. The Dedication Program included an invocation by Rabbi Herbert Panitch, who participated in the unveiling ceremony of the Ten Commandments Monument, a prayer, and a benediction. (Pl. Ex. I).

The Location of the Ten Commandments Monument

18. The school property on which the Ten Commandments Monument is displayed serves as the high school for the New Kensington Arnold School District (NKASD) and is referred to as Valley High School. (Pl. Ex. E; Pl. Ex. K, Deposition of Dr. George Batterson, 6-9, Pl. Ex. L, Deposition of John Pallone, 12-13; Pl. Ex. M, Deposition of Robert Pallone, 105-111).

19. The Ten Commandments Monument is located in a grassy area between two parallel concrete sidewalks or footpaths that pass over a small creek and extend from the parking lot area to the gymnasium of the Valley High School (the “footpaths”). (Pl. Ex. E; Pl. Ex. M, 105-106, 108-111; Pl. Ex. N, Robert Pallone Drawing (Deposition Exhibit P11)).

20. The footpaths lead to the entrance to the gymnasium. (Pl. Ex. M, 105-106, 108).

21. The front of the Ten Commandments Monument is visible from the footpaths. (Pl. Ex. E).

22. The side and rear of the Ten Commandments Monument is visible from the sidewalk that runs perpendicular to the footpaths along the front of the Valley High School. (Pl. Ex. E, NewKen-Arnold 01142-01143, 01169-01171).

23. The rear of the Ten Commandments Monument is visible from the gymnasium entrance. (Pl. Ex. E, NewKen-Arnold 1155).

24. Students enter the Valley High School in the morning by using the footpaths to enter the building. (Pl. Ex. M, 111).

25. The footpaths are also used as the primary means of entrance when individuals attend athletic events. (Pl. Ex. M, 110-111; Pl. Ex. K, 9, 17).

26. The parking lot area adjacent to where the footpaths begin (*see* Pl. Ex. E, NewKen-Arnold 01155) is used for student parking. (Pl. Ex. M, 109; Pl. Ex. N).

27. In response to a former student's email in which the student explained that the Monument moved the student to prayer when he attended classes at Valley High School, Former superintendent George Batterson testified that he encountered the Ten Commandments Monument frequently and said a silent prayer every time he walked by the Monument, (Pl. Ex. K, 9; Pl. Ex. R, March 24, 2012 Email from Batterson, NewKen-Arnold 00354), while both NKASD Board President Robert Pallone and his brother, current Superintendent John Pallone—both lifelong members of the NKASD community—claim to have never known what was on the Monument until the District received the FFRF letter. (Pl. Ex. L, 6, 11-13; Pl. Ex. M, 8, 18).

28. Batterson testified that there is nothing else like the Ten Commandments Monument at Valley High School. (Pl. Ex. K, 10).

The FFRF Demand Letter and NKASD's Response

29. FFRF is a national non-profit 501(c)(3) educational charity and membership organization that is dedicated to promoting the constitutional principal of separation of state and church and to educate the public on matters relating to nontheism. (Pl. Ex. O, FFRF Website, www.ffrf.org/faq/item/14999-what-is-the-foundations-purpose).

30. On February 19, 2012, Freedom From Religion Foundation received a complaint from a student from outside the District who was visiting the Valley High School regarding the Ten Commandments Monument. (Pl. Ex. P, Rebecca Markert Declaration).

31. In response, on March 20, 2012, staff attorney Patrick Elliot sent a letter to then Superintendent George Batterson requesting that the Ten Commandments Monument be removed (the “FFRF Letter”). (Pl. Ex. Q, March 20, 2012 letter from FFRF to George Batterson, P2-P4; Pl. Ex. K, 10).

32. Upon receiving the FFRF Letter, Superintendent Batterson read the letter to his Board of School Directors and one of the District solicitors in executive session before a regularly scheduled NKASD Board, which took place on March 22, 2012. (Pl. Ex. K, 10-11, 14-15, Pl. Ex. S, March 23, 2012 Tribune-Review news article, P21-P23).

