

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

BYRON TANNER CROSS,

*Plaintiff,*

v.

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

*Defendants.*

Case No. CL-21-3254

REC'D  
Loudoun County  
2021 AUG 16 PM 4:07  
FILED

**PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT**

Pursuant to Rule 1:8 of the Supreme Court of Virginia, Plaintiff Byron Tanner Cross respectfully requests leave to file a First Amended Complaint ("FAC"). This motion is accompanied by the proposed FAC, attached to this Motion as Exhibit A, and a redline comparison, Exhibit B, showing changes from the original complaint.

1. Plaintiff filed the original Complaint on June 1, 2021.
2. The Complaint alleges that Defendants violated Plaintiff's constitutional and statutory rights of speech and religion by suspending Plaintiff less than 48 hours after he spoke at the Loudoun County School Board meeting regarding proposed Policy 8040.
3. In his comments, Plaintiff told the Board that he believed that proposed Policy 8040, if enacted, would violate the rights of teachers and students. And he urged the Board not to enact the Policy.
4. Regrettably, the Board failed to heed Plaintiff's warnings.
5. On August 11, 2021, the Board voted to enact Policy 8040 without addressing Plaintiff's concerns.

6. The Policy forces all of its students and staff, including Plaintiff, to refer to “gender-expansive or transgender” students using whatever gender pronoun is chosen by the student, regardless of whether the pronoun is consistent with the student’s biological sex.

7. Plaintiff, and the two proposed plaintiffs, object to expressing this message because it communicates that gender identity, rather than biological reality, fundamentally shapes and defines who we truly are as humans, that our sex can change, and that a woman who identifies as a man really is a man.

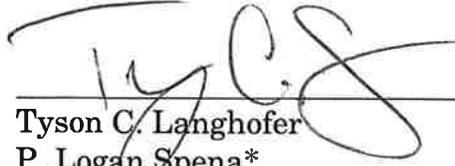
8. Plaintiff, along with two other teachers, seek to amend the Complaint asking the Court to stop Defendants from enforcing the Policy to (i) compel individuals to express ideas regarding gender identity that violate their conscience, including referring to or addressing students using pronouns different than their biological sex, or (ii) prohibit individuals from expressing views regarding gender identity or to punish them for expressing those views, including addressing and referring to students based on their biological sex.

9. On August 12, 2021, Plaintiff’s counsel notified Defendants’ counsel of their intention to file this motion to amend the complaint. Defendants were unable to consent to the filing of this motion at the time.

In support of this motion, Plaintiff files herewith a Memorandum in Support of Plaintiff’s Motion for Leave to Amend Complaint.

Dated: August 16, 2021

Respectfully submitted,



---

Tyson C. Langhofer

P. Logan Spena\*

Virginia State Bar No. 95204

**ALLIANCE DEFENDING FREEDOM**

20116 Ashbrook Place, Suite 250

Ashburn, VA 20147

Tel: (571) 707-4655

Fax: (571) 707-4656

Email: [tlanghofer@ADFlegal.org](mailto:tlanghofer@ADFlegal.org)

Email: [lspena@ADFlegal.org](mailto:lspena@ADFlegal.org)

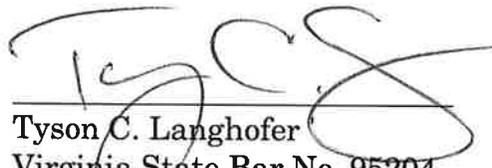
*\*Admitted Pro Hac Vice*

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 16, 2021, I served the foregoing by e-mail and mailing a true and correct copy of the same to:

Stacy Haney  
Haney Phinyowattanachip  
11 South 12th St., Suite 100B  
Richmond, VA 23219  
[shaney@haneyphinyo.com](mailto:shaney@haneyphinyo.com)



Tyson C. Langhofer  
Virginia State Bar No. 95204  
**ALLIANCE DEFENDING FREEDOM**  
20116 Ashbrook Place, Suite 250  
Ashburn, VA 20147  
Tel: (571) 707-4655  
Fax: (571) 707-4656  
Email: [tlanghofer@ADFlegal.org](mailto:tlanghofer@ADFlegal.org)

*Counsel for Plaintiff*

**BYRON TANNER CROSS, MONICA GILL, and KIMBERLY WRIGHT,**

*Plaintiffs,*

*v.*

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

*Defendants.*

Case No. CL21-3254

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

Plaintiffs Byron Tanner Cross, Monica Gill, and Kimberly Wright state as follows:

**INTRODUCTION**

1. This action challenges the content- and viewpoint-based actions and policies of Defendants against Plaintiffs related to their 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 on May 25.
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 threatened termination of his employment for simply expressing speech that the Virginia Constitution protects.

