

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

HEATHER GILLMAN, through next
friend and mother Ardena Gillman;

Plaintiff,

v.

No.: 5:08-cv-34

SCHOOL BOARD FOR HOLMES
COUNTY, FLORIDA; and DAVID
DAVIS, in his official capacity as
principal of Ponce de Leon High
School,

Defendants.

/

COMPLAINT

Plaintiff HEATHER GILLMAN, through her mother and next friend Ardena Gillman, by and through the undersigned counsel, sues Defendant SCHOOL BOARD FOR HOLMES COUNTY, FLORIDA, and Defendant DAVID DAVIS, in his official capacity as Principal of Ponce de Leon High School, and alleges as follows:

NATURE OF THE ACTION

1. This is a free-speech case on behalf of Plaintiff Heather Gillman (“Heather”), who is an eleventh grade student at Ponce de Leon High School (“Ponce de Leon High School”) in Ponce de Leon, Florida. Plaintiff brings this lawsuit against Defendant David Davis (“Davis”), who is the Principal of Ponce de Leon High School, and Defendant School Board of the Holmes County, Florida (“School Board”), which sets the policy for Ponce de Leon High School and other schools in the school district of Holmes County, Florida.

2. At issue in this case is whether school officials may lawfully censor rainbow stickers and other types of non-vulgar and non-obscene student-expression at school in support of the fair treatment of gays and lesbians. While she identifies as heterosexual, Heather supports the respect, equal treatment, and acceptance of gays and lesbians and wishes to express her political beliefs through non-vulgar and non-obscene phrases and symbols on T-shirts and other clothing she wears to school and on her book binders. Examples of the types of expression that Heather would like to engage in include T-shirts reading, “Equal, Not Special Rights,” “Gay? Fine

By Me,” “Gay Pride,” “I Support My Gay Friends,” and “God Loves Me Just the Way I Am,” along with stickers showing rainbows and pink triangles.

3. All of the above phrases and symbols, as well as many others like them, are banned and punishable under Defendants’ unlawful policies and practices concerning student speech. Defendants have outright prohibited students from expressing their political beliefs through such phrases and symbols, contending without a reasonable basis that such expression is disruptive to the educational process and indicative of membership in a “secret society” or “illegal organization.”

4. Defendants’ policies and practices violate Plaintiff Heather Gillman’s and other Holmes County School District students’ freedom of speech under the First Amendment to the United States Constitution, as applied to the states under the Fourteenth Amendment.

JURISDICTION AND VENUE

5. Plaintiff brings this action pursuant to 42 U.S.C. §1983 for violations of civil rights under the First and Fourteenth Amendments to the United States Constitution.

6. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C. §1343(a)(3) (civil rights).

7. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §1391(b) and N.D. Fla. Loc. R. 3.1. Defendant School Board and Defendant Davis, upon information and belief, reside in this district and division and the unlawful practices complained of and that give rise to the claims herein occurred within this district and division.

PARTIES

8. Plaintiff Heather Gillman is an eleventh-grade student enrolled at Ponce de Leon High School. She is under the age of eighteen. She sues here by and through her next friend and mother, Ardena Gillman. As a student at Ponce de Leon High School, Heather remains subject to the authority and directives of Defendants Davis and the School Board.

9. Defendant School Board of Holmes County, Florida, pursuant to the Florida K-20 Education Code, is the governing body of the school district of Holmes County, Florida, which controls, operates, and supervises Ponce de Leon High School. Defendant School Board resides in Holmes

County, Florida. The School Board, as a political subdivision of the State of Florida, is a state actor. The School Board is the final decision maker of policy for the school district of Holmes County, Florida. The School Board is subject to civil lawsuits pursuant to Florida Statutes Section 1001.41(4).

10. Defendant David Davis is the principal of Ponce de Leon High School. He is vested with the authority to discipline students at Ponce de Leon High School at his discretion and to enforce the policies of Ponce de Leon High School and the School Board. Ponce de Leon High School is within the school district of Holmes County, Florida. The School Board, through the superintendent, supervises Mr. Davis as principal of Ponce de Leon High School. Mr. Davis as a school official is a state actor. He is sued in his official capacity.

