

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ROBERT GOLDEN, MARK)	CIVIL ACTION NO. _____
MONTGOMERY, TRAVIS)	
MONTGOMERY, and ANGELA and)	COMPLAINT FOR DAMAGES,
DOUGLAS STRAUSBAUGH, as)	DECLARATORY RELIEF, AND
parents and next friends of)	INJUNCTIVE RELIEF
TIMOTHY STRAUSBAUGH, a)	
minor,)	JURY TRIAL DEMANDED
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
ROSSFORD EXEMPTED VILLAGE)	
SCHOOL DISTRICT, ROSSFORD)	
EXEMPTED VILLAGE SCHOOL)	
DISTRICT BOARD OF EDUCATION,)	
and LUCI GERNOT, Superintendent of)	
the Rossford Exempted Village School)	
District, in her official and individual)	
capacity,)	
)	
<i>Defendants.</i>)	

COMPLAINT

COME NOW the Plaintiffs, ROBERT GOLDEN, MARK MONTGOMERY, TRAVIS MONTGOMERY, and ANGELA and DOUGLAS STRAUSBAUGH, as parents and next friends of TIMOTHY STRAUSBAUGH, and allege and aver as follows:

Jurisdiction and Venue

1.1 This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, as it is an action seeking redress under the laws and statutes of the United States for deprivations of rights secured by the Constitution and laws of the United States.

1.2 This Court has jurisdiction over the Plaintiffs' claims arising under the Constitution and laws of the State of Ohio pursuant to 28 U.S.C. § 1367(a), as such claims are

part of the same case or controversy as those giving rise to the claims over which this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

1.3 Venue properly lies in this Court under 28 U.S.C. § 1391(b), as the Defendants all reside within the Northern District of Ohio and a substantial part of the events giving rise to the action occurred within the Northern District of Ohio.

Parties

2.1 Plaintiffs ROBERT GOLDEN, MARK MONTGOMERY, and TRAVIS MONTGOMERY are individuals over the age of 18 years who reside in Wood County, Ohio.

2.2 Plaintiffs ANGELA and DOUGLAS STRAUSBAUGH are individuals over the age of 18 years who reside in Wood County, Ohio, and are the parents of TIMOTHY STRAUSBAUGH, a minor who resides with his parents and is a student at Rossford High School, a division of the Rossford Exempted Village School District.¹

2.3 Defendant ROSSFORD EXEMPTED VILLAGE SCHOOL DISTRICT is a public school district formed, organized, and operating pursuant to the laws of the State of Ohio.

2.4 Defendant ROSSFORD EXEMPTED VILLAGE SCHOOL DISTRICT BOARD OF EDUCATION is a body corporate created and acting pursuant to the laws of the State of Ohio.

2.5 Defendant LUCI GERNOT is the duly appointed Superintendent of the Rossford Exempted Village School District. In that capacity, she administers and enforces policies established by the Rossford Exempted Village School District Board of Education and, in certain matters, establishes policy for the Rossford Exempted Village School District. Defendant Gernot is sued in both her official and individual capacity.

¹ Any reference to the “Plaintiffs” in this Complaint will by implication include Timothy Strausbaugh, notwithstanding his status as a minor. For the sake of convenience, Plaintiffs may also be referenced by the name of the band “Pawn,” even though one member of “Pawn” (Kyle Kleeberger) is not a party to this action.

Factual History

3.1 Plaintiffs reallege and incorporate by reference Paragraphs 1.1-2.5, as set forth above.

3.2 Plaintiffs Robert Golden, Mark Montgomery, Travis Montgomery, and Timothy Strausbaugh are members of a music group that performs under the name “Pawn.”

3.3 Pawn has performed in clubs, arenas, festivals, county fairs, and other public places throughout Ohio and the Midwest United States and has established a reputation as a group with superior musicianship and outstanding moral character. Pawn performs original compositions, the words and music of which have been written by the members of Pawn, collectively and individually. Pawn’s music conveys positive messages, including messages that oppose the use of drugs, the use of alcohol, and sexual promiscuity.

