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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

HEIDI ZAMECNIK, minor, by and through)
her parents, CARL and LINDA ZAMECNIK,)
and ALEXANDER NUXOLL, minor, by and)
through his parents, MICHAEL and PENNY)
NUXOLL)

Civil Action No. **07 C 1586**

Plaintiffs,

JUDGE HART

v.

INDIAN PRAIRIE SCHOOL DISTRICT #204)
BOARD OF EDUCATION, HOWARD)
CROUSE, in his official capacity as)
Superintendent of Indian Prairie School District)
#204, MICHAEL POPP, in his official capacity)
as Principal of Neuqua Valley High School,)
BRYAN WELLS, individually and in his official)
capacity as Dean of Students for Neuqua Valley)
High School,)

MAGISTRATE JUDGE VALDEZ

VERIFIED COMPLAINT

Defendants.

Comes now plaintiff Heidi Zamecnik, by and through her parents, Carl and Linda Zamecnik, and plaintiff Alexander Nuxoll, by and through his parents, Michael and Penny Nuxoll, and for their complaint against defendants, aver the following:

INTRODUCTION

1. This is a civil rights action challenging defendants' policies and practice that act to discriminate against certain religious viewpoints about homosexual behavior. Specifically, while defendants support the "Day of Silence" and freely permit students at Neuqua Valley High School to be silent and wear T-shirts and other paraphernalia conveying messages promoting homosexual behavior, they systematically eliminate any opposing viewpoint, including messages desired to be communicated by plaintiffs Heidi Zamecnik and Alexander Nuxoll.

2. This action is brought by minor plaintiffs Heidi Zamecnik and Alexander Nuxoll, seeking injunctive relief, declaratory relief, and damages, pursuant to 42 U.S.C. §§ 1983 and 1988, against defendants Indian Prairie School District #204 Board of Education, Howard Crouse, in his official capacity as Superintendent of Indian Prairie School District #204, Michael Popp, in his official capacity as Principal of Neuqua Valley High School, and Bryan Wells, individually and in his official capacity as Dean of Students for Neuqua Valley High School.

3. This action is premised on the United States Constitution pertaining to the denial of plaintiffs' fundamental guarantees, namely, their right to free speech, right to freely exercise their religion, due process, and to the equal protection of the law, by the defendants named herein.

4. Defendants' actions have deprived and will continue to deprive plaintiffs of their paramount rights and guarantees provided under the United States Constitution.

5. Each and every act of defendants alleged herein was committed by defendants, each and every one of them, under the color of state law and authority.

JURISDICTION AND VENUE

6. This Court has jurisdiction over plaintiffs' federal claims pursuant to 28 U.S.C. §§1331 and 1343. This Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§2201 and 2202.

7. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 1391(b), because the actions giving rise to this case occurred within the Northern District of Illinois, and defendants reside in this district.

PARTIES

8. Plaintiff Heidi Zamecnik ("Heidi"), a minor, is a student at Neuqua Valley High School and a resident of Naperville, Illinois.

9. Carl Zamecnik (“Mr. Zamecnik”) and Linda Zamecnik (“Mrs. Zamecnik”) are Heidi’s parents and likewise reside in Naperville, Illinois. They live in the same household as Heidi.

10. Plaintiff Alexander Nuxoll (“Alex”), a minor, is a student at Neuqua Valley High School and a resident of Bolingbrook, Illinois.

11. Michael Nuxoll (“Mr. Nuxoll”) and Penny Nuxoll (“Mrs. Nuxoll”) are Alex’s parents and likewise reside in Bolingbrook, Illinois. They live in the same household as Alex.

12. Defendant Indian Prairie Unified School District #204 Board of Education (“Board”) is a public entity established, organized, and authorized under and pursuant to the laws of Illinois with the authority to sue and be sued in its own name. They act as governing body for Indian Prairie Unified School District #204 and set policy for the school system.

13. Defendant Howard Crouse (“Superintendent Crouse”) is and was at all times pertinent the Superintendent of Indian Prairie School District #204. In his official capacity, Superintendent Crouse is responsible for carrying out policies of the Board. This Defendant is sued in his official capacity.

14. Defendant Michael Popp (“Principal Popp”) is and was at all times pertinent the Principal of Neuqua Valley High School (“NVHS”). In his official capacity, among other duties, he oversees and implements Board policies, as they apply to his school. This Defendant is sued in his official capacity.

