

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

BYRON TANNER CROSS

Plaintiff,

v.

LOUDOUN COUNTY SCHOOL BOARD,

SERVE: Loudoun County School Board
21000 Education Court
Ashburn, VA 20148

SCOTT A. ZIEGLER, Interim Superintendent, in his official and personal capacity; and

SERVE: Scott A. Ziegler
21000 Education Court
Ashburn, VA 20148

LUCIA VILLA SEBASTIAN, Interim Assistant Superintendent for Human Resources and Talent Development, in her official and personal capacity;

SERVE: Lucia Villa Sebastian
21000 Education Court
Ashburn, VA 20148

Defendants.

Case No. _____

**VERIFIED COMPLAINT FOR
DECLARATORY, INJUNCTIVE
AND ADDITIONAL RELIEF**

**PLAINTIFF DEMANDS A JURY
TRIAL**

CIRCUIT CLERK
CLERKS OFFICE
LOUDOUN COUNTY, VA
TESTE: _____ D.C.

2021 JUN -1 PM 1:37

FILED

Plaintiff Byron Tanner Cross, by and through counsel, and for his Verified Complaint states as follows:

INTRODUCTION

1. This action challenges the content- and viewpoint-based retaliation by Defendants against Plaintiff, Byron Tanner Cross, for his speech on an issue that is the subject of vigorous debate at the local, state, and national levels: How should our public schools address the many issues and the divergent and often-conflicting interests among students, parents, and educators when a student struggles with gender identity?

2. Defendants solicited public comment to assist them in evaluating a policy addressing these matters that was under consideration at a Loudoun County School Board Meeting.

3. Mr. Cross, a teacher in Loudoun County Public Schools, spoke at the meeting to offer comments based on his expertise and experience with the hope of informing the public and assisting the Board's evaluation of the proposed policy.

4. Mr. Cross expressed concern with the proposed policy based on his sincerely held philosophical and religious beliefs and years of experience as an educator.

5. Mr. Cross spoke on his own time in his personal capacity.

6. Mr. Cross's speech did not impact his ability to carry out his duties as a teacher.

7. Yet less than 48 hours later, in response to public criticism of Mr. Cross's speech, Defendants swiftly retaliated against Mr. Cross by placing him on administrative leave and banning him from School property and attending any School District functions, including attending future Loudoun County School Board meetings.

8. Defendants placed Mr. Cross on administrative leave and threaten termination of his employment for simply expressing speech that the Virginia Constitution protects.

9. But this case is not about how schools should treat students who struggle with gender dysphoria. It is about whether public schools can punish a teacher for objecting, as a private citizen, to a proposed policy, in a forum designated for the purpose of considering whether to implement such policies, where the policy would force him to express ideas about human nature, unrelated to the school's curriculum, that he believes are false.

10. This is not the type of philosophical disagreement in which the government may compel individuals to take sides. Whether the topic is immigration, healthcare, welfare, or no-cost higher education, our society debates important issues every day. It is not disruptive to civilly disagree about these issues or to peacefully voice that disagreement in a public school board meeting. A truly tolerant society can permit such differences and accommodate all views. But here, Defendants have refused to find middle ground. They have made this case about far more than titles or pronouns; they have made it about dueling views of human nature and compelling conformity to, and support for, only one view. Under the timeless free speech principles enshrined in the Virginia Constitution and laws, Defendants cannot compel one side to voice the other's beliefs.

11. Public school teachers must be free to engage in important debates related to school policies just like everybody else. Teachers have unique insight about the practical implementation of policy in the classroom that Board members, school administrators, and parents do not possess. Teachers, therefore, make an invaluable contribution to the Board's policy formation process. Enriching that process by offering testimony at public meetings opened for the purpose of considering new policies on their personal time as private citizens should not cost teachers their jobs.

12. By punishing Mr. Cross for his contribution to the Board's policy formation process, the Defendants send a message to all District teachers that they testify at Board meetings at the risk of suspension, depriving the District of their unique insight and invaluable contribution to the policy formation process.

13. A temporary restraining order and preliminary and permanent injunctive relief are necessary to immediately stop Defendants' retaliation against Mr. Cross for expressing his viewpoints as a private citizen on a matter of public concern.

14. This is a civil rights action under the Constitution and laws of the Commonwealth of Virginia. Defendants violated the Virginia Constitution and laws of the Commonwealth by suspending Mr. Cross for exercising his rights to free speech and free exercise.

PARTIES

15. Byron Tanner Cross is a resident of Hamilton, Virginia and a physical education teacher at Leesburg Elementary, part of Loudoun County Public Schools.

16. Defendant Loudoun County School Board (the "School Board" or "Board") is the public body that governs Loudoun County Public Schools (the "School District" or "District") and is located in Loudoun County, Virginia.

17. The School Board derives its authority from the Commonwealth of Virginia and acts under the authority of the Commonwealth of Virginia.

18. The School Board has final policymaking and decision making authority for rules, regulations, and decisions that govern school division personnel, including the actions challenged herein.

19. The School Board exercised its authority to suspend Mr. Cross for exercising his rights protected under the Virginia Constitution and statutes.

20. The School Board has acquiesced in, sanctioned, and supported, and continues to acquiesce in, sanction, and support, the actions of the other Defendants

in enforcing the policies and procedures governing District employees, specifically in the suspension of Mr. Cross.

21. The School Board has refused to instruct District personnel, including other Defendants, to reinstate Mr. Cross or otherwise to modify school policies to comply with constitutional mandates or to change the way that those policies have been and are being applied to District employees, including Mr. Cross.

22. At all relevant times, Defendant Scott Ziegler is and was the interim superintendent of the School District.

23. As interim superintendent, Defendant Ziegler is the chief executive officer of Loudoun County Public Schools.

24. Defendant Ziegler's authority and powers include oversight and control of the District.

25. Defendant Ziegler's duties include, among others, authorizing, executing, enforcing, and implementing District and School Board policies governing District employees and overseeing the operation and management of the District.

26. As interim superintendent, Defendant Ziegler is and was aware of the retaliatory and unconstitutional actions taken against Mr. Cross and has refused to instruct District personnel, including the other Defendants, to change or alter the actions taken to comply with constitutional mandates.

