

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

FILED

NOV 27 2006

U. S. DISTRICT COURT  
EASTERN DISTRICT OF MO  
ST. LOUIS

B. W. A., A Minor, )  
MARC ARCHAMBO, Individually, and )  
as Next Friend of B. W. A., )  
A Minor, and TAMRA ARCHAMBO, )  
Individually, and as Next Friend of )  
B. W. A., A Minor, )

Plaintiffs, )

vs. )

FARMINGTON R-7 SCHOOL DISTRICT, )

Serve: Registered Agent )  
1022 Ste. Genevieve Avenue )  
Farmington, Missouri 63640 )

and )

W.L. SANDERS, in )  
his official capacity as Superintendent of )  
Farmington R-7 School District, )

Serve: W.L. Sanders )  
1022 Ste. Genevieve Avenue )  
Farmington, Missouri 63640 )

and )

JUDITH DELANEY, in her official )  
capacity as Assistant )  
Superintendent of Farmington R-7 )  
School District, )

Serve: Judith Delaney )  
1022 Ste. Genevieve Avenue )  
Farmington, Missouri 63640 )

MARK KRAUSE, )

4 06CV01691 JCH

Cause No. \_\_\_\_\_

Serve: Mark Krause )  
469 Yellowstone Drive )  
Farmington, Missouri 63640 )  
Defendants. )  
\_\_\_\_\_)

**COMPLAINT  
VIOLATION OF CIVIL RIGHTS PURSUANT TO 42 U.S.C. §1983  
PRELIMINARY INJUNCTION, PERMANT INJUNCTION and DECLARATORY  
JUDGMENT**

**COMES NOW** B. W.A., a minor, by and through his natural father Marc Archambo and natural mother Tamra Archambo, his legal guardians, and by attorney Robert Herman, and for his Complaint for Preliminary Injunction, Permanent Injunction and Declaratory Judgment state to the Court as follows:

JURISDICTION AND VENUE

1. This Court has Federal Subject Matter Jurisdiction pursuant to 28 U.S.C. § 1331. Jurisdiction for Declaratory Judgment arises under 28 U.S.C. § 2201. This matter arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

2. Venue is proper in the Central Division of the Eastern District of Missouri, because Plaintiffs and all individual Defendants reside within the Central Division of the Eastern District of Missouri and the Defendant Farmington R-7 School District is organized and operates therein. All of the events complained of herein occurred within the Central Division of the Eastern District of Missouri.

3. B. W. A., a minor, is currently and at all times relevant herein a resident citizen of the County of Ste. Genevieve, State of Missouri, residing at 8419 Genevieve Church Road, Ste. Genevieve, Missouri 63670.

4. Marc Archambo is currently and at all times relevant herein a resident citizen of the County of Ste. Genevieve, State of Missouri, residing at 8419 Genevieve Church Road, Ste. Genevieve, Missouri 63670. Marc Archambo is the natural father of Plaintiff B. W. A.

5. Tamra Archambo is currently and at all times relevant herein a resident citizen of the County of Ste. Genevieve, State of Missouri, residing at 8419 Genevieve Church Road, Ste. Genevieve, Missouri 63670. Tamra Archambo is the natural mother of Plaintiff B. W. A.

6. At all times relevant herein Defendant Farmington R-7 School District (hereinafter "District") is an "eight director" school district, organized and operating under the laws of the State of Missouri and existing and operating within Ste. Genevieve County, State of Missouri.

7. At all times relevant herein, Defendant W.L. Sanders, (hereinafter "Sanders"), is and was an individual and a resident of Ste. Genevieve County, State of Missouri. He is sued only in his capacity as superintendent of the Farmington R-7 School District.

8. At all times relevant herein, Defendant Judith DeLaney, (hereinafter "DeLaney"), is and was an individual and a resident of Ste. Genevieve County, State of Missouri. She is sued only in her capacity as assistant superintendent of the Farmington R-7 School District.

9. At all times relevant herein, Defendant Mark Krause, (hereinafter “Krause”), is and was an individual and a resident of Ste. Genevieve County, State of Missouri. He is sued in both his individual capacity and in his capacity as a teacher/instructor of the Farmington R-7 School District.

FACTS COMMON TO ALL COUNTS

10. That on or about September 27, 2006, B. W. A. wore a baseball cap on public school property during normal school hours with an emblem depicting the Confederate States of America, with the words “C.S.A., Rebel Pride, 1861.”

11. That on or about September 27, 2006, B. W. A. was approached by coaching instructor Mark Krause, who took possession of the above-referenced baseball cap and informed Plaintiff Archanbo he was prohibited from wearing the baseball cap, or any clothing bearing the insignia or representation of the Confederate States, due to the alleged inherent message of racism that such insignia sends.

12. That on or about September 27, 2006, Plaintiff Marc Archanbo was informed by Defendant DeLaney that Plaintiff B. W. A. could not wear any clothing with the “rebel flag” or any representation of the Confederate States, due to the alleged inherent message of racism that such insignia sends.

13. That on or about September 28, 2006, Plaintiff B. W. A. wore a t-shirt and belt buckle on public school property during normal school hours with an emblem depicting the Confederate States of America, with the words “Dixie Classics”.

14. That on or about September 28, 2006, Plaintiff B. W. A. was suspended from school for wearing the emblem of the Confederate States of America.

15. The policy and practice of Defendant School District and Individual Defendants, permit students at the school to wear clothing containing insignia and emblems proclaiming a variety of viewpoints, both commercial and non-commercial.

16. That on or about September 28, 2006, as a direct result of Defendants' censorship of B. W. A.'s speech, Tamra Archambo removed him from the District.