11. Defendants Davis and the School Board, at all times relevant hereto, were acting under color of law.

GENERAL ALLEGATIONS

12. This case arose out of events involving a lesbian student at Ponce de Leon High School on or about Friday, September 7, 2007. Upon information and belief, the lesbian student, identified in this complaint as

“Jane Doe,” was assisting a teacher in a classroom when a number of students began to make fun of her for being gay. The taunting students told Jane Doe something to the effect that lesbians are nasty and gross and that Jane Doe was sick. Jane Doe defended herself, told a teacher’s aide what the students had said to her, and explained that she felt personally attacked.

13. Upon information and belief, at the end of the school day on Monday, September 10, 2007, Defendant Davis called Jane Doe into his office to discuss the incident on the previous Friday. Defendant Davis asked Jane Doe if she had told the teacher’s aide that she was a lesbian. Jane Doe answered “yes” in order to give context to the taunting. He then asked, “are you a lesbian?” Jane Doe answered yes. He explained that Jane Doe should not be gay and she should not tell people she is gay. Mr. Davis then instructed Jane Doe not to talk with the “middle school” girls. Defendant Davis also told Jane Doe that “gay pride” was a disgrace to the school.

14. Upon information and belief, Defendant Davis’s admonishments against Jane Doe became publicly known among the student body. Some students began writing “GP” or “Gay Pride” on their arms to show support for Jane Doe. On or about Tuesday, September 11, 2007, a

rumor started among the students that Defendant Davis had invited an anti-gay preacher to speak at a mandatory assembly on Wednesday, September 12, 2007. The rumor was partly confirmed by a silent bulletin on the classroom video monitors showing that there was going to be a “morality assembly” at the end of the day Wednesday.

15. Upon information and belief, during lunchtime on Wednesday, September 12, 2007, a group of friends of Jane Doe discussed the idea of peacefully walking out of the assembly in protest.

16. The “morality assembly” occurred on Wednesday, September 12, 2007, and proceeded without incident. No students walked out of the assembly.

17. Upon information and belief, during the days after the assembly, Defendant Davis called in about a dozen students to interrogate them about the “GP” and “Gay Pride” writings that some students were displaying on their arms and school materials and about the rumored walk-out of the assembly. During those meetings, Defendant Davis instructed students not to wear a rainbow belt and or to write “Gay Pride” or “GP” on their arms or notebooks.

18. One of the students that Defendant Davis called into his office during the days after the assembly is Heather's cousin, who is also a student at Ponce de Leon High School. Upon information and belief, Defendant Davis interrogated Heather's cousin about her sexual orientation and about the sexual orientation of other students at the school. Defendant Davis also stated something to the effect of being gay was not right and that being gay is against the Bible. He further stated that he hoped that Heather's cousin would not "go down that road" of being gay. He then instructed her not to discuss her sexual orientation with any students at the school, not to say "gay pride" or write it on her body or school materials, and not to wear gay-themed clothing, including her rainbow-colored belt. Defendant Davis explained to Heather's cousin that if she were to do any of these things, he would suspend her from school.

19. Upon information and belief, on or about Friday, September 21, 2007, and Monday, September 24, 2007, Defendant Davis suspended a handful of students, including Heather's cousin, for five school days each for expressing their support for the fair treatment of gays and lesbians. To at least one student, Heather's cousin, and her parent, Defendant Davis explained that he was suspending the student for: (1) belonging to a "secret

society,” (2) threatening to walk out of the assembly, and (3) disrupting the school by being part of a gay protest. Heather heard about the suspensions and Defendant Davis’s prohibitions of student expression supporting the fair treatment of gays and lesbians from her cousin and a few other students.

20. On or about Wednesday, September 26, 2007, Heather wore a rainbow belt and a handmade shirt that stated, “I support gays” to Ponce de Leon High School to express her support for her cousin, her acceptance of gays and lesbians, and her belief that gays and lesbians should be afforded equality and fairness. On the succeeding Thursday and Friday, Heather wore the rainbow belt to school to express the same ideals. Heather’s political expression did not cause any disruption of the school or other negative reactions, and she was not reprimanded.