27. As interim superintendent, Defendant Ziegler has the authority to review, approve, or reject the decisions of other School District officials regarding personnel decisions.

28. Defendant Ziegler has authorized, approved, and implemented the policies that were and are being used to restrict Mr. Cross's expression.

29. Defendant Ziegler has confirmed, sanctioned, and ratified District officials' application of the policies to suspend Mr. Cross in a discriminatory and retaliatory fashion.

30. As interim superintendent, Defendant Ziegler directly supervises Defendant Sebastian.

31. Defendant Sebastian is, and was at all times relevant to this Complaint, the Interim Assistant Superintendent for Human Resources and Talent Development.

32. Defendant Sebastian possesses the authority and responsibility for governing and regulating District employees at Loudoun County Public Schools.

33. Defendant Sebastian exercised her authority to suspend Mr. Cross for exercising his rights under the Virginia Constitution and statutes.

34. Plaintiff is suing each natural-person Defendant in his or her official and personal capacities.

FACTUAL BACKGROUND

Mr. Cross's Experience in Education

35. Mr. Cross has extensive experience as an educator and working with students. He entered the education field because of his commitment to educate children and serve them as they develop mentally, physically, and emotionally.

36. Mr. Cross received his bachelor's degree in secondary education from Shepherd University and has worked in the education field for fifteen years.

37. For the past three years, Mr. Cross has been a Health and Physical Education Teacher at Leesburg Elementary.

38. Prior to that, Mr. Cross served for five years as a Health and Physical Education Teacher at Rolling Ridge Elementary, which is also part of the School District.

39. In addition to his teaching duties, Mr. Cross has also served as Head Freshman Football Coach at Loudoun County High School.

40. Before Defendants placed him on administrative leave in May 2021, Mr. Cross was never the subject of any School District disciplinary action.

41. Mr. Cross consistently receives good reviews. In his most recent review, Vice Principal Nikole Mullen described Mr. Cross as “extremely professional,” an “excellent role model,” and said he was a “mentor” to students. Vice Principal Mullen concluded her review with these remarks:

Mr. Cross is an important and valuable member of our Leesburg Elementary community. He works well with our colleagues and is an active participant in school meetings. The lessons that are planned make students want to be involved and participate in P.E. and keeping themselves healthy. Our students look forward to going to P.E. each week and this is due to the hard work of Mr. Cross. Thank you for all your contributions to Leesburg Elementary Mr. Cross.

42. In fact, just earlier this month, Defendants renewed Mr. Cross’s contract for the 2021–22 school year.

Proposed Policy 8040

43. The Defendant School Board is currently considering adopting Policy 8040 entitled “Rights of Transgender Students and Gender-Expansive Students.” A true and accurate copy of proposed Policy 8040 is attached hereto as Exhibit A.

44. If adopted, Policy 8040 would:

(1) allow students to use a chosen name different than their legal name “without any substantiating evidence, regardless of the name . . . recorded in the student’s permanent educational record.”

(2) allow students to use a chosen gender identity pronoun different than the pronoun consistent with their biological sex “without any substantiating evidence, regardless of the gender . . . recorded in the student’s permanent educational record.”

(3) at the request of a student or parent/legal guardian, require school staff “when using a name or pronoun to address the student, [to] use the name and pronoun that correspond to their gender identity” rather than their legal name and pronoun consistent with their biological sex.

(4) allow students to use restrooms and locker rooms based on their gender identity rather than their biological sex (i.e., allow biological boys to use locker rooms and bathrooms alongside biological girls).

(5) revise existing Policy 8350 to allow students to participate in interscholastic, co-curricular, and extra-curricular activities, including sports, based on their gender identity rather than their biological sex (i.e., allow biological males to compete against biological females and vice versa).

45. If adopted, Policy 8040 would require all instructional staff to “annually acknowledge review” of the policy.

Mr. Cross’s Philosophical and Religious Beliefs

46. Mr. Cross believes, based on scientific evidence, that children do not have a fully developed capacity to understand the long-term consequences of their decisions.

47. Mr. Cross wants to protect children from making potentially irreversible and life-changing decisions that they may later regret. Mr. Cross believes that, because of the difficulty of assessing matters of gender identity and the long-term irreversible consequences of certain treatments for transgender-identifying people, including hormone replacement therapy and sex-reassignment surgery, children should not be encouraged to undertake social or medical transition because of their inability to assess long-term consequences.

48. Mr. Cross believes that parents must help children understand the many and complex factors surrounding gender identity.

49. Mr. Cross believes that educators can assist parents in this effort.

50. Mr. Cross believes that parents have a fundamental right to control the upbringing and education of their children.

51. Mr. Cross believes that any gender-identity education policy must account for this fundamental right.

52. Mr. Cross believes that any gender-identity education policy that does not account for parents' fundamental right to control the upbringing and education of their children is deceptive and disserves both children and their parents.

53. Mr. Cross believes educators have free speech and religious freedoms that may be impacted by gender-identity education policy.

54. Mr. Cross believes that all education policy must protect educators' fundamental freedoms.

55. Mr. Cross believes, based on scientific evidence, that there are only two anatomical sex presentations (except in very rare scientifically demonstrable medical circumstances), which are male and female.

56. Mr. Cross also believes, based on scientific evidence, that scientifically demonstrable and anatomically-correct designations of sex should control access to shared public-school restrooms and locker rooms for minors.

57. For those students who are not comfortable using facilities associated with their anatomical sex, Mr. Cross supports those students having access to and using a private restroom or locker space.

58. To accommodate the interests of students, parents, and teachers, Mr. Cross believes that teachers and student peers can—but should not be required to—call a student, who has obtained parental permission, by a derivative of his or her legal name.

59. To accommodate the interests of students, parents, and teachers, Mr. Cross believes that teachers and student peers can—but should not be required to—refer to a student, who has obtained parental permission, by pronouns that do not correspond to the student's biological sex.

60. Mr. Cross is also a professing Christian who strives to live out his faith daily.

61. Because of his Christian faith, Mr. Cross has sincerely held religious beliefs that govern his views about human nature, marriage, gender, sexuality, morality, politics, and social issues.

