

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN DOE AND JANE DOE, AS THE)	CASE NO.: 2:08 CV 575
NATURAL PARENTS AND NEXT)	
FRIENDS OF THEIR MINOR CHILD,)	JUDGE GREGORY L. FROST
JAMES DOE,)	
Plaintiffs,)	MAGISTRATE JUDGE NORAH MCCANN KING
vs.)	<u>SEPARATE ANSWER OF DEFENDANT</u>
MOUNT VERNON CITY SCHOOL)	<u>JOHN FRESHWATER TO PLAINTIFFS'</u>
DISTRICT BOARD OF EDUCATION, ET)	<u>FIRST AMENDED COMPLAINT</u>
AL.,)	
Defendants.)	<u>(Jury Demand Endorsed Hereon)</u>

Now comes Defendant, John Freshwater, by and through his Trial Attorney, Robert H. Stoffers of the law firm of Mazanec, Raskin, Ryder & Keller Co., L.P.A., and hereby respectfully answers Plaintiffs' First Amended Complaint as follows:

1. Answering paragraph 1 of Plaintiffs' First Amended Complaint, Defendant states, without making any admissions, that Plaintiff has filed a civil rights action seeking certain relief and damages. Further answering, Defendant denies any other allegations contained therein.

2. Answering paragraph 2 of Plaintiffs' First Amended Complaint, Defendant states that the Court has jurisdiction for claims arising under the First and Fourth Amendments to the United States Constitution and 42 U.S.C. Section 1983. Further answering, Defendant denies any other allegations contained therein.

3. Answering paragraph 3 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

4. Answering paragraph 4 of Plaintiffs' First Amended Complaint, Defendant states, without making any admissions, that paragraph 4 lists the Defendants who are contained in the caption of Plaintiffs' Complaint. Further answering, Defendant denies any other allegations contained therein.

5. Answering paragraph 5 of Plaintiffs' First Amended Complaint, Defendant admits that the Mount Vernon City School District is located in Knox County, Ohio. Further answering, Defendant admits that John Freshwater is of the age of majority and currently resides in Mount Vernon, Ohio. Further answering, Defendant states that Stephen Short and William White, based upon information and/or belief, are of the age of majority. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

6. Answering paragraphs 6 and 7 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

7. Answering paragraphs 8 and 9 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

8. Answering paragraph 10 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

9. Answering paragraph 11 of Plaintiffs' First Amended Complaint, Defendant states that he has been an eighth grade science teacher at the Mount Vernon City School District. Further answering, Defendant states that William White has been the principal at the school where Defendant was an eighth grade science teacher and that Stephen Short has been the

Superintendent of the Mount Vernon City School District. Further answering, Defendant denies any other allegations contained therein.

10. Answering paragraph 12 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

11. Answering paragraphs 13 and 14 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

12. Answering paragraphs 15 and 16 of Plaintiffs' First Amended Complaint, Defendant denies that he violated policy of the Mount Vernon City School District and Defendant denies that he violated the United States Constitution. Further answering, Defendant states, without making any admissions, that the Board of Education for the Mount Vernon City School District has taken action to terminate Defendant's teaching contract and that Defendant has challenged the District's action and has requested a hearing in accordance with Ohio law. Further answering, Defendant denies any other allegations contained therein.

13. Answering paragraphs 17, 18, 19, 20, 21, 22, 23, 24 and 25 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

14. Answering paragraph 26 of Plaintiffs' First Amended Complaint, Defendant denies that he taught religion in his classroom. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

15. Answering paragraph 27 of Plaintiffs' First Amended Complaint, Defendant denies that he violated Mount Vernon City School District policy and the United States Constitution. Further answering, Defendant states that he is without knowledge or information

sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

16. Answering paragraph 28 of Plaintiffs' First Amended Complaint, Defendant denies that he engaged in unconstitutional conduct and that he violated the School District's own policy. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

