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20 **UNITED STATES DISTRICT COURT**
21 **SOUTHERN DISTRICT OF CALIFORNIA**

22 V.A.,

23 Plaintiff,

24 v.

25 SAN PASQUAL VALLEY UNIFIED
26 SCHOOL DISTRICT; BOARD OF
27 TRUSTEES OF THE SAN
28 PASQUAL VALLEY UNIFIED
SCHOOL DISTRICT, MONICA
MONTAGUE, BERNADINE SWIFT
ARROW, REBECCA RAMIREZ,
SALLY ANN DECORSE, LISA
AGUERRO, in their official capacity
as members of the Board of Trustees;
RAUNA FOX, in her official capacity
as DISTRICT SUPERINTENDENT;
DARRELL PECHTL, in his official
capacity as PRINCIPAL;

Defendants.

Case No. '17CV2471 BAS AGS

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF FOR
VIOLATION OF FREE SPEECH,
BASED ON:**

- (1) DEPRIVATION OF RIGHTS
UNDER COLOR OF STATE
LAW [42 U.S.C. § 1983];
- (2) CAL. EDUC. CODE §§ 48950,
48907
- (3) CAL. CIV. CODE § 52.1

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INTRODUCTION

- 1
2 1. Plaintiff V.A. is a Native American student-athlete at San Pasqual Valley
3 High School in the San Pasqual Valley Unified School District (“SPVUSD”
4 or “the District”) located in Winterhaven, Imperial County, California. He is
5 currently a senior in high school and was a member of the 2017 San Pasqual
6 Valley High School varsity football team and is currently a member of the
7 varsity basketball team. He has actively participated in sports throughout
8 high school and plans to play for the rest of his senior year, and next year to
9 participate in organized sports at the collegiate level.
- 10 2. The SPVUSD recently implemented a speech suppression and compulsion
11 policy applicable to all who participate in school athletic activity that, if not
12 disapproved by this Court, would force V.A. to give up his rights to free
13 expression if he wants to continue to be a successful high school athlete. He
14 seeks through this Complaint to enforce his free speech rights, and those of
15 other students, under the United States Constitution and California law,
16 including the right to be free from compelled speech and to exercise freedom
17 of expression in a conscientious, peaceful and respectful manner at the outset
18 of athletic events, as he has done in the recent past. Specifically, Plaintiff
19 seeks to vindicate and protect his right to silently kneel during the playing of
20 the national anthem at school athletic events.
- 21 3. This litigation challenges Defendants’ adoption of a compulsory anthem
22 policy that requires all student-athletes and coaching staff to stand during the
23 national anthem at school athletic events and prohibits them from kneeling,
24 sitting, or engaging in similar forms of protest or expression (“Compulsory
25 Anthem Policy”, or “CAP”). According to the CAP, students who violate the
26 policy may be removed from the team and prohibited from participating on
27 any other school teams in the future. Coaching staff are subject to discipline
28

1 and termination of employment.

2 4. The District announced and implemented its Compulsory Anthem Policy on
3 October 11, 2017 in the aftermath of an away football game at Mayer High
4 School in Mayer, AZ on October 6, 2017 at which Plaintiff V.A. silently and
5 respectfully kneeled during the playing of the national anthem. According to
6 Defendants, in a letter dated October 12, 2017, "political protests by students
7 and staff of San Pasqual during the playing/singing of the national anthem
8 were not well-received by the students, staff, and community of Mayer, AZ."
9 In fact, San Pasqual students were subjected to verbal and physical
10 harassment after the game, including the use of racial slurs. As Defendant
11 Superintendent Rauna Fox acknowledged, "our students were subjected to
12 verbal assaults, other kinds of assaults, other incidents including the throwing
13 of water and the use of racial slurs and gestures." Instead of addressing the
14 unlawful threatening and racially abusive behavior of the Mayer High School
15 Students, for which Mayer High School officials later apologized, Defendants
16 chose to impose prohibitions and restrictions on the protected speech and
17 expression rights of San Pasqual students and teaching staff. In addition, San
18 Pasqual officials informed the Arizona Interscholastic Association they would
19 no longer accept games versus Mayer High on its schedule.

20 5. Mayer High School is a predominantly white high school with racial and
21 ethnic demographics that are very different from those of San Pasqual Valley
22 High School. Over 77% of all students at Mayer High School are white,
23 whereas less than 4% of all students who attend San Pasqual Valley High
24 School are white. SPVHS has a predominantly Hispanic (52%) and Native
25 American (40%) student population.