9. Shortly thereafter, Mr. Cross filed this action against Defendants alleging that they violated his rights of speech and religion under Virginia law by retaliating against him for engaging in protected speech.

10. After a hearing, this court granted Mr. Cross's motion for preliminary injunction and ordered Defendants to reinstate Mr. Cross to his position while the lawsuit proceeds.

11. As a result, Mr. Cross was able to return to his role as PE teacher for the last five days of school for the Spring 2021 semester.

12. Regrettably, Defendants failed to heed Mr. Cross's plea to adopt a policy that respects the rights of all students and staff at Loudoun County Public Schools.

13. Instead, on August 11, Defendant Loudoun County School Board adopted a policy that forces its students and staff, including Plaintiffs, to refer to "gender-expansive or transgender" students using whatever gender pronoun is chosen by the

student, regardless of whether the pronoun is consistent with the student's biological sex.

14. This case is about far more than pronouns. It raises the question whether public schools can punish a teacher for objecting, as a private citizen during the public comment portion of a board meeting, to a proposed policy that would force him to express ideas about human nature, unrelated to the school's curriculum, that he believes are false.

15. Additionally, it is about whether the government may force Plaintiffs to express ideas about human nature, unrelated to the school's curriculum, that they believe are false and that are the subject of ongoing scientific debate. If Plaintiffs were to comply with Defendants' demands, they would be forced to communicate a message they believe is false—that gender identity, rather than biological reality, fundamentally shapes and defines who we truly are as humans, that our sex can change, and that a woman who identifies as a man really is a man, and vice versa. But if they refer to students based on their biological sex, they communicate the views they actually believe—that our sex shapes who we are as humans, that this sex is fixed in each person, and that it cannot be changed, regardless of our feelings or desires.

16. 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, and so can a school district. But here, Defendants have refused to find middle ground. They have made this case about far more than titles or pronouns; they have taken a side in a national debate over competing views of human nature and compelled 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.

17. 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.

18. By punishing Mr. Cross for his contribution to the Board's policy formation process, the Defendants sent 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. And by enacting Policy 8040, Defendants are attempting to compel Plaintiffs to speak messages that violate their conscience.

19. A temporary restraining order and preliminary and permanent injunctive relief are necessary to immediately (i) stop Defendants' retaliation against Mr. Cross for expressing his viewpoints as a private citizen on a matter of public concern, and (ii) stop Defendants from requiring Plaintiffs to speak messages that violate their consciences.

20. 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 (i) suspending Mr. Cross for exercising his rights to free speech and free exercise, and (ii) enacting Policy 8040 which violates the free speech and free exercise rights of all Plaintiffs.

## **PARTIES**

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

22. Monica Gill is a resident of Hillsboro, Virginia and a high school History teacher at Loudoun County High School, part of Loudoun County Public Schools.

23. Kimberly Wright is a resident of Leesburg, Virginia and a middle school English teacher at Smart's Mill Middle School, part of Loudoun County Public Schools.

24. 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.

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

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

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

28. 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.

29. 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.

30. The School Board exercised its policy making authority by adopting Policy 8040.

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

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

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

34. 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, including enforcement of Policy 8040.

35. As 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 those actions to comply with constitutional mandates.

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

37. Defendant Ziegler has the authority to authorize, approve, and implement the policies that were and are being used to restrict Plaintiffs' expression, including Policy 8040.

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

39. As superintendent, Defendant Ziegler directly supervises Defendant Sebastian.

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

41. Defendant Sebastian possesses the authority and responsibility for governing and regulating District employees at Loudoun County Public Schools, including enforcement of Policy 8040.

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

43. Plaintiffs are suing each natural-person Defendant in his or her official and personal capacities.

## **FACTUAL BACKGROUND**

### ***Plaintiffs' Experience in Education***

44. Plaintiffs each have extensive experience as educators and working with students. They entered the education field because of their commitment to educate children and serve them as they develop mentally, physically, and emotionally.

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

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

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

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

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

50. 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.

51. In fact, several months ago, Defendants renewed Mr. Cross’s contract for the 2021–22 school year.

52. Ms. Gill received her bachelor’s degree in Education and Social Studies from University of Maryland College Park and has been a teacher for twenty-six years.

53. For the past sixteen years, Ms. Gill has been a History Teacher at Loudoun County High School. Ms. Gill has taught AP U.S. History, AP U.S. Government, AP Comparative Government, World History, Philosophy, International Relations, Sociology, and Journalism.

