

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DONALD SCOTT FISH,

Plaintiff,

vs.

Civil Action No.: _____

KAREN DENNY, individually and in her
official capacity as Principal of South Jefferson
Clarke Senior High School; SOUTH
JEFFERSON CENTRAL SCHOOL
DISTRICT,

Defendants.

**PLAINTIFFS' VERIFIED
COMPLAINT**

JURY DEMAND

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

Now comes Plaintiff Donald Scott Fish, and for a verified complaint against Defendants avers the following:

I.

INTRODUCTION

1. This case is brought to vindicate the First Amendment rights of Scott Fish, a senior attending of South Jefferson Clarke Senior High School in Adams, New York. On October 24, 2006, Scott along with other students attempted to communicate a message to their schoolmates regarding the perils of abortion, by means of the use of message-bearing t-shirts, armbands, leaflets, and symbolic expression. Defendant Karen Denny, Principal of the school, censored Scott and other participating students for the reason that she

objected to the content and viewpoint of their speech. This act of censorship, as well as Defendants' continuing prohibition which serves to chill Scott's speech on this matter, violates his rights to the freedom of speech, due process of law, and to the equal protection of the law guaranteed him by the First and Fourteenth Amendments to the United States Constitution. Scott wishes to engage in substantially similar expression on or around January 22, 2007, which creates an urgent need for a preliminary injunction against Defendants.

II.

JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of state law, of rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to recover damages and secure equitable relief under an Act of Congress, specifically, 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights; under 42 U.S.C. § 1988(b) to award attorneys fees; under 28 U.S.C. § 2201(a) to secure declaratory relief; and under 28 U.S.C. § 2202 to secure preliminary and permanent injunctive relief and damages.

3. Venue is proper in the United States District Court for the Northern District of New York under 28 U.S.C. § 1391(b), because the events giving rise to the claim occurred within the District and because Defendants are residents of or located in the District.

III.

PARTIES

4. Plaintiff Donald Scott Fish is eighteen-year-old student in the twelfth grade at South Jefferson Clarke Senior High School, and is a resident of Rodman, New York.

5. Defendant Karen Denny is Principal of South Jefferson Clarke Senior High School, an agent of the South Jefferson Central School District, and is sued in both her individual and official capacities.

6. Defendant South Jefferson Central School District is a public body corporate and politic established, organized, and authorized pursuant to New York Law, with the authority to sue and be sued. The District's main office is located 13180 U.S. Route 11, Adams Center, New York. South Jefferson Clarke Senior High School, which provides instruction to students in the ninth through twelfth grades, is an operating extension of the South Jefferson Central School District.

IV.

STATEMENT OF FACTS

7. Scott is a Christian who is impelled by his sincerely held religious and ethical beliefs to share with others, including his fellow students at South Jefferson Clarke Senior High School, the content of those beliefs.

8. Moreover, for religious and ethical reasons Scott is opposed to the killing of pre-born children and the harming of women that occurs in the abortion procedure.

9. On October 24, 2006, Scott and some friends came to the school prepared to speak out against abortion, in conjunction with a nationwide project called the "3rd Annual Pro-Life Day of Silent Solidarity," organized by the national group "Stand True."

10. As participants in the Pro-Life Day of Silent Solidarity, Scott and friends planned to engage in written and symbolic communication as an act of solidarity with the silenced voices of preborn abortion victims. Scott's friends engaged in substantially similar activities at the school in 2004 and 2005 as well, including wearing expressive clothing and engaging in literature distribution, and no disruption ensued. Since 2005 Scott had come to believe that abortion is wrong, so October 2006 was to be his first time participating in the expressive activity with his friends.

11. One of Scott's modes of communication on October 24, 2006, was to be the wearing of a t-shirt on the front of which he had affixed an 8 ½ x 11 inch paper sign which read "Abortion is Murder." Scott also wore a red jacket and an armband comprised of a red bandana, both of which symbolized the violence that occurs in abortion.

12. Another mode of communication by Scott on October 24, 2006, was to be the free distribution at school during non-instructional time of small fliers which contain text advocating against abortion and describing prenatal development. A true and accurate copy of the front and back side of this flier is attached as **Exhibit A**.