26 6. The disorderly conduct engaged in by students and even adults from Mayer
27 High School on October 6th occurred hours after Plaintiff took a knee during
28 the national anthem. There was no audible or visible response to Plaintiff's

1 kneeling as he knelt, immediately thereafter, or at any point during the game
2 or at halftime. It was not until the game had completely finished and San
3 Pasqual students were getting ready to head home that a few students from the
4 rival school began yelling racial slurs and spraying them with water.

5 7. In the aftermath of the Mayer, AZ game, Defendants promulgated their CAP
6 to suppress what they viewed as peaceful protest and commanded a single
7 manner of expressing oneself during the playing of the national anthem,
8 rather than proceeding cautiously with due regard to the valuable rights at
9 stake.

10 8. Public school students have constitutional rights to freedom of speech and
11 expression that they do not shed at the schoolhouse gate, on the playing field,
12 or on the basketball court.

13 9. Schools must achieve a balance between protecting the safety and well-being
14 of students and respecting the students' constitutional rights.

15 10. As the Supreme Court has acknowledged, "Any word spoken (or not spoken),
16 in class, in the lunchroom, or on the campus, that deviates from the views of
17 another person may start an argument or cause a disturbance. But our
18 Constitution says we must take this risk [internal citation omitted]; and our
19 history says that it is this sort of hazardous freedom – this kind of openness –
20 that is the basis of our national strength and of the independence and vigor of
21 Americans who grow up and live in this relatively permissive, often
22 disputatious, society." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.* 393 U.S.
23 503, 508-509 (1969).

24 **PARTIES**

25 11. Plaintiff V.A. is a 17 year old senior and student-athlete at San Pasqual Valley
26 High School (SPVHS) of the San Pasqual Valley Unified School District
27 located in Imperial County. SPVHS has approximately 173 students enrolled,
28 almost all of whom are either Native American or Latino. Plaintiff V.A. has

1 played a number of school sports including football and basketball throughout
2 his enrollment in the District. During the current (2017-2018) school year,
3 V.A. has played and continues to play high school sports. He played on the
4 varsity football team at the start of the school year and with football season's
5 end, now plays on the varsity basketball team.

6 12. During this year's football season, V.A. began silently taking a knee during
7 the playing of the national anthem to protest racial injustice. V.A. wishes to
8 continue taking a knee during the national anthem at athletic events, including
9 at high school basketball games, but he fears he will be disciplined as stated
10 in the Compulsory Anthem Policy including being removed from the
11 basketball team and prohibited from playing any future sports. Plaintiff does
12 not want to be compelled to stand for something he does not believe in or
13 agree with. Neither does Plaintiff want to be prohibited from peacefully
14 expressing his point of view by taking a knee during the national anthem.
15 Plaintiff V.A. does not want to have to choose between exercising his
16 constitutional rights and participating in school sports, but the CAP
17 unconstitutionally imposes that coercive choice.

18 13. Defendant SAN PASQUAL VALLEY UNIFIED SCHOOL DISTRICT is,
19 and at all times mentioned herein was, a local educational agency duly
20 organized and existing under the laws of the State of California. The District
21 is located in Imperial County near Yuma, Arizona. Over 46% of all students
22 enrolled are Native American, 45% are Hispanic and 94% of all students are
23 low-income. The District is charged with providing a public education and
24 education-related services to all school aged children within its boundaries.
25 SPVUSD is, and at all times mentioned herein was, a local agency as that
26 term is defined in 2 California Code of Regulations § 11150, receives
27 financial assistance from the State of California and is funded directly by the
28 State of California to provide educational services to children who reside

1 and/or are enrolled in public schools within its boundaries. Additionally,
2 SPVUSD receives, and at all times mentioned herein has received, federal
3 financial assistance and/or sub-grants of federal financial assistance from the
4 State of California to provide educational services to children who reside
5 and/or are enrolled in public schools within its boundaries.

6 14. Defendant BOARD OF TRUSTEES OF SAN PASQUAL VALLEY
7 UNIFIED SCHOOL DISTRICT and its members, defendants Monica
8 Montague, Bernadine Swift Arrow, Rebecca Ramirez, Sally Ann DeCorse,
9 and Lisa Aguerro (referred to collectively as "BOARD OF TRUSTEES"), are
10 charged with determining the policies governing SPVUSD schools and with
11 adopting and promulgating rules and regulations for the supervision and
12 administration of its programs that are not inconsistent with the U.S. and
13 California Constitutions and laws of the State of California. They are charged
14 with the oversight of SPVUSD and its compliance with state and federal laws
15 regarding the education of its students. The above-named Respondent
16 members of the BOARD OF TRUSTEES are sued in their official capacities.
17 The Fourteenth Amendment protects the citizen against the State itself and all
18 of its creatures, including this Board of Education.