33. After Batterson read the FFRF Letter in executive session, the Board informed him that he should consult with legal counsel and that the Board wanted to keep the Monument. (Pl. Ex. K, 11).

34. None of the NKASD Board members sided with removing the Ten Commandments Monument at the executive session. (Pl. Ex. K, 12-13).

35. NKASD Board President Robert Pallone testified that the Board informally agreed that it was not going to remove the Ten Commandments Monument. (Pl. Ex. M, 33-35).

36. According to Robert Pallone, all of the administrators present when the FFRF Letter was discussed supported keeping the Monument and those administrators he spoke with on the side felt the same way. (Pl. Ex. M, 34).

37. By March 23, 2012, the local media had picked up the story of the FFRF Letter and NKASD's intention to not move the Ten Commandments Monument. (*See e.g.*, Pl. Ex. S).

38. Around March 23, 2012, Batterson and NKASD began receiving a large number of calls and emails regarding the FFRF Letter and the situation with the Ten Commandments Monument. (Pl. Ex. K, 27; *See* Pl. Exs. EE, II).

39. On March 23, 2012, Batterson stated to the Tribune-Review, "We're not happy with them asking us to take down the Ten Commandments." (Pl. Ex. S).

40. On March 23, 2012, Batterson sent an email stating, "If we pray about [the Ten Commandments issue] God will help our children to win out over the atheist organization that wants to impose their will on us." (Pl. Ex. T, March 23, 2012 email from Batterson, NewKen-Arnold 00348).

41. On March 23, 2012, Batterson indicated that he interviewed with local media and that he "used the script I prepared after talking to [the solicitors]." (Pl. Ex. K, 40-41; Pl. Ex. U, March 23, 2012 email from Batterson, NewKen-Arnold 01092).

42. On March 26, 2012, it was reported that Batterson stated to the media,

We're not happy with them asking us to take down the Ten Commandments. The One thing that's very very important that people realize is that there is no way that our school district is trying to promote or impose religion on our students. This is just a monument that was donated by the Fraternal Order of the Eagles, way back in 1957 and we see this having more historical significance than religious.

(Pl. Ex. TT, March 26, 2012 Christian Post news article, P24-P27).

43. Around this time, a Facebook group called “KEEP THE TEN COMMANDMENTS AT VALLEY HIGH SCHOOL” (hereinafter the “group page”) was created. (*See* Pl. Exs. V-X).

44. NKASD Board President Robert Pallone, NKASD Board member Marilyn Claassen, and NKASD Board member George Zavadek participated on the group page through Facebook. (Pl. Ex. V, Pallone activity on “KEEP THE TEN...” Facebook page, P167, NewKen-Arnold 01114; Pl. Ex. W, Claassen activity on “KEEP THE TEN...” Facebook page, NewKen-Arnold 01113-01115; Pl. Ex. X, Zavadek activity on “KEEP THE TEN...” Facebook page, NewKen-Arnold 01111).

45. Pallone posted the following comment on the “KEEP THE TEN COMMANDMENTS AT VALLEY HIGH SCHOOL” group page:

To the community of the NKASD - I am writing this to all of you that are concerned about the Ten Commandments Monument at the high school.

Clearly, we are under attack from an outside group from the state of Wisconsin - Our community, the administration, the board and our staff are outraged by the request to remove a monument that has been part of our district and community for decades. We WILL NOT remove this monument without a fight !!!!! We will litigate this issue at the highest level (US Supreme Court) if necessary. All of us in the district appreciate the overwhelming support from the community and as the current President of the board I want to assure all of you that we won't remove this monument without a battle. We are one of the most diverse school populations and communities in the Commonwealth, and we are extremely sensitive and accepting to everyone in the community. The claims of this organization are ridiculous and a complete travesty when you consider all the facts surrounding this situation.

This entire situation is ludicrous and a frivolous lawsuit and request by a radical group. Let's all attempt to remain professional and mannerly as we show our support on both sides of this emotionally charged issue. Please do not allow your emotions to denigrate your support by lowering our arguments to obscenities and radical responses. Please be assured that we will fight this and litigate this in a professional manner and continue to challenge until we get a decision that is acceptable to all of us!!! We will use our current legal team and the support of outside legal scholars and organizations that have

contacted the district and offered free services...

