

COMPLAINT

COMES NOW Plaintiff WILLIAM LEE, and hereby alleges as follows:

Jurisdiction

1. Jurisdiction in this Court is founded on the existence of a federal question pursuant to 28 U.S.C. § 1331 and the deprivation of civil rights pursuant to 28 U.S.C. § 1343(a)(3), as it is an action for relief under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202, for the deprivation of rights to freedom of speech and equal protection of the laws secured by the First and Fourteenth Amendments to the Constitution of the United States.

2. Plaintiff also invokes supplemental jurisdiction of this Court over his state law claims against Defendants for violations of the Virginia Constitution pursuant to 28 U.S.C. § 1367, as such claims form part of the same case or controversy.

Venue

3. Venue in the Eastern District of Virginia is proper pursuant to 28 U.S.C. § 1391 because (a) all of the Defendants reside in this judicial district and in the State of Virginia, and (b) all or a substantial part of the events or omissions which give rise to the present claims occurred in this judicial district, and more specifically within York County, Virginia.

Parties

4. Plaintiff WILLIAM LEE is an adult individual who is, and at all relevant times herein was, a citizen of the United States of America and the Commonwealth of Virginia, with his principal place of residence in Gloucester County, Virginia.

5. Defendant YORK COUNTY SCHOOL DIVISION SCHOOL BOARD is, and at all relevant times herein was, a body corporate created and operating under the

laws of the Commonwealth of Virginia, charged with the power and duty to supervise and establish policy for the York County School Division, and is the local governing entity for which all other Defendants herein were acting when committing the acts herein alleged. Defendants R. PAGE MINTER, BARBARA S. HAYWOOD, LINDA MEADOWS, MARK A. MEADFORD, and BARRENT M. HENRY, are individuals who comprise the YORK COUNTY SCHOOL DIVISION SCHOOL BOARD.

6. On information and belief, Defendant DR. STEVEN R. STAPLES is, and at all relevant times herein was, employed by the York County School Division as Superintendent. In such capacity, Defendant Staples is responsible for administering and carrying out the policies and business of the York County School Division and, with respect to certain matters, establishing policy for and on behalf of the York County School Division.

7. Plaintiff is informed and believes, and thereon alleges, that at all relevant times herein, that each of the Defendants, were agents, servants, employees, supervisors and/or co-conspirators of their co-defendants, and in doing the things herein alleged, were acting within the course, scope and authority of said agency, employment or conspiracy, and each Defendant has ratified, authorized and approved the acts of the other.

8. At all relevant times and for all actions herein alleged, all of the Defendants, and each of them, acted toward Plaintiff under color of law, including statutes, ordinances, customs and usages, of the Commonwealth of Virginia and the York County School Division, pursuant to the official policies of the York County School Division. Plaintiff sues each of the Defendants in their individual and official capacities.

General Allegations

9. Plaintiff is, and was at all relevant times, employed by Defendant York County School Division School Board as a full-time Spanish instructor at Tabb High School, a public school operated by Defendant York County School Division School Board. The Plaintiff subscribes to the Christian faith.

10. Plaintiff is presently employed by the York County School Division pursuant to a continuing contract under which his employment and assignment to Tabb High School will continue at least through the 2005-2006 school year.

11. In connection with his employment, the Plaintiff was assigned a classroom at Tabb High School, where he engaged in instruction of students and had a personal workspace in that classroom.

12. Tabb High School and Defendant York County School Division School Board had and continues to have a policy, custom and practice of allowing instructors to post upon the walls and bulletin boards of their assigned classrooms pictures and printed and illustrated materials that are consistent with the educational mission of the school.

13. Tabb High School and York County School Division School Board had and continues to have a policy, custom and practice of allowing instructors to post upon the walls and bulletin boards of their assigned classrooms pictures and printed and illustrated materials of a general and personal nature that are not otherwise inconsistent with the educational mission of the school.

14. Further, and also in connection with his employment, the Plaintiff was and is the assigned faculty sponsor of First Priority, an approved extracurricular club at Tabb High School. The Plaintiff has been assigned this sponsorship responsibility since the 2002 school year.