19 15. Defendant RAUNA FOX is the Superintendent of SPVUSD and Plaintiff sues
20 her for actions taken in her official capacity. As Superintendent of the
21 District she is charged with the oversight of SPVUSD and its compliance with
22 the U.S. and California Constitutions and state and federal laws regarding the
23 education of its students. Defendant Fox, acting in her capacity as
24 Superintendent, instituted and approved the Compulsory Anthem Policy and
25 provided letters describing and/or interpreting the policy to all coaching staff
26 on October 11, 2017 and to parents on October 12, 2017 in which disciplinary
27 sanctions for violators were described.

28 16. Defendant DARRELL PECHTL is the Principal of San Pasqual Valley High

1 School. Plaintiff sues him for his actions taken in his official capacity. As
2 Principal, he is charged with the oversight of San Pasqual Valley High School
3 and its compliance with the U.S. and California Constitutions and state and
4 federal laws regarding the education of its students.

5 17. Defendants, including the individual members of the Board of Trustees,
6 Superintendent Fox, and Principal Pechtl, acted under color of their
7 governmental authority and under color of the customs and usages of the
8 District when developing, adopting, and implementing the Compulsory
9 Anthem Policy.

10 **JURISDICTION AND VENUE**

11 18. Plaintiff's claims occurred in the state of California. This action arises under,
12 inter alia, the Fourteenth Amendment of the United States Constitution and
13 presents a federal question within this Court's jurisdiction under Article III of
14 the Constitution and 28 U.S.C. §§ 1331, 1343, and 1367.

15 19. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28
16 U.S.C. §§ 2201 and 2202, by Federal Rules of Civil Procedure 57 and 65, and
17 by the inherent equitable powers of this Court.

18 20. This Court has supplemental jurisdiction over Plaintiff's state law claims
19 pursuant to 28 U.S.C. § 1367(a), because these claims are based on and share
20 a common nucleus of operative facts with Plaintiff's federal civil rights
21 claims and form parts of the same case or controversy under Article III of the
22 United States Constitution.

23 21. Venue is proper under 28 U.S.C. §1391(b) because a substantial part of the
24 events or omissions giving rise to the Plaintiff's claims occurred in this
25 district.

26 **STATEMENT OF FACTS**

27 22. On September 29, 2017, Plaintiff began taking a knee during the playing of
28 the national anthem at football games as a form of peaceful political protest to

1 the racial injustices occurring across the country. In so doing, Plaintiff
2 himself never interrupted school activities nor sought to intrude in the school
3 affairs or the lives of others.

4 23. On September 29, 2017, at least one other student-athlete on the football team
5 took a knee with Plaintiff during the playing of the national anthem at the
6 high school football game. There was no adverse or negative reaction from
7 anyone witnessing the students' kneeling, which they did in plain sight of
8 spectators, coaches and players and personnel of the opposing team.

9 24. At no point prior to the promulgation of the CAP on October 11, 2017 did
10 Defendants or anyone from the school or district, speak with Plaintiff
11 regarding his taking a knee or his reasons for doing so.

12 25. On Friday, October 6, 2017, the San Pasqual Valley High School football
13 team played Mayer High School in Mayer, Arizona. This was the
14 homecoming game for Mayer High School. When the national anthem was
15 played at the beginning of the football game, Plaintiff silently kneeled as he
16 had done at the prior football game on September 29, 2017. Three members
17 of the San Pasqual cheerleading squad also remained seated for the national
18 anthem as it was played. This silent expressive conduct by SPVHS students
19 occurred without contemporaneous incident. There was no immediate
20 noticeable reaction to their conduct by anyone at that time or at any point
21 during the football game.

