

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SAM DOE 1,
SAM DOE 2, (A MINOR BY AND
THROUGH DOE’S PARENT AND NEXT
FRIEND),
SAM DOE 3,
SAM DOE 4, AND
SAM DOE 5, (A MINOR BY AND
THROUGH DOE’S PARENT AND NEXT
FRIEND)
C/O ACLU OF OHIO
4506 CHESTER AVENUE
CLEVELAND, OHIO 44103,

Plaintiffs,

v.

JACKSON CITY SCHOOL DISTRICT,
JACKSON CITY BOARD OF EDUCATION,
AND PHIL HOWARD, IN HIS OFFICIAL
CAPACITY AS SUPERININTENDENT OF
JACKSON CITY SCHOOL DISTRICT,
450 VAUGHN STREET
JACKSON, OHIO 45640,

Defendants.

CIVIL ACTION NO. 2:13-cv-112

JUDGE ALGENON L. MARBLEY

**AMENDED VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF, DAMAGES, AND STATUTORY
ATTORNEYS’ FEES**

INTRODUCTION

1. This is a challenge to the constitutionality of the maintenance and display of a portrait depicting Jesus Christ in the Jackson High School which is located within the jurisdiction of Defendant, Jackson City School District. The maintenance and display of the portrait has the effect of advancing and endorsing one religion, improperly entangling the State in religious affairs, and violating the personal consciences of Plaintiffs.

2. Plaintiffs seek a declaration that the Defendants' maintenance and display of the portrait of Jesus in a public school constitutes a violation of the Establishment Clause of the First Amendment, which is incorporated to apply to the states by the Fourteenth Amendment to the United States Constitution, and is also a violation of Article I, §7 of the Constitution of the State of Ohio. Plaintiffs further seek an injunction prohibiting the Defendants from maintaining or displaying such portrait or a substantially similar display, now or in the future.

JURISDICTION AND VENUE

3. The claims for relief and the causes of action alleged herein arise under the First and Fourteenth Amendments to the Constitution of the United States and under Article I, §7 of the Constitution of the State of Ohio.

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331 and 1343.

5. Declaratory and injunctive relief is sought pursuant to 28 U.S.C. §§2201 and 2202.

6. Venue is proper in this Court under 28 U.S.C. §1391(b) because Defendants reside in this State and because a substantial part of the events that are the subject of this action arose in this judicial district.

THE PARTIES

7. Plaintiff Sam Doe 1 resides within the jurisdiction of the Jackson City School District and has a minor child enrolled in and attending Jackson Middle School.

8. Plaintiff Sam Doe 2 resides within the jurisdiction of the Jackson City School District and is a student enrolled in and attending Jackson Middle School. Plaintiff Sam Doe 2 is filing suit by and through Sam Doe 2's parent and next friend.

9. Plaintiff Sam Doe 3 resides within the Jackson City School District and has minor children that attend one of the public elementary schools. Plaintiff Sam Doe 3's children will eventually matriculate to Jackson High School. Sam Doe 3 regularly attends the school board meetings held at Jackson High School.

10. Plaintiff Sam Doe 4 resides within the Jackson City School District and has a minor child that attends Jackson High School.

11. Plaintiff Sam Doe 5 resides within the Jackson City School District and attends Jackson High School. Plaintiff Sam Doe 5 is filing suit by and through Sam Doe 5's parent and next friend.

12. Defendant Jackson City School District is a political subdivision of the State of Ohio and has as its primary mission, the education of school age children that reside in the City of Jackson.

13. Defendant Jackson City Board of Education, is the elected Board of the Jackson City School District which has as its primary responsibility the establishment of policies for the education of school age children that attend Jackson City School District consistent with the rules and regulations promulgated by the Ohio Department of Education, the State Board of Education, the laws and Constitution of the State of Ohio and the laws and Constitution of the United States.

14. Defendant Phil Howard, is the Superintendent of the Jackson City School District. His primary duty is the implementation of the policies established by the Jackson City Board of Education for the education of school age children that reside in and around the City of Jackson. This implementation must be consistent with the rules and regulations promulgated by the Ohio

Department of Education, the State Board of Education, the laws and Constitution of the State of Ohio and the laws and Constitution of the United States of America.

FACTUAL BACKGROUND

15. For some years an entrance wall located in Jackson Middle School prominently displayed a portrait of Jesus Christ (hereinafter referred to as “portrait of Jesus,”) a figure who plays a central role in the Christian religion and whose image is often used to symbolize the Christian faith. (Plaintiffs’ Exhibit A, and Plaintiffs’ Exhibit B.)

16. This portrait of Jesus has recently been moved and is prominently displayed on the fine arts wall in a hallway of Jackson High School. (Plaintiffs’ Exhibit C.)

17. Although Defendants Jackson Board of Education and Superintendent Phil Howard were all notified of the fact that the portrait of Jesus on public school property was a violation of the Establishment Clause of the First Amendment to the United States Constitution, they refused to remove the portrait and, Superintendent Phil Howard specifically stated that, “it would take a court order to remove the picture.”