21. As Heather wore her “I support gays” T-shirt and rainbow belt without incident, she sought clarification from the Defendant School Board about its position regarding student expression in school in support of the respect, equal treatment, and acceptance of gays and lesbians. On November 2, 2007, Heather and her cousin (who had been previously suspended by Defendant Davis), through legal counsel, sent a letter (attached hereto as

Exhibit 1) to the School Board, through its attorney, seeking guidance regarding exactly which phrases and symbols they could wear or write at school without being punished. Specifically, in the letter, Heather and her cousin sought permission to express their support for the respect, equal treatment, and acceptance of gays and lesbians through the following phrases and symbols:

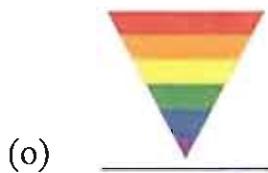
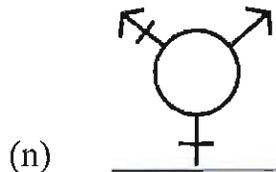
- (a) "Gay Pride" or "GP"
- (b) "Gay? Fine by Me!"
- (c) "I'm Straight, but I vote Pro-Gay"
- (d) "I Support Equal Marriage Rights"
- (e) "Equal, Not Special Rights"
- (f) "God Loves Me Just the Way I Am" (in rainbow colors or in a rainbow)
- (g) "Pro-Gay Marriage"
- (h) "Sexual Orientation is Not a Choice. Religion, However, Is."
- (i) A rainbow in the shape of an arch or flag
- (j) A triangle with one corner at the bottom, rainbow or pink

colored

(k) A pink armband or an armband with a triangle on it

(l) "I Support My Gay Friends"

(m) "I Support Gays"



22. By letter dated November 12, 2007 (attached hereto as Exhibit 2), the School Board, through its attorney, advised Heather and her cousin that School Board policy prohibited the display of any and all of the phrases or symbols listed in the November 2, 2007, letter (Exhibit 1). The School Board justified this censorship on the ground that such expression at Ponce de Leon High School would "likely be disruptive and interfere with the educational process." In the letter, the School Board also stated that students could not wear the requested symbols because they indicated membership in an "illegal organization." The School Board defined "illegal organizations" as "any

attempt to use the school day for activities that are not school related or school sponsored.”

23. Heather desired and continues to desire to express her support for the fair treatment of gays and lesbians. But for Defendants’ verbal and written instructions and her reasonable fear that she will be disciplined for doing so, Heather would have expressed and would express at school her support the fair treatment of gays and lesbians using one or more of the phrases or symbols listed in the November 2, 2007, letter (Exhibit 1). Heather has abstained and continues to abstain from expressing her political beliefs concerning gays and lesbians using the phrases and symbols listed in the November 2, 2007, letter (Exhibit 1) out of reasonable fear that she will be disciplined for violating the Defendants’ unlawful policies and practices or out of retaliation by the Defendants for engaging in her free speech rights.

24. Defendants’ written and verbal prohibitions against engaging in the expression showing support for the respect, equal treatment, and acceptance of gays and lesbians, such as the symbols and phrases listed in the November 2, 2007, letter (Exhibit 1), impermissibly infringe and constitute an impermissible chill on Plaintiff’s freedom of speech.

25. The Defendants' policies concerning "illegal organizations" or "secret societies" are void for vagueness, overbroad, and unconstitutional, facially and as applied to the contested phrases and symbols. By banning and imposing a prior restraint on all speech concerning activities that are not school related or school sponsored, the policies on their face create an impermissible risk of suppression of ideas, penalize a substantial amount of speech that is constitutionally protected, and fail to give fair notice of what is prohibited. As applied to the contested phrases and symbols, Plaintiff is unaware of any secret society or unlawful organization that uses any of the contested phrases or symbols as indications of membership.

26. Unless restrained by this Court, Plaintiff will continue to be subject to punishment for her lawful exercise of their First Amendment right to express support for the fair treatment of gays and lesbians. Plaintiff has been and will continue to be irreparably harmed by the Defendants' denial of her fundamental constitutional rights.

27. Plaintiff has no adequate remedy at law because the denial of Plaintiff's fundamental constitutional rights cannot be remedied fully and adequately through legal relief.