22 26. On information and belief, it was not until the football game was over, that a
23 group of 5-6 Mayer students approached the San Pasqual cheerleading coach,
24 Adina A., who is also Plaintiff's mother, as she and two cheerleaders were
25 about to enter the designated changing area after the game. The San Pasqual
26 football players had already entered the changing area. As Adina A. and the
27 two cheerleaders were approaching the door, the Mayer students asked Adina
28 A. "where is number 7 or was it 77" "we want number 7" "we are going to

1 drag him, pull him onto our field and force him to stand” “you don’t take a
2 knee here, this is America, you don’t disrespect our field”. Adina stood in
3 front of the door of the changing area and instructed the group of students to
4 move along. The Mayer students started saying things like “go back across
5 the border” to which one of the cheerleaders responded “we are not from
6 Mexico, we are Native”. The Mayer students then stated “well, we stole your
7 land” “this is America” and began mocking their Native American culture
8 through war cry. At the time this was happening, Adina A. was the only adult
9 present. There were no school security or other adults in the immediate
10 vicinity. Once the two cheerleaders were inside of the changing area, Adina
11 A. left to find another adult. As she was looking for another adult, another
12 group of students joined and others, including a Mayer parent, started chiming
13 in saying “this is America” and making comments such as “you guys got
14 slaughtered, you must be used to that.”

15 27. On information and belief, Adina A. was ultimately able to speak with an
16 assistant athletic director from Mayer and explain the situation. When she
17 told him what was happening and described the offending students and
18 parent, he responded that he knew who she was referring to and was not
19 surprised. By that time, the San Pasqual football players and cheerleaders had
20 already left the changing area and were standing in line to get onto their
21 school bus. As the San Pasqual students were getting onto the bus, Mayer
22 students were lining up alongside the gymnasium for their homecoming
23 dance. A group of Mayer students who were standing in line sprayed water
24 towards the San Pasqual students as they were getting onto the bus and the
25 water sprayed onto one of the San Pasqual cheerleaders. The students who
26 sprayed the water were the same students who had made the offensive
27 comments earlier. Other than Mayer students throwing water as the San
28 Pasqual students were boarding the school bus, there was no report of

- 1 physical violence engaged in by anyone at this Mayer post-game incident.
- 2 28. On information and belief, Principal Pechtl called Plaintiff's mother into his
3 office on Monday, October 9, 2017 around 8:30 a.m. During this meeting,
4 Principal Pechtl asked Plaintiff's mother to report what happened and insisted
5 "You don't think you, your son, and the other students were disrespectful?"
6 "Because of what you did, per the school board, all future games are
7 canceled. I just got the call this morning".
- 8 29. On information and belief, Principal Pechtl had at some point on or before
9 October 9, 2017 received a communication from officials at Mayer High
10 School apologizing for the incident.
- 11 30. Plaintiff's mother did not hear anything else until Tuesday, October 10, 2017
12 when she was informed that the matter would be discussed by Principal
13 Pechtl and Superintendent Fox with the school board in closed session.
- 14 31. On information and belief, Plaintiff's mother was again called in by Principal
15 Pechtl on October 11, 2017 to meet with him in his office. Plaintiff's mother
16 communicated to the principal that it was not fair for the school to punish her
17 son for the behavior of other students and for expressing himself, especially
18 when the school never bothered to talk to him about it directly or ask him
19 about his reasons for taking a knee. The Principal stated that her son would
20 be suspended from sports, she would be terminated from employment, and
21 that her cheerleaders would be subjected to the same discipline rules if they
22 were to continue to kneel or sit during the national anthem at school games.
23 Plaintiff's mother felt this was a direct threat to her and her son because the
24 Principal knows how important sports are to her son and that such action
25 would serve to silence him.
- 26 32. On Thursday, October 11, 2017, the San Pasqual Valley Unified School
27 District announced the Compulsory Anthem Policy in a letter from
28 Superintendent Fox to all coaching staff. The policy mandated that students

1 and coaches “stand and remove hats/helmets and remain standing during the
2 playing or singing of the National Anthem”. The policy expressly bars
3 “[k]neeling, sitting or similar forms of political protest . . . during athletic
4 events at any home or away games.” Violating the policy could result in
5 removal from all athletic teams for students and discipline for coaching staff,
6 including possible termination of employment.

7 33. The letter announcing the new policy stated that the new rule was necessitated
8 by what transpired at the away game in Mayer, Arizona on October 6, 2017.

9 34. On information and belief, the Athletic Director for San Pasqual High School
10 was instructed to meet, and did meet, with all coaches, except for Plaintiff’s
11 mother, to review the letter from Superintendent Fox.

12 35. On Wednesday, October 11, 2017, V.A. was under so much stress and
13 nervousness that he broke out in hives that morning and his mother took him
14 home from school around 10:00 am. V.A. returned to school around 2:30 pm
15 and was read the Superintendent’s letter by the athletics director. Plaintiff
16 V.A. was asked to sign a document stating that his coach had reviewed the
17 letter with him.