18. On February 7, 2013, Plaintiffs filed a complaint alleging that the Jackson City School District’s maintenance and display of the portrait of Jesus in the middle school was a violation of plaintiffs’ rights under the United States and Ohio Constitutions.

19. On February 12, 2013, Counsel for Defendants provided a “Report and Recommendation” to the Jackson City School District regarding their maintenance and display of the portrait. Among other things the report advised that, “Under the Establishment Clause of the First Amendment, the government cannot endorse religion. *See Lynch v. Donnelly*, 465 U.S. 668, 687-88 (1984) (O’Connor, J., concurring). This includes a government sponsored display of

a picture of Jesus in a public school. *Washegesic v. Bloomingdale Pub. Schs.*, 815 F. Supp.559, 566 (W.D. Mich. 1983.)” (Plaintiffs’ Exhibit D, pg.4.)

20. The “Report and Recommendation” further advised that Defendants: (1) “[f]ormally disclaim any ownership or control over the Portrait, (2) ... [f]ormally recognize that it created a limited public forum, and codify a policy... (Exhibit D, pg.7) It then goes on to provide a sample proposed policy for the District to adopt in order to create a “limited public forum.” (Exhibit D, p 8).

21. Significantly, on the exact same day that the Report and Recommendation was issued by counsel for Defendants to the District, counsel representing the “Hi-Y” club sent the District a letter asserting the Hi-Y club’s “continued interest in having the Club’s portrait remain in the [middle school] lobby.” (Exhibit D, pg. 3)

22. On or about February 12, 2013 The Jackson City School Board adopted a policy designating two spaces as “limited public forums.” One space is the fine arts hallway adjacent to the school trophy case in Jackson High School, where the portrait was recently moved, and the other is the foyer in Jackson Middle School adjacent to one of the middle school’s main entrances, where the portrait was previously displayed. The District also announced for the first time that they did not own the portrait and that it was the property of the “Hi-Yi Club.” (Plaintiffs’ Exhibit E.)

23. For the past 65 years, there have been no other student clubs that have displayed anything in the foyer of the middle school where the portrait was previously displayed, nor have any student clubs displayed anything there since. The only item currently displayed in the fine arts hallway of the high school is the prominently displayed portrait of Jesus which is now affixed to a cement wall adjacent to the trophy case. (Exhibit C.)

24. At no time prior to the filing of the complaint did the Defendants have a written policy regarding the use of the middle school foyer as a “limited public forum.”

25. After the filing of the complaint, and on the advice provided by their attorneys in the Report, Defendants Jackson City School Board approved a policy that designated the middle school foyer and fine arts hallway of the high school as a “limited public forum.” (Exhibit E.)

26. Not long after this implementation of this new policy, Defendants removed the portrait from the middle school and placed it in the fine arts hallway of the high school under the pretext that this was done to protect the First Amendment right to free speech of the Hi-Y club. (Exhibit E.)

27. Plaintiffs all reside within the limits of Jackson City School District. Plaintiffs are parents of children or students who attend the Jackson City Schools.

28. Plaintiff Sam Doe 1 is the parent of a child that is currently enrolled in and attends Jackson Middle School. Sam Doe 1 does not identify as being of any one particular religion. Sam Doe 1 regularly attends the school board meetings which are located most often at the high school. Sam Doe 1 also attends various community events that occur at the high school including the yearly Community Thanksgiving, which Sam Doe 1 attends with Sam Doe 1’s child. The presence of the portrait at Jackson High School imposes the beliefs of one particular religion upon Plaintiff Sam Doe 1’s child and interferes with the manner in which Plaintiff chooses to teach morality and religion to Sam Doe 1’s child.

29. Plaintiff Sam Doe 2 attends Jackson Middle School and previously viewed the portrait of Jesus every day when Plaintiff walked through the entranceway to the middle school. Sam Doe 2 attends various community events at Jackson High School, including the yearly Community Thanksgiving. Sam Doe 2 will matriculate to Jackson High School upon graduation

from Jackson Middle School. Sam Doe 2 identifies as a person of the Christian faith and is offended by the religious portrait hanging in Jackson High School because it portrays the image of Jesus in a manner that is inconsistent with said Plaintiff's religious beliefs and expresses the Christian faith in a way that distorts Sam Doe 2's own beliefs about morality and religion.

30. Plaintiff Sam Doe 3 is a parent with elementary school children currently attending one of the public elementary schools in the Jackson City School District. Sam Doe 3's children participate in various community events at Jackson High School. Sam Doe 3 attends school board meetings at the high school and expects to continue to attend them in the future. Sam Doe 3's children will eventually matriculate to Jackson High School. Sam Doe 3 does not identify as being of any particular religion. The presence of the portrait of Jesus at Jackson High School imposes the beliefs of one particular religion upon Plaintiff Sam Doe 3's children and interferes with the manner in which said Plaintiff chooses to teach them about morality and religion.