15. Tabb High School and Defendant York County School Division School Board had and continues to have a policy, custom and practice of allowing instructors to post upon the walls and bulletin boards of their assigned classrooms printed and illustrated materials that are consistent with the mission and/or vision of the approved club of which they are the faculty sponsor as designated by the school.

16. Upon information and belief, Plaintiff alleges that the Defendants have not previously required an approved faculty sponsor of an extracurricular club approved by the York County School Division at Tabb High School to remove printed or illustrated materials posted in their assigned classrooms, which material was consistent with the vision or mission of the assigned club.

17. In addition to allowing the posting of pictures and printed and illustrated materials by faculty sponsors of approved extracurricular clubs in the areas and under the circumstances alleged in paragraphs 12 through 15 above, Tabb High School and Defendant York County School Division School Board had a policy, custom and practice of allowing the posting upon the walls and common areas of the school printed and illustrated materials, relating to extracurricular clubs approved of by the school.

18. Upon information and belief, the policies, customs and practices established by the school referenced in Paragraphs 12, 13, 14, 15 and 17 above afforded the individuals designated in such paragraphs broad discretion in determining the nature, type and content of any such material to be posted in the various areas designated in each such allegation.

19. In conformity with the policy, custom and practices established by the school, the Plaintiff posted pictures and printed and illustrated materials upon the walls and bulletin boards of his classroom at the beginning of the 2004-2005 school years.

20. Materials posted, as alleged in paragraph 19 herein, included among other things, a poster publicizing the National Day of Prayer and depicting President George Washington praying at Valley Forge, an article from a newspaper pertaining to the religious faith of President George W. Bush with a picture showing President Bush praying and a news article about former Attorney General John Ashcroft and his voluntary prayer meetings with staff members.

21. Materials posted by the Plaintiff as alleged herein also included, among other things, pictures and articles relating to the Peruvian Inca sun god festival of Inti Raymi (an actively practiced religion to this day), a magazine article discussing the religious motives of pre-Inca civilizations, an article discussing the crucial social role of Moche chieftain-priests, another article discussing the “priceless gift” of fourteen “religious cows” as a religious expression of grief to the United States by the Masai people of Africa, a National Geographic article discussing the religious understanding of souls of Inca mummies in the after life, posters with emblems representing the *still-worshipped* pantheon of Mayan creature gods, and ceremonial knives called “Tumis” used only by the High Priest in the most important religious ceremony in Incan times.

22. Additional materials posted in the Plaintiff classroom also included a chart and map relating to Columbus’ discovery of America with pictures of the Santa Maria and other ships with the Christian Cross displayed on the sails of such ships, a picture of Boy Scouts praying during Unity Day at a courthouse in memory of those lost in the September 11, 2001 terrorist attacks, a picture of an aircraft carrier flight technician with “Pray for America” written on the forehead of his communication helmet, and a picture and article recognizing the achievements of a student who was student president of the First Priority club, and had been recognized as “Senior of the Month”.

23. All posted materials referenced herein were used by the Plaintiff to educate and exemplify in a fair and complete treatment the religious traditions of various Hispanic and pre-Hispanic societies and those which embrace the Spanish language and culture, including Spain, to publicize or illustrate the activities of First Priority and/or to communicate about current public events and/or of personal interest to the Plaintiff.

24. The Plaintiff personally received no complaints from students, parents or staff about the materials posted on his classroom walls.

25. On or about October 19, 2004, the Plaintiff became ill and was forced to be absent from his duties at Tabb High School. After receiving medical treatment, the Plaintiff returned to his duties several days later.

26. When he returned, the Plaintiff discovered that all materials specified in paragraph 20 above had been removed from his classroom walls. In fact, one particular presentation, constructed and laminated together as a single, complete presentation concerning a former local high school student and wherein a Christian cross appeared on the top half of the laminated sheet, was physically cut and removed from the bottom half of the laminated sheet, wherein a related article relating to said student which did not have a picture of the cross was left intact and posted to the wall.

27. Other materials the Plaintiff had posted on his walls, such as the items referenced in paragraphs 21 and 22 herein, which did either did not involve Christianity or otherwise were deemed to not be “overtly religious” concerning Christianity or otherwise related to a particular viewpoint or another religious belief or secular viewpoint, were not removed from the walls.