62. His Christian faith informs Mr. Cross's convictions concerning human nature, the purpose and meaning of life, and ethical and moral standards that should govern human conduct.

63. Mr. Cross's faith teaches him that God immutably creates each person as male or female; these two distinct, complementary sexes reflect the image of God; and rejection of one's biological sex is a rejection of the image of God within that person.

64. Mr. Cross also believes he cannot affirm as true those ideas and concepts that he believes are not true. Doing so, he believes, would violate biblical commands against dishonesty and lying.

65. Mr. Cross believes that referring to a child using pronouns inconsistent with the child's biological sex is harmful to the child because it is untrue.

66. Mr. Cross also endeavors to treat every person with dignity, love, and care, because he believes all people are created in the image of God.

67. Mr. Cross objects to Defendants' regulation, suppression, and censorship of his sincerely held religious beliefs.

Mr. Cross's Public Comments at a School Board Meeting

68. Mr. Cross learned that the Defendant School Board was considering adopting proposed Policy 8040 at the upcoming School Board meeting.

69. On the evening of May 25, Mr. Cross attended the School Board's public meeting.

70. Mr. Cross registered to speak during the public comments portion of the meeting pursuant to the Defendant School Board's policies.

71. When called upon, Mr. Cross delivered these remarks during the public comments portion of the meeting:

My name is Tanner Cross. And I am speaking out of love for those who suffer with gender dysphoria. *60 Minutes*, this past Sunday, interviewed over 30 young people who transitioned. But they felt led astray because lack of pushback, or how easy it was to make physical changes to their bodies in just 3 months. They are now de-transitioning. It is not my intention to hurt anyone. But there are certain truths that we must face when ready. We condemn school policies like 8040 and 8035 because it will damage children, defile the holy image of God. I love all of my students, but I will never lie to them regardless of the consequences. I'm a teacher but I serve God first. And I will not affirm that a biological boy can be a girl and vice versa because it is against my religion. It's lying to a child. It's abuse to a child. And it's sinning against our God.

A true and accurate video of Mr. Cross's statements is submitted along with this complaint on a USB Drive as Exhibit F.

72. When Mr. Cross delivered his remarks, he spoke as a private citizen on a matter of public concern.

73. Mr. Cross did not violate any School Board policies during his participation in the meeting.

Defendants' Unlawful Retaliation Against Mr. Cross

74. On Wednesday, May 26, Mr. Cross went to work at Leesburg Elementary just like he has every other day for the last three years.

75. Mr. Cross played t-ball with his students and performed his other normal teaching duties.

76. Mr. Cross's public comments at the School Board meeting did not interfere with the performance of his duties as a teacher at Leesburg Elementary.

77. Mr. Cross's public comments at the School Board meeting did not disrupt the educational activities of Leesburg Elementary.

78. That evening, Alix Smith, HRTD Supervisor for Equity, Compliance and Respectful Workplace at Loudoun County Public Schools, called Mr. Cross and asked him to meet with her the next morning.

79. On Thursday morning, Mr. Cross met with Ms. Smith. Ms. Smith immediately informed Mr. Cross that he was being placed on administrative leave.

80. Mr. Cross asked why he was being placed on leave.

81. Ms. Smith handed Mr. Cross a folder with a letter inside. She said that the letter explained the basis for his suspension.

82. The letter is from Defendant Sebastian. The only explanation provided in the letter is that the School Board was conducting “an investigation of allegations that you engaged in conduct that has had a disruptive impact on the operations of Leesburg Elementary School.” A true and correct copy of the letter of suspension is attached hereto as Exhibit B.

83. Upon information and belief, the conduct referenced in the letter is Mr. Cross’s public comments at the School Board meeting two days prior.

84. The letter further provides that during the suspension Mr. Cross (1) is banned from the buildings and grounds of all Loudoun County Public Schools, and (2) may not attend any school-sponsored activities or extra-curricular events on or off School property. Ex. B.

85. Later that day, an e-mail was sent to all Leesburg Elementary parents and staff that Mr. Cross was placed on leave.

86. As a consequence of administrative leave, Mr. Cross cannot conduct any school business.

87. Because of administrative leave, Mr. Cross has lost opportunities to develop his skills as an educator and has lost opportunities to mentor his students.

88. As a consequence of administrative leave, Mr. Cross has lost opportunities to continue to inform the ongoing debate about whether the District will adopt Policy 8040, or something like it, including participating in future Loudoun County School Board meetings.

89. By placing Mr. Cross on administrative leave within 48 hours of offering public comment on Policy 8040, Defendants attacked Mr. Cross's qualifications as an educator, assaulted his credibility in offering public comment on school policy, and inflicted reputational injury on Mr. Cross.

90. By placing Mr. Cross on administrative leave within 48 hours of offering public comment, Defendants sent a message to Mr. Cross and all District employees that offering public comment in opposition to proposed policies that would compel teachers to use pronouns inconsistent with biological sex or in opposition to proposed policies that would compel access to sex-segregated facilities based on gender-identity rather than biological sex will result in punishment, including suspension or termination.

91. On May 28, through counsel, Mr. Cross sent a letter to Defendant Sebastian informing her that the suspension violated his constitutional rights and requesting that Defendants immediately reinstate Mr. Cross. A true and correct copy of the letter is attached hereto as Exhibit C.

92. Later that day, Defendants' counsel sent an e-mail refusing to reinstate Mr. Cross. The e-mail confirms that Mr. Cross's suspension was based solely upon complaints relating to "Mr. Cross's comments to the School Board." No other justification was given. A true and correct copy of the e-mail is attached hereto as Exhibit D.

Defendants' unconstitutional actions are chilling Mr. Cross's speech

93. Mr. Cross desires to speak publicly, as a private citizen, about proposed Policy 8040 and about other gender-identity education policies, including at future Loudoun County School Board meetings.

94. As a result of Defendants' actions, Mr. Cross has been chilled in his speech about proposed Policy 8040 and about gender-identity education policies.

95. If Mr. Cross makes public comments about proposed Policy 8040 or gender-identity education policy, Defendants will likely impose additional adverse employment consequences on Mr. Cross because of his speech.