18 36. Defendants’ actions towards Plaintiff including through their adoption,
19 publication, and enforcement of the Compulsory Anthem Policy has both a
20 chilling and retaliatory effect on Plaintiff’s right to continue to engage in
21 constitutionally protected activity.

22 37. Defendants, by their actions, deterred or chilled Plaintiff’s political speech
23 and such deterrence was a substantial or motivating factor in Defendants’
24 conduct.

25 38. Superintendent Fox sent a subsequent letter dated October 12, 2017
26 describing the Compulsory Anthem Policy including the disciplinary
27 sanctions for violators. The letter indicated that political protests during the
28 pre-game anthem “were not well-received” by the Mayer crowd. It also

1 stated that the District had contacted Mayer High School as well as the
2 officials at AIA, Arizona Interscholastic Association, to notify them of the
3 October 6, 2017 incident and that San Pasqual will no longer allow Mayer
4 High School to be on their playing schedule.

5 39. The Compulsory Anthem Policy denies Plaintiff his right to freedom of
6 speech and expression as guaranteed by the First and Fourteenth Amendments
7 of the United States Constitution, and Sections 48907 and 48950 of the
8 California Education Code.

9 **Plaintiff's Attempts to Resolve this Dispute Without Litigation**

10 40. Counsel for Plaintiff sent a demand letter to the District on October 12, 2017,
11 the day of the final football game of the season, demanding that the District
12 rescind its new policy. That night the District opted not to play the national
13 anthem before, during, or after the football game.

14 41. Because the District failed to respond in writing to its October 12, 2017 letter,
15 counsel for Plaintiff sent a second demand letter on October 19, 2017
16 requesting certain assurances concerning the CAP and again demanding that
17 the District rescind its policy by written notice to parents and staff.

18 42. The District finally responded through their counsel, Robert E. Thurbon, in a
19 letter dated October 28, 2017 defending the policy.

20 43. Counsel for Plaintiff sent a third and final CAP rescission demand on
21 November 20, 2017, which was the day of the first high school basketball
22 game of the season, reiterating prior demands and requesting written
23 confirmation of the District's intent to comply by December 1, 2017. The
24 letter stated that failing such rescission, Counsel would have no option but to
25 advise its clients to pursue available legal remedies including appropriate
26 injunctive and declaratory relief. As of the date of the filing of this complaint,
27 the District has failed to respond.

28 44. On information and belief, Defendant Board of Trustees attempted to adopt a

1 board policy governing political activities on school grounds without
2 meaningful opportunity for students, parents, or community members to
3 provide input by calling a special board meeting on November 28, 2017.

4 45. On information and belief, on November 28, 2017 the Board discussed but
5 did not change its policy. Thus, the Compulsory Anthem Policy continues to
6 be the controlling policy of the District.

7 46. Unless and until enjoined by order of this court, defendants will continue to
8 violate students' rights to freedom of speech and expression and enforce the
9 Compulsory Anthem Policy, thereby causing Plaintiff great and irreparable
10 injury, i.e., that Plaintiff will thereby be deprived of his rights to freedom of
11 speech and expression under the First and Fourteenth Amendments of the
12 United States Constitution, and Sections 48907 and 48950 of the California
13 Education Code.

14 47. Plaintiff has no adequate remedy at law for the injuries suffered, and to be
15 suffered in the future, in that it is impossible for Plaintiff to calculate a sum of
16 money damages that will compensate him for the loss of his rights to freedom
17 of speech and expression.

18 48. An actual controversy has arisen and now exists between Plaintiff and
19 Defendants concerning their respective rights and duties in that Plaintiff
20 contends that the Compulsory Anthem Policy is unconstitutional, invalid and
21 unenforceable, both on its face and as applied to plaintiff, because it deprives
22 Plaintiff of his rights to freedom of speech and expression. Plaintiff further
23 contends that Defendants have no right, pursuant to the Compulsory Anthem
24 Policy or otherwise, to: force him to stand against his will during the national
25 anthem or to prevent him from silently kneeling in political protest or to
26 harass, threaten, intimidate, discourage, discriminate against, discipline, or
27 otherwise punish Plaintiff for exercising his constitutional rights. Defendants
28

1 dispute these contentions.

2 49. The first home game of the San Pasqual basketball season is scheduled for
3 Friday, December 15, 2017 at 6:00 pm.