28. The Plaintiff spoke to Tabb High School Principal Crispin Zanca and asked about the missing and removed materials. Principal Zanca told the Plaintiff that a

parent advocate had complained about the materials on behalf of parents not identified to him. Because of the complaint, Principal Zanca received an instruction a week earlier to examine the materials and report back. Principal Zanca told the Plaintiff that he had done as instructed and reported that he found nothing wrong with the materials.

29. Principal Zanca told the Plaintiff that he (Zanca) was thereafter instructed to remove the materials, which he did while the Plaintiff was away from school on sick leave.

30. The Plaintiff, with the assistance of The Rutherford Institute, a Virginia-based civil liberties organization, thereafter brought the matter to the attention of Defendant Staples and requested that he (the Plaintiff) be allowed to put the materials back up on the classroom walls.

31. After January 21, 2005 but before January 31, 2005, the Plaintiff entered the teacher conference room at Tabb High School during the school day and found there County Attorney Carla Hook, Dr. Carl James, Director of School Administration for the York County School Division, and Principal Zanca, who were examining the materials removed from the Plaintiff's classroom walls. After the Plaintiff was requested to comment concerning such materials by the County Attorney, Carla Hook, and after the Plaintiff advised all parties present that he could not formally comment on any substantive element of such matter, nonetheless, an informal discussion concerning the posters among those present ensued. This impromptu meeting concluded within five (5) minutes, with the Plaintiff reiterating that he could not further comment as he had retained counsel to represent his interest concerning such matter.

32. In a letter dated January 31, 2005, County Attorney James E. Barnett responded to the request set forth in paragraph 30 on behalf of Defendant Staples and the

York County School Division. Defendant Barnett wrote that the removal of the posters and articles was not improper, that the removal was required by law due to their “overtly religious nature of the displays and their narrow focus on only a religious point of view” and that the decision to forbid the reposting of the materials would stand.

33. The Defendants’ decision to forbid the Plaintiff from posting the printed and written materials upon Plaintiff’s classroom walls was because of the religious theme and viewpoint of those materials.

34. The Plaintiff alleges that during his tenure as a teacher at Tabb High School, that he has specific knowledge conveyed to him by at least one teacher who then also was a teacher at Tabb High School, who indicated that she was required to remove a poster from her classroom wall. Such poster was indicated to be one displaying the four horsemen referenced in the Bible in the book of Revelation, e.g. Rev. 6:2-8, and such poster was indicated to have been displayed in the context of teaching the history and beliefs of some individuals living at the time of the First World War and concerning the events of the First World War, the curriculum being addressed by said teacher. The teacher indicated to the Plaintiff that Dr. Carl James had instructed her to display the poster for one day only, and specific instruction concerning the First World War as it related to such poster was to be taught on such day, and to be removed from the teacher’s wall immediately thereafter.

35. The Plaintiff alleges that during his tenure as a teacher at Tabb High School that he has specific knowledge of a number of teachers displaying on their classroom walls and or bulletin boards, personal pictures of family and friends, as well as articles, pictures and printed material of a non curricular nature, such as comic strip

clippings, newspaper and magazine articles, famous quotes, as well as pictures of individuals, things and places of a historic and contemporary interest.

36. The Plaintiff alleges that during his tenure as a teacher at Tabb High School that he has specific knowledge of a number of teachers who were approved faculty sponsors of extracurricular clubs displaying on their classroom walls and or bulletin boards articles and printed material such as posters and advertisements relevant to the theme or activities of such clubs.

37. Upon information and belief, Plaintiff alleges that the Defendants have not previously required an instructor employed by the York County School Division at Tabb High School to remove printed or illustrated materials posted by the instructor, other than materials with a Christian viewpoint such as the materials indicated herein.

First Claim
U.S. Const. Amend. I
Free Speech Clause

38. The Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 37 set forth above.

39. The Plaintiff's posting of the materials on his classroom walls constituted speech and expression that is protected by the First Amendment to the United States Constitution.

40. The decision to remove and to prohibit the reposting of the materials the Plaintiff had posted constituted the execution and/or establishment of policies by the Defendant York County School Division School Board and/or Defendant Staples.

41. The removal of the Plaintiff's materials from the classroom walls and the Defendants' decision to forbid the Plaintiff from reposting those materials on the

classroom walls constituted discrimination against Plaintiff's expression on the basis of the religious viewpoint of the Plaintiff's expression.

