

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JOHN D. FRESHWATER

Case No. 2:09cv464

Plaintiff

Judge: FROST

vs.

MOUNT VERNON CITY SCHOOL  
DISTRICT BOARD OF EDUCATION, et al.

Defendants.

**COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES AND  
INJUNCTIVE RELIEF WITH JURY DEMAND**

Plaintiff John Freshwater for his complaint against the MOUNT VERNON CITY SCHOOL DISTRICT BOARD OF EDUCATION and the other Defendants states as follows.

**INTRODUCTION**

This is a civil rights action with pendent other claims brought by Plaintiff Freshwater alleging Defendants, individually and collectively, deprived Freshwater of his rights secured and provided by The United States Constitution. Defendants, individually and collectively, discriminated, harassed, and are attempting to terminate the employment of Plaintiff Freshwater because Freshwater kept his personal Bible on his desk. Defendants, individually and collectively, alleged other false and injurious allegations against Plaintiff Freshwater in an attempt to discredit Freshwater.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §1331, §1343 and §2201 to secure rights under 42 U.S.C. §1983 and 42 U.S.C. §2000e-5(f)(3) as Plaintiff seeks remedies for violations of constitutional guarantees granted by the First and Fourteenth Amendments to the United States Constitution.
2. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367 with respect to Plaintiff's claims based on the laws of the State of Ohio, as these claims arise out of the same set of operative facts making the state-law claims part of the same controversy as the federal claims.
3. Venue is proper in the Southern District of Ohio pursuant to 28 U.S.C. §1391 as a substantial amount of the conduct complained of by Plaintiff occurred within Knox County, Ohio, making venue appropriate in this District and Division.

**PARTIES**

4. Plaintiff John Freshwater (hereinafter "Freshwater") is a person who has been employed by the MOUNT VERNON CITY SCHOOL DISTRICT BOARD OF EDUCATION for

approximately twenty (20) years. Freshwater was employed as an 8<sup>th</sup> Grade school teacher until suspended by the Board on June 20, 2008. Freshwater is also a resident within the boundaries of the Board and has had three of his own children attend public school within the MOUNT VERNON CITY SCHOOL DISTRICT BOARD OF EDUCATION.

5. Defendant MOUNT VERNON CITY SCHOOL DISTRICT BOARD OF EDUCATION (hereinafter "Board"), is a public school system located within Knox County, Ohio.
6. Defendant IAN WATSON is a person who was at the time the events in this matter occurred, the President of Defendant Board. This action is brought against Ian Watson in both his professional and personal capacities.
7. Defendant JODY GOETZMAN is a person who was at the time the events in this matter occurred, a member of Defendant Board. This action is brought against Jody Goetzman in both her professional and personal capacities.
8. Defendant STEVE SHORT is a person who was at the time the events in this matter occurred, the Superintendent of Defendant Board. This action is brought against Steve Short in both his professional and personal capacities.
9. Defendant LYNDA WESTON is a person who was at the time the events in this matter occurred, the Director of Teaching and Learning for the Defendant Board. This action is brought against Lynda Weston in both her professional and personal capacities.
10. Defendant WILLIAM WHITE is a person who was at the time the events in this matter occurred, the Principal of the Mount Vernon Middle School, a school in the jurisdiction Defendant Board. This action is brought against William White in both his professional and personal capacities.
11. Defendant DAVID MILLSTONE is a person who was at the time the events in this matter occurred, an agent of the Defendant Board.
12. Defendant H.R. on Call, Inc. is a corporation appearing to be duly organized under the laws of the State of Ohio and possibly acted as an agent of Defendant Board.
13. Defendant THOMAS J. HERLEVI is a person who acted as an agent of Defendant Board in conducting interviews.
14. Defendant JULIA F. HERLEVI is a person who acted as an agent of Defendant Board in conducting interviews.
15. Defendant John Does and Jane Does 1-8 are employees, agents or others associated with Defendant Board who, in concert with other defendants, conducted or facilitated the actions complained of by Plaintiff. Defendant John Does and Jane Does 1-8 cannot currently be positively identified by Plaintiff Freshwater.

#### **STATEMENT OF FACTS**

16. Plaintiff Freshwater has certain causes of action that have an approaching statute of limitations.
17. In order to advance, protect and secure those claims Plaintiff Freshwater had to timely file this action prior to the conclusion of the statutorily prescribed hearing provided pursuant to Ohio Revised Code §3319.16.
18. Plaintiff Freshwater was hired by the Defendant Board in 1987.
19. As a public employee, Plaintiff Freshwater has a property right in his employment with Defendant Board.

20. During Plaintiff Freshwater's approximately twenty (20) years of employment by Defendant Board his employment performance had been evaluated on at least twenty (20) separate occasions.
21. Plaintiff Freshwater's employment performance evaluations have consistently been positive and Freshwater had never been disciplined.
22. On or about June 20, 2008 Freshwater learned from his attendance at a public meeting of Defendant Board that the Defendant Board affirmatively voted for a resolution titled as an *Intent to Consider the Termination of the Teaching Contract of John Freshwater* (hereinafter "resolution").
23. The original resolution was passed by Defendant Board on June 20, 2008. Apparently, the five elected members of Defendant Board did not know or understand which curriculum had previously been approved by Defendant Board as the Board asserted Plaintiff Freshwater "...consistently failed to adhere to the established curriculum under the American Content Standards for eighth grade as adopted by ...the Mount Vernon City School Board.."
24. On or about July 7, 2008, Defendant Board voted to amend the resolution to consider the termination of Plaintiff Freshwater by correctly identifying the applicable curriculum standards as the titled, "Academic Content Standards".
25. The amended resolution notified Plaintiff Freshwater of his statutory right to a hearing in front of Defendant Board pursuant to Ohio Revised Code §3319.16.
26. Plaintiff Freshwater elected to have a public hearing in front of the Board but the Board elected to have a referee administer the hearing.
27. Defendant Board's resolution affirms "(t) he Board retained counsel and requested a complete investigation of the charges against Mr. Freshwater by a neutral, outside party". The counsel retained was Defendant Millstone and the investigation was conducted by or through Defendant H.R. on Call, Inc.
28. Defendant Board's resolution affirms "...an investigation was completed and a report of the investigation was provided to the Board on June 19, 2008...".
29. The investigators who conducted the alleged "investigation" are Defendants Thomas J. Herlevi and Julia F. Herlevi.
30. Article 402 of the Master Contract between The Mount Vernon Board of Education and The Mount Vernon Education Association provides the ability of Defendant Board to investigate Plaintiff Freshwater. Defendant Board delegated its duty to investigate to Defendants Millstone, H.R. on Call, Inc., and the Herlevi's.
31. Defendants Herlevi's acted as agents of Defendant Board.
32. Defendant Millstone acted as an agent for Defendant Board.
33. Testimony provided during the statutorily prescribed administrative hearing revealed that Defendants Herlevi's, through H.R. on Call, Inc., submitted draft reports to Defendant Millstone. Defendant Millstone then provided information and or revision so that Defendants Herlevi's could revise the report ultimately provided to Defendant Board.
34. Article 402 of the Master Contract between The Mount Vernon Board of Education and The Mount Vernon Education Association provides, "...the investigator will interview all witnesses each party identifies and, if possible, obtain a written statement from each witness interviewed."