4 50. Plaintiff desires a judicial determination of his rights and duties and a
5 declaration as to whether the Compulsory Anthem Policy is invalid and
6 unenforceable so as to violate of Plaintiff's rights of free speech and
7 expression under the First and Fourteenth Amendments of the United States
8 Constitution, and Sections 48907 and 48950 of the California Education
9 Code. Pursuant to Education Code Section 48907, students shall have the
10 right to exercise freedom of speech, except that expression shall be prohibited
11 which is obscene, libelous, or slanderous or that so incites pupils as to create a
12 clear and present danger of the commission of unlawful acts on school
13 premises or the violation of lawful school regulations, or the substantial
14 disruption of the orderly operation of the school. Education Code Section
15 48907 provides that a school district may not make or enforce any rule
16 subjecting any high school pupil to disciplinary sanctions solely on the basis
17 of conduct that is speech or other communication that, if engaged in off
18 campus, is protected from governmental restriction by the First Amendment
19 to the United States Constitution or Section 2 of Article I of the California
20 Constitution.

21 51. A judicial declaration is necessary and appropriate at this time under the
22 circumstances in order that Plaintiff may ascertain his rights and duties with
23 respect to not being compelled to stand during the national anthem and to
24 express himself by silently kneeling in political protest during school athletic
25 events.

26 52. By reason of Defendants' acts and conduct as herein alleged, Plaintiff was
27 deprived of his rights, privileges, and immunities secured to him by the First
28 Amendment of the United States Constitution, all in violation of Title 42 of

1 the United States Code, Section 1983.

2 53. The loss of First Amendment freedoms, for even minimal periods of time,
3 constitutes irreparable injury.
4

5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 Compelled Speech in Violation of Free Speech
8 First Amendment to the U.S. Constitution
(42 U.S.C. § 1983)

9 (Against Defendants Board of Trustees, Fox, and Pechtl)
10

11 54. Plaintiff incorporates all preceding paragraphs by reference as though fully
12 set forth here.

13 55. The First Amendment to the United States Constitution provides that
14 “Congress shall make no law respecting an establishment of religion, or
15 prohibiting the free exercise thereof; or abridging the freedom of speech, or of
16 the press; or the right of the people peaceably to assemble, and to petition the
17 Government for a redress of grievances.”

18 56. Governmental authority may not directly coerce the unwilling expression of
19 any belief.

20 57. Defendants by and through their Compulsory Anthem Policy have invaded
21 the “sphere of intellect and spirit which is the purpose of the First
22 Amendment to reserve from all official control” by requiring all student-
23 athletes and coaching staff to stand against their will during the national
24 anthem.

25 58. Defendants may not compel Plaintiff, or any other student, to participate in
26 patriotic exercises, such as standing, removing hats, or singing the national
27 anthem, at school. Defendants may not compel students to affirm their
28

1 loyalty by word or act.

2 59. The letters provided to coaching staff and parents from Superintendent Fox,
3 who is an authority figure with substantial discretionary powers and whose
4 words carry a presumption of legitimacy, constituted an official interpretation
5 of the District's policy and communicated to VA and other students that
6 Plaintiff's conduct was not within his rights to expression on campus.

7 60. Defendants Board of Trustees ratified those acts and the policy by failing to
8 revoke the policy although on notice of its purpose and effect on or before
9 November 28, 2017 when the matter was discussed and subject to action at
10 their board meeting noticed for that date.

11 61. Defendants are acting under color of state law and have and continue to
12 subject and/or cause Plaintiff to be subjected to a deprivation of rights,
13 privileges, and immunities secured by the United States Constitution.
14

15 **SECOND CAUSE OF ACTION**

16 **Suppression of Speech in Violation of Free Speech**

17 **First Amendment to the U.S. Constitution**

18 **42 U.S.C. § 1983**

19 **(Against Defendants Board of Trustees, Fox, and Pecht)**

20 62. Plaintiff incorporates all preceding paragraphs by reference as though fully
21 set forth here.

22 63. Students in school as well as out of school are "persons" under our
23 Constitution possessed of fundamental rights which the State must respect.

24 64. Plaintiff has a right to express his views and beliefs by kneeling silently
25 during the national anthem.

26 65. Plaintiff's silent, passive expression of opinion is unaccompanied by any
27 disorder or disturbance on the part of Plaintiff.

28 66. Defendants' undifferentiated fear or apprehension of disturbance is not

1 enough to overcome the right to freedom of expression.

2 67. Defendants cannot suppress expressions of feelings with which they do not
3 wish to contend.

4 68. Defendants have unlawfully suppressed Plaintiff's freedom of expression, and
5 those of other students, through their Compulsory Anthem Policy.