Sincerely,
Robert M. Pallone

(Pl. Ex. V, P167; Pl. Ex. M, 28; Pl. Ex. P). This post was later removed from Facebook.

(Pl. Ex. BBB, Def. Supp. Answers to Interrogs., 10).

46. Pallone, along with Claassen, also participated in the group page by “liking” Tom Wynkoop’s post on the group page from March 24, 2012, which stated “When I was walking through New Your [sic] past the Muslim temples, I was offended. Tell th [sic] to rip it down”).

(Pl. Ex. V; Pl. Ex. W).

47. Claassen participated in the group page by “liking” Julz Ann’s post on the group page from March 24, 2012, which stated: “I have the solution! If the atheists group would like to erect a statue of the Theory of Evolution at their expense...we can display it beside the Ten commandments! I gladly support their right to display their beliefs it doesn’t offend me, and that statue shouldn’t offend them! First it’s a problem with the pledge in school, then the nativity scene, now a statue. Im not even sure where this idiocy will end!” (Pl. Ex. W, NewKen-Arnold 01113).

48. Claassen participated in the group page by “liking” John Zavadek’s post on the group page from March 23, 2012, which stated: “Everyone is entitled to their opinion-this Wisconsin group and the ACLU have no right telling us what we can and can’t have on our school property. I think the school district should ignore this group and we will let a judge decide. IF the judge thinks we should remove the monument the next time he is up for retention we will vote his ass out.” (Pl. Ex. W, NewKen-Arnold 01115).

49. Zavadak posted an article regarding the scheduling of a rally at the Ten Commandments Monument on the group page. (Pl. Ex. X).

50. An online petition was created on change.org and the electronically “signed” petitions were sent to the email address petition@nkasd.com. (Pl. Ex. Y, Collection of Electronically-signed Petitions sent to petition@nkasd.org and produced by Defendant in Discovery).

51. The @nkasd.com email suffix is the NKASD District email suffix. (Pl. Ex. K, 29; *See e.g.* Pl. Ex. T (reflecting Batterson’s email address ending in @nkasd.com)).

52. The only person with ability to create an email using the @nkasd.com suffix was the NKASD Technology Director. (Pl. Ex. K, 29).

53. The created online petition states that the Monument is constitutional and “not purely religious value.” (Pl. Ex. Y).

54. The language of the online petition itself is in line with the District’s stated position on the Ten Commandments Monument. (Pl. Ex. K, 31).

55. The petition@nkasd.com email address received 469 signed online petitions over less than one week between March 30, 2012 and April 4, 2012. (Pl. Ex. Y).

56. Some of the signed petitions contained only the name of the person signing the petition, while others contained comments of the individuals who were signing. For example, one such signed petition read, “Our great Country was based on Christian values, and I’m sick and tired of atheists, and other religious groups who feel that they have the right to take away the precious things that we believe in.” (Pl. Ex. Y, NewKen-Arnold 00537).

57. On March 26, 2012, Batterson sent an email to Sara Costanza with a link to his interview with a Christian radio station in Colorado and indicated “[i]t has been a lot of fun for me[, and] I know we are doing the right thing in God’s eyes.” (Pl. Ex. Z, March 26, 2012 emails from Batterson, NewKen-Arnold 01086-01087, 01003).

58. On March 29, 2012, Batterson sent an email to his fiancé regarding the Ten Commandments situation and stated, “The atheist group from Wisconsin are suing us but I think God prevails in issues like this in the end. I am happy I am in a position to do what is right for all of the Christians and my students.” (Pl. Ex. K, 58-59; Pl. Ex. AA, March 29, 2012 email from Batterson, NewKen-Arnold 01095).

59. On March 31, 2012, Batterson sent another email to his fiancé and stated, “I was wondering why God had me go [to New Kensington-Arnold]. Now my career is ending in three months but I am doing a good job defending the Ten Commandments. I have influenced my board and community to stand up to the atheists. May God had this plan for me here. I know he is helping me. I have had thousands of emails and letters of support from all over the country. It has been quite an awesome experience and I know I am doing God’s work.” (Pl. Ex. BB, March 31, 2012 email from Batterson, NewKen-Arnold 01096).