35. Upon information and belief through testimony in the hearing Defendants the Herlevi's did not interview all witnesses identified by Plaintiff Freshwater nor did the Herlevi's obtain written statements from any of the witnesses interviewed.
36. Defendant Herlevi's scheduled a follow-up interview with Plaintiff Freshwater to occur on May 28, 2008, but the Herlevi's cancelled the interview on May 27, 2008.
37. Defendant Board's resolution is based upon the investigation.
38. Defendant Short recommended to Defendant Board and Defendant Board approved and ratified the unpaid suspension of Plaintiff Freshwater in July 2008. The suspension was punitive in nature as other teachers employed by Defendant Board had not been suspended without pay.
39. In the Spring of 2003, Plaintiff Freshwater received encouragement from his then building principal to make a proposal to Defendant Board. Plaintiff Freshwater made a presentation to the Board concerning the analysis of evolution. Defendant Board voted to reject the proposal opting instead to maintain the existing curriculum.
40. In the Fall of 2004, the State Board of Education for the State of Ohio adopted the Academic Content Standards for eighth grade science. Defendant Board adopted the same standards after the state board of education.
41. Defendant Board's resolution in part asserts Plaintiff Freshwater failed to adhere to the established curriculum and Freshwater's failure to adhere superseded the best interest of his students.
42. During the 2007-2008 school year, Plaintiff Freshwater's students, as a group, achieved and earned the highest proficiency scores on the standardized Ohio Achievement Tests when comparing Freshwater's students scores to all of the other eighth grade groups taught by any other teacher employed by Defendant Board. Plaintiff Freshwater was the only Mount Vernon Middle School science teacher who achieved a "passing" score on the Ohio Achievement Test despite Freshwater having the most students with individualized education plans. Eighty-nine (89%) percent of Plaintiff Freshwater's students achieved a passing score on the topic of "Evolutionary Theory" which is a topic within the "Life Science" curriculum.
43. On or about February 28, 2009, during the hearing a student testified by sworn affidavit and by in-person testimony that Plaintiff Freshwater's eighth grade instruction during the 2007-2008 school year was especially beneficial for his subsequent studies in the ninth grade by stating:  
**"A lot of stuff I learned last year in Mr. Freshwater's class has helped me in science class this year. Specifically, I learned and memorized the periodic table in Mr. Freshwater's class while in 8<sup>th</sup> grade. This year, in 9<sup>th</sup> grade, learning the periodic table was a breeze because I had already learned it in 8<sup>th</sup> grade. Also, the stuff I learned last year on sound with tuning forks and astronomical units helped me this year in 9<sup>th</sup> grade."**
44. More than one witness has testified that teachers employed by Defendant Board are permitted to teach beyond the established curriculum stated in the Academic Content

Standards. Not a single witness has testified to the existence of a written or official declaration by Defendant Board prohibiting a teacher from teaching beyond the established curriculum. Defendant Weston testified she is not aware of any directive prohibiting teachers from teaching beyond the academic content standards.

45. Defendant Board's resolution asserts Plaintiff Freshwater taught creationism and intelligent design in the eighth grade science class. Plaintiff Freshwater denies he ever taught creationism or intelligent design in any public school setting in violation of Defendant Board's policy.
46. Defendant White did not request, require or review lesson plans of Plaintiff Freshwater for the 2007-2008 school year after completion of the first week of school.
47. Defendant Board's resolution asserts Plaintiff Freshwater distributed unauthorized handouts. Plaintiff Freshwater denies he ever distributed a handout that was specifically unauthorized.
48. On June 8, 2006, Defendant Board's then superintendent directed Plaintiff Freshwater to "...delete from your supplemental resources..." a handout that could not be sourced to the author. Plaintiff Freshwater has not used the handout since June 8, 2006, nor has Defendant Board demonstrated Plaintiff Freshwater has in fact used the handout or has violated the directive.
49. On page 216 of the "Academic Content Standards" adopted by Defendant Board under the curriculum of "Scientific Ways of Knowing", Benchmark B requires an eighth grade student to:  
**"Explain the importance of reproducibility and reduction of bias in scientific methods."**
50. The indicator for Grade Eight states students must:  
**"Explain why it is important to examine data objectively and not let bias affect observations."**
51. Plaintiff Freshwater has at all times since the adoption of the Academic Content Standards endeavored to teach his students how to "Explain why it is important to examine data objectively and not let bias affect observations."
52. Plaintiff Freshwater has not received any training, instruction or explanation as to how the standard differs in application or is to be interpreted other than by the plain meaning of the language used in the standard.
53. On January 9, 2009, Defendant Board's expert witness testified it was her opinion that the Academic Content Standard on page 216 and referenced herein should be changed for purposes of clarity. Defendant Board's expert elaborated, "The goal is to understand and recognize one's biases when making observations." Defendant Board's expert elaborated, "Therefore, the idea of not letting bias affect observations is in many ways anti-scientific", eventually concluding, "But it's so vague as to be misleading", referring to the Academic Content Standard Plaintiff Freshwater was tasked to teach.
54. Defendant Thomas J. Herlevi acknowledged an inaccurate statement in Defendant H.R. on Call, Inc.'s report at the bottom of page 4 which states:  
**"A former student had a copy of the "Dinosaur Extinction" handout she received from Mr. Freshwater that included the**