3.4 Plaintiffs Robert Golden, Mark Montgomery, Travis Montgomery, and Timothy Strausbaugh are all devout and practicing Christians. Their religious beliefs are reflected in much, but not all, of Pawn’s music and performances.

3.5 In late November 2004, Plaintiff Timothy Strausbaugh and fellow Pawn member Kyle Kleeberger spoke with Ron Grimm, the Principal of Rossford High School (a division of the Defendant Rossford Exempted Village School District) about the possibility of having Pawn play a concert at a school assembly. Principal Grimm reacted positively and told Kyle Kleeberger to have his father (Dave Kleeberger) call Mr. Grimm. Dave Kleeberger is Pawn’s manager and a member of the School Board. Dave Kleeberger and Principal Grimm proceeded to communicate over the course of the next several days, and Principal Grimm left it to Mr. Kleeberger’s discretion to choose a theme for the concert. Because Pawn had been developing an anti-drug, anti-alcohol concert theme for some months prior thereto, Mr. Kleeberger selected the anti-drug, anti-alcohol theme and instructed Pawn’s members accordingly. Although the

assembly was originally targeted for December 22, 2004, it was changed to December 21, 2004 to accommodate the schedule of Plaintiff Robert Golden. The assembly was to be sponsored by a recognized school organization, and it was approved by the high school principal, Ron Grimm.

3.6 On or about December 9, 2004, plans for Pawn's performance at the December 21, 2004 assembly were finalized. Pawn would perform their original music at the assembly, without compensation, while also presenting anti-drug, anti-alcohol messages to students between songs. Pawn selected songs appropriate to the anti-drug, anti-alcohol theme and agreed that its messages between songs would not include references to Christ, Christianity, or to religion generally.

3.7 Attendance at the December 21 assembly was to be purely voluntary, as all students were to have the option of attending Pawn's performance, attending a study hall, or attending a movie.

3.8 Both the school and Pawn began making preparations for the assembly. Pawn's performance was announced to students, and posters were printed to promote the event. The schedule for the December 21 school day was rearranged to accommodate the assembly and Pawn's performance. Mr. Kleeberger arranged for the erection of scaffolding at the performance site, and Pawn members began work on various visual effects for the performance.

3.9 However, the Defendants' support for the Pawn performance changed on or about December 13, 2004. Upon information and belief, Defendant Gernot, who had previously been supportive of the plans for Pawn's performance, suddenly took the position that Pawn's performance had to be cancelled because Pawn's members and music were distinctively Christian. The Christian identity of Pawn and its members was well known already to school administrators and easily confirmed on Pawn's internet website, which contains sample lyrics of some of Pawn's music, as well as profiles of Pawn's members. Defendant Gernot made the

decision to cancel Pawn's performance without any knowledge of the songs that Pawn actually intended to perform at the assembly.

3.10 On December 13, 2004, Defendant Gernot informed the Plaintiffs that Pawn would not be permitted to perform at the December 21 assembly. Defendant Gernot's stated reason for her decision was a concern of the band Pawn promoting their message of Christianity during a school assembly.

3.11 Plaintiffs responded by repeatedly asking Defendant Gernot to reconsider her decision and to allow Pawn to perform at the assembly. Plaintiffs assured Defendant Gernot that they would not proselytize, evangelize, or otherwise promote religious views during songs or between songs at the assembly. However, Defendant Gernot refused to alter her position and refused to allow Pawn to play at the December 21 assembly.

3.12 Meanwhile, another local band named "Blind Ambition" was asked to perform at the school assembly in place of Pawn. The members of Blind Ambition subsequently asked Plaintiff Travis Montgomery to present the anti-drug, anti-alcohol message at the assembly (between Blind Ambition's songs) because members of Blind Ambition were unable or unwilling to promote that theme. Plaintiff Travis Montgomery declined Blind Ambition's request.

3.13 The December 21 assembly was ultimately rescheduled and held at Rossford High School on December 22, 2004, with Blind Ambition performing.