13. An additional mode of communication by Scott on October 24, 2006, was that he wore a piece of duct tape over his mouth, in order to symbolize the silencing of children and women that results from abortion. Scott intended to wear this tape over his mouth, and to remain silent, during non-instructional time.

14. Additionally, Scott intended to wear this tape during instructional time, because in recent years Defendants had permitted similar expressive activities by students and student groups during instructional time.

15. Up until the third period of class, Scott along with his friends wore t-shirts

communicating a pro-life message, wore the symbolic armband and jacket, wore symbolic tape over their mouths, and showed numerous leaflets to teachers and fellow students.

16. At the beginning of Scott's third period of class, however, Principal Denny summoned Scott into her office and announced that he had remove the pro-life message from his shirt, remove the symbolic red armband and jacket, and cease wearing the symbolic tape over his mouth.

17. Principal Denny explained to Scott that he could not communicate his message in the school it was not appropriate in "a school environment," that Principal Denny had "to keep the school a safe environment," and that others might get offended by Scott's message. Principal Denny further also alleged that Scott's bandana symbolized being in a gang, and that his message was a distraction to the learning process. Principal Denny told Scott that if he wanted to engage in any of these forms of expression, he had to do it elsewhere, such as "in a mall or another public place."

18. Scott neither proposed to wear the bandana-armband on his head, nor did he wear it as a gang symbol, nor had he or his friends been mistaken for engaging in gang activity, nor was such a mistaken belief by others reasonably likely.

19. Principal Denny allowed Scott to remain silent for the rest of the day except when he was called on in class, yet she forbade him from wearing the tape over his mouth that symbolized his silence.

20. Principal Denny imposed all of these regulations on Scott's friends in separate meetings with them.

21. Scott complied with Principal Denny's censorship directives to avoid being publicly called out of class and disciplined.

22. The next day, on October 25, 2006, Scott asked for a meeting with Principal Denny to ask her why she prohibited him from wearing a pro-life t-shirt and engaging in the other expressive activities. Principal Denny said that the “separation of church and state” required her to prohibit Scott’s expression at school, and that she could not permit Scott’s message because if she did she would be showing favoritism to his Christian viewpoint. Principal Denny additionally said that Scott’s message was not permitted on school property, and that it was her job to make sure that no one else felt uncomfortable by his message. Scott pointed out to her the fact that the student handbook did not prohibit his message, but Principal Denny would not change her mind.

23. In January of 2007, Scott was looking at a display of artwork created by students in class at school and hanging on a school wall. Among the pictures on display, Scott observed one depicting a man holding a book, and under the picture was the caption “Faith, not wanting to know the truth.”

24. Scott and his mother therefore scheduled a meeting with Principal Denny on January 11, 2007, in order to challenge the school’s hypocrisy in censoring Scott’s message as too religious, while allowing students to engage in anti-religious speech. Scott and his mother also explained the meaning of Scott’s message that Principal Denny had previously, and told Principal Denny that censoring Scott’s pro-life t-shirt and other expressive activities violated his Constitutional rights and could be the basis for a lawsuit unless the school changed its policy. Scott and his mother asked Principal Denny to apologize to each of the censored students, and to allow the students to engage in similar expression on another day.

25. Even after hearing these reasons, Principal Denny refused to reverse her

ensorship edicts, and instead abruptly cut off her conversation with Scott and his mother and refused to talk to them further about anything.

26. No material or substantial interference with the requirements of appropriate discipline in the operation of the school, nor interference with the rights of others had occurred as a result of the various forms of Scott's or his friends' speech described herein, nor did Defendants have a reasonable basis to identify their speech as presenting a risk of disruption, or otherwise properly subject to prohibition.

V.

SCHOOL REGULATIONS

27. The written code governing the conduct of students at South Jefferson Clarke Senior High School is the "Student Handbook," attached as **Exhibit B**.

28. The Handbook states that "If a student's attire is determined to be distracting . . . then the student will need to change it." *Id.* at 37.