**full document with references to God and the Bible in the parts that had been deleted.”**

55. The former student testified Plaintiff Freshwater did not distribute the document to her.
56. Defendant Board’s resolution asserts in April 2008, Plaintiff Freshwater violated the Academic Content Standards in that Freshwater provided an extra credit assignment to his students related to an intelligent design movie titled, “Expelled: No Intelligence Allowed”, despite the fact Freshwater used the exact language from the standard referenced herein when making the extra credit available.
57. Defendant Board’s resolution asserts Plaintiff Freshwater taught religious beliefs in the classroom. Defendant Board has adopted a policy concerning and titled, “Religion in the Classroom”. Said policy states in part:

**“An understanding of religions and their effects on civilization is essential to the thorough education of young people and to their appreciation of a pluralistic society. To that end, curriculum may include as appropriate to the various ages and attainments of the students, instruction about the religions of the world.”**
58. Any and all instruction by Plaintiff Freshwater in Defendant Board’s classroom was taught by Freshwater within the parameters of the policy.
59. Defendant Board’s resolution asserts Plaintiff Freshwater taught students to use the code word “here” when the textbook would contradict religious or Biblical perspectives. Plaintiff Freshwater maintains that is a false representation of a student’s use of the word “here”. More than one witness has testified during the hearing that the use of the word “here” was to indicate an understanding of the difference between an exact fact versus a fact that is supposed.
60. Defendant Board’s policy concerning and titled, “Religion in the Classroom” further states in part:

**“The Board acknowledges the degree to which a religious consciousness has permeated the arts, literature, music, and issues of morality. The instructional and resource materials approved for use in the District’s schools frequently contain religious references or concern moral issues that have traditionally been the focus of religious concern. That such materials may be religious in nature shall not, by itself, bar their use in the District. The Board directs that professional staff members employing such materials be neutral in their approach and avoid using them to advance or inhibit religion in any way.”**
61. Any and all instruction by Plaintiff Freshwater, including the use of instructional and resource materials, in Defendant Board’s classroom was taught by Freshwater within the parameters of the policy with an emphasis by Freshwater in maintaining a neutral approach.

62. The use of instructional and resource materials by Plaintiff Freshwater since the Fall 2004 were used to highlight the Academic Content Standard previously stated herein and depicted on page 216 of the manual. Plaintiff Freshwater taught with a precise emphasis of focus to prepare students to “Explain why it is important to examine data objectively and not let bias affect observations”, as Freshwater understood the plain meaning of the language.
63. Defendant Board’s policy concerning and titled, “Religion in the Classroom” further states in part:
- “Based on the First Amendment protection against the establishment of religion in the schools, no devotional exercises or displays of a religious character will be permitted in the schools of this District in the conduct of any program or activity under the jurisdiction of the Board. Instructional activities shall not be permitted to advance or inhibit any particular religion.”**
64. Any and all instructional activities by Plaintiff Freshwater were conducted so as not to advance or inhibit any religion. Plaintiff Freshwater maintains he did not engage in devotional exercises or create a display of a religious nature.
65. Plaintiff Freshwater, with approval and permission from previous administrators from Defendant Board, covered the glass next to his classroom door with surplus, paper, textbook covers that had in small print words replicating a ten commandments. The glass was ordered covered by administrators for security-lockdown purposes and the textbook covers created an exact fit for the dimensions of window. Plaintiff Freshwater learned approval was granted as another Mount Middle School teacher had posted similar virtuous statements titled as the “Native Ten Commandments”, which according to the teacher who hung the poster, were very similar to the Christian Judeo Ten Commandments.
66. Defendant Board’s administrators, Defendant Short and Defendant White, could not articulate Defendant Board’s policy concerning religion in the curriculum when questioned during the hearing.
67. During a meeting with Defendant Short in July 2008, Plaintiff Freshwater, his spouse and counsel were directed to wait in Defendant Short’s office. Plaintiff Freshwater and the others observed a poster with a Christian Bible verse hanging on Defendant Short’s office wall. Defendant Short admitted during the hearing the presence of the Christian Bible verse was observable and viewed by Plaintiff Freshwater in July 2008.
68. Plaintiff Freshwater kept a book titled, “The Living Bible – Paraphrased” on his desk in Defendant Board’s classroom during the time he was in the classroom. The book has been owned and possessed by Plaintiff Freshwater for at approximately twenty-eight (28) years. Plaintiff Freshwater states he receives personal inspiration from the presence of the book. Plaintiff Freshwater never displayed or referenced the book in the classroom.
69. Testimony during the hearing emphasized the cluttered nature of Plaintiff Freshwater’s work space including the top of his desk with more than one person stating they did not know Freshwater’s book, “The Living Bible – Paraphrased”, was present.

70. Defendant White testified during the hearing he signed a letter to Plaintiff Freshwater dated April 7, 2008. Defendant White testified he only partially wrote the letter and had assistance from Defendant Short and Defendant Millstone. Defendant White acknowledged the words, “religious materials” from the letter of April 7, 2008, were undefined and did not reference any specific religious items other than the “10 commandments” (sic) and “a bible out on your desk” (sic).
71. Defendant White testified despite his inspection of the Mount Vernon Middle School building he did not become aware of the “10 commandments” textbook covers attached to Plaintiff Freshwater’s classroom window until March 2008, which was approximately seven months after Defendant White became principal of the building.
72. Defendant White acknowledges he had an in-person discussion with Plaintiff Freshwater on April 7 and 11, 2008, concerning removing any religious items from Freshwater’s classroom. Plaintiff Freshwater asserts during these discussions Defendant White advised Freshwater as long as Freshwater’s “The Living Bible – Paraphrased” could not be seen the book could remain on his desk.
73. Plaintiff Freshwater asserts on April 16, 2008, Defendant White inspected Freshwater’s classroom. Plaintiff Freshwater asserts Defendant White approved the presence of Freshwater’s classroom. Plaintiff Freshwater directed Defendant White’s attention to Freshwater’s “The Living Bible – Paraphrased” which was on Freshwater’s desk in its usual place amidst the clutter on Freshwater’s desk. Plaintiff Freshwater asked Defendant White if such placement of Freshwater’s book was acceptable to which White replied he would ask Defendant Short.
74. Defendant White reappeared in Plaintiff Freshwater’s classroom again on April 16, 2008, and advised Freshwater Defendant Short required the removal of Freshwater’s “The Living Bible – Paraphrased” from Freshwater’s classroom with an instruction the book had to be removed by the end of the day on April 16, 2008.
75. Defendant White’s letter to Plaintiff Freshwater dated April 14, 2008, affirms two discussions occurred between White and Freshwater: one on April 7, 2008; and one on April 11, 2008. Defendant White’s letter affirms the contradictory verbal messages received by Plaintiff Freshwater from White directing Freshwater that:  
**“...all religious items need to be removed from your classroom...”**