15. Defendant Bryan Wells (“Dean Wells”), is and was at all times pertinent a Dean of Students at NVHS. This Defendant is sued both individually and in his official capacity.

STATEMENT OF FACTS

16. Heidi is a seventeen-year old student currently enrolled at NVHS in Indian Prairie

School District #204. She is a senior in classification.

17. Alex is a fourteen-year old student currently enrolled at NVHS in Indian Prairie School District #204. He is a freshman in classification.

18. Heidi and her parents, and Alex and his parents, are all Christians with sincerely-held religious beliefs about biblical teachings on the issue of homosexual behavior.

19. As a firm religious conviction, plaintiffs believe that homosexual behavior is immoral, damaging to the practitioners and to human society in general, and is contrary to the teachings of the bible, which they believe to be the inspired word of God.

20. Plaintiffs' sincerely-held religious beliefs compel them to communicate, out of a sense of compassionate duty, the biblical condemnation of homosexual behavior to others in their school and their community. They wish to share their conviction that true happiness cannot be found through homosexual behavior.

21. The Gay/Straight Alliance ("GSA") is an officially recognized student club at NVHS. The GSA and its members adhere to the belief that homosexual conduct should be endorsed by society. GSA promotes its agenda via display cases, video advertisements in the classrooms and lunchroom, and special activities during the school year. One such special activity is an event known as the "Day of Silence."

22. The so-called "Day of Silence" is a national event sponsored by a national organization, the Gay, Lesbian, and Straight Education Network ("GLSEN"). "Day of Silence" event encourages students to show visible support for homosexual lifestyle by refusing to speak during the school day, while conveying written messages in the form of T-shirts, buttons, and stickers, all of which promote homosexual behavior.

23. The GSA club at NVHS, and its supporters, participate in the "Day of Silence" on

an annual basis in April of each year.

24. The administration and faculty at NVHS promote and help facilitate the “Day of Silence.” No participating student is required to speak during school hours, and students are allowed to bear messages of their choosing concerning their support of homosexual conduct. School employees are likewise permitted to participate in “Day of Silence,” and many teachers at NVHS take advantage of this opportunity, by wearing “Day of Silence” T-shirts and/or other paraphernalia supporting this event.

25. Heidi, as a freshman, and then again as a sophomore, observed the “Day of Silence” activities taking place at NVHS. Given her religious convictions, Heidi was offended by the explicit promotion of homosexual behavior, but understood that students have a right to share their viewpoints on this and other issues. She was taken aback, however, by the school’s staunch support of a position on homosexual behavior that is so antithetical to her religious beliefs.

26. During Heidi’s freshman and sophomore years, as a way of response to the “Day of Silence,” and as a means of sharing her religious viewpoint, Heidi endeavored to remain silent on the day after “Day of Silence,” constituting her own day of silence in support of her viewpoint of homosexual conduct.

27. During her junior year, on April 19, 2006, Heidi encountered the “Day of Silence” event again at her school. Several hundred students participated in some fashion in the “Day of Silence” on this day, as did many teachers.

28. Like the previous “Day of Silence” events at NVHS, Heidi observed many students refusing to speak during the school day, even when called on by teachers, as way of demonstrating support for individuals engaged in overt homosexual lifestyles and behavior. She further observed that the administration and teachers at NVHS permitted students to remain

silent, without any reprimand or any threat of reprimand.

29. Heidi witnessed numerous students, as well as teachers, wearing various paraphernalia -- T-shirts, stickers, buttons -- advocating homosexual behavior and the “Day of Silence.”

30. One common T-shirt had the letters “NVHS” intertwined with the "S" in "GSA" to make:

“ G ”
NVHS
A

31. The back of the shirt read:

"BE WHO YOU ARE."

32. Another T-shirt worn by many that day contained the following provocative message:

“DAY OF SILENCE NIGHT OF NOISE.”

33. Heidi noticed that many students were intimidated by the “Day of Silence” event and NVHS’s support of it, and were coerced to support this particular view about homosexual behavior.

34. For this “Day of Silence” event, during her junior year at school, Heidi decided to convey her viewpoint about homosexual behavior in a more demonstrative way. Like the other two years, she decided that she would be silent on the day after the “Day of Silence.” She also determined to wear a T-shirt communicating her particular view of homosexual behavior.

