

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

CARLOS AND TATIANA IBANEZ, *et. al*,

Plaintiffs,

v.

Case No. CL21001737-00

ALBEMARLE COUNTY SCHOOL BOARD,

et. al,

Defendants.

ORDER

On April 22, 2022, the parties, by counsel, appeared for argument on Defendants' Demurrers, Plea in Bar, Motion Craving Oyer, and Motion to Dismiss and/or Drop for Misjoinder, as well as Plaintiffs' Motion for a Preliminary Injunction.

By agreement of the parties, Defendants' Motion Craving Oyer is GRANTED.

Moreover, after consideration of all of the pleadings, the briefs submitted by the parties, and oral argument on behalf of Plaintiffs and Defendants, and for the reasons stated on the record, the Court finds that Plaintiffs lack standing to bring their claims, and that Plaintiffs have not stated a cause of action arising under Virginia law because their claims under the Constitution of Virginia are not self-executing and the statute on which they rely does not create a private cause of action. Accordingly, the case must be dismissed. Therefore:

It is hereby ORDERED that Defendants' Plea in Bar is SUSTAINED; and

Defendants' Demurrer as to the Sixth Cause of Action of the Complaint is SUSTAINED;

and


The Complaint is hereby DISMISSED WITH PREJUDICE.

In light of the dismissal of the Complaint, Defendants' Demurrers I, II, III, IV, V, VI, and VIII, Defendants' Motion to Dismiss and/or Drop for Misjoinder, and Plaintiffs' Motion for Preliminary Injunction are MOOT.

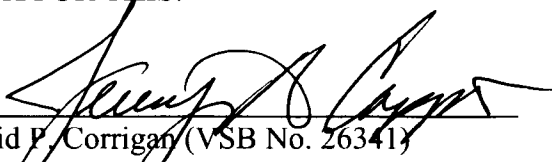
Plaintiffs' objections are noted.

IT IS SO ORDERED.

ENTER: 6/1/22

BY: 
Hon. Claude Worrell, Judge

I ASK FOR THIS:



David P. Corrigan (VSB No. 26341)
Jeremy D. Capps (VSB No. 43909)
Melissa Y. York (VSB No. 77493)
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SEEN AND OBJECTED TO:

SEEN AND OBJECTED TO, as to the Order sustaining Defendants' Plea in Bar, for the reasons set forth in the pleadings, briefs, and in open court, including that Plaintiffs have standing to bring all of their claims as stated, among other places in the record, in Plaintiffs' Memorandum in Opposition to Defendants' Demurrer, Plea in Bar, Motion Craving Oyer, and Motion to Dismiss and/or Drop for Misjoinder.

Further, SEEN AND OBJECTED TO, as to the Order sustaining Defendants' Plea in Bar for the reasons set forth in the pleadings, briefs, and in open court, including that Defendants are not entitled to sovereign immunity because Article I, Sections 11 and 12, of the Virginia Constitution are self-executing, as stated, among other places in the record, in Plaintiffs' Memorandum in Opposition to Defendants' Demurrer, Plea in Bar, Motion Craving Oyer, and Motion to Dismiss and/or Drop for Misjoinder.

Further, SEEN AND OBJECTED TO, as to the Order sustaining Defendants' Plea in Bar for the reasons set forth in the pleadings, briefs, and in open court, including that Article I, Sections 11 and 12, of the Virginia Constitution are self-executing, as stated, among other places in the record, in Plaintiffs' Memorandum in Opposition to Defendants' Demurrer, Plea in Bar, Motion Craving Oyer, and Motion to Dismiss and/or Drop for Misjoinder.

SEEN AND OBJECTED TO, as to the Order sustaining Defendants' Demurrer to Count VI, for the reasons set forth in the pleadings, briefs, and in open court, including that Plaintiffs pleaded facts sufficient to state a claim for the violation of their fundamental parental rights under the Virginia common law, Article I, Section 11, of the Virginia Constitution, and Virginia Code Section 1-240.1, as stated, among other places in the record, in Plaintiffs' Memorandum in Opposition to Defendants' Demurrer, Plea in Bar, Motion Craving Oyer, and Motion to Dismiss and/or Drop for Misjoinder.