29. The Handbook also states that "Articles of clothing that are not appropriate will not be allowed in school; this includes any reference to alcohol, tobacco, drugs, weapons and violence or comments that are sexually overt or implied. Any students who violate this school law will be required to change these clothes. Continued violation of this school law will result in further consequences." *Id.* at 38.

30. The Handbook prohibits the wearing of "bandanas" only where they are "head coverings." *Id.* at 45.

31. The Handbook prohibits "Littering," defined as "The general distribution or dissemination of printed, written, recorded or other materials without the prior approval of the building principal. The granting of approval or refusal to grant the same shall be

determined pursuant to administrative guidelines for the distribution and dissemination of materials on District Property.” *Id.* at 44.

32. Defendants have never made available to students or their parents any written standard that sets forth constitutional standards governing the prior approval of leaflets distributed by students during non-instructional times of the school day.

33. The censorship directive announced and applied by Principal Denny as herein described, to the degree that it is unwritten or different than the Student Handbook, stands as the policy of the South Jefferson Central School District.

34. Defendants have allowed other similarly-situated students to wear clothing during the school day that communicates messages through words and other symbols, including messages involving music bands and irreverent religious imagery.

35. Defendants have permitted similarly situated students to participate in an activity organized by a student group named “SADD” at South Jefferson Clarke Senior High School. During the school day, participating students engage in silent expressive activity to bring graphic attention to the fate of those teenagers who have been killed by drunk driving. Defendants facilitate the day by providing a school employee who dresses up as the “grim reaper,” and who passes in and out of classes in session, selecting and removing students from class. The withdrawn students then have a symbol of death painted on their faces, after which they are put back into circulation but must remain silent for the rest of the day, including during class time. Defendants further facilitate the project by announcing at the end of the day how many students were “killed” throughout the day.

VI.

CONTINUING IMPACT OF DEFENDANTS’ POLICY

36. Because of Defendants' Policy and practice censoring his speech, Scott has self-censored and refrained from engaging in any of the above actions of pro-life free expression at South Jefferson Clarke Senior High School since October 24, 2006.

37. Scott desires to continue to speak in the manner related above, and communicate substantially the same message at South Jefferson Clarke Senior High School as has been related above. Specifically, Scott desires to express a message in favor of pre-born life on the anniversary of the *Roe v. Wade* abortion decision, January 22, 2007, by wearing a t-shirt with the message described above or one substantially similar, by wearing the armband described above or one substantially similar, and by handing out the leaflet described above or one substantially similar. However, because of Principal Denny's censorship and Defendants' policies, Scott fears the imposition of discipline by Principal Denny or other agents of Defendants if he were to engage in such speech, so he intends to self-censor to avoid such penalty, absent remedial intervention by this Court.

VII.

STATEMENTS OF LAW

38. Each and all of the acts herein alleged of the Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color of state law, including the design and implementation of the prohibitions announced and enforced by Principal Denny and the South Jefferson Central School District.

39. Unless and until the enforcement of Defendants' policies identified herein is enjoined, Scott will suffer, and continue to suffer, irreparable harm to his constitutional rights.

VIII.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION:
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
CONTENT AND VIEWPOINT DISCRIMINATION AGAINST SPEECH
(42 U.S.C. § 1983)**

40. Plaintiff hereby incorporates by reference all foregoing allegations as if set forth fully herein.

41. Defendants' discriminatory treatment of Scott's speech constitutes a content- and viewpoint-based censorship unjustified by a compelling government interest. By discriminating against Scott's speech because of the content and viewpoint of his speech, Defendants have violated and continue to violate his rights to the freedom of speech under the First Amendment.

**SECOND CAUSE OF ACTION:
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
RESTRICTIONS ON NON-DISRUPTIVE SPEECH
(42 U.S.C. § 1983)**

42. Plaintiff hereby incorporates by reference all foregoing allegations as if set forth fully herein.

43. By Defendants' actions and policies restricting Scott's various forms of speech, even though the speech presented no material or substantial interference with the requirements of appropriate discipline in the school or interference with the rights of others, Defendants have violated and continue to violate his rights to the freedom of speech under the First Amendment.

