

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JOHN DOE #2,

Plaintiff,

versus

**TANGIPAHOA PARISH SCHOOL BOARD,
ANN SMITH, School Board Member, District A;
ROBERT POTTS, School Board Member,
District B; LEONARD GENCO, School Board
Member, District C; AL LINK, School Board
Member, District D; DANNY RIDGEL, School
Board Member, District E; ROBERT CAVES,
School Board Member, District F; ERIC
DANGERFIELD, School Board Member, District
G; SANDRA BAILEY-SIMMONS, School Board
Member, District H; and ROSE DOMINQUEZ,
School Board Member, District I,**

Defendants.

CIVIL ACTION NO. 08-1172

SECTION F(5)

Judge Martin L.C. Feldman

Magistrate Judge Alma L. Chasez

AMENDED ANSWER

NOW INTO COURT come Defendants, TANGIPAHOA PARISH SCHOOL BOARD, ANN SMITH, School Board Member, District A; ROBERT POTTS, School Board Member, District B; LEONARD GENCO, School Board Member, District C; AL LINK, School Board Member, District D; DANNY RIDGEL, School Board Member, District E; ROBERT CAVES,

School Board Member, District F; ERIC DANGERFIELD, School Board Member, District G; SANDRA BAILEY-SIMMONS, School Board Member, District H; and ROSE DOMINQUEZ, School Board Member, District I, (hereinafter collectively referred to as “Defendants”), who respectfully answer the Amended Verified Complaint (hereinafter “Complaint”) of Plaintiffs, John Doe #2 and Sally Doe,¹ as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Plaintiffs lack standing to bring their case and support their Complaint.

THIRD AFFIRMATIVE DEFENSE

Defendants are shielded in their individual capacities from the Plaintiffs’ claim for damages by qualified immunity.

FOURTH AFFIRMATIVE DEFENSE

None of the Defendants, and no representative of the Tangipahoa Parish School Board committed any act or failed to take any action, within the sphere of his/her official capacity, which that person knew or should have known would violate the constitutional rights of Plaintiffs or, alternatively, damage or injure Plaintiffs in any manner whatsoever. Moreover, no such Defendant or representative committed any act or failed to commit any act with malicious intent to cause a deprivation of Plaintiffs’ constitutional rights or cause harm to Plaintiffs as a result of the actions or inactions taken or complained of.

¹ While the Amended Verified Complaint includes only “John Doe #2” in its case caption and opening paragraph, paragraph 3 and later paragraphs of the document refer also to “Sally Doe.” Defendants answer both individual’s allegations here, in an abundance of caution.

FIFTH AFFIRMATIVE DEFENSE

At all times material, Defendants and all representatives of the Tangipahoa Parish School Board have acted in good faith.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiffs have failed to mitigate damages (if any).

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs' proposed remedy would violate the free speech and free exercise rights guaranteed by the First Amendment to the United States Constitution.

AND NOW, for their answer to the allegations of each and every numbered paragraph of the Complaint, Defendants aver as follows:

I.

1. Defendants deny that this Court has subject matter jurisdiction in this matter.

II.

2. Defendants admit that in order to solemnize proceedings of the Tangipahoa Parish School Board, it is the policy of the Board to allow for an invocation to be offered before its meetings for the benefit of the Board. Defendants deny any and all remaining allegations and inferences of paragraph 2.

III.

3. Defendants lack sufficient knowledge or information necessary to admit or deny the allegations in paragraph 3, and thus deny them.

4. Defendants admit that they are named as parties to this lawsuit, but deny that LSA-R.S. 17:51 authorizes Plaintiffs to bring this suit against the Tangipahoa Parish School Board. Defendants further deny all other allegations and inferences of paragraph 4.

IV.

5. Defendants lack sufficient knowledge or information necessary to admit or deny the allegations in paragraph 5, and thus deny them.

6. Admitted.

7. Admitted.

8. Defendants admit that Board meetings are open to all members of the public, but deny that Board meetings are opened with a prayer. Defendants admit that in order to solemnize proceedings of the Tangipahoa Parish School Board, it is the policy of the Board to allow for an invocation to be offered *before* its meetings for the benefit of the Board. The Pledge of Allegiance is delivered after the opening of each meeting. Defendants deny any and all remaining allegations and inferences of paragraph 8.

9. Admitted.

10. Defendants admit that on or about August 21, 2007, the Board enacted an invocations policy. The policy, attached as P-1 to the Complaint, speaks for itself and no response is needed as to its contents.

11. Defendants deny any and all allegations and inferences of paragraph 11. The policy, and any cited provision thereof, speaks for itself and no response is needed as to its contents.

12. Defendants deny any and all allegations and inferences of paragraph 12. The policy, and any cited provision thereof, speaks for itself and no response is needed as to its contents.

13. Defendants deny any and all allegations and inferences of paragraph 13. The policy, and any cited provision thereof, speaks for itself and no response is needed as to its contents.

14. Defendants deny any and all allegations and inferences of paragraph 14. The policy, and any cited provision thereof, speaks for itself and no response is needed as to its contents.

15. Defendants deny any and all allegations and inferences of paragraph 15. The policy, and any cited provision thereof, speaks for itself and no response is needed as to its contents.