Further SEEN AND OBJECTED TO, as to the Order sustaining Defendants' Demurrer to Count VI, for the reasons set forth in the pleadings, briefs, and in open court, including that Article I, Section 11, of the Virginia Constitution is self-executing, as stated, among other places in the record, in Plaintiffs' Memorandum in Opposition to Defendants' Demurrer, Plea in Bar, Motion Craving Oyer, and Motion to Dismiss and/or Drop for Misjoinder, and that Virginia Code Section 1-240.1 expressly codifies parents' fundamental rights under the Constitution and common law of Virginia.

SEEN AND OBJECTED TO, as to the Order dismissing the Complaint with prejudice, for the reasons set forth in the pleadings, briefs, and in open court, including that, as explained in Plaintiffs' Memorandum in Opposition to Defendants' Demurrer, Plea in Bar, Motion Craving Oyer, and Motion to Dismiss and/or Drop for Misjoinder, among other places in the record, Plaintiffs pleaded facts sufficient to state claims for violations of these rights:

freedom from racial discrimination under Article I, Section 11, of the Virginia Constitution (Count I);

freedom from viewpoint discrimination under Article I, Section 12, of the Virginia Constitution (Count II);

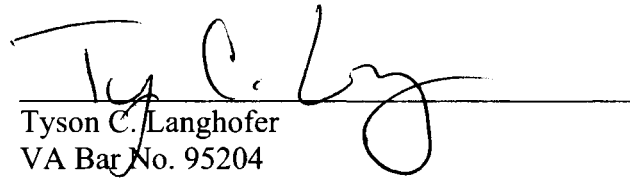
freedom from compelled speech under Article I, Section 12, of the Virginia Constitution (Count III);

freedom from religious discrimination under Article I, Section 11, of the Virginia Constitution (Count IV);

due process under Article I, Section 11, of the Virginia Constitution (Count V); and

fundamental right to control children's upbringing, education, and care under the Virginia common law, Article I, Section 11, of the Virginia Constitution, and Virginia Code Section 1-240.1 (Count VI).

SEEN AND OBJECTED TO, as to the Order dismissing Plaintiffs' Motion for Preliminary Injunction as moot, for the reasons set forth in the pleadings, briefs, and in open court, including that: (1) Plaintiffs are likely to prevail on the merits of their claims (a) because Defendants' Policy unlawfully discriminates on the basis of race; violates Plaintiffs' freedom of speech, of which the Virginia Constitution is more protective than the U.S. Constitution, and insofar as *Elliott v. Commonwealth*, 267 Va. 464, 593 S.E.2d 263 (2004), has language to the contrary, it should be limited to the issues it involved or overruled; violates Plaintiffs' religious freedom; and violates Plaintiffs' fundamental parental rights; and (b) because Defendants' Policy fails strict scrutiny, or because no governmental interest is strong enough to justify compelling Plaintiffs to speak; (2) Plaintiffs have suffered and will continue to suffer irreparable injury because "the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," *Leaders of a Beautiful Struggle v. Balt. Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021) (en banc) (citation omitted); (3) the balance of equities favors Plaintiffs because the government "is in no way harmed by issuance of a preliminary injunction which prevents [it] from enforcing restrictions likely to be found unconstitutional," *id.* (citation omitted); and (4) "the public interest favors protecting constitutional rights," *id.*



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May 27, 2022

VIA FEDEX DELIVERY

The Honorable Jon R. Zug, Clerk
Albemarle County Circuit Court
Court Square
501 East Jefferson Street
Charlottesville, VA 22902

Re: Carlos and Tatiana Ibanez, et al v. Albemarle County School Board, et al
Case No.: CL21001737-00

Dear Mr. Zug:

Please present the enclosed Order to Judge Worrell for entry in the above referenced matter. Please return a copy of the entered Order to all counsel of record.

Best regards.

Very truly yours,

Jeremy D. Capps

JDC/rah
Enclosure
cc: Kate Anderson, Esq.
Tyson C. Langhofer, Esq.
Vincent Wagner

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FILED
2022 MAY 31 AM 10:07
CIRCUIT COURT CLERK'S OFFICE
ALBEMARLE COUNTY, VA
JON R. ZUG, CLERK
BY: _____ D.C.