FIRST CLAIM FOR RELIEF
Violation of First Amendment,
as applied to the states under the Fourteenth Amendment
(Against Defendant David Davis, 42 U.S.C. §1983)

28. Plaintiff realleges and incorporates by reference all of the preceding paragraphs in this Complaint.

29. Defendant Davis deprived, and is continuing to deprive, Plaintiff of the rights secured to her by the United States Constitution.

30. By instructing Ponce De Leon High School students that they are prohibited from wearing clothing or writing phrases expressing their support for the respect, equal treatment, and tolerance of gays and lesbians, Defendant Davis violated, and is continuing to violate, Plaintiff's right to free speech and expression, and in particular her right to political expression, as guaranteed by the First Amendment and the Fourteenth Amendment to the U.S. Constitution.

31. Defendant Davis's actions are, in whole or in part, unlawfully motivated by his disagreement with the Plaintiff's viewpoint concerning the fair treatment of gays and lesbians or out of anti-gay animus, and therefore his actions also constitute unlawful viewpoint discrimination.

32. In depriving the Plaintiff of these rights, the Defendant Davis acted under color of state law. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

SECOND CLAIM FOR RELIEF

Violation of First Amendment,

as applied to the states under the Fourteenth Amendment

(Against Defendant Holmes County School Board, 42 U.S.C. §1983)

33. Plaintiff realleges and incorporates by reference all of the preceding paragraphs in this Complaint.

34. Defendant School Board deprived, and is continuing to deprive, Plaintiff of the rights secured to her by the United States Constitution.

35. By ratifying Defendant Davis's unlawful prohibitions against Ponce De Leon High School students wearing clothing or writing phrases expressing their support for the respect, equal treatment, and acceptance of gays and lesbians, Defendant School Board violated, and is continuing to violate, Plaintiff's right to free speech and expression, and in particular her right to political expression, as guaranteed by the First Amendment and the Fourteenth Amendment to the U.S. Constitution.

36. By prohibiting Plaintiff from expressing in school any of the phrases or symbols listed on the November 2, 2007, letter (Exhibit 1),

Defendant School Board violated, and is continuing to violate, Plaintiff's right to free speech and expression, and in particular her right to political expression, as guaranteed by the First Amendment and the Fourteenth Amendment to the U.S. Constitution.

37. In depriving the Plaintiff of these rights, Defendant School Board acted under color of state law. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

A. An order declaring that the Defendants violated the Plaintiff's rights protected under the First and Fourteenth Amendments to the United States Constitution;

B. An order preliminarily and then permanently enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants, employees and all other persons or entities in active concert or privity or participation with them, from restraining, prohibiting, or suppressing the Plaintiff or any other student within the school district of Holmes County,

Florida, from expressing his or her support for the respect, equal treatment, and acceptance of gays and lesbians, including but not limited to the phrases and symbols listed in the November 2, 2007, letter (Exhibit 1), pursuant to reasonable time, place, and manner restrictions;

C. An order enjoining the enforcement of the Defendants' policies concerning expression related to "illegal organizations" or "secret societies."

D. An order directing Defendants to take such affirmative steps necessary to remediate the past restraints of expression of support for the respect, equal treatment, and acceptance of gays and lesbians, including, but not limited, to notifying in writing the Ponce de Leon High School student body and school officials within the Holmes County School District that students are permitted to express support for the respect, equal treatment, and acceptance of gays and lesbians pursuant to reasonable time, place, and manner restrictions;

E. An order enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants, employees and all other persons or entities in active concert or privity or participation with them, from taking retaliatory action against Plaintiff for bringing this lawsuit, or against any students for

their past or future expressions of support for the respect, equal treatment, and acceptance of gays and lesbians;

F. An entry of judgment for Plaintiff against Defendant School Board for nominal damages of \$1;

G. An award to Plaintiff of reasonable attorneys' fees and costs incurred in connection with this action from the Defendants pursuant to 42 U.S.C. §1988;

H. Retain jurisdiction of this matter to enforce the terms of the Court's orders; and

I. An order granting such further and different relief as this Court may deem just and proper or that is necessary to make the Plaintiff whole.

Dated: January 31, 2008.

RESPECTFULLY SUBMITTED,



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