42. As a result, the Plaintiff was and continues to be deprived of his right to free speech and expression guaranteed and protected by the First Amendment to the United States Constitution.

43. As a direct and proximate result of the deprivation of the Plaintiff's First Amendment rights, he has suffered humiliation, embarrassment and mental suffering.

Second Claim
Va. Const. Art. I, § 12

44. The Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-43 set forth above.

45. The Plaintiff's posting of the materials on his classroom walls constituted speech and expression that is protected by Va. Const. Art. I, § 12.

46. The removal of the Plaintiff's materials from the classroom walls and the Defendants' decision to forbid the Plaintiff from reposting those materials on the classroom walls constituted discrimination against Plaintiff's expression on the basis of the religious viewpoint of the Plaintiff's expression.

47. As a result, the Plaintiff was and continues to be deprived of his right to free speech and expression guaranteed and protected by Va. Const. Art. I, § 12.

48. As a direct and proximate result of the deprivation of the Plaintiff's rights under the Virginia Constitution, he has suffered humiliation, embarrassment and mental suffering.

Third Claim
U.S. Const. Amend. XIV
Equal Protection Clause

49. The Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-48 set forth above.

50. The decision to remove and to prohibit the reposting of the materials the Plaintiff had posted constituted the execution and/or establishment of policies by the Defendant York County School Division School Board and/or Defendant Staples.

51. The Defendants discriminated against the Plaintiff on the basis of the viewpoint and content of expressive activity engaged in by the Plaintiff, which activity is protected by the First Amendment to the United States Constitution.

52. The Defendants discriminated against the Plaintiff and treated him less favorably than other similarly-situated individuals, and such treatment was arbitrary, capricious and not justified by any legitimate governmental interest.

53. The Defendants' discrimination against the Plaintiff deprived the Plaintiff of his right to equal protection of the law guaranteed and secured by the Fourteenth Amendment to the United States Constitution.

54. As a direct and proximate result of the deprivation of the Plaintiff's right to equal protection of the law under the Fourteenth Amendment to the United States Constitution, he has suffered humiliation, embarrassment and mental suffering.

Fourth Claim

Va. Const. Art. I, § 11
Equal Protection Clause

55. The Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-54 set forth above.

56. The Defendants discriminated against the Plaintiff on the basis of the viewpoint and content of expressive activity engaged in by the Plaintiff, which activity is

protected by the First Amendment to the United States Constitution and Va. Const. Art. I, § 12.

57. The Defendants discriminated against the Plaintiff and treated him less favorably than other similarly-situated individuals, and such treatment was arbitrary, capricious and not justified by any legitimate governmental interest.

58. The Defendants' discrimination against the Plaintiff deprived the Plaintiff of his right to equal protection of the law guaranteed and secured by Va. Const. Art. I, § 11.

59. As a direct and proximate result of the deprivation of the Plaintiff's right to equal protection of the law under the Va. Const. Art. I, § 11, he has suffered humiliation, embarrassment and mental suffering.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

A) that a declaratory judgment be entered pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., declaring that the removal of the Plaintiff's printed and illustrated materials and Defendants' refusal to allow the Plaintiff to repost those materials deprives the Plaintiff's rights under the Constitutions of the United States and the Commonwealth of Virginia;

B) that a preliminary injunction be entered enjoining the Defendants from interfering with the Plaintiff's reposting of the materials removed from the Plaintiff's classroom or other contextually similar materials to be employed or posted by Plaintiff in the future;

C) that an order be entered permanently enjoining the Defendants from interfering with the Plaintiff's reposting of the materials removed from the Plaintiff's classroom or other contextually similar material to be employed or posted by the Plaintiff in the future;

D) that this Court award Plaintiff nominal and compensatory damages in an amount to be determined at trial;

E) that this Court order Defendants to pay Plaintiff's attorney fees pursuant to 42 U.S.C § 1988, together with costs of this litigation; and

F) such other and further relief as the Court may deem proper.

Dated: _____, 2005

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VERIFICATION

I verify under penalty of perjury that the foregoing allegations of the Complaint are true and correct.

Executed on ____th day of August, 2005

William Lee