**-BUT-**

**“...Bibles and other religious DVD’s, videos, etc. should also be placed out of sight and access of the students...” (sic).**

76. On April 16, 2008, Plaintiff Freshwater knew other teachers employed by Defendant Board had various personal Bibles on their desks. More than one teacher has testified during the hearing that they have personal Bibles on their desks and had those Bibles on their desks on April 16, 2008.
77. Plaintiff Freshwater was not and is not nor has ever been a member of the Mount Vernon Education Association. When Defendant Board through Defendants Short and White notified Plaintiff Freshwater of the requirement that Freshwater had to remove his book,

“The Living Bible – Paraphrased”, Freshwater, who had never used the grievance process or the collective bargaining agreement, did not know and had no reason to know of the grievance process.

78. On or about April 16, 2008, Plaintiff Freshwater, in an attempt to protect his constitutional rights, and implement an action to protect his rights, made a public statement at the town square of the City of Mount Vernon.
79. Defendants Short and White did not know Plaintiff Freshwater was not a member of the union. Defendants Short and White advised other teachers employed by Defendant Board of the right to union representation but did not advise Plaintiff Freshwater of the same or of Freshwater’s ability to grieve the issue concerning the placement of Freshwater’s “The Living Bible – Paraphrased” on his desk.
80. On or about August 4, 2008, Mount Vernon Middle School teacher Lori Miller spoke in favor of Plaintiff Freshwater during a public meeting of Defendant Board. Approximately three weeks later, Defendant White and Short summoned teacher Lori Miller to a meeting with Defendant Short advising Miller to bring union representation. During the meeting teacher Lori Miller was threatened with disciplinary action for an instance that occurred approximately eleven (11) months previously.
81. On or about August 24, 2008, teacher Lori Miller made an audio-recording of the meeting between herself and Defendant Short. Defendants Short and White knew teacher Lori Miller had maintained a personal Bible on her desk. Defendant Short advised teacher Lori Miller she could keep her personal Bible on her desk but that Miller had to remove items of a religious display. Defendant Short directed teacher Lori Miller to file a grievance or to use the grievance process if Miller wanted to contest Short’s decision.
82. After Lori Miller’s testimony in the hearing on March 26, 2009, she was ordered to remove her Bible from her classroom desk by Defendants Short and White. Lori Miller contested the direction that she remove her personal Bible from her desk. On April 14, 2009, Lori Miller met with Defendant White, the assistant principal and a union representative. A written memorandum of the meeting detailed as follows:

**“Mrs. Miller was to the understanding she had to remove her Bible from her desk along with the religious/devotional materials. Currently, the Bible is allowed to remain on Mrs. Millers’ desk (sic) as long as it is not opened or used when students are in her room. According to Mount Vernon City School Board Policy, religious/devotional materials are not permitted to be displayed within a classroom at any time. This meeting and written notice does not constitute any level of the negotiated grievance procedure that is contained within the contracted agreement between the Mount Vernon City Schools and the Mount Vernon Education Association.”**
83. Teacher Lori Miller was advised by The Mount Vernon Education Association that Miller could not file a grievance and that the association would not process her issue.

84. Upon information and belief, in July 2008 Defendant Watson acknowledged he knew Lori Miller had a Bible upon her desk and was advised of other Bibles upon the desks of other teachers employed by Defendant Board.
85. Upon information and belief, Defendant Watson maintained a separate book or binder at his business office in the First Knox National Bank containing information about Plaintiff Freshwater.
86. Plaintiff Freshwater was treated differently than Lori Miller.
87. Plaintiff Freshwater was the faculty appointed facilitator, monitor, and supervisor of the eighth grade group called the Fellowship of Christian Athletes for approximately sixteen (16) years. The group had been meeting in Defendant Board's classrooms for approximately sixteen (16) years.
88. In September or October 2007, for the first time during his employment with Defendant Board, Plaintiff Freshwater received training in the form of a handout from Defendant Board through Defendant Short. The handout was approximately twenty-three (23) pages in length concerning how to facilitate, monitor and supervise the Fellowship of Christian Athletes group.
89. Defendant Board's resolution asserts Plaintiff Freshwater violated the rules governing the Fellowship of Christian Athletes meetings by conducting and leading prayer, asking students to pray and contacting speakers or recommending speakers to students.
90. Defendants H.R. on Call, Inc. and the Herlevi's did not interview any of the thirty-three (33) speakers who spoke at the Fellowship of Christian Athletes meetings during the 2007-2008 school year. Defendants H.R. on Call, Inc. and the Herlevi's interviewed only three (3) of the approximately thirty (30) students who attended meetings of the Fellowship of Christian Athletes. Defendants H.R. on Call, Inc. and the Herlevi's did not even interview the pastor who allegedly was the focus of a "healing session" despite the fact Defendant Board Member Margie Bennet attends the church of the pastor. The pastor who was the alleged focus of the "healing session" testified at the hearing and by sworn affidavit that Plaintiff Freshwater was not involved in any "healing session" prayer. Further, the pastor, who spoke at the Fellowship of Christian Athletes meetings every third Tuesday, testified Plaintiff Freshwater never asked for prayer requests and never directed a student to pray.
91. Plaintiff Freshwater, as the faculty facilitator, monitor and supervisor of the eighth grade Fellowship of Christian Athletes, was required by Defendant Board's rule to ascertain the name of the speaker who was selected by the students to speak at the meetings and confirm the speaker's scheduled attendance.
92. Defendant Board's resolution asserts Plaintiff Freshwater failed to fully comply with a directive to remove or discontinue display of all religious articles in his classroom including all posters of a religious nature. Upon information and belief through testimony in the hearing the alleged poster Plaintiff Freshwater failed to remove has been titled, "The George Bush – Colin Powell Poster", which depicts President Bush and Colin Powell at a meeting. Although a Bible verse is positioned upon the poster Plaintiff Freshwater had intentionally covered the verse. Unbeknownst to Plaintiff Freshwater the verse was partially uncovered by unknown persons. Plaintiff Freshwater asserts he received the poster in his school mailbox approximately six (6) years ago. Multiple witnesses have testified in the hearing of having the same poster hung in their

classroom. Plaintiff Freshwater maintains the poster was not presented for religious intent but rather because of the poster's inherent patriotic theme.