16. Defendants deny any and all allegations and inferences of paragraph 16. The policy, and any cited provision thereof, speaks for itself and no response is needed as to its contents.

17. Defendants deny any and all allegations and inferences of paragraph 17. The policy, and any cited provision thereof, speaks for itself and no response is needed as to its contents.

18. Defendants deny any and all allegations and inferences of paragraph 18. The policy, and any cited provision thereof, speaks for itself and no response is needed as to its contents. Defendants further aver that religious leaders who voluntarily respond to the Board's open invitation are scheduled on a first-come, first-serve basis. If a religious leader respondent has a preference among the dates of scheduled Board meetings, he or she may

request a particular date, and be scheduled for the same, if that particular date is available at the time of his or her request.

19 Defendants lack sufficient knowledge or information necessary to admit or deny the allegations in paragraph 19 concerning Plaintiff's alleged attendance at Board meetings and/or the precise content of particular invocations that may have been offered on the specified dates, because invocations offered before Board meetings are not recorded, transcribed or memorialized in any way. Defendants thus deny those allegations, and further deny any and all remaining allegations and inferences of paragraph 19.

20. Defendants lack sufficient knowledge or information necessary to admit or deny the allegations in paragraph 20, and thus deny them. Defendants further aver that *any and all* religious leaders of *any and all* religious congregations with an established presence in Tangipahoa Parish are invited and eligible to offer an invocation for the Board.

21. Defendants lack sufficient knowledge or information necessary to admit or deny the allegations in paragraph 21, and thus deny them.

22 Defendants deny any and all allegations and inferences of paragraph 22. Defendants further aver that invocations policy, and any cited provision thereof, speaks for itself and no response is needed as to its contents

23. Defendants deny any and all allegations and inferences of paragraph 23.

24. Defendants deny any and all allegations and inferences of paragraph 24.

25. Defendants deny any and all allegations and inferences of paragraph 25.

26. Defendants deny any and all allegations and inferences of paragraph 26.

27 Defendants deny any and all allegations and inferences of paragraph 27.

V.

28. Defendants reassert and incorporate here their answers to paragraphs 1-27 above.

29. Defendants admit that paragraph 29 includes an accurately quoted excerpt of 42 U.S.C. § 1983, but Defendants deny the statute has been implicated here.

30. Defendants admit that paragraph 30 includes an accurately quoted excerpt of the First Amendment, but Defendants deny the First Amendment's Establishment Clause has been implicated here.

31. Defendants admit that paragraph 31 includes an accurately quoted excerpt of the First Amendment, but Defendants deny the First Amendment's Establishment Clause has been implicated here.

32. Defendants deny that any parents or students are ever mandated to appear at any Board meeting for any reason. All other allegations of paragraph 32 are admitted.

33. Defendants deny any and all allegations and inferences of paragraph 33. The invocations policy speaks for itself and no response is needed as to its contents, however Defendants further aver that the policy does not "mandate a religious invocation," nor any other type or variety of invocation. Instead, the policy provides that the Board is prohibited from engaging in any prior inquiry, review of, or involvement in, the content of any invocation to be offered by an invocation speaker.

VI.

34. Defendants deny any and all allegations and inferences of paragraph 34, and further deny that Plaintiffs are entitled to the relief requested.

VII.

35. Defendants deny any and all allegations and inferences of paragraph 35.

36. Defendants deny any and all allegations and inferences of paragraph 36, and further deny that Plaintiffs are entitled to the relief requested.

VIII.

37. Defendants deny any and all allegations and inferences of paragraph 37.

IX.

38. Defendants deny that Plaintiffs are entitled to an award of attorney's fees. Defendants further deny any other allegations of the Complaint not specifically admitted above and further deny that Plaintiffs are entitled to any other award or relief in this matter.

WHEREFORE, Defendants, TANGIPAHOA PARISH SCHOOL BOARD, ANN SMITH, School Board Member, District A; ROBERT POTTIS, School Board Member, District B; LEONARD GENCO, School Board Member, District C; AL LINK, School Board Member, District D; DANNY RIDGEL, School Board Member, District E; ROBERT CAVES, School Board Member, District F; ERIC DANGERFIELD, School Board Member, District G; SANDRA BAILEY-SIMMONS, School Board Member, District H; and ROSE DOMINQUEZ, School Board Member, District I, pray that this Answer be deemed good and sufficient, and that after due proceedings are had, there be judgment in their favor, dismissing the claims and demands of Plaintiffs, John Doe #2 and Sally Doe, with prejudice, so that they take nothing by their claims, and that the Defendants receive their costs and be awarded such further equitable and general relief to which they show themselves justly entitled.

Respectfully submitted,

ATTORNEYS FOR DEFENDANTS

/s/ J. Michael Johnson
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**Pro hac vice* motion filed herewith

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EASTERN DISTRICT OF LOUISIANA**

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Plaintiff,

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District B; LEONARD GENCO, School Board
Member, District C; AL LINK, School Board
Member, District D; DANNY RIDGEL, School
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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2008, I electronically filed the foregoing Amended Answer (*correcting non-substantive typographical errors in the originally-filed Answer*) with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the Attorney for Plaintiffs, Mr. Ronald L. Wilson (Cabral2@aol.com) and Ms. Katherine Murphy

Schwartzmann (kschwartzmann@laaclu.org).

Respectfully submitted,

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