60. On March 30, 2012, Batterson responded to an email and thanked a former NKASD graduate for his support, indicating “[w]e are going to not cave in. I am determined to keep the Ten Commandments on our high school lawn. We are doing the right thing for our children, community and graduates.” (Pl. Ex. GG, March 30, 2012 email from Batterson, NewKen-Arnold 00502).

61. On March 30, 2012, Batterson responded to another email and indicated that “We have the support of our entire student body, community and many Christians like you from all over the country. We are doing the right thing and will prevail over a small group of atheists who should mind their own affairs in Wisconsin. We can not let people like this continue to undermine or [sic] values and impose their will on the vast majority of Americans.” (Pl. Ex. HH, March 30 email from Batterson, NewKen-Arnold 01075).

62. Similarly, on April 8, 2012, Batterson sent an email stating, “I have the total support of the students in my school, community and board of school directors. It has been quite awesome for me. I know God is helping me do what is right. No ever stands up to the atheists on things like this but we are doing it!” (Pl. Ex. II, April 8, 2012 email from Batterson, NewKen-Arnold 01087).

63. In a March 29, 2012 news article it was reported that Batterson had received more than 1,000 emails and calls in support of the monument and only three message opposing it. (Pl. Ex. EE).

64. As of April 8, 2012, Batterson indicated that he had received “1,500 emails, phone calls and letters of support from Christians all over the County.” (Pl. Ex. II).

65. In the same email, Batterson identified the situation as “one of the coolest things that ever happened to [him]” and identified himself as the spokesperson for the District who had the opportunity to “say to the atheists we will not take the Ten Commandments down.” (*Id.*).

66. On April 4, 2012, Batterson interviewed with Cornerstone T.V. and “stuck to the script . . . about how this is a historical monument.” (Pl. Ex. KK, NewKen-Arnold 01108).

67. On April 10, 2012, Pallone sent an email stating:

Thank you for your well stated and thoughtful e-mail regarding our situation with the Ten Commandments monument in our school District. I hope the radical group that is challenging us on this has “buckled up” and I truly hope they are ready for a fight! We have no intentions of removing the monument and are FULLY prepared to investigate all options for keeping it and fighting this ludicrous complain all the way to the United States Supreme Court. . . We are confident that we have more than adequate legal grounds to win this case and dismiss this radical group from gaining traction on this issue. That being said, what is truly heart-warming is the support, letters, facebook posts, etc of people like YOU! We have gotten overwhelming support and many kind words from people like you and all the support is what keeps us focused on our one and only acceptable outcome: **KEEPING OUR MONUMENT in place.** . .

Thank you very much for your e-mail and thank you for the support of our cause. I am confident we will win, but it is the support that we have received that is keeping us focused and on track for keeping the monument on school grounds.

(Pl. Ex. LL, NewKen-Arnold 00887) (emphasis in original).

68. On April 18, 2012, Audrey Sleigh, NKASD Board secretary, sent an email to a number of local clergy members inviting them to the “Clergy Luncheon” on May 2, 2012.

Included on the agenda for the Clergy Luncheon was the “historical monument (Ten Commandments).” (Pl. Ex. MM, NewKen-Arnold 01045; Pl. Ex. M, 53).

69. Batterson initiated clergy luncheons when he arrived at the District and held them for the purpose of he and his administrators developing “personal relationships with clergy members so that [they] could get to know them better and with the thought that should we have any kinds of issues that occurred in the District.” (Pl. Ex. K, 45-46).

70. Batterson also used the clergy luncheons to present the NKASD school budget to the ministers “in hopes that they would support the school budget when they had their congregations in their church.” (Pl. Ex. K, 46).

Community Reaction to the FFRF Letter and NKASD Action

71. As of March 23, 2012, the local media reported that community member Mike Hresko was seeking to organize a rally in support of keeping the Ten Commandments Monument. (Pl. Ex. S).