3.14 The cancellation of the Pawn performance created great controversy in the school and throughout the community. Many appeals were made to the Defendant School District and School Board to override Defendant Gernot's decision and to re-schedule Pawn's performance at the high school. The Rossford School Board was presented with a letter containing 99 signatures of people expressing their dismay at the cancellation of Pawn's performance and suggesting that

the cancellation appeared to be discriminatory against Pawn because of the religious viewpoint of the band's members and music.

3.15 On January 3, 2005, Mike Spahr, a member of the Rossford School Board and acting on its behalf, announced a special meeting of the School Board on January 6, 2005 to discuss why Pawn's performance was cancelled. On the evening of January 6, 2005, the Rossford School Board convened its special meeting with many members of the public in attendance. However, as soon as the meeting began, the School Board voted to meet in Executive Session. Thus, the remaining discussion by the School Board was held out of public view. Absent public discussion and without even knowing the content of the songs and messages that Pawn intended to present at the school assembly, the School Board emerged from Executive Session to announce that it would not disturb Defendant Gernot's decision, thereby supporting, adopting and ratifying the decision to cancel the Pawn performance.

3.16 Both prior to the January 6 special meeting and for weeks thereafter, Rev. Mark Montgomery, the father of two of the Plaintiffs and acting as a liaison for Pawn, made continuing efforts to present information to the Defendants about the appropriate nature of the music, lyrics, and messages that Pawn intended to present to the school assembly. Rev. Montgomery repeatedly expressed the concern, shared by a significant sector of the community as well, that the cancellation of the Pawn performance was little more than religious discrimination against a group of fine young Christian men, based solely on their Christian identities and viewpoints. Defendants' conduct consistently validated that concern. Not only did Defendants cancel Pawn's performance, in spite of the secular message that Pawn intended to present at the assembly, Defendants also made it clear that they had no interest in receiving or considering the nature of the messages that Pawn intended to present. In the end, a band that could not promote

an anti-drug message was deemed more suitable for students than a Christian band that took pride in promoting an anti-drug message.

First Claim

Free Speech Clause

United States Const. Amend. I

4.1 The Plaintiffs repeat and re-allege Paragraphs 1.1-3.16 and incorporate said Paragraphs by reference.

4.2 The anti-drug, anti-alcohol assembly scheduled for Rossford High School in December 2004 was a limited public forum in which the Plaintiffs, acting through the band Pawn, were invited to participate by authorized policymakers, agents, and employees of the Defendant Rossford Exempted Village School District.

4.3 The Plaintiffs, acting through the band Pawn, were appropriate participants in the forum because of their personal beliefs against the use of drugs and alcohol and because they could effectively convey those beliefs by their spoken words and songs at the assembly.

4.4 Defendants revoked the invitation to Pawn and prevented the Plaintiffs from performing at the assembly because of Plaintiffs' religious identities, viewpoints, and songs, thereby violating Plaintiff's clearly established federal constitutional rights and demonstrating a willful and deliberate disregard of those rights.

4.5 Defendants Rossford Exempted Village School District and Rossford Exempted Village School District Board of Education adopted, approved, and ratified the decision of Defendant Luci Gernot to prevent the Plaintiffs from performing at the assembly because of the Plaintiffs' religious identities, viewpoints, and songs.

4.6 Defendants at all times acted under color of state law in prohibiting the Plaintiffs from performing at the assembly.

4.7 Defendants' decision to prohibit the Plaintiffs from performing at the assembly constituted the official policy of the Defendant Rossford Exempted Village School District and of the Rossford Exempted Village School District Board of Education.

4.8 The Defendants' decision to prohibit the Plaintiffs from performing at the assembly constituted viewpoint discrimination against the Plaintiffs and violated the Plaintiffs' right to free speech granted by U.S. Const. Amend. I.

4.9 As a direct and proximate result of the Defendants' actions, policies, and practices, Plaintiffs have suffered constitutional damages and incurred attorney fees and costs that continue to accrue.