96. Other District employees desire to communicate their opinions on Policy 8040. However, after learning of Defendants' suspension of Mr. Cross, they have refrained from doing so because they fear Defendants will retaliate against them. A true and correct copy of the Affidavits from the employees are attached hereto as Exhibit E.

97. Other District employees have made public comments at School Board meetings on a variety of proposed policies, including in support of proposed Policy 8040 and other gender-identity related policies but Defendants have not punished those employees because of their viewpoints.

STATEMENTS OF LAW

98. At all times relevant, each and all the acts and policies alleged in this Complaint were attributed to Defendants who acted under color of a statute, regulation, or custom of the Commonwealth of Virginia.

99. Defendants knew or should have known that they were violating Plaintiff's constitutional, statutory, and contractual rights, and did violate Mr. Cross's constitutional, statutory, and contractual rights by subjecting Plaintiff to disciplinary action because he communicated his philosophical and religious beliefs regarding gender-identity education policy and his belief that biological sex is fixed and binary, and by banning him from School District Property including attending future Loudoun County School Board meetings.

100. The policy and practices that led to the violation of Plaintiff's constitutional rights remain in effect.

101. Plaintiff is suffering irreparable harm from Defendants' retaliatory action.

102. Plaintiff has no adequate or speedy remedy at law to correct the deprivation of his rights by Defendants.

103. Punishing Plaintiff for communicating his views on proposed gender-identity education policy does not serve any legitimate or compelling state interest and is not narrowly tailored to serve any such interests.

104. Defendants' actions have caused injury to Mr. Cross including depriving him of his constitutional and statutory rights, pain, suffering, and emotional distress.

FIRST CAUSE OF ACTION
Violation of Plaintiff's Right to Freedom of Speech
Under the Virginia Constitution:
Retaliation and Prior Restraint
(VA. CONST. art. I, § 12)

105. Plaintiff repeats and realleges each of the allegations in paragraphs 1–104 of this Complaint.

106. By punishing and threatening to punish Plaintiff for expressing his views regarding gender-identity education policy, Defendants have retaliated and are retaliating against Plaintiff for exercising his rights under the Virginia Constitution.

107. When Plaintiff communicated his views regarding proposed gender-identity education policy, he was speaking as a private citizen on a matter of public concern and engaging in expression the Virginia Constitution protects.

108. Plaintiff's interest as a private citizen discussing matters of public concern outweighs Defendants' interest in the efficient provision of services.

109. Defendants' decision to sanction Plaintiff for offering comment in a forum designed to solicit public input on policies under consideration by the Board undermines Defendants' interest in the efficient provision of services.

110. Defendants' disciplinary action and their threatened future disciplinary action has deterred Plaintiff from exercising his right to free speech.

111. Defendants have imposed a prior restraint on Plaintiff by banning him from attending and providing comments at future Loudoun County School Board meetings during his suspension.

112. Defendants' disciplinary action and their threatened future disciplinary action would deter a person of ordinary firmness from exercising his right to free speech in the future.

113. Defendants have taken disciplinary action against Plaintiff and threaten to do so in the future because of the views Plaintiff has expressed on matters of public concern, expression that the Virginia Constitution protects.

114. Defendants subjected Plaintiff to discipline and threaten to do so in the future due to the content and viewpoint of Plaintiff's speech.

115. By placing Plaintiff on administrative leave, Defendants have punished Plaintiff for engaging in expression the Virginia Constitution protects.

116. Defendants' disciplinary action violates Plaintiff's right to free speech as guaranteed by the Virginia Constitution.

117. Defendants' actions have caused injury to Mr. Cross including depriving him of his constitutional and statutory rights, loss of reputation, pain, suffering, and emotional distress.

SECOND CAUSE OF ACTION
Violation of Plaintiff's Right to Freedom of Speech
Under the Virginia Constitution:
Content and Viewpoint Discrimination
(VA. CONST. art. I, § 12)

118. Plaintiff repeats and realleges each of the allegations in paragraphs 1–104 of this Complaint.

119. By punishing and threatening to punish Plaintiff for expressing his views regarding proposed gender-identity education policy, Defendants have engaged in content and/or viewpoint discrimination in violation of the Virginia Constitution.

120. Defendants considered the content and viewpoint of Plaintiff's expression when they decided to suspend Plaintiff. And Defendants threaten to do so again if Plaintiff continues to express his views.

121. Defendants' policies confer unbridled discretion upon School District officials, including Defendants, to discriminate based on content or viewpoint.

122. Defendants exercised this unbridled discretion when they punished Plaintiff for expressing his views regarding gender-identity education policy.

123. Defendants have allowed and failed to punish speech by other District employees that expressed different views on proposed gender-identity education policy.

124. Defendants' policies and enforcement of those policies are unconstitutionally overbroad because they restrict a significant amount of constitutionally protected speech.

125. The overbreadth of Defendants' policies chills the speech of Plaintiff, who seeks to engage in protected expression, including expression about gender-identity education policy.

126. The overbreadth of Defendants' policies chills the speech of all employees within the District who wish to engage in protected expression, including by offering their insight into the policy formulation process by offering comments at public meetings.

127. Plaintiff's expression regarding proposed gender-identity education policy is protected by the Virginia Constitution.

128. Defendants' actions violated Plaintiff's right to free speech as guaranteed by the Virginia Constitution.

129. Defendants' actions have caused injury to Mr. Cross including depriving him of his constitutional and statutory rights, loss of reputation, pain, suffering, and emotional distress.

THIRD CAUSE OF ACTION
Violation of Plaintiffs' Right to Free Exercise of Religion
Under the Virginia Constitution and the Act for Religious Freedom
(VA. CONST., art. I, § 16 and VA. CODE § 57-1)

130. Plaintiff repeats and realleges each of the allegations in paragraphs 1–104 of this Complaint.

131. By punishing and threatening to punish Plaintiff for exercising his sincerely held religious beliefs in the way he discusses issues regarding gender-identity education policy, Defendants have violated and are violating Plaintiff's right to free exercise of religion under the Virginia Constitution and the Act for Religious Freedom.