93. Defendant Board has adopted a policy concerning such patriotic posters which states in part:

**“No classroom teacher shall be prohibited from providing reasonable periods of time for activities of a moral, philosophical, or patriotic theme.”**

94. Defendant Board's resolution asserts Plaintiff Freshwater brought additional religious articles into his classroom to “make a point” in direct acts of insubordination. Upon information and belief through testimony in the hearing the alleged additional articles consist of two books Plaintiff Freshwater checked out from Defendant Board's Middle School library. Defendants H.R. on Call, Inc. and the Herlevi's mischaracterized and incorrectly quoted Plaintiff Freshwater from his interview with them. Defendants H.R. on Call, Inc. and the Herlevi's report states the following:

**“When asked if the school Bible was there to make a statement, he said, “Yes.”**

95. The plain meaning and intended interpretation of Defendants H.R. on Call, Inc. and the Herlevi's above statement was to communicate Plaintiff Freshwater brought additional religious articles into his classroom in defiance of instruction not to do so.

96. Plaintiff Freshwater audio-recorded the May 15, 2008, interview conducted by Defendants H.R. on Call, Inc. and the Herlevi's. The true and exact words uttered by Plaintiff Freshwater and Defendants H.R. on Call, Inc. and the Herlevi's are as follows:

**Defendants: “So, it was just, it's a statement is what your saying?”**

**Plaintiff Freshwater: “Yea, because when I opened it up I recognized it was bought**

**with government money, and its been there. I obviously looked at the dates when it was stamped and actually I looked at some of the names on there it's like oh I remember that kid, remember that kid, I actually kind a enjoyed looking at it, ah it dates back a long ways.”**

97. Defendant Julia F. Herlevi admitted during testimony that the above depiction erroneously indicating Plaintiff Freshwater was trying to “make a point” was inflammatory toward Freshwater.
98. Defendant Board's resolution asserts Plaintiff Freshwater used a Tesla Coil to mark the shape of a cross into the arm of eighth grade students which was subsequently characterized as a religious symbol that lasted as long as three-to-four (3-4) weeks on one student's arm.
99. The alleged student who Defendant Board claimed had a mark on their arm for three-to-four (3-4) weeks most recently testified in the hearing on May 7, 2009, that the mark lasted “About a week and a half, two weeks.”
100. On December 7, 2007, Defendant Short received the report of the alleged cross/religious symbol having been made by Plaintiff Freshwater. Despite the plain language and

meaning of Ohio Revised Code §2151.421, “Reporting Child Abuse or Neglect”, Defendant Short failed to report the alleged harm to the public children services or local law enforcement.

101. The mother of the student allegedly harmed by Plaintiff Freshwater advised Defendant Goetzman in January 2008 of Freshwater’s use of the Tesla Coil and the alleged harm.
102. The father of the student allegedly harmed by Plaintiff Freshwater advised Defendant Watson as early as January 2008 of Freshwater’s use of the Tesla Coil and the alleged harm. The father of the student allegedly harmed also stated he had “probably ten” conversations with Defendant Watson at Watson’s office in the First Knox National Bank. The mother of the student allegedly harmed by Plaintiff Freshwater stated she called Defendant Watson at his home and met with Watson at his office in the First Knox National Bank.
103. Defendant Board’s resolution asserts Plaintiff Freshwater knew or should have known the manufacturer’s advice concerning the use of the Tesla Coil.
104. Plaintiff Freshwater received on-the-job-training approximately twenty (20) years ago as to how to use the Tesla Coil.
105. More than one teacher employed by Defendant Board testified as to their use of the Tesla Coil which was similar to the use by Plaintiff Freshwater. Additionally, the other teachers who used the Tesla Coil also testified to receipt of similar on-the-job-training as to how to use the Tesla Coil as that received by Plaintiff Freshwater.
106. None of the teachers who used the Tesla Coil reported ever having seen or been given written instructions as to how to use the Tesla Coil.
107. None of the other teachers who used the Tesla Coil reported ever having witnessed or been notified of harm being caused to anyone as a result of using the Tesla Coil.
108. Defendants Herlevi’s did not interview any of the teachers who also used the Tesla Coil.
109. Upon information and belief through testimony in the hearing, Defendants Watson and Thomas J. Herlevi actually used and applied the Tesla Coil to each other or themselves contrary to the manufacturer’s instructions. Defendants used the Tesla Coil despite having the manufacturer’s instructions available and presumably having read the manufacturer’s instructions.
110. On January 22, 2008, approximately forty-six (46) days after Defendant Short received the alleged complaint of harm to the student as a result of the Tesla Coil, Defendant White wrote a letter to Plaintiff Freshwater advising:

**“This letter is a follow-up to our conversation on December 10, 2007, concerning the use of the electrostatic machine in the science classroom. As per our conversation the electrostatic machine should not be used for the purpose of shocking students. It was further directed the machine(s) should be removed from the classroom or locked up so that the students do not have access to these machines. Subject to follow through on the above issues and no further incidences whereas anyone is being shocked with the machines this letter will not become part of your permanent record. If there should be another occurrence of misusing this equipment then this letter**

**will be entered into your permanent record along with all supporting documentation.”**

111. Defendant White copied Defendant Short with the January 22, 2008, letter. Former Superintendent Maley testified in the hearing that Defendant White had the authority to write the letter and resolve the matter. The Master Contract between The Mount Vernon Board of Education and The Mount Vernon Education Association requires a teacher be given notice if a document is to be put in the teacher’s permanent record. Plaintiff Freshwater was never given the required notice which would permit the letter to be placed into Freshwater’s file.
112. Defendants Short, Weston and White testified in the hearing they had personal knowledge of or a perceived belief concerning Plaintiff Freshwater’s personal religious activities as a result of actions taken by Freshwater during Freshwater’s time outside of school duties.
113. Defendants H.R. on Call, Inc and the Herlevi’s investigative report published:  
**“Dr. Weston stated that she has had to deal with internal and external complaints about his (Plaintiff Freshwater) failure to follow the curriculum for much of her 11 years at Mount Vernon.”**
114. Despite stating she had been receiving internal and external complaints for much of her eleven (11) years of employment with Defendant Board, Defendant Weston admitted in the hearing during her testimony that she did not provide and could not provide any documentation detailing the alleged internal and external complaints. Defendant Weston admitted the statement in the report of Defendants H.R on Call, Inc. and the Herlevi’s was “inaccurate”. Defendants Herlevi’s did not seek verification of Defendant Weston’s assertion.