4.10 For this deprivation of rights secured by the United States Constitution, the Plaintiffs are entitled to relief under 42 U.S.C. § 1983.

Second Claim
Free Speech Clause
Ohio Const. Art. I, § 11

5.1 The Plaintiffs repeat and re-allege Paragraphs 1.1-4.10 and incorporate said Paragraphs by reference.

5.2 The anti-drug, anti-alcohol assembly scheduled for Rossford High School in December 2004 was a limited public forum in which the Plaintiffs, acting through the band Pawn, were invited to participate by authorized policymakers, agents, and employees of the Defendant Rossford Exempted Village School District.

5.3 The Plaintiffs, acting through the band Pawn, were appropriate participants in the forum because of their personal beliefs against the use of drugs and alcohol and the message they intended to convey by their spoken words and songs at the assembly.

5.4 Defendants revoked the invitation to Pawn and prevented Pawn from performing at the assembly because of Plaintiffs' religious identities, viewpoints, and songs, thereby violating Plaintiffs' clearly established state constitutional rights and demonstrating a reckless and wanton disregard of Plaintiffs' rights.

5.5 Defendants Rossford Exempted Village School District and Rossford Exempted Village School District Board of Education adopted, approved, and ratified the decision of Defendant Luci Gernot to prevent the Plaintiffs from performing at the assembly because of the Plaintiffs' religious identities, viewpoints, and songs.

5.6 Defendants at all times acted under color of state law in prohibiting the Plaintiffs from performing at the assembly.

5.7 Defendants' decision to prohibit the Plaintiffs from performing at the assembly constituted the official policy of the Defendants Rossford Exempted Village School District and the Rossford Exempted Village School District Board of Education.

5.8 The Defendants' decision to prohibit the Plaintiffs from performing at the assembly constituted viewpoint discrimination against the Plaintiffs and violated the Plaintiffs' right to free speech granted by Ohio Const. Art. I, § 11.

5.9 As a direct and proximate result of the Defendants' actions, policies, and practices, Plaintiffs have suffered constitutional damages and incurred attorney fees and costs that continue to accrue.

Third Claim

Equal Protection Clause
United States Const. Amend. XIV

6.1 The Plaintiffs repeat and re-allege Paragraphs 1.1-5.9 and incorporate said Paragraphs by reference.

6.2 Defendant Luci Gernot withdrew the invitation to the Plaintiffs to perform at the assembly and prevented Plaintiffs from so performing because Plaintiffs are Christians, because some of their music promotes a Christian message, and because they have been willing to publicly identify themselves as Christians, both by their music and by other means. Defendant Luci Gernot made and stood by her decision, in spite of Plaintiffs' assurances that their performance at the school assembly would not include religious songs or messages. Meanwhile, Defendant Luci Gernot approved a performance by Blind Ambition in the same forum, a band whose members were less qualified and less able to meet the needs of the assembly, all because Blind Ambition promoted messages from a non-religious viewpoint. Not only was there no compelling state interest to support Defendants' decision to replace Pawn with Blind Ambition, the decision also lacked any rational basis.

6.3 Defendants Rossford Exempted Village School District and the Rossford Exempted Village School District Board of Education approved, ratified, and adopted the decision to prevent the Plaintiffs from performing at the assembly because the Plaintiffs are devout Christians and because of the Plaintiffs' public avowal of their religious beliefs.

6.4 Defendants at all times acted under color of state law in prohibiting the Plaintiffs from performing at the assembly.

6.5 The Defendants' decision to prohibit the Plaintiffs from performing at the assembly because the Plaintiffs are devout Christians and because of the Plaintiffs' public avowal of their religious beliefs constitutes the official policy of the Defendants Rossford Exempted Village School District and the Rossford Exempted Village School District Board of Education.

6.6 The Defendants' decision to prohibit the Plaintiffs from performing at the assembly because the Plaintiffs are devout Christians and because of the Plaintiffs' public

avowal of their religious beliefs deprived Plaintiffs' of their clearly established right to equal protection of the laws as guaranteed by the U.S. Const. Amend. XIV.