72. Monsignor Michael J. Begolly, a pastor of a Roman Catholic church in New Kensington was quoted in a March 24, 2012 article as saying, “In this community, I think most people believe in the Ten Commandments and try to live their life that way.” (Pl. Ex. NN, P55-P57).

73. Pastor Dean Ward, a pastor of a New Kensington church was quoted in a March 29, 2012 article as saying, “This is a very value-driven community and the Ten Commandments mean a great deal to most people here in the Valley.” (Pl. Ex. UU, March 29, 2012 Pittsburgh Tribune-Review news article, P38-P40).

74. In a March 30, 2012 news article, many local citizens were quoted as offering religious-based support for the District’s stated position of retaining the Monument. (Pl. Ex. VV, March 30, 2012 Pittsburgh Tribune-Review news article, P48-P50).

75. Pallone testified that he had an understanding early on that the people in the community he encountered clearly valued the presence of the Ten Commandments Monument. (Pl. Ex. M, 47).

76. A number of NKASD alumni sent supportive emails to Batterson. (Pl. Ex. OO, Collection of emails from community members).

77. On March 29, 2012, a local clergyman, Mitchel Nickols, sought to organize a “Gathering of Faith” at the Ten Commandments Monuent, and Nickols informed Batterson that Cornerstone Television may want to obtain a statement from Batterson for Christian television. (Pl. Ex. CC, March 29, 2012 email from Nickols to Batterson, NewKen-Arnold 01074).

78. A gathering of 40-45 people occurred on March 29, 2012, including Mitch Nickols. (Pl. Ex. DD, NewKen-Arnold 01100; Pl. Ex EE, March 29, 2012 WPXI news article, P36-P37).

79. Batterson was quoted in the newspaper article as saying, “We’ve decided to take a hard line on this, we have legal counsel, and we are not going to remove the Ten Commandments.” (Pl. Ex. EE).

80. Batterson reported of the gathering that “the ministers in [his] community, parents and Christians prayed on our front lawn by the Ten Commandments.” (Pl. Ex. II).

Doe Plaintiffs’ Encounters with and Complaints regarding the Ten Commandments Monument

81. Plaintiff Schaub resides within the city of Arnold and the New Kensington-Arnold School District. (Pl. Ex. QQ, Declaration of Plaintiff Marie Schaub, ¶ 1).

82. Plaintiff Schaub is the mother of Plaintiff Doe 1. (Pl. Ex. PP, 26).

83. Plaintiff Schaub identifies as an atheist. (Pl. QQ, ¶ 12).

84. Plaintiff Schaub views the Ten Commandments Monument as “commanding” that students and visitors worship “thy God.” (Pl. QQ, ¶ 13).

85. Plaintiff Schaub sees the presence of the Ten Commandments Monument in front of the Valley High School as signaling that she is an outsider because she does not follow the particular religion or god that the Monument endorses. (Pl. QQ, ¶ 14).

86. Plaintiff Schaub does not want Doe 1 to attend a school that endorses religion. (Pl. QQ, ¶ 15).

87. Plaintiff Doe 1 does not believe in God. (Pl. Ex. RR, 13).

88. Plaintiff Doe 1 feels that the NKASD wants her to believe in God because of the presence of the Ten Commandments Monument in front of the Valley High School. (Pl. RR, 23).

89. Plaintiff Doe 1 was a student in the NKASD until the beginning of the 2014-2015 school year. (Pl. Ex. PP, Deposition of Plaintiff Marie Schaub, 26; PL. Ex. QQ, ¶¶ 6, 8-9).

90. Plaintiff Doe 1 was scheduled to attend the Valley High School for the 2014-2015 school year, but Doe 1’s family made the decision to avoid bringing Doe 1 into daily contact with the Ten Commandments Monument and withdrew Doe 1 from the NKASD. (Pl. Ex. QQ, ¶¶ 8-10, 15, 21, 23, 27).