### **COUNT 1**

#### **Violations of First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. §1983 – Deprivation of Right to Free Speech, Free Association and Exercise of Religion Under Color of State Law**

115. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
116. Pursuant to 42 U.S.C. §1983 it is unlawful for any person who under color of any statute, ordinance, regulation, custom, or usage, of any State subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
117. Defendants, individually and or collectively, among other things have unjustly discriminated against Plaintiff Freshwater as a result of Freshwater’s 2003 proposal to modify Defendant Board’s curriculum and Freshwater’s public statement of April 16, 2009.

118. Certain defendants have stated an opinion of their perception of Plaintiff Freshwater's religious position.
119. Defendant Board and Short have discriminated against Plaintiff Freshwater for his religious beliefs and have demonstrated an attempt to chill and stifle the freedom of speech and religious freedom of witness Lori Miller by adverse job action or threatening adverse job action.
120. Reasonable persons would know that deprivation of another's right to free speech violates a person's constitutional rights.
121. Defendants engaged in conduct set forth herein that violated Plaintiff's right to free speech, association and exercise of religion by retaliating against Plaintiff for exercising those rights.

### **COUNT 2**

#### **Violations of First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. §1983 – Deprivation of Equal Protection**

122. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
123. Pursuant to 42 U.S.C. §1983 it is unlawful for any person who under color of any statute, ordinance, regulation, custom, or usage, of any State subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
124. Defendants, individually and or collectively, among other things have discriminated against Plaintiff Freshwater in a manner that constitutes disparate treatment and treated Freshwater different than other similarly situated persons on account of his perceived religious beliefs.
125. Reasonable persons would know that discrimination based upon religion violates a person's constitutional rights.
126. Acting under color of law, Defendants, individually and or collectively, deprived Plaintiff Freshwater of his rights under The United States Constitution 14<sup>th</sup> Amendment right to equal protection under the law by intentionally discriminating against Freshwater on the basis of religion.

### **COUNT 3**

#### **Violations of First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. §1983 – Denial of Procedural Due Process Under Color of Law**

127. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
128. Pursuant to 42 U.S.C. §1983 it is unlawful for any person who under color of any statute, ordinance, regulation, custom, or usage, of any State subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution

and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

129. Defendants, individually and or collectively, took actions against Plaintiff Freshwater which constitute a denial of his property and liberty interests under color of state law without procedural due process as guaranteed and outlined in Defendant Board's agreement with the collective bargaining agent and by instituting and adopting an incomplete investigative report which included inaccuracies and false statements.
130. Defendants, individually and or collectively, among other things failed to reasonably and meaningfully implement Defendant Board's policies causing a deprivation of due process to Plaintiff Freshwater.
131. Reasonable persons would know that deprivation of another's right to free speech violates a person's constitutional rights.
132. Acting under color of law, Defendants, individually and or collectively, deprived Plaintiff Freshwater of his rights under The United States Constitution 14<sup>th</sup> Amendment right to due process.

#### **COUNT 4**

#### **Violation of Title VII of the Civil Rights Act of 1964 – Religious Discrimination**

133. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
134. Pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a) (1), it is an unlawful employment practice for an employer:
  - (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
  - (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.
135. Plaintiff was at all times herein an employee covered by 42 U.S.C. 2000e, *et seq.*, prohibiting discrimination in employment on the basis of religion. Defendant was at all times herein an employer subject to 42 U.S.C. 2000e, *et seq.*
136. Beginning in the 2007-2008 school year Plaintiff Freshwater began to experience increased scrutiny because of his religion and various Defendants' perception of Freshwater's religion.
137. Plaintiff Freshwater was discriminated against because of his involvement with the Fellowship of Christian Athletes.
138. Plaintiff Freshwater was given multiple and conflicting direction to remove his book titled, "The Living Bible – Paraphrased" from his desk.
139. Plaintiff Freshwater knew other teachers were permitted to keep their multiple and obvious Christian Bibles on their desks.

140. As a proximate result of Defendant Board, Short and White's religious discrimination against Plaintiff Freshwater he has suffered and continues to suffer substantial economic losses and has suffered and continues to suffer embarrassment, emotional distress, humiliation and mental anguish, all to his damage in an amount to be determined at trial.
141. Defendant Board, Short and White's conduct has been despicable and the acts herein alleged were malicious, fraudulent and oppressive, and committed with an improper and evil motive to injure Plaintiff Freshwater, amounting to malice and in conscious disregard of Freshwater's rights. Plaintiff Freshwater is thus entitled to recover punitive damages from Defendants in an amount to be determined at trial.
142. Attorney's fees are recoverable in an action for which they are specifically provided by statute. Title 42 U.S.C. §§1988 and 2000e-5(k) provide that reasonable attorney's fees and costs are recoverable herein by the prevailing party. As a result, Plaintiff Freshwater is entitled to reasonable attorney's fees and costs.
143. Plaintiff has not filed a complaint with the Equal Employment Opportunity Commission as of the date of this filing as doing so would be futile.
144. Plaintiff had to file the instant matter to preserve his claims under the existing statute of limitations.
145. Exhaustion of administrative remedies may not be required where exhaustion would be futile or inadequate.
146. Where plaintiff can show that the issues to be resolved are legal rather than factual a futility exception is justified.
147. Freshwater is pursuing the statutorily mandated administrative action which has been ongoing and not yet concluded.
148. Considering the ongoing nature of the statutorily mandated administrative hearing and the fact Plaintiff Freshwater has yet to be terminated; requiring Freshwater to file with the State of Ohio Civil Rights Commission or the United States Equal Employment Opportunity Commission would be an act of futility.