**THIRD CAUSE OF ACTION:
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
UNCONSTITUTIONAL PRIOR RESTRAINT ON SPEECH
(42 U.S.C. § 1983)**

44. Plaintiff hereby incorporates by reference all foregoing allegations as if set forth fully herein.

45. Defendants' regulations which require the Principal's permission to be obtained prior to the distribution of literature by students vest Defendants with unfettered discretion to decide whether to permit student speech, and do not provide in that process appropriate procedural protections. This program constitutes a prior restraint on Plaintiffs' speech in violation of the First Amendment to the United States Constitution.

**FOURTH CAUSE OF ACTION:
VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
FREE EXERCISE OF RELIGION
(42 U.S.C. § 1983)**

46. Plaintiff hereby incorporates by reference all foregoing allegations as if set forth fully herein.

47. Defendants' Policy and Principal Denny's censoring imposition on Scott discriminated against and regulated his speech because of its religious content and nature, and such action was not narrowly tailored to advance a compelling state interest. Defendants' actions substantially burdened Scott's religious exercise.

**FIFTH CAUSE OF ACTION:
VIOLATION OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION
EQUAL PROTECTION
(42 U.S.C. § 1983)**

48. Plaintiff hereby incorporates by reference all foregoing allegations as if set forth fully herein.

49. Defendants have allowed other similarly-situated students to wear expressive clothing and symbols during the school day and engage in silent expression, by which the students communicated messages, including messages on controversial issues.

50. Defendants censored Scott's speech because of its content and viewpoint, selectively targeting his speech for prohibition, and Defendants possess no compelling governmental interest to justify this disparate treatment of Scott's speech, thereby violating the Equal Protection Clause of the Fourteenth Amendment.

**SIXTH CAUSE OF ACTION:
VIOLATION OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION
DUE PROCESS
(42 U.S.C. § 1983)**

51. Plaintiff hereby incorporates by reference all foregoing allegations as if set forth fully herein.

52. Defendants have enforced their policies against Scott in an *ad hoc* and arbitrary manner, detached from a fixed and identifiable policy standard.

53. Defendants' policies as written, announced, and applied to Scott, including the policies giving Defendants unfettered discretion to reject materials for distribution, are vague, such that the policy fails to provide persons of ordinary intelligence a reasonable

opportunity to understand what conduct it prohibits, and it authorizes and encourages arbitrary and discriminatory enforcement by Defendants.

54. This vagueness was exploited to infringe on Scott's right to due process, and because of the impact on his speech, also on his right to the freedom of speech.

INJURY

55. As a direct result of Defendants' violation of Scott's First and Fourteenth Amendment rights, as alleged herein, he has suffered humiliation as well as injury to his constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment against Defendants and that this Court:

- A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declarations shall have the force and effect of final judgment and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court's Orders;
- B. Pursuant to 28 U.S.C. §2201, declare that Defendants' past enforcement against Scott of their speech prohibition policy was unconstitutional and violated his rights guaranteed under the First and Fourteenth Amendments to the United States Constitution;
- C. Pursuant to 28 U.S.C. §2201, declare that Defendants' policy, as alleged above, violates on its face and as applied to Scott the First and Fourteenth Amendments to the United States Constitution;

- D. Pursuant to 28 U.S.C. §2202, Fed. R. Civ. P. 65, and 42 U.S.C. §1983, preliminarily and permanently enjoin Defendants from enforcing against Scott the unconstitutional speech prohibition policy which infringes his rights to the freedom of speech, equal protection of the laws, and due process of law;
- E. Award damages to Scott to vindicate his constitutional rights which were violated by Defendants;
- F. Pursuant to 42 U.S.C. § 1988 and other applicable law, award Scott his costs and expenses of this action, including reasonable attorneys' fees;
- G. Grant such other and further relief as the Court deems equitable, just, and proper.

JURY DEMAND

Plaintiff hereby requests a trial by jury for all issues so triable in conformity with Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: January 18, 2007, Washington, DC

By Attorneys for Plaintiffs:

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VERIFICATION

On this 17th day of January, 2007, Donald Scott Fish, pursuant to 28 U.S.C. §1746, declares that he has read the foregoing verified complaint and the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, he believes them to be true. With respect to matters of law, he has relied upon the advice of counsel.

Donald Scott Fish