132. Plaintiff's views and expression related to gender-identity education policy are motivated by his sincerely held religious beliefs, are avenues through which he exercises his religious faith, and constitutes a central component of his sincerely held religious beliefs.

133. Suspending Mr. Cross for expressing his views on gender-identity education policy restricted his "free[dom] to profess, and by argument to maintain, [his] opinions in matters of religion, and . . . diminish[ed] [his] . . . civil capacities."

134. Defendants' actions and practices have created a religious test for public school teachers.

135. Defendants' policies and related practices are neither neutral nor generally applicable. The policies instead allow Defendants to target religious expression and activities specifically and to express hostility to that expression.

136. Defendants' policies and related practices are neither neutral nor generally applicable because they represent a system of individualized assessments.

137. Defendants' policies and related practices are underinclusive, prohibiting some expression while leaving other expression equally harmful to the District's asserted interests unprohibited.

138. Defendants violated Plaintiff's right to free exercise of religion when they disciplined Plaintiff for communicating his views on issues related to proposed gender-identity education policy.

139. Defendants' policies and related practices and Defendants' discipline and threatened discipline of Plaintiff for speaking his deeply held religious beliefs violate Plaintiff's right to free exercise of religion as guaranteed by the Virginia Constitution and the Act for Religious Freedom.

140. Defendants' actions have caused injury to Mr. Cross including depriving him of his constitutional and statutory rights, loss of reputation, pain, suffering, and emotional distress.

FOURTH CAUSE OF ACTION
Violation of Plaintiff's Right to Free Exercise of Religion
(VA. CODE § 57-2.02)

141. Plaintiff repeats and realleges each of the allegations in paragraphs 1–104 of this Complaint.

142. Mr. Cross expressed his sincerely held religious beliefs during the public School Board meeting on May 25.

143. By suspending Mr. Cross for expressing his sincerely held religious beliefs, Defendants imposed a substantial burden on Mr. Cross' religious exercise and coerced him into either changing or violating his sincerely held religious beliefs.

144. Suspending Mr. Cross for expressing his religious beliefs furthers no compelling governmental interest and is not narrowly tailored to further any compelling governmental interest.

145. Suspending Mr. Cross was not the least restrictive means of furthering Defendants' stated interests.

146. Suspending Mr. Cross violated Mr. Cross's civil rights under Virginia Code § 57-2.02.

147. Defendants' actions caused injury to Mr. Cross including depriving him of his constitutional and statutory rights, loss of reputation, pain, suffering, and emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants and provide Plaintiff with the following relief:

- A. A judgment declaring that Defendants' retaliation against Plaintiff for expressing his views regarding proposed gender-identity education policy violates his rights under the Virginia Constitution and Virginia law;
- B. A temporary restraining order and a preliminary and permanent injunction directing Defendants sued in their official capacities and their agents, officials, servants, employees, and any other persons acting on their behalf to reinstate Plaintiff to his position at Leesburg Elementary School.
- C. A preliminary and permanent injunction directing Defendants sued in their official capacities and their agents, officials, servants, employees, and any other persons acting on their behalf to remove from Plaintiff's personnel files any reference to the discipline Defendants imposed on Plaintiff for expressing his views regarding proposed gender-identity education policy;
- D. A temporary restraining order and a preliminary and permanent injunction prohibiting Defendants sued in their official capacities and their agents, officials, servants, employees, and any other persons acting on their behalf from enforcing Defendants' policies to prohibit Plaintiff from, or punish Plaintiff for, expressing his views on gender-identity education policy.
- E. Nominal damages;
- F. Compensatory damages;

- G. Plaintiff's reasonable attorneys' fees, costs, and other costs and disbursements in this action; and
- H. All other further relief to which Plaintiff may be entitled.

Respectfully submitted this 1st day of June, 2021.



TYSON C. LANGHOFER
Virginia State Bar No. 95204
ALLIANCE DEFENDING FREEDOM
20116 Ashbrook Place, Suite 250
Ashburn, VA 20147
Telephone: (571) 707-4655
Facsimile: (571) 707-4656
tlanghofer@ADFlegal.org

J. Caleb Dalton
Virginia State Bar No. 83790
ALLIANCE DEFENDING
FREEDOM
440 First Street NW, Suite 600
Washington, D.C. 20001
Telephone: (202) 393-8690
Facsimile: (202) 347-3622
E-mail: cdalton@ADFlegal.org

Attorneys for Plaintiff

DECLARATION UNDER PENALTY OF PERJURY

I, BYRON TANNER CROSS, a citizen of the United States and a resident of the State of Virginia, hereby declare under penalty of perjury that I have read the foregoing and that the foregoing is true and correct to the best of my knowledge.

Executed this 31 day of May, 2021, at Hamilton, Virginia.



Byron Tanner Cross

London, VIRGINIA



Natalie Gonzalez Gustafson

Exhibit A

RIGHTS OF TRANSGENDER AND GENDER-EXPANSIVE STUDENTS

1
2 Loudoun County Public Schools (LCPS) is committed to providing an equitable,
3 safe and inclusive learning environment for all students. All students shall be treated
4 with dignity and respect, regardless of their sex, sexual orientation, transgender status,
5 or gender identity/expression. LCPS is committed to supporting student privacy and
6 providing equal educational opportunities including access to LCPS programs, activities,
7 and facilities.

8
9 Pursuant to the Code of Virginia, 22.1-23.3, LCPS endorses policies, procedures,
10 and practices for an inclusive school environment that are consistent with the Virginia
11 Department of Education's publication, Model Policies for the Treatment of Transgender
12 Students in Public Elementary and Secondary Schools issued by the Virginia
13 Department of Education.

14
15 A. Student Identification - Names and Pronouns.

16
17 LCPS staff shall allow gender-expansive or transgender students to use their
18 chosen name and gender pronouns that reflect their gender identity without any
19 substantiating evidence, regardless of the name and gender recorded in the student's
20 permanent educational record. School staff shall, at the request of a student or
21 parent/legal guardian, when using a name or pronoun to address the student, use the
22 name and pronoun that correspond to their gender identity.