91. Plaintiff Doe 1 presently attends school in a different school system. (Pl. Ex. QQ, ¶ 22).

92. As a result of Plaintiff Doe 1's withdrawal from the NKASD, Plaintiff Doe 1 has different classmates than Doe 1 had last year, and Doe 1 cannot take a school bus to Doe 1's new school from Plaintiff Schaub's residence. (Pl. Ex. QQ, ¶¶ 25-26).

93. Plaintiff Schaub was involved in the decision to remove Doe 1 from the NKASD. (Pl. Ex. QQ, ¶¶ 10, 15, 21, 23).

94. Plaintiff Schaub withdrew Doe 1 from the NKASD because she does not want Doe 1 to be influenced by the Ten Commandments Monument. (Pl. Ex. QQ, ¶ 21).

95. Plaintiff Schaub would allow Doe 1 to attend Valley High School if the Ten Commandments Monument is removed. (Pl. Ex. QQ, ¶ 28-29).

96. Nonetheless, Plaintiff Schaub remains concerned that Doe 1 will come into contact with the Ten Commandments Monument in the future because the Northern Westmoreland Career & Technology Center ("Center") is located on the same campus as Valley High School, and Doe 1's school district allows students to take vocational and technical classes at the Center. Doe 1 has expressed an interest in taking such classes. Plaintiff Schaub and Doe 1 were invited to take part in an orientation at the Center on November 13, 2014 but did not attend. (Pl. Ex. QQ, ¶¶ 30-34).

97. Valley High School is the most convenient high school for Doe 1 to attend. (Pl. QQ, ¶ 17).

98. Plaintiff Doe 1 used the swimming pool at Valley High School from third to fifth grade with her daycare program. (Pl. Ex. RR, Deposition of Doe 1, 10).

99. Plaintiff Doe 1 also participated in a karate event at the school. (Pl. Ex. RR, 10).

100. When Plaintiff Doe 1 went to the Valley High School to use the swimming pool and to participate in the karate event, Doe 1 walked past the Ten Commandments Monument. (Pl. Ex. RR, 11).

101. On those occasions, Plaintiff Doe 1 entered the school by walking across the bridge, on the concrete footpaths near the Monument. (Pl. Ex. RR, 18).

102. Plaintiff Doe 1 visited Valley High School for a dinner dance last year. (Pl. Ex. QQ, ¶ 7).

103. Plaintiff Doe 1 views the Monument when she goes to a friend's house. (Pl. Ex. RR, 19).

104. Plaintiff Schaub viewed the Ten Commandments Monument on one or two occasions when she dropped her sister off so that her sister could attend to orientation and/or necessary business pertaining to her child who was a student at the school. (Pl. PP, 31-33).

105. Plaintiff Schaub viewed the Ten Commandments Monument and utilized the footpaths while at the Valley High School for the karate event that Plaintiff Doe 1 attended. (Pl. QQ).

106. Plaintiff Schaub is a member of Freedom From Religion Foundation (FFRF). (Pl. Ex. QQ).

107. After hearing about the FFRF Letter on the news, Plaintiff Schaub contacted staff attorney Patrick Elliot at FFRF for the purpose of obtaining legal advice regarding the potential removal of the Monument (Pl. Ex. PP, 166-168, 171).

108. On August 29, 2012, FFRF, Plaintiff Schaub and Plaintiff Doe 1 sent a letter through counsel to interim superintendent Thomas Rocchi and the Board of School Directors of NKASD requesting that the Ten Commandments Monument be removed and threatening the

filing of a lawsuit on behalf of FFRF and the Doe Plaintiffs if the District refused to remove the monument (the “Plaintiffs’ Letter”). (Pl. Ex. SS, August 29, 2012 letter to Rocchi from Steele Schneider, P6-P9).

NKASD Response to Plaintiffs’ Letter

109. The NKASD never discussed the Plaintiffs’ Letter or the Complaint in any public Board meeting. (Pl. Ex. A, 14-16).

110. The NKASD never held a public discussion or public vote on whether to oppose Plaintiff’s Complaint. (*Id.*).

111. Prior to the NKASD September 27, 2012 Board meeting, where Robert Pallone indicated to the media the NKASD intended to discuss Plaintiffs’ Letter, Robert Pallone said, “My personal position is to fight them all the way, but that will need to be a board decision.” (Pl. Ex. WW, P17-P20).

