

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF KING WILLIAM

PETER VLAMING

Plaintiff,

v.

WEST POINT SCHOOL BOARD; LAURA ABEL,
in her official capacity as Division Superintendent;
JONATHAN HOCHMAN, in his official capacity as
Principal of West Point High School; and
SUZANNE AUNSPACH, or her successor in office,
in her official capacity as Assistant Principal of West
Point High School

Defendants.

Case No. CL19-454

FINAL ORDER

This matter came before the Court on Proposed Intervenor John Doe's Motion for Leave to Proceed Under Pseudonym and Motion to Intervene, on Defendants' Demurrer and Plea in Bar to the Complaint filed herein by Plaintiff Peter Vlaming, and on Plaintiff Vlaming's Motion to Nonsuit a Portion of Count IX. Upon consideration of the argument of counsel submitted on brief and orally at the hearing on June 7, 2021, the Court GRANTS Proposed Intervenor's Motion to Proceed Under Pseudonym; the Court DENIES Proposed Intervenor's Motion to Intervene; the Court SUSTAINS Defendants' Demurrer and Plea in Bar to Counts I, II, and III; the Court SUSTAINS Defendants' Demurrer to Counts IV, V, VI, VII, and VIII; the Court SUSTAINS Individual Defendants' (Laura Abel, Jonathan Hochman, and Suzanne Aunspach) Demurrer to Count IX; the Court SUSTAINS Defendant School Board's Demurrer to Count IX to the extent that the breach of contract claim asserted in Count IX is based on an allegation that West Point School Board Policies AC and GBA/JFHA, under which Plaintiff was discharged, are unconstitutional or ultra vires, or

based on any of the alleged causes of action asserted in Counts I through VIII; the Court OVERRULES Defendant School Board's Demurrer to Count IX only to the extent that Count IX asserts a claim for breach of contract for failure to comply with School Board policy requiring certain procedures during an investigation of allegations of discrimination, as alleged in Paragraphs 163 through 167 of the Complaint; and the Court GRANTS Plaintiff Vlaming's Motion to Nonsuit a Portion of Count IX, namely the remaining portion against Defendant School Board asserting a claim for breach of contract for failure to comply with School Board policy requiring certain procedures during an investigation of allegations of discrimination, as alleged in Paragraphs 163 through 167 of the Complaint.

Accordingly, the Court DISMISSES WITH PREJUDICE Counts I, II, III, IV, V, VI, VII, and VIII of the Complaint.


The Court further DISMISSES WITH PREJUDICE the portion of Count IX pertaining to Individual Defendants.

The Court further DISMISSES WITH PREJUDICE a portion of Count IX as to Defendant School Board to the extent a portion of that claim is based on an allegation that West Point School Board Policies AC and GBA/JFHA, under which Plaintiff was discharged, are unconstitutional or ultra vires, arbitrary or capricious, or based on any of the alleged causes of action asserted in Counts I through VIII.

And, on motion by Plaintiff, the remaining portion of Count IX as to Defendant School Board asserting a claim for breach of contract for failure to comply with School Board policy requiring certain procedures during an investigation of allegations of discrimination, as alleged in Paragraphs 163 through 167 of the Complaint, is NONSUITED.

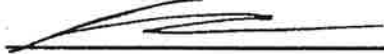
Let the Clerk send a certified copy of this Order to all counsel of record.

Entered this 13th day of August, 2021.



Jeffrey W. Shaw
Judge

SEEN AND OBJECTED TO, to the extent that the Demurrer to Count IX was overruled, for the reasons stated on the record, including that the Plaintiff has failed to state a claim for breach of contract against the School Board and because there is no allegation in the Complaint that a complaint of discrimination was ever filed by John Doe against Plaintiff to trigger any requirement that an investigation be conducted or that certain procedures be followed for such an investigation.