35. Heidi made a T-shirt reflecting her position on the issue of homosexual conduct, and she wore it on April 20, 2006, the day after the “Day of Silence.”

36. The front of Heidi’s T-shirt read:

“MY DAY OF SILENCE, STRAIGHT ALLIANCE.”

37. The back of Heidi’s T-shirt read:

“BE HAPPY, NOT GAY”

38. During the course of the school day, some students expressed disagreement with Heidi’s message, but there were no altercations. There was no threat of violence and no disruption.

39. Nevertheless, the Dean of Students for class of 2010, Mick Ruettiger (“Dean Ruettiger”), approached Heidi in the lunchroom during her lunch hour. Dean Ruettiger asked Heidi to get up and follow him, and did so in a non-discrete manner. So much so, other students in the lunchroom noticed what was happening and began to laugh and snicker at Heidi.

40. After pulling Heidi aside, Dean Ruettiger demanded that Heidi supply her name, which she did promptly. After which, Dean Ruettiger informed Heidi that he called her over because of the message on her T-shirt. Heidi tried to respond by giving the Dean a written note explaining her silence. Dean Ruettiger instructed Heidi that she could no longer remain silent, and escorted her to the office of Dean Wells, who serves as the dean of Heidi’s class.

41. Dean Wells told Heidi that her T-shirt “offended” some students and faculty. As a result, Heidi would be required to remove the T-shirt from her body or herself from the school.

42. Heidi refused to remove the T-shirt because she had no other clothing. Heidi also advised Dean Wells that she thought it was unfair to be forced to take off her T-shirt since other students were allowed to wear similar T-shirts just the day prior in support of the “Day of Silence.”

43. Dean Wells then called Heidi’s mother, Mrs. Zamecnik, so he could discuss the situation with her. Dean Wells warned Mrs. Zamecnik that Heidi must remove her T-shirt or be forced to leave school.

44. Mrs. Zamecnik refused to permit the removal of Heidi's T-shirt and advised Dean Wells that she would come and pick Heidi up from school.

45. Dean Wells mentioned to Mrs. Zamecnik several times that Heidi could remain at school if the wording on her T-shirt was different. Dean Wells offered that the words "BE HAPPY, BE STRAIGHT" would be ok.

46. After some discussion, Mrs. Zamecnik gave Dean Wells permission to alter the T-shirt to say "BE HAPPY, BE STRAIGHT." Dean Wells gave the phone to Heidi, and Mrs. Zamecnik informed Heidi that Dean Wells was going to mark on her shirt.

47. However, Dean Wells did not follow this arrangement with Mrs. Zamecnik. Rather than mark out the words "BE HAPPY, NOT GAY" and replace them with "BE HAPPY, BE STRAIGHT," Dean Wells instructed a female counselor to mark out the words "NOT GAY."

48. The female guidance counselor slid a clipboard under Heidi's shirt and marked out the words "NOT GAY" with a black marker. As a result, Heidi's T-shirt read "BE HAPPY." Upon viewing the shirt, and the change to it, Dean Wells sent Heidi on to class.

49. At the end of the day, Mrs. Zamecnik came to school to pick Heidi up. Upon seeing the wording on Heidi's T-shirt, Mrs. Zamecnik realized that Dean Wells had violated their agreement.

50. Heidi explained what happened and expressed her frustration and disappointment to her mother. Following this discussion, Mrs. Zamecnik went immediately to Dean Well's office to protest the matter.

51. When confronted by Mrs. Zamecnik, Dean Wells instructed her to take the issue up with the Board.

52. Thereafter, Mrs. Zamecnik went to the office of Principal Popp to discuss the

issue. The Principal's secretary informed Mrs. Zamecnik that Principal Popp was unavailable but he would call her later.

53. Principal Popp never bothered to call Mrs. Zamecnik. On April 21, 2006, Mrs. Zamecnik went to the Principal Popp's office again, and scheduled a meeting to discuss the situation regarding Heidi.

54. Pursuant to the scheduled meeting, on April 24, 2006, Mrs. Zamecnik went to the Principal Popp's office. However, Principal Popp claimed that he had not gathered any information about the situation involving Heidi and was therefore unprepared to discuss it. Mrs. Zamecnik advised Principal Popp that she wanted to have an informed discussion about the incident involving Heidi and asked Principal Popp to gather all the relevant facts so that they could discuss the situation on a later date.