54. In addition to her teaching duties, Ms. Gill was the History Department Chair for 2 years.

55. Ms. Gill has never been the subject of any School District disciplinary action.

56. Ms. Gill consistently receives positive reviews. In her most recent review, Ms. Gill was described as “a highly effective teacher who engages her students with her instruction.” A previous year’s review said, “You provide a very safe environment in which students can express their opinions and engage in debates, and this is managed extremely well.”

57. Ms. Wright received her bachelor’s degree in education from Virginia Tech University and has been a teacher for twenty-two years.

58. For the past seventeen years, Ms. Wright has been a teacher at Smart's Mill Middle School. Ms. Wright has taught Communications 7, English 6, 7, and 8, and Computer Application 6.

59. Ms. Wright has never been the subject of any School District disciplinary action.

60. Ms. Wright consistently receives positive reviews. In her most recent review, 6th Grade Dean Sarah Letina described Ms. Wright as a "lighthouse of positivity in a time of extreme negativity" and "a shining example of what it means to be a professional educator." Ms. Letina concluded her review with these remarks:

This year we have asked you to do more and learn more in a shorter time than we have ever requested. You have shown your dedication by bringing your "A Game" each day. You have routinely provided the best you can give all while being stretched in many different directions. While everyone is at their own point in their journey to provide exceptional education in our new normal. The growth that you have shown to get to this point has been EXEMPLARY. I look forward to the next academic year and the work that we will do together to continue your growth as an educator and as an integral member of the Smart's Mill staff.

### ***Proposed Policy 8040***

61. In May 2021, the Defendant School Board was considering adopting Policy 8040 entitled "Rights of Transgender Students and Gender-Expansive Students." A true and accurate copy of Policy 8040 as proposed is attached hereto as Exhibit A.

62. On information and belief, the Board drafted the Policy based on the recommendations in the Virginia Department of Education's Model Policies for the Treatment of Transgender Students in Virginia Public Schools (hereinafter "Model Policies").<sup>1</sup> See Exhibit A at 1.

---

<sup>1</sup> The Model Policies are available at [https://townhall.virginia.gov/l/GetFile.cfm?File=C:%5CTownHall%5Cdocroot%5CGuidanceDocs\\_Proposed%5C201%5CGDoc\\_DOE\\_4683\\_20201208.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=C:%5CTownHall%5Cdocroot%5CGuidanceDocs_Proposed%5C201%5CGDoc_DOE_4683_20201208.pdf).

63. The Policy authorizes “gender-expansive or transgender students” to specify names and gender pronouns on the basis of gender identity rather than biological sex.

64. The Policy does not define the term “gender-expansive.”

65. The Model Policies do not define “gender-expansive.” The Model Policies only state that “[g]ender-expansive,” along with “gender-diverse/gender-fluid/gender-nonbinary/agender/gender queer” are among “[t]erms that convey a wider, more inclusive range of gender identity and/or expression than typically associated with the social construct of a binary (two discrete and opposite categories of male and female) gender system.”

66. As proposed, 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 name and 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).

(6) require all instructional staff to “annually acknowledge review” of the Policy.

### ***Plaintiffs’ Philosophical and Religious Beliefs***

67. Plaintiffs believe, based on scientific evidence, that children do not have a fully developed capacity to understand the long-term consequences of their decisions.

68. Plaintiffs want to protect children from making potentially irreversible and life-changing decisions that they may later regret. Plaintiffs believe 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 puberty blockers, 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.

69. Plaintiffs believe that parents must help children understand the many and complex factors surrounding gender identity.

70. Plaintiffs believe that educators can assist parents in this effort.

71. Plaintiffs believe that parents have a fundamental right to control the upbringing and education of their children.

72. Plaintiffs believe that any gender-identity education policy must account for this fundamental right.

73. Plaintiffs believe 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.

74. Plaintiffs believe educators have free speech and religious freedoms that may be impacted by gender-identity education policy.

75. Plaintiffs believe that all education policy must protect educators' fundamental freedoms.

76. Plaintiffs believe, 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.

77. Plaintiffs also believe, 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.

78. For those students who are not comfortable using facilities associated with their anatomical sex, Plaintiffs support those students having access to and using a private restroom or locker space.

79. To accommodate the interests of students, parents, and teachers, Plaintiffs believe 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.

80. To accommodate the interests of students, parents, and teachers, Plaintiffs believe 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.

81. Plaintiffs are also professing Christians who strives to live out their faith daily.

82. Because of their Christian faith, Plaintiffs have sincerely held religious beliefs that govern their views about human nature, marriage, gender, sexuality, morality, politics, and social issues.

83. Their Christian faith informs Plaintiffs' convictions concerning human nature, the purpose and meaning of life, and ethical and moral standards that should govern human conduct.