17. That Plaintiff B. W. A. would attend the Defendant school but for the unconstitutional censorship of his speech.

## **CLAIMS FOR RELIEF**

### **COUNT I: DECLARATORY JUDGMENT**

18. The act of wearing clothing containing the insignia or emblem of the Confederate States of America is protected speech under the First Amendment to the United States Constitution.

19. The policy under which the Defendant School District and Individual Defendants attempt to justify their actions against Plaintiffs is unconstitutional because it is overbroad, subjective, applied on an *ad hoc* basis, and is viewpoint discriminatory.

20. Defendants have no justification for such a constitutionally overbroad policy.

21. Display of the Confederate flag or any emblem or insignia connected therewith, is not *per se* or patently offensive speech for purposes of the First Amendment.

22. Other than the simple display of the Confederate symbols on his clothing, Plaintiff did not wear the Confederate symbol in a manner that promoted disruptive behavior.

23. No disruptive behavior resulted from Plaintiff's display of the Confederate symbol in the school.

24. Missouri Statutes mandate that no "employee of or volunteer in or school board member of or school district administrator of a public school or charter school shall direct a student to remove an emblem, insignia, or garment, including a religious emblem, insignia, or garment, as long as such emblem, insignia, or garment is worn in a manner that does not promote disruptive behavior." V.A.M.S. 167.166.

**WHEREFORE**, Plaintiffs pray this Court for its order in Declaratory Judgment that Defendants are prohibited from ordering Plaintiff to remove any sign, insignia or emblem of the Confederate States of America from his clothing, or conditioning Plaintiff B. W. A.'s enrollment in the School District on attendance therein upon the removal of such sign, insignia or emblem of the Confederate States of America from his clothing; for attorneys' fees and costs of this action pursuant to 42 U.S.C. § 1988, and for such other and further orders as to this Court seem just and proper.

COUNT II: PRELIMINARY INJUNCTION

25. Defendants' unconstitutional censorship of Plaintiff's speech has caused irreparable and continuing harm that may be only remedied by immediately requiring Defendant District to withdraw its alleged policy banning the display of the Confederate States of America emblems or insignias on student clothing, to admit Plaintiff B. W. A. to the school district without conditioning attendance therein upon the removal of such sign, insignia or emblem of the Confederate States of America from his clothing; and to

expunge any record of discipline incurred by Plaintiff as a result of his refusal to comply with the School District's unconstitutional policy.

26. Plaintiffs have no adequate remedy at law for the unconstitutional actions of Defendants.

27. Plaintiffs are likely to prevail upon the merits of the underlying constitutional issues. See, V.A.M.S. 167.166, *Bragg v. Swanson*, 371 F. Supp. 814 (S.D. W.Va. 2005); *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 89 S.Ct. 733 (U.S.Iowa 1969).

**WHEREFORE**, Plaintiffs pray this Court for its order in Preliminary Injunction that Defendants are enjoined from conditioning Plaintiff B. W. A.'s enrollment in the School District or attendance therein upon the removal of such sign, insignia or emblem of the Confederate States of America from his clothing; enforcing any policy requiring Plaintiff to remove any sign, insignia or emblem of the Confederate States of America from his clothing while in attendance at the Defendant school. And further, Plaintiffs pray that Defendants be ordered to expunge any record of discipline incurred by Plaintiff B. W. A. as a result of his refusal to comply with the School District's unconstitutional policy, and an order for attorneys' fees and costs of this action pursuant to 42 U.S.C. § 1988, and for such other and further orders as to this Court seem just and proper.

### COUNT III: PERMANENT INJUNCTION

28. Defendants' unconstitutional censorship of Plaintiff's speech has caused irreparable and continuing harm that may be only remedied by immediately requiring Defendant District to withdraw its alleged policy banning the display of Confederate

States of America emblems or insignias on student clothing, to admit Plaintiff B. W. A. to the school district without conditioning attendance therein upon the removal of such sign, insignia or emblem of the Confederate States of America from his clothing; and to expunge any record of discipline incurred by Plaintiff as a result of his refusal to comply with the School District's unconstitutional policy.

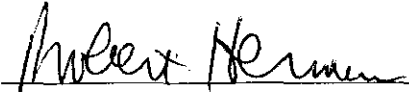
29. Plaintiffs have no adequate remedy at law for the unconstitutional actions of Defendants.

30. Plaintiffs are likely to prevail upon the merits of the underlying Constitutional issues. *See*, V.A.M.S. 167.166; *Tinker v. Des Moines Independent Community School Dist.* 393 U.S. 503, 89 S.Ct. 733 (U.S.Iowa 1969).

**WHEREFORE**, Plaintiffs pray this Court for its order in Permanent Injunction, permanently enjoining Defendants from conditioning the enrollment or attendance of Plaintiff B. W. A.'s in the School District upon the removal of such sign, insignia or emblem of the Confederate States of America from his clothing; enforcing any policy requiring Plaintiff to remove any sign, insignia or emblem of the Confederate States of America from his clothing while in attendance at the Defendant school. And further, Plaintiffs pray that Defendants be ordered to expunge any record of discipline incurred by Plaintiff B. W. A. as a result of his refusal to comply with the School District's unconstitutional policy, and an order for attorneys fees and costs of this action pursuant to 42 U.S.C. § 1988, and for such other and further orders as to this Court seem just and proper.

Respectfully submitted,

**SCHWARTZ, HERMAN & DAVIDSON**

By: \_\_\_\_\_

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Marc Archambo; and Tamra Archambo*