112. John Pallone began as Superintendent of the NKASD on October 1, 2012 and Robert Pallone believes the decision to oppose any lawsuit had already been made before the hiring of John Pallone. (Pl. Ex. L, 7, 19; Pl. Ex. M, 96).

113. As of October 26, 2012, the District had no plans to remove the Monument. (Pl. Ex. XX, October 26, 2012 Pittsburgh Tribune-Review news article, P103-P104).

114. At the October 26, 2012 NKASD Board meeting, the Board voted to appoint counsel. (*Id.*).

115. On November 16, 2012, NKASD filed a Motion to Dismiss Plaintiffs’ Complaint. (ECF No. 8).

Community Response to NKASD Response to Plaintiffs’ Letter

116. Plaintiff Schaub monitored the “KEEP THE TEN COMMANDMENTS AT VALLEY HIGH SCHOOL” Facebook group around the time that the Plaintiffs’ Letter was sent. (ECF No. 12-6, Plaintiff Schaub Declaration in support of Motion to Proceed Pseudonymously).

117. On September 12, 2012, Plaintiff Schaub read the group page and saw an individual by the name of Anthony Ferma post, “Tell these asswipe to go to hell and stay in Wisconsin and mind their own effin business as to what is on private property.” John Zavadek then wrote, “Maybe we should get that lady’s phone number who is a participant in the law suit and have everybody call her and give her our opinion.” Ferma responded, “I’m sure if we look up the bitch she probably has a facebook account or a facebook page for her ridiculous group and we can slam the shit out of the bitch.” (ECF No. 12-7).

118. On September 16, 2012, an individual by the name of Vincent Miller posted: “Have the families involved in the law suit been identified? I cannot believe anyone living in the community would participate in such a worthless cause. Someone needs to send that group back to Wisconsin with several black eyes.” (ECF No. 12-8).

119. On October 5, 2012, a letter titled “But out II” was published in the Pittsburgh Tribune-Review which stated that the September 28 letter titled “Butt out, atheists” “said it all and said it very eloquently.” The letter went on to say “[h]ere in New Kensington, we neither want nor need you atheists.” (Pl. Ex. YY, P162).

120. On October 14, 2012, the local media reported that approximately 50 people attended a rally in a local park to support the District’s keeping the Ten Commandments Monument, which was called the “Save our Stone” rally. (Pl. Ex. ZZ, P100-P101).

121. Plaintiff Schaub observed the “Save our Stone” rally. (*Id.*).

122. The organizer of the event stated, “We want to show the school district that the community wants that monument to stay there.” (*Id.*).

123. Speaking from the bandstand in the park, the organizer of the event stated, “We don’t want it removed—this is part of our country—They’ll lock u [sic] the churches and we’ll be just like a communist country.” (*Id.*).

124. The news article also mentioned Nickols’ effort at gathering petition signatures on a petition to be submitted to the District. At the time of the rally, he had gathered at least 400 signatures. (*Id.*).

125. On January 5, 2013, a letter written by a New Kensington resident titled “Leave us alone” was published in the Pittsburgh Tribune-Review. The letter referenced the December 27, 2012 letter “The Ten Commandments are historical” as expressing the “Leave us alone!” viewpoint. The letter also said that the September 28, 2012 letter titled “Butt out, atheists” “is a close second.” The letter goes on to say, “I will be counted, by name, in the fight to allow the Ten Commandments monument to stand outside of Valley High School. The devil and his atheists need to butt out of New Kensington and attempt to cause trouble elsewhere. My 110-pound Doberman will stand with me.” (Pl. Ex. AAA, P10-P13).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2014, the foregoing **PLAINTIFFS' CONCISE STATEMENT OF MATERIAL FACTS** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic case filing system and constitutes service of this filing under Rule 5(b)(2)(E) of the Federal Rules of Civil Procedure. Parties may access this filing through the Court's ECF system.

/s/ Marcus B. Schneider, Esquire
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