23
24 The use of gender-neutral pronouns are appropriate. Inadvertent slips in the use
25 of names or pronouns may occur; however, staff or students who intentionally and
26 persistently refuse to respect a student's gender identity by using the wrong name and
27 gender pronoun are in violation of this policy.

28
29 B. Access to Activities.

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31 LCPS Policy 8350, Student Activities, states that interscholastic, co-curricular,
32 and extra-curricular activities are part of the educational program and are subject to
33 school supervision and regulation. All students are expected to display good
34 sportsmanship in competitive activities, whether they are participants or spectators, and
35 they shall conduct themselves in a manner demonstrating respect for persons and
36 property. LCPS staff shall allow gender-expansive and transgender students to
37 participate in such activities in a manner consistent with the student's gender identity.

38
39 All students, including transgender and gender-expansive students, participating
40 in programs sponsored by the Virginia High School League (VHSL) or other
41 interscholastic organization shall comply with policies and rules outlined by those
42 organizations.

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RIGHTS OF TRANSGENDER AND GENDER-EXPANSIVE STUDENTS

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C. Access to Facilities.

All students are entitled to have access to restrooms and locker rooms that are sanitary, safe, and adequate, so that they can comfortably and fully engage in their school programs and activities. Students should be allowed to use the facility that corresponds to their gender identity. While some transgender students will want that access, others may want alternatives that afford more privacy. Taking into account existing school facilities, administrators should take steps to designate gender-inclusive or single-user restrooms commensurate with the size of the school.

D. Professional Development and Training.

All school mental health professionals shall complete training on topics relating to LGBTQ+ students, including procedures for preventing and responding to bullying, harassment and discrimination based on gender identity/expression.

All instructional staff will annually acknowledge review of this policy and have access to resources related to the safety and support of LGBTQ+ students.

E. Other Considerations.

The Superintendent is authorized to develop implementing regulations and school procedures to ensure consistency in practices.

Current Policy:

Leg Refs: Code of Virginia §22.1-23.3, 8.01-217, 32.1-269(E)

Cross Ref: Policy 8250, Bullying Prevention and Education; Policy 8210, Introduction to Student Discipline; Policy 8-6, Sex Discrimination and/or Sexual Harassment (Policy 8030 when adopted); Policy 8610, Student Records; Policy 8640, Disclosure of Personally Identifiable Information; Policy 8270, Student Dress Code; Policy 8350, Student Activities; Policy 8250, Bullying Prevention and Education

Exhibit B



Loudoun County Public Schools
Department of Human Resources and Talent Development
21000 Education Court
Ashburn, VA 20148
Telephone: 571-252-1100 (Toll Free): 888-204-1622

May 27, 2021

HAND DELIVERED

Byron Tanner Cross
38270 Stone Eden Drive
Hamilton, Virginia 20158

Dear Mr. Cross:

This is to confirm that you are on administrative leave with pay effective May 27, 2021, pending an investigation of allegations that you engaged in conduct that has had a disruptive impact on the operations of Leesburg Elementary School.

During the course of this administrative leave, you are restricted from the buildings and grounds of all Loudoun County Public Schools (LCPS) property and you may not attend any school-sponsored activities or extracurricular events on or off LCPS property. You may request, in writing, permission from Shawn Lacey, Principal of Leesburg Elementary School, to go on any LCPS property or attend school-sponsored or extracurricular events. During the course of this administrative leave, you are to be available to meet in person or by phone with officials of Loudoun County Public Schools during business hours.

If you have any questions with regard to this action, please contact me.

Sincerely,

Lucia Villa Sebastian, Ed.D.
Interim Assistant Superintendent for Human Resources and Talent Development

cc: Shawn Lacey, Principal Leesburg Elementary School
Personnel File

Read carefully before signing:

I confirm receipt of this correspondence from a representative of the Department of Human Resources and Talent Development.

Byron Tanner Cross

Date: 5/27/21

Exhibit C



May 28, 2021

Dr. Lucia Sebastian
Interim Assistant Superintendent
Human Resources and Talent Development
Loudoun County Public Schools
via email: lucia.sebastian@lcps.org

Re: *Unconstitutional retaliation against Mr. Byron Cross*

Dear Dr. Sebastian:

We represent Byron [Tanner] Cross, a Leesburg Elementary Physical Education teacher, regarding Loudoun County Public School's unconstitutional suspension in retaliation for his speech at Tuesday's school board meeting.

By way of introduction, ADF's Center for Academic Freedom is dedicated to ensuring freedom of speech and association for students and teachers so that everyone can freely participate in the marketplace of ideas without fear of government censorship. We have a track record of success.¹

¹ Alliance Defending Freedom has consistently achieved successful results for its clients before the United States Supreme Court, including 12 victories before the highest court in the last 10 years. *See, e.g., Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021) (student free speech); *March for Life Educ. & Def. Fund v. California*, 141 S. Ct. 192 (2020); *Thompson v. Hebdon*, 140 S. Ct. 348 (2019) (overturning ruling upholding a law limiting political contributions); *NIFLA v. Becerra*, 138 S. Ct. 2361 (2018) (upholding ADF's client's free speech rights against the State of California); *Masterpiece Cakeshop, LTD. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018) (upholding ADF's client's First Amendment rights); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (upholding ADF's client's First Amendment rights); *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (representing Geneva College and Southern Nazarene University in consolidated cases) (upholding ADF's clients' First Amendment rights); *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015) (unanimously upholding ADF's client's free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (representing Conestoga Wood Specialties Corp. in consolidated case) (striking down federal burdens on ADF's client's free-exercise rights); *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014) (upholding a legislative prayer policy promulgated by a town represented by ADF); *Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011) (upholding a state's tuition tax credit program defended by a faith-based tuition organization represented by ADF).

Factual Background

Mr. Cross has been employed by Loudoun County Public Schools for eight years, the last three as a physical education teacher at Leesburg Elementary. He has always received exemplary evaluations. On Tuesday evening, May 25, Mr. Cross spoke during public comment time at a Loudoun County School Board meeting expressing his opposition to adopting proposed policies 8040 and 8350.