55. Principal Popp never called Mrs. Zamecnik to reschedule another meeting. During the month of May, Mrs. Zamecnik called and emailed Principal Popp repeatedly and reiterated her request to have a meeting, but Mrs. Zamecnik never received the courtesy of a reply.

56. On June 15, 2006, Mrs. Zamecnik went to the Principal Popp's office and again scheduled a meeting to discuss the situation about Heidi and her T-shirt.

57. On the scheduled day, on June 21, 2006, Mrs. Zamecnik met Principal Popp at his office to discuss the incident regarding Heidi. Principal Popp informed Mrs. Zamecnik that he had investigated the incident, consulted with the Superintendent, and concluded that Dean Wells had done nothing wrong. Principal Popp elaborated that students are not allowed to remain silent if called upon by a teacher and that Heidi's T-shirt is inappropriate by school standards because the message "upset" other students. Principal Popp also informed Mrs. Zamecnik that Heidi would be removed from school if Heidi attempted any such behavior in the future. Principal

Popp did not offer any explanation, however, as to why other students are permitted to remain silent on the “Day of Silence” or why other students are able to wear T-shirts bearing messages about the same subject matter, but with a differing viewpoint than Heidi.

58. On September 20, 2006, Mrs. Zamecnik sent an email to Superintendent Crouse. This email detailed Heidi’s dilemma and the objectionable conduct of Dean Wells. Mrs. Zamecnik asked Superintendent Crouse whether the school district concurred with Principal Popp’s assessment of the matter.

59. Later on, in September, Assistant Superintendent Kathryn Birkett (“Ms. Birkett”) called Mrs. Zamecnik in response to her email to Superintendent Crouse. Ms. Birkett informed Mrs. Zamecnik that the school officials could and would censor T-shirts with offensive messages and that the officials at NVHS had done nothing wrong in their actions toward Heidi.

60. Indian Prairie School District publishes a policy manual that includes a section entitled “Student Appearance” (IPSD Policy). In § 710.01, this Policy states in relevant part:

A student's dress and grooming must not disrupt the educational process, interfere with the maintenance of a positive teaching/learning climate, or compromise reasonable standards of health, safety, modesty and decency as determined by the building principal, the Superintendent, and/or the Board of Education. Student dress or attire will conform to the following minimum standards:

....

6. No garments or jewelry with messages, graphics or symbols depicting weapons or which are derogatory, inflammatory, sexual, or discriminatory, will be worn at school.

61. This same language appears in the NVHS Student Handbook & Planner 2006-2007 (NVHS Handbook) in the section entitled “Dress Guidelines.”

62. The NVHS Handbook also contains a section entitled “Racial Incidents (Use of Slurs/Derogatory Comments).” This section states as follows:

All students are valued members of our school community and should feel that the learning environment is safe and accepting. NVHS does not tolerate racial, ethnic or religious slurs, derogatory comments, innuendoes, or any other related action. Any student who participates in such activity will face disciplinary action.

This section on “Racial Incidents” in the NVHS Handbook cross-references §§ 710.01, 710.06, and 715.01 in the IPSD Policy. However, these sections in the IPSD Policy make no reference to “derogatory comments” or “innuendoes.”

63. If a student violates any of these policies, the student will be subject to discipline including but not limited to suspension and/or expulsion from school. This discipline policy is outlined in §710.01 in the IPSD Policy and in the section entitled “Acts of Disobedience and Misconduct” in the NVHS Handbook.

64. Defendants rely on §710.01 of the IPSD Policy and the sections entitled “Dress Guidelines” and “Racial Incidents” in the NVHS Handbook to justify their censorship of viewpoints opposing homosexual behavior and their intent to continue the application of said policy against any student who wishes to convey a message critical of homosexual behavior.

65. These policies, on their face, and as applied in this case, are overly broad, impermissibly vague, and subject to abuse. These policies effectively grant unbridled discretion to school officials as to its application, allowing for viewpoint discrimination.

66. Neither Heidi’s T-shirt message nor any of her behavior while attending school on April 20, 2006 in any way created a danger of imminent commission of unlawful acts on school premises or constituted the violation of lawful school regulations, or threatened substantial disruption of the orderly operation of the school.

67. Heidi suffered unlawful discrimination, humiliation, and punishment at the hands of NVHS personnel simply because of disapproval of the viewpoint Heidi wished to express.