84. Plaintiffs' faith teaches them 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.

85. Plaintiffs also believe they cannot affirm as true those ideas and concepts that they believe are not true. Doing so, they believe, would violate biblical commands against dishonesty and lying.

86. Plaintiffs believe that referring to a child using pronouns inconsistent with the child's biological sex is harmful to the child because it is untrue.

87. Plaintiffs also endeavor to treat every person with dignity, love, and care, because they believe all people are created in the image of God.

88. Plaintiffs object to Defendants' regulation, suppression, and censorship of their sincerely held religious beliefs.

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

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

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

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

92. 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.

93. When Mr. Cross delivered his remarks, he spoke as a private citizen on a matter of public concern. Specifically, he was speaking on his own time at a public meeting, during the time reserved for public comment, about a proposed policy under consideration by the School Board that addressed issues being debated on the national stage, including on 60 Minutes.

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

***Defendants' Unlawful Retaliation Against Mr. Cross***

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

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

97. 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.

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

99. 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.

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

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

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

103. 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.

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

105. 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.

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

107. As a consequence of administrative leave, Mr. Cross was prohibited from conducting any school business.

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

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

110. 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 and assaulted his credibility in offering public comment on school policy.

111. 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.

112. 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.

113. 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.

114. On June 1, Mr. Cross filed this action alleging that Defendants' actions violated his rights and seeking an injunction to immediately reinstate him to his teaching position.

115. On June 8, this court found that Mr. Cross was likely to prevail on the merits of his claims and issued a preliminary injunction ordering Defendants to "immediately reinstate [Mr. Cross] to his position as it was prior to the issuance of his suspension and remove the ban that was placed on him from all buildings and grounds of Loudoun County Public Schools."

116. As a result, Mr. Cross returned to his teaching position for the final five days of school. During that period, Mr. Cross's comments at the board meeting did not disrupt school activities or otherwise interfere with his ability to perform his duties.

***LCPS enacts unconstitutional Policy 8040***

117. On August 11, Defendant School Board enacted Policy 8040 without addressing any of the concerns raised by Mr. Cross, other LCPS staff, parents,

students, and other concerned citizens. At the hearing, two amendments were made to the proposed policy, but neither amendment revised Subsection A which governs the use of names and pronouns.

118. Accordingly, the Policy as approved by the School Board contains all the provisions set forth in paragraph 66 herein.

119. Among other things, the Policy provides: “LCPS staff shall allow gender-expansive or transgender students to use their chosen name and gender pronouns that reflect their gender identity without any substantiating evidence, regardless of the name and gender recorded in the student’s permanent educational record. School staff shall at the request of a student or parent/legal guardian, when using a name or pronoun to address the student, use the name and pronoun that correspond to their gender identity.”

120. Under Defendants’ Policy, students may select any gender identity they choose because the selection is based entirely on an individual student’s subjective feelings.

121. By using the term “gender-expansive,” Defendants support the view that there are an infinite variety of gender identities.

122. Defendants note that gender identity is completely subjective, saying that students can choose their gender identity “without any substantiating evidence.”

123. Some sources say that there are currently 112 different options for one’s gender identity, including genders that “refuse[] to be categorized,” that are “influenced by your surroundings,” are “affected by mood swings,” that “change[] depending on which friend you’re with,” and those that “outright refus[e] to accept or identify in, on, or around the gender spectrum.”<sup>2</sup>

124. These sources say “this list is non-exhaustive” because one should “[f]eel free

---

<sup>2</sup> See, e.g., *Dude Asks: How Many Genders Are There In 2021?*, available at <https://dudeasks.com/how-many-genders-are-there-in-2021/> (last visited 8/5/21).

to mix and match your own prefixes and suffixes to create the orientation that best describes you.”<sup>3</sup>

125. Other sources note that the number of possible gender identities is infinite.<sup>4</sup>

126. Under Defendants’ Policy, students may demand that LCPS staff, including Plaintiffs, and all students refer to them by any pronoun they choose, from the standard English pronouns (*e.g.*, “he” or “she”), to the standard pronouns applied in a nonstandard way (*e.g.*, “they” used to refer to one person), to those invented within the last few years (*e.g.*, “ze,” “zie,” “sie,” “hir,” “hirs,” “zie,” “xe,” “xem,” “xyr,” “xyrs,” “per,” “ve,” “ver,” “vis,” “fae,” “faer,” “ae,” “aer,” “e,” “ey,” “em,” “eir,” “eirs,” “tey,” “ter,” “tem,” “ters”),<sup>5</sup> to any others a student idiosyncratically requests.