6 69. The very existence of Defendants' Compulsory Anthem policy may cause
7 others not before the court to refrain from constitutionally protected speech or
8 expression.

9 70. Defendants are acting under color of state law and have and continue to
10 subject and/or cause Plaintiff to be subjected to a deprivation of rights,
11 privileges, and immunities secured by the United States Constitution.

12
13 **THIRD CAUSE OF ACTION**

14 **Content and Viewpoint Discrimination in Violation of Free Speech**

15 **First Amendment to the U.S. Constitution**

16 **42 U.S.C. § 1983**

17 **(Against Defendants Board of Trustees, Fox, and Pechtl)**

18 71. Plaintiff incorporates all preceding paragraphs by reference as though fully
19 set forth here.

20 72. Defendants have engaged in impermissible content and viewpoint
21 discrimination through their Compulsory Anthem Policy in which Defendants
22 clearly favor certain speech and expression over others.

23 73. Specifically, Defendants' Compulsory Anthem Policy compels all student-
24 athletes and coaching staff to "stand and remove hats/helmets and remain
25 standing during the playing or singing of the National Anthem" while
26 "kneeling, sitting, or similar forms of political protest are not permitted".

27 74. Defendants have failed to afford Plaintiff, and other students with the same or
28 similar viewpoint, equal protection of the laws as students who express

1 speech the District considers acceptable forms of patriotic speech.

2 75. Defendants are acting under color of state law and have and continue to
3 subject and/or cause Plaintiff to be subjected to a deprivation of rights,
4 privileges, and immunities secured by the United States Constitution.

5
6 **FOURTH CAUSE OF ACTION**

7 Cal. Educ. Code. § 48950
(Against all Defendants)

8 76. Plaintiff incorporates all preceding paragraphs by reference as though fully
9 set forth here.

10 77. Educ. Code. § 48950(a) provides that a school district may not make or
11 enforce any rule subjecting any high school pupil to disciplinary sanctions
12 solely on the basis of conduct that is speech or other communication that, if
13 engaged in off campus, is protected from governmental restriction by the First
14 Amendment to the United States Constitution or Section 2 of Article I of the
15 California Constitution.

16 78. Defendants have violated Educ. Code § 48950 by promulgating and enforcing
17 the Compulsory Anthem Policy which subjects student violators of the policy
18 to discipline in the form of removal from their school sports teams and any
19 subsequent school sports teams.

20 79. V.A. was enrolled at San Pasqual Valley High School at the time that
21 Defendants made and enforced the Compulsory Anthem Policy in violation of
22 Cal. Educ. Code. § 48950(a). As such, V.A. may commence a civil action to
23 obtain appropriate injunctive and declaratory relief as determined by the court
24 pursuant to Educ. Code. § 48950(b).

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FIFTH CAUSE OF ACTION

Writ of Mandate

Cal. Code. Civ. Proc. § 1085; Cal. Educ. Code § 48907

(Against all Defendants)

80. Plaintiff incorporates all preceding paragraphs by reference as though fully set forth here.

81. Defendants have a clear and present ministerial duty to ensure that all pupils have the right to exercise freedom of speech as well as a clear and present duty not to unlawfully interfere with that right.

82. Cal. Educ. Code. § 48907 provides that all pupils shall have the right to exercise freedom of speech, except that expression shall be prohibited which is obscene, libelous, or slanderous or that so incites pupils as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.

83. V.A.'s speech cannot be prohibited under § 48907 because it does not incite disruption. Even if the incident that followed the end of the football game at Mayer, AZ could be deemed "substantial disruption of the orderly operation of the school" and/or that there was at that moment a "clear and present danger" of disruption, it cannot be prohibited because V.A.'s speech, itself, having occurred prior to the beginning of the game, did not incite that disruption.

84. The Compulsory Anthem Policy unlawfully places V.A.'s peaceful conduct outside the scope of his "rights of expression" and proclaims that speech similar to his kneeling will not be tolerated. This message was reinforced when coaches were instructed to review, and did review, with their student-athletes the Compulsory Anthem Policy described in the letter from Superintendent Fox dated October 11, 2017 as well as the subsequent letter

1 from Superintendent Fox on October 12, 2017 to parents.

2 85. The Compulsory Anthem Policy constitutes regulatory government action
3 that may result in an actionable chill, and the threat of censorship implicit in
4 the letters dated October 11, 2017 and October 12, 2017 is a legally
5 cognizable claim.