68. Defendants continue to interpret their policies to prohibit the religiously-

motivated speech desired by Heidi, Alex, and any other similarly-situated student regarding homosexual behavior.

69. Alex was not a student at NVHS when Heidi's message was expunged. He has since heard about the incident, however. Alex knows Heidi and her family and shares the same religious beliefs about homosexual behavior.

70. Heidi wants to wear a T-shirt expressing her desired message at NVHS for this her senior year. Similarly, for this 2006/2007 school year, and for his remaining years at NVHS, Alex desires to express a message at school through speech and clothing regarding his religious viewpoint of homosexual behavior. Specifically, they wish and plan to express their message on the day following this year's "Day of Silence" event, which is scheduled for April 18, 2007. They want to express their disagreement with the "Day of Silence" and their viewpoints about homosexual behavior.

71. Defendants' policies, and their enforcement of which, serve to quell Heidi's and Alex's anticipated messages. Under their policies and practices, Heidi and Alex would be forced to cover up or remove any clothing expressing this message. If they refused to remove or cover up their expression, the school will alter their message and/or punish them, just as they did with Heidi on April 20, 2006.

72. The acts of defendants are chilling and deterring plaintiffs' exercise of religious speech, and plaintiffs have no adequate remedy at law to redress the violations of their rights.

73. Unless and until the enforcement of defendants' current policies identified herein and practices are enjoined, plaintiffs will suffer, and continue to suffer, irreparable harm.

FIRST CAUSE OF ACTION

Violation of Freedom of Speech

74. Plaintiffs' religious speech is protected speech under the First Amendment.

75. The policies, including, but not necessarily limited to, §710.01 of the IPSD Policy and the sections entitled “Dress Guidelines” and “Racial Incidents” in NVHS Handbook and defendants’ enforcement thereof, that serve to exalt one view of homosexual behavior and ban the opposing view:

- a. are vague and overbroad;
- b. single out religious speech for discriminatory treatment;
- c. discriminate against speech because of its content;
- d. discriminate against speech on the basis of the speaker’s viewpoint;
- e. restrain constitutionally protected speech in advance of its expression, with virtually no guidelines or standards to guide the discretion of school officials charged with enforcing the policy;
- f. chill the free speech and free exercise of religion of plaintiffs and other students;
- g. allow the exercise of unbridled discretion; and
- h. improperly prohibit speech merely because it may allegedly be “offensive.”

76. Defendants have no compelling or legitimate reason that would justify their censorship of T-shirts and religious viewpoints sought to be expressed by plaintiffs.

77. Defendants’ policies, and the enforcement thereof, thus violate the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment.

WHEREFORE, plaintiffs respectfully pray the Court grant the equitable and legal relief set forth in the prayer for relief.

SECOND CAUSE OF ACTION

Violation of the Free Exercise Clause

78. Plaintiffs hold sincerely-held religious beliefs that are central to their Christian faith and compel them to express their opposition to homosexual behavior.

79. Plaintiffs' sincerely-held religious beliefs are based upon biblical precepts and a Christian worldview.

80. A facially-neutral policy can violate the Free Exercise Clause when it is implicated in connection with another constitutional right such as the freedom of speech.

81. The policies and defendants' enforcement thereof substantially burden religious expression that is critical of homosexual behavior.

82. Defendants have no compelling or legitimate reason that would justify their censorship of religious expression that is critical of homosexual behavior.

83. The policies and defendants' enforcement thereof therefore violate the Free Exercise Clause of the First Amendment to the United States Constitution, made applicable to the states under the Fourteenth Amendment.

WHEREFORE, plaintiffs respectfully pray the Court grant the equitable and legal relief set forth in the prayer for relief.

THIRD CAUSE OF ACTION

Violation of the Equal Protection Clause

84. Under the policies, defendants have allowed other students to wear T-shirts supporting one view of homosexual behavior while preventing T-shirts with opposite view. In 2006, the school intentionally altered the message on Heidi's T-shirt so as to comply with a school-sanctioned view of homosexual behavior.

85. Under the policies, defendants have allowed certain students and school officials to express their secular and religious viewpoints on the issue of homosexual behavior but have censored plaintiffs and other like-minded students from expressing their religious viewpoints on the issue of homosexual behavior.

86. Under the policies, defendants have allowed other students and school officials to express their allegedly “positive” viewpoints on the issue of homosexual behavior but have censored plaintiffs and other like-minded students from expressing their allegedly “negative” viewpoints on the issue of homosexual behavior.