127. According to some sources, the number of possible pronouns is infinite because “[a]ny combination is possible.”<sup>6</sup>

128. Using a pronoun when referring to a student expresses a message about that student’s sex.

129. How to respond to individuals with gender dysphoria, or who identify as transgender is a matter of national and local public debate and concern, including whether it is appropriate to treat males as if they are females and vice versa in matters of personal privacy, pronouns, and sports competitions.

130. Compelling Plaintiffs to express that a female is a male by using male pronouns, or vice versa, forces them to express a message on that matter of public concern and debate.

---

<sup>3</sup> *Id.*

<sup>4</sup> *See, e.g.,* Marco A. Hildalgo, Diane Ehrensaft, *et al.*, *The Gender Affirmative Model: What We Know and What We Aim to Learn*, 56 HUMAN DEVELOPMENT 285, 288 (2013) (advocating for “self-acceptance within an infinite variety of authentic gender selves”).

<sup>5</sup> *See, e.g.,* Univ. of Wis., Milwaukee, Lesbian, Gay, Bisexual, Transgender Res. Ctr., *Gender Pronouns*, available at <https://uwm.edu/lgbtrc/support/gender-pronouns/> (last visited Aug. 5, 2021).

<sup>6</sup> *See, e.g.,* Univ. of Cal., Davis, LGBTQIA Res. Ctr., *Pronouns*, available at <https://lgbtqia.ucdavis.edu/educated/pronouns> (last visited Aug. 5, 2021).

131. If students heard Plaintiffs use a male pronoun to refer to a female student, or vice versa, they would reasonably understand that Plaintiffs were endorsing the idea that a person can change their sex, or that it is appropriate to refer to a female as a male, or vice versa.

132. The use or non-use of a pronoun does not interfere with the efficient functioning of a school.

133. The use or non-use of a pronoun does not constitute prohibited discrimination or harassment because it does not objectively and substantially impair access to education.

134. Using a person's preferred name rather than a pronoun to refer to them does not create a hostile learning environment.

135. Using a person's preferred name rather than a pronoun to refer to them is not discriminatory.

136. Defendants do not have a compelling interest in mandating that Plaintiffs use a male pronoun to refer to a female student or vice versa.

137. Plaintiffs' speech on matters of public concern, including their use or non-use of pronouns, have not prevented, and will not prevent, Defendants from efficiently providing services to the public (or even threaten to do so).

***Defendants have no valid interest in enforcing the Policy against Plaintiffs***

138. Virginia law tasks the Department of Education with developing model policies "that address common issues regarding transgender students in accordance with evidence-based best practices." Va. Code § 22.1-23.3.

139. The Model Policies and the Policy are inconsistent with "evidence-based best practices" because they require social transition at the request of a child "without any substantiating evidence." The Policy requires that LCPS staff participate in social transition: (1) even if the child does not meet any diagnostic criteria of gender

dysphoria as set forth in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5)<sup>7</sup>; (2) even though there are different types of gender dysphoria which have different causes, different rates of desistance, and require different kinds of treatment, which may not include social transition; (3) even though the majority of childhood cases of gender dysphoria will desist; (4) without any kind of waiting period whereby other mental health disorders might be diagnosed or addressed; and (5) even without obtaining consent from, or even notifying, the student's parents or guardians.

140. Administering treatment for gender dysphoria in lieu of diagnosis and treatment of other mental health conditions is harmful to children with such conditions, especially if the child is in the statistical majority of cases where the gender dysphoria will desist.

141. Administering treatment for gender dysphoria in the form of social transition is harmful to a child if the child is in the statistical majority of cases where the gender dysphoria will desist, regardless of whether the child has other mental health conditions.

142. Defendants have no valid interest in forcing Plaintiffs to participate in any child's treatment for any condition, including gender dysphoria, when a child has not met the diagnostic criteria for that condition or when the mandated treatment will be harmful to the child.

***Defendants' unconstitutional actions are violating Plaintiffs' rights***

143. Plaintiffs desire to speak publicly, as private citizens, about the Policy and about other gender-identity education policies, including at future Loudoun County School Board meetings.

---

<sup>7</sup> American Psychiatric Association, *What is Gender Dysphoria?* (Nov. 2020) available at <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria> (accessed Aug. 8, 2021).

144. As a result of Defendants' actions, Plaintiffs have been chilled in their speech about the Policy and about other gender-identity education policies.

145. If Plaintiffs make public comments about the Policy or gender-identity education policy, Defendants will likely impose adverse employment consequences on Plaintiffs because of their speech.

146. Other District employees desire to communicate their opinions on the Policy. 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.

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

148. Defendants' Policy compels Plaintiffs to refer to students using a student's preferred pronouns even if the pronouns differ from the student's biological sex.