31. Plaintiff Sam Doe 4 is a parent with a child that attends Jackson High School in the Jackson City School District. Sam Doe 4 does not identify as being of any one particular religion, but does identify as being spiritual. Given the prominent placement of the portrait of Jesus in the high school, Sam Doe 4 is forced to view the portrait upon entering the high school to fulfill parental responsibilities, as well as when attending various community events. The presence of the portrait at Jackson High School imposes the beliefs of one particular religion upon Plaintiff Sam Doe 4's child and interferes with the manner in which Plaintiff chooses to teach about morality and religion.

32. Plaintiff Sam Doe 5 attends Jackson High School and views the portrait of Jesus while walking to and from classes in the high school. Sam Doe 5 attends various community

events at Jackson High School. Sam Doe 5 does not identify as belonging to any particular religion, but does identify as being spiritual. Sam Doe 5 is offended by the hanging of the portrait in Jackson High School because it portrays the image of Jesus in a manner that is inconsistent with said Plaintiff's religious beliefs and distorts Sam Doe 5's own beliefs about morality and religion.

FIRST CAUSE OF ACTION

(First and Fourteenth Amendments of the U.S. Constitution)

33. Plaintiffs incorporate by reference each and every statement, allegation and averment set forth in paragraphs 1 through 32 as if fully restated herein.

34. Defendants, by causing, allowing, displaying and maintaining the portrait of Jesus, as described herein, have violated the Establishment Clause of the First Amendment to the United States Constitution, which is applicable to the states by the Fourteenth Amendment to the United States Constitution.

35. Defendants' actions, as described herein, have no legitimate secular purpose, and are motivated by a desire to advance a religious purpose.

36. Defendants' actions, as described herein, have the effect of advancing or endorsing one particular religion or religion in general.

37. Defendants' actions, as described herein, improperly entangle the state in religious affairs, issues, or institutions.

38. Display of the portrait of Jesus constitutes an offensive affront to the religious and moral convictions of Plaintiffs, making them as Christians, non-Christians and non-believers feel like outsiders who are being coerced by their government into observing the religious portrait of an individual identified with one particular religion, and it is an unconstitutional violation of Plaintiffs rights under the Establishment Clause to practice and teach religion as they see fit.

39. Defendants' actions in displaying the portrait of Jesus constitute an endorsement of religion, and reasonably leave those who come into the school who may not share this religious viewpoint, including the Plaintiffs, to doubt that their religious beliefs, or choice not to practice a religion, will be respected.

40. An actual controversy exists between Plaintiffs and Defendants as to the constitutionality of Defendants' maintenance and display of the portrait of Jesus.

41. Defendants' actions as described herein are acts and conduct performed under color of law within the meaning of 42 U.S.C. § 1983.

42. Defendants' actions as described herein, constitute a custom, usage, or policy within the meaning of 42 U.S.C. §1983.

43. Defendants' unconstitutional acts described above have resulted in imminent and irreparable harm and injury to the Plaintiffs.

44. Plaintiffs have no adequate remedy at law and monetary damages cannot fully repair the constitutional injury that Defendants' acts have caused, and will continue to cause, from the maintenance and display of a religious portrait in the high school.

45. Defendants' conduct, as described herein, constitutes action taken under color of law that has caused and, unless enjoined, will continue to cause, a deprivation of constitutional rights in violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

46. As a direct result of the unconstitutional actions of Defendants, described herein, attorneys' fees and costs have been and will continue to be incurred on the Plaintiffs' behalf.

SECOND CAUSE OF ACTION
(Article I, § 7 of the Ohio Constitution)

47. Plaintiffs incorporate by reference paragraphs 1 through 43 as if fully restated herein.

48. Defendants' actions as described herein violate Article I, § 7 of the Ohio Constitution.

49. As a direct result of these unconstitutional actions, Plaintiffs and other like-minded citizens and residents have suffered, and will continue to suffer imminent, permanent, severe and irreparable harm and injury.

50. As a direct result of the unconstitutional actions of Defendants described herein, attorneys' fees and costs have been and will continue to be incurred by Plaintiffs.

WHEREFORE, Plaintiffs request:

A. That this Court declare that Defendants' conduct, as described herein, has violated the First and Fourteenth Amendments to the United States Constitution, and Article I, § 7, of the Constitution of the State of Ohio;

B. That this Court enter a temporary restraining order and preliminary and permanent injunction restraining and enjoining Defendants and their successors in office, and all their respective agents, employees and others in active concert with them from continuing to maintain and display the portrait of Jesus or any substantially similar display;

C. That this Court award Plaintiffs reasonable attorney fees and court costs incurred in prosecuting this action, pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 54(d);

D. That this Court grant such additional relief, legal or equitable, as the Court deems appropriate, including but not limited to appropriate damages.

Respectfully submitted,

/s/ James L. Hardiman

James L. Hardiman (0031043)

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CERTIFICATE OF SERVICE

The foregoing Amended Verified Complaint was filed this 1st day of April, 2013 through the Court's Electronic Filing System. Parties will be served, and may obtain copies electronically, through the operation of the Electronic Filing System.

/s/ James L. Hardiman

James L. Hardiman

TRIAL ATTORNEY