#### **COUNT 5**

#### **Violation of Title VII of the Civil Rights Act of 1964 – Retaliation**

149. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
150. Plaintiff Freshwater has been engaged as a private citizen in promoting certain religious activities and liberties in the Mount Vernon, Ohio community.
151. Plaintiff Freshwater knew other teachers were permitted to keep their multiple and obvious Christian Bibles on their desks.
152. Plaintiff Freshwater sought clarification of Defendant Board's position concerning "The Living Bible – Paraphrased" on his desk.
153. Plaintiff Freshwater attended public meetings conducted by Defendant Board during school year 2007-2008 seeking clarification about Board policy and expectations.
154. Plaintiff Freshwater opposed the discriminatory treatment by Defendant Board and made a public statement about the religious discrimination on April 16, 2008.
155. As a result of Plaintiff Freshwater's activities Defendant Board discriminated against Freshwater by initiating an investigation.

156. Defendant Board knew or should have known the investigation report as disseminated to the public was incomplete and included scandalous allegations which were intended to be or would result in retaliation against Plaintiff Freshwater.
157. As a proximate result of Defendant Board's retaliation against Plaintiff Freshwater he has suffered and continues to suffer substantial economic losses and has suffered and continues to suffer embarrassment, emotional distress, humiliation and mental anguish, all to his damage in an amount to be determined at trial.
158. Defendant Board's conduct has been despicable and the acts herein alleged were malicious, fraudulent and oppressive, and committed with an improper and evil motive to injure Plaintiff Freshwater, amounting to malice and in conscious disregard of Freshwater's rights. Plaintiff Freshwater is thus entitled to recover punitive damages from Defendants in an amount to be determined at trial.
159. Attorney's fees are recoverable in an action for which they are specifically provided by statute. Title 42 U.S.C. §§1988 and 2000e-5(k) provide that reasonable attorney's fees and costs are recoverable herein by the prevailing party. As a result, Plaintiff Freshwater is entitled to reasonable attorney's fees and costs.

#### **COUNT 6**

#### **Violation of Title VII of the Civil Rights Act of 1964 – Religious Harassment**

160. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
161. Pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(1), it is an unlawful employment practice for an employer to discriminate against an employee on the basis of religion, and to create, condone, permit or fail or refuse to remedy a work environment that is hostile to an employee's religion.
162. Plaintiff was at all times herein an employee covered by 42 U.S.C. 2000e, *et seq.*, prohibiting discrimination in employment on the basis of religion. Defendant was at all times herein an employer subject to 42 U.S.C. 2000e, *et seq.*
163. Defendants Board, Watson, Short and Weston and others created, condoned and encouraged a work environment that was hostile to Plaintiff Freshwater on account of his religion and Defendants' perception of Freshwater's religion.
164. Defendant Board and Short failed to remedy this hostile work environment, and permitted Plaintiff Freshwater to be harassed by both administrators and co-workers on account of his religion. Defendant Board has engaged in an ongoing and continuous course of religious harassment since 2003.
165. As a proximate result of Defendant Board, Watson, Short and Weston's religious harassment against Plaintiff Freshwater he has suffered and continues to suffer substantial economic losses and has suffered and continues to suffer embarrassment, emotional distress, humiliation and mental anguish, all to his damage in an amount to be determined at trial.
166. Defendant Board, Watson, Short and Weston's conduct has been despicable and the acts herein alleged were malicious, fraudulent and oppressive, and committed with an improper and evil motive to injure Plaintiff Freshwater, amounting to malice and in

conscious disregard of Freshwater's rights. Plaintiff Freshwater is thus entitled to recover punitive damages from Defendants in an amount to be determined at trial.

167. Attorney's fees are recoverable in an action for which they are specifically provided by statute. Title 42 U.S.C. §§1988 and 2000e-5(k) provide that reasonable attorney's fees and costs are recoverable herein by the prevailing party. As a result, Plaintiff Freshwater is entitled to reasonable attorney's fees and costs.

#### **COUNT 7**

#### **Violations of Ohio Revised Code 4112.02**

168. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
169. Defendants, individually and or collectively, among other things violated Freshwater's liberty and property interests under the First and Fourteenth Amendments to The United States Constitution, Ohio Revised Code 4112 and other law.
170. As a proximate result of Defendant Board, Watson, Short and Weston's religious harassment against Plaintiff Freshwater he has suffered and continues to suffer substantial economic losses and has suffered and continues to suffer embarrassment, emotional distress, humiliation and mental anguish, all to his damage in an amount to be determined at trial.

#### **COUNT 8**

#### **Hostile Work Environment**

171. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
172. Defendants, individually and or collectively, among other things created a hostile work environment for Plaintiff Freshwater.
173. Defendants conduct constitutes unlawful discrimination in violation of Ohio Revised Code §4112.02 et seq., including 4112.99.
174. As a proximate result of Defendants actions, individually and or collectively, among other things religious harassment against Plaintiff Freshwater he has suffered and continues to suffer substantial economic losses and has suffered and continues to suffer embarrassment, emotional distress, humiliation and mental anguish, all to his damage in an amount to be determined at trial.

#### **COUNT 9**

#### **Violations of Ohio Public Policy**

175. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
176. Defendants' actions violated Ohio public policy prohibiting retaliation in employment for protesting unlawful practices by the employer.
177. As a proximate result of Defendants actions, individually and or collectively, among other things religious harassment against Plaintiff Freshwater he has suffered and continues to suffer substantial economic losses and has suffered and continues to suffer embarrassment, emotional distress, humiliation and mental anguish, all to his damage in an amount to be determined at trial.

**COUNT 10**  
**Civil Conspiracy**

178. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
179. Defendants, individually and or collectively, among other things maliciously combined and conspired to violate Plaintiff Freshwater's civil rights, an unlawful act independent from the conspiracy itself.
180. As a proximate result of Defendants actions, individually and or collectively, among other things religious harassment against Plaintiff Freshwater he has suffered and continues to suffer substantial economic losses and has suffered and continues to suffer embarrassment, emotional distress, humiliation and mental anguish, all to his damage in an amount to be determined at trial.