Less than 48 hours later, you suspended Mr. Cross, banned him from campus, and began an investigation for potential “disruption.” When he inquired as to the basis of the allegations, you refused to provide any details other than to refer to the letter which did not provide any specifics.

Analysis

The First Amendment prohibits retaliation against public employees for speaking on matters of public concern. “[A] teacher’s exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment.” *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 574 (1968).

Mr. Cross’s expression during public comment time at an open school board meeting was undoubtedly expression in his private capacity on a matter of public concern. *Id.* (teachers’ public expression regarding school board actions is protected speech); *Janus v. Am. Fed’n of State, Cnty. & Mun. Emps.*, 138 S. Ct. 2448, 2476 (2018) (listing examples of matters of public concern); *see also, Meriwether v. Hartop*, 992 F.3d 492, 506-07 (6th Cir. 2021) (teachers’ use of pronouns is protected speech on a matter of public concern).

Immediately suspending an employee and launching an investigation for engaging in First Amendment-protected expression, creates an atmosphere of fear and is intended to send a message to Mr. Cross and other teachers that they must toe the line or face the consequences. *Cf. Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005) (“plaintiff suffers adverse action if the defendant’s allegedly retaliatory conduct would likely deter ‘a person of ordinary firmness’ from the exercise of First Amendment rights); *Mosunic v. Nestle Prepared Foods Co.*, No. 15-cv-380, 2017 WL 3531465, at *27 n.3 (D.R.I. Aug. 16, 2017) (“Suspension, regardless of whether it is paid, is adverse to the employee in and of itself. It is punitive in nature and at a minimum becomes part of one’s permanent employment record, affecting one’s ability for advancement, or to find other future employment, or gaining valuable job experience.”).

The First Amendment does not countenance such retaliation.

Dr. Sebastian
May 28, 2021
Page 3

Conclusion

We demand that you immediately (1) rescind the suspension, (2) reinstate Mr. Cross so that he can return to class on Tuesday, June 1, (3) remove the suspension letter from his file, and (4) refrain from any future retaliation against protected speech.

Please respond by 5:00 p.m. TODAY, Friday May 28. Absent the complete revocation of this suspension, Mr. Cross will be forced to pursue other legal options to safeguard his rights.

Sincerely,

Tyson C. Langhofer
Senior Counsel

Exhibit D

Deb Hardin

From: Stacy Haney <Shaney@haneyphinyo.com>
Sent: Friday, May 28, 2021 3:26 PM
To: Tyson Langhofer
Subject: Byron Cross/Loudoun County Public Schools
Attachments: May 28, 2021 Ltr to Dr. Sebastian.pdf

EXTERNAL

Tyson,

I represent Loudoun County Public Schools. Your letter to Dr. Sebastian (copy attached) was forwarded to me for response. My client respectfully declines your demand to rescind Mr. Cross's suspension and return him to the classroom on June 1. On Wednesday, May 26, 2021, the day following Mr. Cross's comments to the School Board, there was significant disruption at Leesburg Elementary School, including multiple complaints and parents requesting that Mr. Cross have no contact with their children because of his comments.

Please direct any further communication regarding this matter to me.

Stacy

Stacy Haney
Member



HANEY PHINYOWATTANACHIP

T (804) 500-0301	11 South 12 th St. Suite 100 B	shaney@haneyphinyo.com
F (804) 500-0309	Richmond, Virginia, 23219	www.haneyphinyo.com

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Exhibit E

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

BYRON TANNER CROSS

Plaintiff,

v.

LOUDOUN COUNTY SCHOOL BOARD, SCOTT A. ZIEGLER, Interim Superintendent, in his official and personal capacity; and **LUCIA VILLA SEBASTIAN**, Interim Assistant Superintendent for Human Resources and Talent Development;

Defendants.

Case No. _____

**DECLARATION OF
ANGELA DIANE BOZZAY**

I, Angela Diane Bozzay, make the following Declaration in the above-captioned matter.

1. I am a staff member in the Loudoun County Public Schools.
2. I would like to make public comments and engage in the ongoing discussions and debate related to proposed Policy 8040 and other gender-identity related policies.
3. I am aware of the School Board's decision to suspend Mr. Cross because of his public comments at the May 25 Loudoun County School Board meeting.
4. After learning of Mr. Cross's suspension, I have refrained from publicly commenting on proposed Policy 8040 and other gender-identity related policies because I am afraid that the School Board will punish me as it did with Mr. Cross.

5. The Loudoun County School Board's decision to suspend Mr. Cross has chilled my speech related to proposed Policy 8040 and other gender-identity related discussions and policies.

I declare under penalty of perjury of the laws of the United States that to the best of my knowledge, information, and belief, the foregoing is true and correct.

Executed on ~~June~~ ^{May} 31, 2021. *ang*

Angela Diane Bozary

Angela Diane Bozary
[INSERT NAME]

FOR NOTARY PUBLIC'S USE ONLY:

State of VIRGINIA [] City [] County of Loudoun

Acknowledged, subscribed and sworn to before me this 31 day of May, 2021.

7878161
Notary Registration Number

Natalie Gonzalez Gustafson
Notary Public
(My commission expires: 3-31-2024)



VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

BYRON TANNER CROSS

Plaintiff,

v.

LOUDOUN COUNTY SCHOOL BOARD, SCOTT A. ZIEGLER, Interim Superintendent, in his official and personal capacity; and **LUCIA VILLA SEBASTIAN**, Interim Assistant Superintendent for Human Resources and Talent Development;

Defendants.

Case No. _____

**DECLARATION OF
DONNA DAUGHTRY**

I, Donna Daughtry, make the following Declaration in the above-captioned matter.

1. I am a staff member in the Loudoun County Public Schools.
2. I would like to make public comments and engage in the ongoing discussions and debate related to proposed Policy 8040 and other gender-identity related policies.
3. I am aware of the School Board's decision to suspend Mr. Cross because of his public comments at the May 25 Loudoun County School Board meeting.
4. After learning of Mr. Cross's suspension, I have refrained from publicly commenting on proposed Policy 8040 and other gender-identity related policies because I am afraid that the School Board will punish me as it did with Mr. Cross.