6.7 As a direct and proximate result of the Defendants' actions, policies, and practices, Plaintiffs have suffered constitutional damages and incurred attorney fees and costs in an amount that continues to accrue.

6.8 For this deprivation of rights secured by the United States Constitution, the Plaintiffs are entitled to relief under 42 U.S.C. § 1983.

Fourth Claim
Equal Protection Clause
Ohio Const. Art. I, § 2

7.1 The Plaintiffs repeat and re-allege Paragraphs 1.1-6.8 and incorporate said Paragraphs by reference.

7.2 Defendant Luci Gernot withdrew the invitation to the Plaintiffs to perform at the assembly and prevented the Plaintiffs from so performing because the Plaintiffs are devout Christians and because of the Plaintiffs' public avowal of their religious beliefs. Not only was there no compelling state interest to support the Defendants' decision to replace Pawn with Blind Ambition, the decision also lacked any rational basis.

7.3 Defendants Rossford Exempted Village School District and the Rossford Exempted Village School District Board of Education approved, ratified, and adopted the decision to prevent the Plaintiffs from performing at the assembly because the Plaintiffs are devout Christians and because of the Plaintiffs' public avowal of their religious beliefs.

7.4 Defendants at all times acted under color of state law in prohibiting the Plaintiffs from performing at the assembly.

7.5 The Defendants' decision to prohibit the Plaintiffs from performing at the assembly because the Plaintiffs are devout Christians and because of the Plaintiffs' public avowal of their religious beliefs constitutes the official policy of the Defendants Rossford Exempted Village School District and Rossford Exempted Village School District Board of Education.

7.6 The Defendants' decision to prohibit the Plaintiffs from performing at the assembly because the Plaintiffs are devout Christians and because of the Plaintiffs' public avowal of their religious beliefs deprived the Plaintiffs of their clearly established right to equal protection of the laws as guaranteed by Ohio Const. Art. I, § 2.

7.7 As a direct and proximate result of the Defendants' actions, policies, and practices, Plaintiffs have suffered constitutional damages and incurred attorney fees and costs that continue to accrue.

Fifth Claim

Demand for Declaratory Relief
Declaratory Judgment Act, 28 U.S.C. § 2201

8.1 The Plaintiffs repeat and re-allege Paragraphs 1.1-7.7 and incorporate said Paragraphs by reference.

8.2 An actual and justiciable controversy exists between Plaintiffs and Defendants over the legality of the exclusion of the Plaintiffs from the assembly.

8.3 Plaintiffs desire a judicial determination of the rights, duties, and obligations of the parties with respect to the exclusion.

8.4 A judicial declaration is necessary and appropriate at this time in order that Plaintiffs and others similarly situated may ascertain their rights, duties, and obligations with

respect to expression in places under the authority and control of Defendants Rossford Exempted Village School District and the Rossford Exempted Village School District Board of Education.

8.5 Plaintiffs have no adequate remedy at law to prevent or redress irreparable injury. Moreover, Plaintiffs' constitutional injury is ongoing and is certain to continue for the foreseeable future absent the intervention of this court.

WHEREFORE, Plaintiffs respectfully request that this Court order the following relief:

A. That the Court declare that the Defendants' exclusion of the Plaintiffs from the assembly violated the Plaintiffs' rights under U.S. Const. Amends. I and XIV, and Ohio Const. Art. I, §§ 2 and 11;

B. That the Defendants be preliminarily and permanently enjoined from engaging in viewpoint discrimination against the Plaintiffs, or others similarly situated;

C. That the Defendants be ordered to pay each of the Plaintiffs nominal damages in the amount of \$1.00 (One Dollar);

D. That the Defendants be ordered to pay costs and reasonable attorney fees expended by the Plaintiffs herein, pursuant to 42 U.S.C. § 1988;

E. That the Court order such other and further relief as the Court may deem just, proper, and necessary under the circumstances.

DATED: This ____th day of February, 2005.

Respectfully submitted,

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JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues raised herein.

Thomas W. Condit, Esq.