17. Answering paragraph 29 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

18. Answering paragraphs 30, 31 and 32 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

19. Answering paragraph 33 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

20. Answering paragraph 34 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

21. Answering paragraph 35 of Plaintiffs' First Amended Complaint, Defendant states, without making any admissions, that he received a letter dated January 22, 2008 from William D. White, Principal, and Brad Ritchey, Assistant Principal, regarding the use of an electrostatic machine in the science classroom. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

22. Answering paragraphs 36 and 37 of Plaintiffs' First Amended Complaint, Defendant states, without making any admissions, that the aforementioned January 22, 2008 letter from Messrs. White and Ritchey speaks for itself. Further answering, Defendant denies any other allegations contained therein.

23. Answering paragraph 38 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

24. Answering paragraph 39 of Plaintiffs' First Amended Complaint, Defendant states that he has adhered to the instructions given to him by other teachers or individuals and the advice of manufacturers that has been provided to him, regarding the proper use of science instruments. Further answering, Defendant denies any other allegations contained therein.

25. Answering paragraph 40 of Plaintiffs' First Amended Complaint, Defendant states that his teaching duties have included being an advisor/monitor/supervisor of the Fellowship of Christian Athletes for eighth grade students and that he has been involved with the Fellowship of Christian Athletes as part of his teaching duties and responsibilities for approximately 17 years. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

26. Answering paragraphs 41, 42, 43, 44 and 45 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

27. Answering paragraphs 46, 47 and 48 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

28. Answering paragraphs 49, 50 and 51 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

29. Answering paragraph 52 of Plaintiffs' First Amended Complaint, Defendant denies that he burned a cross into any student's arm. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

30. Answering paragraphs 53, 54 and 55 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

31. Answering paragraph 56 of Plaintiffs' First Amended Complaint, Defendant states that he taught eighth grade science through the end of the 2007-2008 school year. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

32. Answering paragraphs 57, 58 and 59 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

33. Answering paragraph 60 of Plaintiffs' First Amended Complaint, Defendant denies that he engaged in religious teachings in his capacity as an eighth grade science teacher. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

34. Answering paragraph 61 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

35. Answering paragraph 62 of Plaintiffs' First Amended Complaint, Defendant states that an administrator with the Mount Vernon City School District monitored his class for a certain period of time. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

36. Answering paragraphs 63 and 64 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

37. Answering paragraphs 65 and 66 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

38. Answering paragraphs 67 and 68 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

39. Answering paragraph 69 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

40. Answering paragraphs 70, 71 and 72 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

41. Answering paragraph 73 of Plaintiffs' First Amended Complaint, Defendant denies that he was deliberately indifferent to the rights of students. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

42. Answering paragraph 74 of Plaintiffs' First Amended Complaint, Defendant incorporates and reasserts his answers set forth above, as if fully rewritten herein.

43. Answering paragraphs 75, 76, 77 and 78 of Plaintiffs' First Amended Complaint, Defendant states that the statutes, United States Constitution and case law referenced therein speak for themselves. Further answering, Defendant denies any other allegations contained therein.

44. Answering paragraphs 79, 80 and 81 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

45. Answering paragraph 82 of Plaintiffs' First Amended Complaint, Defendant incorporates and reasserts his answers set forth above, as if fully rewritten herein.

46. Answering paragraph 83 of Plaintiffs' First Amended Complaint, Defendant denies that he engaged in unconstitutional actions. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

47. Answering paragraph 84 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

48. Answering paragraph 85 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

49. Answering paragraph 86 of Plaintiffs' First Amended Complaint, Defendant denies he engaged in any unlawful, unconstitutional or any other improper actions as a teacher. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

50. Answering paragraph 87 of Plaintiffs' First Amended Complaint, Defendant incorporates and reasserts his answers set forth above, as if fully rewritten herein.

51. Answering paragraph 88 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

52. Answering paragraphs 89, 90 and 91 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

53. Answering paragraph 92 of Plaintiffs' First Amended Complaint, Defendant incorporates and reasserts his answers set forth above, as if fully rewritten herein.