149. Plaintiffs desire to refer to all students using pronouns that correspond to the students' biological sex. As discussed herein, Plaintiffs object to referring to a student using a pronoun different than the student's biological sex. If a student requests, Plaintiffs will refer to the student using the student's chosen name and will use their best efforts to refrain from referring to or addressing the student with any pronoun.

150. During the hearing on June 4, in response to a question from the Court, Defendants' counsel stated that a teacher would violate the Policy, and thus be subject to punishment, if he declined to use a student's preferred pronoun but used biological pronouns for all other students. Transcript at p. 85.

## STATEMENTS OF LAW

151. 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.

152. Defendants knew or should have known that they were violating Plaintiffs' constitutional, statutory, and contractual rights, and did violate Plaintiffs' constitutional, statutory, and contractual rights by (i) subjecting Mr. Cross 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, and (ii) by enacting the Policy compelling Plaintiffs to speak messages that violate their consciences.

153. The policies and practices that led to the violation of Plaintiffs' constitutional rights remain in effect.

154. Plaintiffs are suffering irreparable harm from Defendants' actions.

155. Plaintiffs have no adequate or speedy remedy at law to correct the deprivation of their rights by Defendants.

156. Punishing Mr. Cross 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.

157. Defendants' actions have caused injury to Mr. Cross including depriving him of his constitutional and statutory rights.

158. Compelling Plaintiffs to speak messages about sex and gender identity do not serve any legitimate or compelling state interest and is not narrowly tailored to serve any such interests.

159. Defendants' actions have caused injury and continue to cause injury to Plaintiffs including depriving them of their constitutional and statutory rights.

**FIRST CAUSE OF ACTION**  
**Violation of Mr. Cross's Right to Freedom of Speech**  
**Under the Virginia Constitution:**  
**Retaliation and Prior Restraint**  
**(Va. Const. art. I, § 12)**

160. Mr. Cross repeats and realleges each of the allegations in paragraphs 1–159 of this Complaint.

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

162. When Mr. Cross 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.

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

164. Defendants' decision to sanction Mr. Cross 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.

165. Defendants' disciplinary action and their threatened future disciplinary action has deterred Mr. Cross from exercising his right to free speech.

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

167. 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.

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

169. Defendants subjected Mr. Cross to discipline and threaten to do so in the future due to the content and viewpoint of Mr. Cross's speech.

170. By placing Mr. Cross on administrative leave, Defendants punished Plaintiff for engaging in expression the Virginia Constitution protects.

171. Defendants' disciplinary action violates Mr. Cross's right to free speech as guaranteed by the Virginia Constitution.

172. Defendants' actions have caused injury to Mr. Cross including depriving him of his constitutional and statutory rights.

**SECOND CAUSE OF ACTION**  
**Violation of Mr. Cross's Right to Freedom of Speech**  
**Under the Virginia Constitution:**  
**Content and Viewpoint Discrimination**  
**(Va. Const. art. I, § 12)**

173. Mr. Cross repeats and realleges each of the allegations in paragraphs 1–159 of this Complaint.

174. By punishing and threatening to punish Mr. Cross 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.

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

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

177. Defendants exercised this unbridled discretion when they punished Mr. Cross for expressing his views regarding gender-identity education policy.

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

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

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

181. 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.

182. Mr. Cross's expression regarding proposed gender-identity education policy is protected by the Virginia Constitution.

183. Defendants' actions violated Mr. Cross's right to free speech as guaranteed by the Virginia Constitution.

184. Defendants' actions have caused injury to Mr. Cross including depriving him of his constitutional and statutory rights.

**THIRD CAUSE OF ACTION**  
**Violation of Mr. Cross's 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)**

185. Mr. Cross repeats and realleges each of the allegations in paragraphs 1–159 of this Complaint.

186. By punishing and threatening to punish Mr. Cross for exercising his sincerely held religious beliefs in the way he discusses issues regarding gender-identity education policy, Defendants have violated and are violating Mr. Cross's right to free

exercise of religion under the Virginia Constitution and the Act for Religious Freedom.

187. Mr. Cross'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.

188. 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."

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

190. 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.

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

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

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

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

195. Defendants' actions have caused injury to Mr. Cross including depriving him of his constitutional and statutory rights.

**FOURTH CAUSE OF ACTION**  
**Violation of Mr. Cross's Right to Free Exercise of Religion**  
**(Va. Code § 57-2.02)**

196. Mr. Cross repeats and realleges each of the allegations in paragraphs 1–159 of this Complaint.

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

198. 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.