5. The Loudoun County School Board's decision to suspend Mr. Cross has chilled my speech related to proposed Policy 8040 and other gender-identity related discussions and policies.

I declare under penalty of perjury of the laws of the United States that to the best of my knowledge, information, and belief, the foregoing is true and correct.

Executed on ^{May⁰⁵} June 31, 2021.

Donna Daughtry Donna Daughtry
[INSERT NAME]

FOR NOTARY PUBLIC'S USE ONLY:

State of Virginia [] City [] County of Loudoun

Acknowledged, subscribed and sworn to before me this 31 day of May, 2021.

7878161
Notary Registration Number

Natalie Gonzalez Gustafson
Notary Public
(My commission expires: 3.31.2024)



VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

BYRON TANNER CROSS

Plaintiff,

v.

LOUDOUN COUNTY SCHOOL BOARD, SCOTT A. ZIEGLER, Interim Superintendent, in his official and personal capacity; and **LUCIA VILLA SEBASTIAN**, Interim Assistant Superintendent for Human Resources and Talent Development;

Defendants.

Case No. _____

**DECLARATION OF
AMANDA JACKSON KRISTIENSEN**

I, Amanda Jackson Kristiansen, make the following Declaration in the above-captioned matter.

1. I am a staff member in the Loudoun County Public Schools.
2. I would like to make public comments and engage in the ongoing discussions and debate related to proposed Policy 8040 and other gender-identity related policies.
3. I am aware of the School Board's decision to suspend Mr. Cross because of his public comments at the May 25 Loudoun County School Board meeting.
4. After learning of Mr. Cross's suspension, I have refrained from publicly commenting on proposed Policy 8040 and other gender-identity related policies because I am afraid that the School Board will punish me as it did with

Mr. Cross.

5. The Loudoun County School Board's decision to suspend Mr. Cross has chilled my speech related to proposed Policy 8040 and other gender-identity related discussions and policies.

I declare under penalty of perjury of the laws of the United States that to the best of my knowledge, information, and belief, the foregoing is true and correct.

Executed on ~~June~~ ^{May} 31, 2021.

Armanda Jackson Kristiansen
[INSERT NAME]

FOR NOTARY PUBLIC'S USE ONLY:

State of Virginia
County of Loudoun



NANCY LYNN HURWITZ GORDON
Notary Public - Reg. # 7883698
Commonwealth of Virginia
My Commission Expires Aug. 31, 2024

[] City

Acknowledged, subscribed and sworn to before me this 31 day of May, 2021.

7883698
Notary Registration Number

Nancy Lynn Hurwitz Gordon
Notary Public
(My commission expires: Aug. 31, 2024)

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

BYRON TANNER CROSS

Plaintiff,

v.

LOUDOUN COUNTY SCHOOL BOARD, SCOTT A. ZIEGLER, Interim Superintendent, in his official and personal capacity; and **LUCIA VILLA SEBASTIAN**, Interim Assistant Superintendent for Human Resources and Talent Development;

Defendants.

Case No. _____

**DECLARATION OF
RHONDA R. PARVIN**

I, Rhonda R. Parvin, make the following Declaration in the above-captioned matter.

1. I am a staff member in the Loudoun County Public Schools.
2. I would like to make public comments and engage in the ongoing discussions and debate related to proposed Policy 8040 and other gender-identity related policies.
3. I am aware of the School Board's decision to suspend Mr. Cross because of his public comments at the May 25 Loudoun County School Board meeting.
4. After learning of Mr. Cross's suspension, I have refrained from publicly commenting on proposed Policy 8040 and other gender-identity related policies because I am afraid that the School Board will punish me as it did with Mr. Cross.

5. The Loudoun County School Board's decision to suspend Mr. Cross has chilled my speech related to proposed Policy 8040 and other gender-identity related discussions and policies.

I declare under penalty of perjury of the laws of the United States that to the best of my knowledge, information, and belief, the foregoing is true and correct.

Executed on ^{WRP} ~~June~~ ^{May} 31, 2021.

Rhonda R. Parvin Rhonda R. Parvin
[INSERT NAME]

FOR NOTARY PUBLIC'S USE ONLY:

State of Virginia [] City [] County of Loudoun

Acknowledged, subscribed and sworn to before me this 31 day of May, 20 21.

1818161
Notary Registration Number

Natalie Gonzalez Gustafson
Notary Public
(My commission expires: 3/31/2024)



VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

BYRON TANNER CROSS

Plaintiff,

v.

LOUDOUN COUNTY SCHOOL BOARD, SCOTT A. ZIEGLER, Interim Superintendent, in his official and personal capacity; and **LUCIA VILLA SEBASTIAN**, Interim Assistant Superintendent for Human Resources and Talent Development;

Defendants.

Case No. _____

**DECLARATION OF
HOLLY MYERS**

I, Holly Myers, make the following Declaration in the above-captioned matter.

1. I am a staff member in the Loudoun County Public Schools.
2. I would like to make public comments and engage in the ongoing discussions and debate related to proposed Policy 8040 and other gender-identity related policies.
3. I am aware of the School Board's decision to suspend Mr. Cross because of his public comments at the May 25 Loudoun County School Board meeting.
4. After learning of Mr. Cross's suspension, I have refrained from publicly commenting on proposed Policy 8040 and other gender-identity related policies because I am afraid that the School Board will punish me as it did with Mr. Cross.

5. The Loudoun County School Board's decision to suspend Mr. Cross has chilled my speech related to proposed Policy 8040 and other gender-identity related discussions and policies.

I declare under penalty of perjury of the laws of the United States that to the best of my knowledge, information, and belief, the foregoing is true and correct.

Executed on ~~June~~ ^{May} 31, 2021.

Holly Myers Holly Myers
[INSERT NAME]

FOR NOTARY PUBLIC'S USE ONLY:

State of Virginia [] City [] County of Loudoun

Acknowledged, subscribed and sworn to before me this 31 day of May, 20 21.

7878161
Notary Registration Number

Natalie Gonzalez Gustafson
Notary Public
(My commission expires: 3-31-2024)



Exhibit F

May 25, 2021

Loudoun County School Board
Public Meeting

[Video submitted on USB drive]