87. Defendants’ enforcement of the policies intentionally treats plaintiffs differently than other similarly-situated students based on the viewpoint of their expression.

88. Defendants have no compelling or legitimate reason that would justify their disparate treatment of plaintiffs.

89. The policies, and defendants’ enforcement thereof, therefore violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, plaintiffs respectfully pray the Court grant the equitable and legal relief set forth in the prayer for relief.

FOURTH CAUSE OF ACTION

Violation of the Due Process Clause

90. The policies are vague and lack sufficient objective standards to curtail the discretion of school officials, and thus allow defendants to enforce the policies in an *ad hoc* and discriminatory manner.

91. Defendants have no compelling or legitimate reason that would justify their vague policies.

92. The policies, and defendants' enforcement thereof, therefore violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, plaintiffs respectfully pray the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs Heidi Zamecnik and Alex Nuxoll pray for judgment as follows:

A. That this Court issue Preliminary and Permanent Injunctions enjoining defendants, defendants' agents, employees, and all persons in active concert or participation with them from violating plaintiffs' constitutional rights by selectively banning their religious viewpoint about homosexual behavior at NVHS;

B. That this Court render a Declaratory Judgment declaring that defendants' policies, including, but not necessarily limited to, §710.01 of the IPSD Policy and the sections entitled "Dress Guidelines" and "Racial Incidents" in NVHS Handbook and defendants' practice of selectively banning certain religious expression about homosexual behavior violates the First and Fourteenth Amendments to the United States Constitution;

C. Adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy in order that such declaration shall have the force and effect of final judgment;

D. Retain jurisdiction of this matter for the purpose of enforcing this Court's order;

E. Grant an award of nominal damages to plaintiff Heidi Zamecnik in an amount this Court deems appropriate;

G. Grant to plaintiffs' reasonable costs and expenses of this action, including attorneys fees in accordance with 42 U.S.C. § 1988; and

H. Grant such other and further relief as this Court deems just and proper.

VERIFICATION OF COMPLAINT

We, Heidi Zamecnik, minor, Carl Zamecnik, and Linda Zamecnik citizens of the United States and residents of Naperville, Illinois hereby declare that we have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.



Heidi Zamecnik
HEIDI ZAMECNIK, minor

Carl Zamecnik
CARL ZAMECNIK

Linda Zamecnik
LINDA ZAMECNIK

VERIFICATION OF COMPLAINT

We, Alexander Nuxoll, minor, Michael Nuxoll, and Penny Nuxoll, citizens of the United States and residents of Bolingbrook, Illinois hereby declare that we have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.



Alexander Nuxoll
ALEXANDER NUXOLL

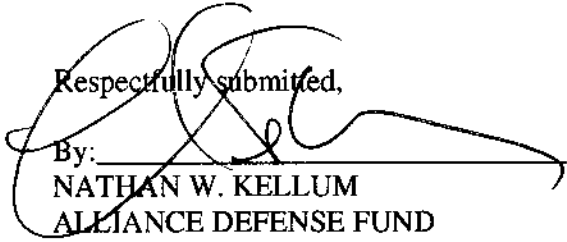
Michael Nuxoll
MICHAEL NUXOLL

Penny Nuxoll
PENNY NUXOLL

JONATHAN SCRUGGS
ALLIANCE DEFENSE FUND
TN Bar # 025679
(pending admission *pro hac vice*)
15333 N. Pima Road, Suite 165
Scottsdale, AZ 85260
(480) 444-0020 telephone
(480) 444-0028 – Fax

Attorney for Plaintiff Heidi Zamecnik
and Plaintiff Alexander Nuxoll

Respectfully submitted,


By: _____
NATHAN W. KELLUM
ALLIANCE DEFENSE FUND
TN BAR #13482; MS BAR # 8813
(pending admission *pro hac vice*)
P.O. Box 11159
Memphis, TN 38111
(901) 323-6672 telephone
(901) 323-6674 – Fax

BENJAMIN W. BULL (*of counsel*)
ALLIANCE DEFENSE FUND
AZ Bar # 009940
15333 N. Pima Road, Suite 165
Scottsdale, AZ 85260
(480) 444-0020 telephone
(480) 444-0028 – Fax

Attorneys for Plaintiff Heidi Zamecnik
and Plaintiff Alexander Nuxoll