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

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

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

202. Defendants' actions caused injury to Mr. Cross including depriving him of his constitutional and statutory rights.

**FIFTH CAUSE OF ACTION**  
**Violation of Plaintiffs' Right to Freedom of Speech Under the Virginia**  
**Constitution:**  
**Compelled Speech**  
**(Va. Const. art. I, § 12)**

203. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–159 of this complaint.

204. Referring to a person using a pronoun that is different than an individual's biological sex communicates a message about gender identity.

205. Defendants' Policy compels Plaintiffs, subject to discipline, to communicate a message about gender identity, a message that they do not hold, that they do not wish to communicate, and that conflicts with their religious beliefs and conscience.

206. The discussion of how to respond to individuals with gender dysphoria and whether to alter use of pronouns, or not use pronouns, is a matter of public concern and public debate as defined by the Supreme Court in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448, 2473 (2018).

207. Compelling an individual to express an objective biological falsehood is not a lawful message.

208. The discussion of how to respond to individuals with gender dysphoria and whether to alter use of pronouns is not curricular speech.

209. Using, or not using, pronouns to refer to students is not curricular speech.

210. Using, or not using, pronouns to refer to students is not part of Plaintiffs' official duties as defined by the Supreme Court in *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006).

211. Plaintiffs' expression, or lack thereof, regarding gender identity is protected by the Virginia Constitution.

212. Defendants' Policy and their threatened enforcement of the Policy to compel Plaintiffs to express messages that they do not wish to express violate their right to free speech as guaranteed by the Virginia Constitution. Va. Const. art. I, § 12.

213. Defendants' Policy has caused and is continuing to cause injury to Plaintiffs including depriving them of their constitutional and statutory rights.

**SIXTH CAUSE OF ACTION**  
**Violation of Plaintiffs' Right to Freedom of Speech Under the Virginia**  
**Constitution:**  
**Viewpoint and Content Discrimination**  
**(Va. Const. art. I, § 12)**

214. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–159 of this complaint.

215. By threatening to punish Plaintiffs for expressing their views regarding gender identity and for not expressing the Board's views regarding gender identity, Defendants have engaged in content and/or viewpoint discrimination in violation of the Virginia Constitution.

216. Defendants' Policy requires the Board or its designees to evaluate the content and viewpoint of faculty and student expression to determine whether it is consistent with the mandate of the Policy.

217. The discussion of how to respond to individuals with gender dysphoria and whether to alter use of pronouns, or not use pronouns, is a matter of public concern and public debate as defined by the Supreme Court in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448, 2473 (2018).

218. Compelling an individual to express an objective biological falsehood is not a lawful message.

219. The discussion of how to respond to individuals with gender dysphoria and whether to alter use of pronouns is not curricular speech.

220. Using, or not using, pronouns to refer to students is not curricular speech.

221. Using, or not using, pronouns to refer to students is not part of Plaintiffs' official duties as defined by the Supreme Court in *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006).

222. Plaintiffs' expression, or lack thereof, regarding gender identity is protected by the Virginia Constitution.

223. By threatening to punish Plaintiffs for violating the Policy, Defendants

have threatened to punish Plaintiffs for engaging in expression, or lack thereof, that the Virginia Constitution protects.

224. Defendants' Policy and their threatened enforcement of the Policy to punish Plaintiffs have violated and continue to violate their right to free speech as guaranteed by the Virginia Constitution. Va. Const. art. I, § 12.

225. Defendants' actions have caused and continue to cause injury to Plaintiffs including depriving them of their constitutional and statutory rights.

**SEVENTH CAUSE OF ACTION**  
**Violation of Plaintiffs' Right to Due Process of Law**  
**Under the Virginia Constitution**  
**(Va. Const., art. I § 11)**

226. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–159 of this complaint.

227. The Virginia Constitution prohibits the deprivation of liberty without due process of law.

228. Rules which use terms that are so vague that ordinary citizens must guess at their meaning and will differ as to the rule's application unconstitutionally deprive citizens of liberty without due process of law.

229. A rule must afford citizens a reasonable opportunity to know what is prohibited in order to comport with constitutional due process requirements.

230. Rules which restrict or compel speech must meet a higher standard of specificity than other rules in order to comport with constitutional due process requirements.

231. Defendants' Policy and their enforcement of the Policy are unconstitutionally vague, ambiguous, and contradictory.

232. Defendants' Policy and related practices are unconstitutionally vague because they prohibit both "sex" discrimination and "gender identity" discrimination which are inherently in conflict.

233. Defendants' Policy is unconstitutionally vague because it applies to "gender-expansive" students without defining the term "gender-expansive," leaving teachers unaware of the circumstances under which their use of names and pronouns is under restriction or compulsion and subject to sanction.