54. Answering paragraph 93 of Plaintiffs' First Amended Complaint, Defendant denies he engaged in any unlawful conduct. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

55. Answering paragraphs 94 and 95 of Plaintiffs' First Amended Complaint, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

56. Answering paragraph 96 of Plaintiffs' First Amended Complaint, Defendant incorporates and reasserts his answers set forth above, as if fully rewritten herein.

57. Answering paragraph 97 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

58. Answering paragraph 98 of Plaintiffs' First Amended Complaint, Defendant incorporates and reasserts his answers set forth above, as if fully rewritten herein.

59. Answering paragraphs 99 and 100 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

60. Answering paragraph 101 of Plaintiffs' First Amended Complaint, Defendant states, without making any admissions, that the Plaintiffs are seeking a preliminary and permanent injunction pursuant to Federal Rule of Civil Procedure 65. Further answering, Defendant states that he is without knowledge or information sufficient to form a belief as to the truth of any other allegations contained therein and, therefore, denies the same.

61. Answering paragraphs 102 and 103 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein.

62. Answering paragraph 104 of Plaintiffs' First Amended Complaint, Defendant denies that Plaintiffs are entitled to the relief requested therein. Further answering, Defendant controverts their prayers for relief, A, B, C, D and E, set forth under paragraph 144 of Plaintiffs' First Amended Complaint, and hereby requests judgment in favor of this answering Defendant.

Affirmative Defenses

1. Plaintiffs' First Amended Complaint fails to state a claim upon which relief can be granted against this answering Defendant.

2. Plaintiffs' First Amended Complaint fails to join a party or parties necessary for the just adjudication of the matters set forth therein.

3. Defendant is entitled to qualified immunity.

4. Defendant is entitled to immunity for state law claims based upon O.R.C. Chapter 2744, et seq.

5. Plaintiffs have failed to exhaust their administrative remedies.

6. Plaintiffs' claims for punitive damages are barred as a matter of law.

7. Plaintiffs' claims and damages are the direct and proximate result of the conduct of others, for which this answering Defendant is not liable to Plaintiffs.

8. Plaintiffs lack standing to assert any claims against this answering Defendant.

9. Plaintiffs have an adequate remedy at law in regard to their claims and, therefore, they are not entitled to injunctive and declaratory relief.

10. Some of Plaintiffs' claims may be barred based upon the applicable statute of limitations.

11. At all times Defendant acted in good faith.

12. All actions and statements of this answering Defendant were privileged, including, but not limited to, absolute and qualified conditional privileges.

13. Plaintiffs' damages are subject to the limitations set forth in O.R.C. §§ 2744.05, 2315.18, 2315.20 and 2315.21.

14. Plaintiffs' alleged damages should be apportioned for the tortious conduct of Plaintiffs and/or others, in accordance with O.R.C. § 2307.23.

15. This answering Defendant specifically reserves the right to assert additional affirmative defenses based upon information that becomes known after the filing of the within Answer.

WHEREFORE, having fully answered Plaintiffs' First Amended Complaint, Defendant John Freshwater respectfully prays that Plaintiffs' First Amended Complaint be dismissed at their costs and that this answering Defendant recover his costs, expenses, attorney fees and any other relief as determined by the Court.

Respectfully submitted,

MAZANEC, RASKIN, RYDER & KELLER CO., L.P.A.

s/Robert H. Stoffers

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Trial Attorney for Defendant John Freshwater

JURY DEMAND

A trial by jury composed of the maximum number of jurors permitted under the law is hereby demanded.

s/Robert H. Stoffers

ROBERT H. STOFFERS (0024419)

Trial Attorney for Defendant John Freshwater

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2008, a copy of the foregoing *Separate Answer of Defendant John Freshwater to Plaintiffs' First Amended Complaint* was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Robert H. Stoffers

ROBERT H. STOFFERS (0024419)

Trial Attorney for Defendant John Freshwater