**COUNT 11**  
**Defamation**

181. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
182. Defendants, individually and or collectively, among other things communicated false statements.
183. Defendants, individually and or collectively, among other things permitted an incomplete investigative report to be published.
184. The statements were slanderous as a matter of law in that it was intended to and did (1) cause injury to Plaintiff Freshwater's reputation, (2) expose him to public hatred, contempt, ridicule, shame or disgrace, and/or (3) affect him adversely in his trade or business.
185. Defendants, individually and or collectively, among other things published these statements to others, including but not necessarily limited to the investigative report authored by Defendants Millstone, H.R. on Call, Inc. and the Herlevi's.
186. Defendants H.R. on Call, Inc. and the Herlevi's intentionally excluded exculpatory information from the investigative report concerning Plaintiff Freshwater.
187. Defendants H.R. on Call, Inc. and the Herlevi's did not obtain written statements from witnesses interviewed as directed in Article 402 of the Master Contract between The Mount Vernon Board of Education and The Mount Vernon Education Association.
188. Defendants H.R. on Call, Inc. and the Herlevi's did not interview witnesses identified by Plaintiff Freshwater as directed in Article 402 of the Master Contract between The Mount Vernon Board of Education and The Mount Vernon Education Association.
189. Defendants, individually and or collectively, have a degree of fault rising to the level of 'actual malice' concerning the publication of the statement(s), to wit: the statement(s) imputed an indictable offense involving moral turpitude; the statement(s) were factual in nature, rather than stated as opinion; the statement(s) affect Plaintiff Freshwater's profession, business, or employment by imputing a want of capacity or fitness to carry out the duties of a public school teacher; and/or Defendants knew of the falsehood or recklessly disregarded the truth.

190. As a proximate result of Defendants actions, individually and or collectively, against Plaintiff Freshwater he has suffered and continues to suffer substantial economic losses and has suffered and continues to suffer embarrassment, emotional distress, humiliation and mental anguish, all to his damage in an amount to be determined at trial.

**COUNT 12**  
**Breach of Contract**

191. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
192. Defendants Board, Short, White, Millstone, H.R. on Call, Inc. and the Herlevi's breached the duties of contract and policy due and owed to Plaintiff Freshwater.
193. As a result of the breach of contract, Plaintiff Freshwater has suffered economic damages for the unexpired term of his contract including but not limited to loss of pay and benefits, retirement pension, back pay and future earnings in an amount to be determined at trial.

**COUNT 13**  
**Res Judicata**

194. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
195. Defendant Board is bound by the principle or legal doctrine of *Res Judicata* – “a matter already judged”.
196. Defendant Board's resolution asserts Plaintiff Freshwater committed actions which include matters previously adjudicated by Defendant Board's previous administration.
197. Defendant Board previously adjudicated any and all issues reported to and acted upon or not acted upon by the previous administration.
198. Defendant Board previously adjudicated all matters reported to the then administration of Defendant Board to include matters reported by: Plaintiff Freshwater, by and through Freshwater's submitted lesson plans; by and through performance evaluations upon Freshwater; by and through reports to Defendant Weston; by and through reports to former Superintendent Maley, to include the superintendent's letter to Freshwater dated June 8, 2006; by and through Defendant White's letter to Freshwater dated January 22, 2008, which was copied to Defendant Short; and other matters.
199. In the interest of justice and equity, Plaintiff Freshwater cannot be made to answer, defend or contest matters previously affirmed, ratified or resolved by previous administrative actions of Defendant Board and Defendant Board and Plaintiff Freshwater are bound by those determinations *Res Judicata* from the beginning of or prior to the investigation *Ab Initio*.

**COUNT 14**  
**Negligent Retention, Supervision and Failure to Train**

200. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.

201. Defendants Board negligently retained, supervised and trained Defendants Short, Weston and White, among others, as agents of Defendant Board performed with gross incompetence and or malicious intent as evidenced by actions of hypocrisy, failure to report alleged harm to a student, failure to require and review lesson plans, failure to articulate or explain Board policy, permitting Plaintiff Freshwater to be subject to and singled out but permitting other teachers to have a Bible on their desk, and other actions, to the detriment of Freshwater.
202. As a proximate result of Defendants actions, individually and or collectively, Plaintiff Freshwater has suffered and continues to suffer substantial economic losses and has suffered and continues to suffer embarrassment, emotional distress, humiliation and mental anguish, all to his damage in an amount to be determined at trial.

**COUNT 15**

**Malicious Purpose, Bad Faith or Wanton or Reckless Behavior**

203. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
204. Defendant's conduct was intentional, malicious, reckless and or in gross disregard of the rights and regard of Plaintiff Freshwater entitling Freshwater to punitive damages.

**COUNT 16**

**Declaratory Judgment**

205. Plaintiff incorporates the foregoing paragraphs of this Complaint as if fully restated herein.
206. Plaintiffs are entitled to declaratory judgment pursuant to 28 U.S.C. § 2201 and in accordance with the Federal Rules of Civil Procedure 57 that the Defendants' actions are in violation of the Establishment Clause of the First and Fourteenth Amendments of the United

States Constitution.

WHEREFORE, Plaintiff prays that this Court:

- A. Order reinstatement of Plaintiff Freshwater to his position as an 8<sup>th</sup> Grade Science Teacher;
- B. Order Defendant MOUNT VERNON CITY SCHOOL DISTRICT BOARD OF EDUCATION to engage in education training programs and activities to promote equal employment opportunities on account of religious understandings;
- C. Award Plaintiff compensatory damages in an amount to be shown at trial to include back pay with prejudgment interest, front pay, pension pay and lost opportunity costs totaling five hundred thousand (\$500,000.00) dollars;
- D. Awards Plaintiff punitive damages against Defendants Watson, Goetzman, Short, Weston and White and John Does and Jane Does 1-8 in an amount totaling five hundred thousand (\$500,000.00) dollars;
- E. Award Plaintiff reasonable attorney's fees, costs and disbursements;
- F. Order Defendant to remove any negative mark or statement from Plaintiff's personnel file;
- G. Enjoin Defendants' from further retaliating against Plaintiff;

- H. Grant to Plaintiff such additional relief as the Court may deem just and proper; and
- I. To retain jurisdiction of this action for a reasonable period after entering a final judgment to ensure Defendants comply with the Orders of this Court and with the requirements of First Amendment to the U.S. Constitution and Title VII.

Respectfully submitted,

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Attorney for Plaintiff John Freshwater

**JURY DEMAND**

Plaintiff hereby demands a jury of eight (8) persons.

Respectfully submitted,