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A Copy Teste:
Patricia M. Norman, Clerk
By: 

Deputy Clerk

SEEN AND OBJECTED TO, as to the Order sustaining Proposed Intervenor's Motion to Proceed Under Pseudonym, for the reasons set forth in the pleadings, briefs, and in open court.

SEEN AND OBJECTED TO, as to the Order sustaining Defendants' Demurrer to Counts I–III, for the reasons set forth in the pleadings, briefs, and in open court, including that Plaintiff pled facts sufficient to state claims for compelled speech, content and viewpoint discrimination, and retaliation in violation of Article I section 12 of the Virginia Constitution.

SEEN AND OBJECTED TO, as to the Order sustaining Defendants' Plea in Bar to Counts I–III, for the reasons set forth in the pleadings, briefs, and in open court, including those reasons stated in opposition to Defendants' Demurrer to Counts I–III.

SEEN AND OBJECTED TO, as to the Order sustaining Defendants' Demurrer to Counts IV and V, for the reasons set forth in the pleadings, briefs, and in open court, and because the Virginia Constitution requires, *at the very least*, that strict scrutiny applies to Defendants' actions and policies because they substantially burdened Plaintiff's free exercise of his religion, and Plaintiff pled facts sufficient to state claims for violations of these rights:

free exercise of religion under of Article I section 16 of the Virginia Constitution and Virginia Code 57-1 (Count IV); and

free exercise of religion under Virginia Code 57-2.02 (Count V).

Further, SEEN AND OBJECTED TO. as to the Order sustaining Defendants' Demurrer to Counts IV and V, based on the United States Supreme Court's recent decision in *Fulton v. City of Philadelphia, Pennsylvania*, No. 19-123, 2021 WL 2459253 (U.S. June 17, 2021). *Fulton* demonstrates that, even examined under the federal free exercise standards, Plaintiff sufficiently pled that Defendants' actions and policies substantially burdened the exercise of his religion, *id.* at *4, were not neutral and generally applicable, *id.* at *4–7, failed to advance "properly narrowed" compelling government interests as applied against Plaintiff, *id.* at *8–9, and were not "narrowly tailored to achieve those interests," *id.* at *8. *Fulton* further shows that Plaintiff's status as a public employee does not undermine these conclusions because the Supreme Court has "never suggested that the government may discriminate against religion when acting in its managerial role." *Id.* at *6.


SEEN AND OBJECTED TO, as to the Order sustaining Defendants' Demurrer to Counts VI–VIII, for the reasons set forth in the pleadings, briefs, and in open court, including that Plaintiff pled facts sufficient to state claims for violations of these rights:

due process under Article I section 11 of the Virginia Constitution (Count VI);

freedom from government discrimination under Article I section 11 of the Virginia Constitution (Count VII); and

freedom from being subject to ultra vires acts under the Dillon rule, common law, and Virginia code 15.2-965 (Count VIII).

SEEN AND OBJECTED TO, as to the Order sustaining Defendant School Board's Demurrer to a portion of Count IX, breach of contract, for the reasons set forth in the pleadings, briefs, and in open court, including that Plaintiff pled facts sufficient to state a breach of contract claim based on Defendants' unlawful and ultra vires actions, including that their acts were contrary to law, arbitrary, and capricious.



J. Caleb Dalton, Esq.

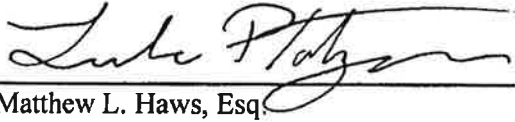
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SEEN AND OBJECTED TO, as to the Order denying proposed Intervenor John Doe's motion to intervene, for the reasons set forth in the motion to intervene, briefs, and in open court, including that John Doe seeks to interpose defenses germane to the subject matter of the proceeding; that John Doe's interests are placed in issue by the relief sought by the Complaint; and that permitting intervention would be appropriate under Rule 3:14 and beneficial to the conduct of the proceeding.



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