**EIGHTH 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)**

234. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–159 of this complaint.

235. By threatening to punish Plaintiffs for exercising their sincerely held religious beliefs in the way that they discuss issues regarding gender identity, including the use of pronouns consistent with a person's biological sex, Defendants have violated and continue to violate their right to free exercise of religion under the Virginia Constitution and the Act for Religious Freedom.

236. Plaintiffs' views and expression related to gender identity, including the use of pronouns, are motivated by their sincerely held religious beliefs and are avenues through which they exercise their religious faith.

237. Expressing Defendants' mandated message regarding gender identity would require Plaintiffs to violate their sincerely held religious beliefs.

238. Threatening to punish Plaintiffs for not using pronouns that violated their conscience compelled them to "suffer on account of [their] religious opinions or belief."

239. Threatening to punish Plaintiffs for not using pronouns that violated their conscience restricted their "free[dom] to profess, and by argument to maintain, [their] opinions in matters of religion, and . . . diminish[ed] [their] . . . civil capacities."

240. Defendants' Policy and their interpretation and enforcement of their Policy creates a religious test for public school teachers.

241. Defendants' Policy and their threatened enforcement of the Policy to punish

Plaintiffs violated and continue to violate Plaintiffs' right to free exercise of religion as guaranteed by the Virginia Constitution and the Act for Religious Freedom. Va. Const., art. I, § 16 and Va. Code §57-1.

242. Defendants' actions have caused and continue to cause injury to Plaintiffs including depriving them of their constitutional and statutory rights.

**NINTH CAUSE OF ACTION**  
**Violation of Plaintiffs' Right to Exercise of Religion**  
**Under Virginia Code § 57-2.02**

243. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1-159 of this complaint.

244. Plaintiffs' sincerely held religious beliefs prohibit them from using male pronouns to refer to a female and vice versa.

245. By compelling them to use male pronouns to refer to a female, and vice versa, or be punished, Defendants have imposed and are imposing a substantial burden on Plaintiffs' religious exercise and are attempting to coerce them into either changing or violating their sincerely held religious beliefs or being punished.

246. Compelling Plaintiffs to use male pronouns to refer to a female student, and vice versa, furthers no compelling governmental interest and is not narrowly tailored to further any compelling governmental interest.

247. Threatening to punish Plaintiffs or compelling them to speak specific words was not the least restrictive means of furthering Defendants' stated interests.

248. Threatening to punish Plaintiffs if they do not comply with the Policy violated and will continue to violate Plaintiffs' civil rights under Virginia Code §57-2.02.

249. Defendants' Policy and threatened enforcement of the Policy caused injury and will continue to cause injury to Plaintiffs including depriving them of their constitutional and statutory rights.

### **PRAYER FOR RELIEF**

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

- A. A judgment declaring that Defendants' retaliation against Mr. Cross 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 Mr. Cross 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 Mr. Cross's personnel files any reference to the discipline Defendants imposed on Mr. Cross 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 Mr. Cross from, or punish Mr. Cross for, expressing his views on gender-identity education policy.
- E. A temporary restraining order and a preliminary and permanent injunction prohibiting Defendants sued in their official capacities, their agents, officials, servants, employees, and any other persons acting on their behalf from enforcing the Policy to (i) compel individuals to express ideas regarding gender identity that violate their conscience, including referring to or addressing students using pronouns different than their biological sex, or (ii) prohibit individuals from expressing views regarding gender identity or to punish them

for expressing those views, including addressing and referring to students based on their biological sex.

F. Nominal damages for the violation of Plaintiffs' constitutional and statutory rights;

G. Plaintiffs' reasonable attorneys' fees, costs, and other costs and disbursements in this action; and

H. All other further relief to which Plaintiffs may be entitled.

Respectfully submitted this \_\_\_\_\_ day of August, 2021.

---

TYSON C. LANGHOFER  
VA Bar No. 95204  
ALLIANCE DEFENDING FREEDOM  
20116 Ashbrook Place, Suite 250  
Ashburn, VA 20147  
(571) 707-4655  
tlanghofer@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 \_\_\_\_ day of August, 2021, at Hamilton, Virginia.

---

Byron Tanner Cross

**DECLARATION UNDER PENALTY OF PERJURY**

I, MONICA GILL, 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 \_\_\_\_ day of August, 2021, at \_\_\_\_\_, Virginia.

\_\_\_\_\_  
Monica Gill

**DECLARATION UNDER PENALTY OF PERJURY**

I, KIMBERLY WRIGHT, 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 \_\_\_\_ day of August, 2021, at \_\_\_\_\_, Virginia.

\_\_\_\_\_  
Kimberly Wright