6 86. The letters provided to coaching staff and parents from Superintendent Fox,
7 who is an authority figure with substantial discretionary powers and whose
8 words carry a presumption of legitimacy, constituted an official interpretation
9 of the District's policy and communicated to V.A. and other students that
10 Plaintiff's conduct was not within his rights to expression on campus.

11 87. Defendants violated V.A.'s right to exercise freedom of speech in violation of
12 Cal. Educ. Code § 48907.

13 88. Plaintiff has no plain, speedy, or adequate remedy at law other than the relief
14 requested.

15 89. Plaintiff's success in this action will result in the enforcement of important
16 rights affecting the public interest by conferring significant benefits on a large
17 class of persons, the right of public school children in the San Pasqual Valley
18 Unified School District to exercise freedom of speech consistent with their
19 rights under the United States Constitution and California education codes.

20
21 **SIXTH CAUSE OF ACTION**

22 Cal. Civ. Code § 52.1

23 (Against all Defendants)

24 90. Plaintiff incorporates all preceding paragraphs by reference as though fully
25 set forth here.

26 91. Any individual whose exercise or enjoyment of rights secured by the laws of
27 California has been interfered with or attempted to be interfered with by
28 threat, intimidation or coercion may institute a civil action for damages,

1 injunctive relief and other appropriate equitable relief pursuant to Cal. Civ.
2 Code § 52.1.

3 92. Cal. Educ. Code § 48907 provides that all pupils shall have the right to
4 exercise freedom of speech, except that expression shall be prohibited which
5 is obscene, libelous, or slanderous or that so incites pupils as to create a clear
6 and present danger of the commission of unlawful acts on school premises or
7 the violation of lawful school regulations, or the substantial disruption of the
8 orderly operation of the school.

9 93. V.A.'s speech cannot be prohibited under § 48907 because it is not intended
10 to incite and does not incite disruption.

11 94. Defendants attempted to interfere with and did interfere with V.A.'s right to
12 free expression, as secured by Cal. Educ. Code § 48907, by threat,
13 intimidation and coercion. Through the Compulsory Anthem Policy,
14 Defendants threatened to remove V.A. from all school sports teams for his
15 peaceful expression, a punishment that would harm V.A. personally and
16 professionally. Defendants' continued intimidating V.A. by having sports
17 coaches review with their student-athletes the Compulsory Anthem Policy
18 and directing student-athletes to sign forms acknowledging that they
19 understood the policy.

20 95. Defendants' attempts to interfere with V.A.'s statutory rights under Cal.
21 Educ. Code § 48907 violated Cal. Civ. Code § 52.1. Under Cal. Civ. Code
22 § 52.1(b) he is entitled to institute a civil action for injunctive relief and all
23 other equitable relief this Court deems appropriate.

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PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Issue a temporary restraining order and order to show cause why a preliminary and permanent injunction enjoining the Defendants from enforcing or attempting to enforce the Compulsory Anthem policy should not issue, and commanding the Defendants to immediately:
 - a. rescind the Compulsory Anthem policy;
 - b. retract its notice dated October 11, 2017 to all coaching staff as well as its notice to parents dated October 12, 2017 regarding the policy;
 - c. provide written notice to parents, students, and staff that the rule has been rescinded;
 - d. specifically instruct employees that no student may be disciplined in any way for not standing during the national anthem or for kneeling or sitting quietly during the national anthem;
 - e. take appropriate steps to address any harassment of students lawfully exercising their First Amendment rights including steps to prevent harassment and keep students safe while exercising their right;
 - f. take immediate steps to comply with U.S. Constitution and California Education Code;
 - g. provide training for teachers, administrators, coaches, and other staff regarding students' rights to freedom of expression at school and during school activities including athletic events.
2. Issue a preliminary and permanent injunction enjoining the Defendants from interfering with Plaintiff's right to freedom of expression under federal and state constitutional and statutory standards.
3. Issue a declaratory judgment that:
 - a. The Compulsory Anthem Policy is unconstitutional, invalid, void, and unenforceable, both on its face and as applied to Plaintiff;

- 1 b. Defendants violated Plaintiff's rights under the U.S. Constitution and
- 2 California education code;
- 3 4. For costs of suit herein incurred;
- 4 5. For reasonable attorneys' fees as authorized by Title 42 U.S.C. §1988(b), Cal.
- 5 Educ. Code §48950(b), and Cal. Code of Civ. Proc. §1021.5, and
- 6 6. For such other and further relief as the court may deem proper.

7
8 Respectfully submitted.

9 Dated: December 8, 2017

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