

NO. _____

ANDREA HERNANDEZ, a minor, by	§	IN THE DISTRICT COURT
and through her father and next	§	
friend, Steve Hernandez,	§	
	§	
<i>Plaintiff,</i>	§	_____ JUDICIAL DISTRICT
	§	
v.	§	
	§	
NORTHSIDE INDEPENDENT	§	
SCHOOL DISTRICT, by and through its	§	
Board of Trustees;	§	
ROBERT HARRIS, in his individual	§	
capacity and in his official capacity as	§	BEXAR COUNTY, TEXAS
Principal of John Jay High School; and	§	
JAY SUMPTER, in his individual	§	
capacity and in his official capacity as	§	
Principal of John Jay Science &	§	
Engineering Academy,	§	
	§	
<i>Defendants.</i>	§	
	§	

**PLAINTIFF’S ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER, INJUNCTIVE
RELIEF AND DECLARATORY RELIEF**

TO THE HONORABLE COURT:

COMES NOW the Plaintiff, Andrea Hernandez, by her father and next friend, Steve Hernandez, by and through their attorney, and alleges and avers as follows:

Introduction

1. Plaintiff seeks relief pursuant to the state’s Religious Freedom Act, Tex. Code Ann. § 110.001 *et seq.*, for violation of her right to religious freedom, and pursuant to 42 U.S.C. § 1983 for redress of the deprivation under color of regulation, custom,

policy or usage of certain rights secured to her by the First and Fourteenth Amendments to the United States Constitution.

2. Plaintiff seeks a temporary restraining order and immediate injunctive and declaratory relief to prevent Defendants from removing her from her current educational program in retaliation for her refusal to participate in a pilot program that conflicts with her sincere religious beliefs.

Parties And Service of Citation

3. Plaintiff Andrea Hernandez is a minor who has earned admission to and is currently enrolled at John Jay Science and Engineering Academy (“Academy”), and she brings this action through her father and next friend, Steve Hernandez.

4. Defendant Northside Independent School District (“District”) is a public School district organized and operating under the laws of the State of Texas, and may be served by serving its Superintendent, Brian Woods, at 5900 Evers Road, San Antonio, TX 78238. In all respects set forth in this Complaint, Defendant Northside Independent School District acted under color of the laws of the State of Texas.

5. Defendant Robert Harris is the Principal of John Jay High School, a public school operating within District. He is sued in his individual capacity and in his official capacity for claims brought pursuant to 42 U.S.C. § 1983. In all respects set forth in this Complaint, Defendant Harris acted under color of the laws of the State of Texas. He may be served at his principal place of business, 7611 Marbach Road, San Antonio, TX 78227.

6. Defendant Jay Sumpter is the Principal of Academy, a public school

operating within District. He is sued in his individual capacity and in his official capacity for claims brought pursuant to 42 U.S.C. § 1983. In all respects set forth in this Complaint, Defendant Sumpter acted under color of the laws of the State of Texas. He may be served at his principal place of business, 7611 Marbach Road, San Antonio, TX 78227

Discovery Level

7. Plaintiff affirmatively pleads that she seeks monetary and injunctive relief and requests that discovery be conducted in accordance with a tailored discovery control plan under Civil Procedure Rule 190.4.

JURISDICTION

8. Jurisdiction is proper in this Court because this Court has exclusive jurisdiction of this controversy pursuant to Tex. Code Ann. § 110.005. Further, in accordance with TEX. GOV. CODE § 24.0003, the relief sought herein is within the jurisdictional limits of this Court in that the amount in controversy exceeds the sum of or value of \$500.00.

VENUE

9. Venue is proper in Bexar County, Texas, because all or a substantial part of the causes of action alleged herein accrued in Bexar County, Texas, in accordance with TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1). Further, in accordance with TEX. CIV. PRAC. & REM. CODE § 15.002(a)(2)-(3), at least one or more of the Defendants are residents of and/or have their principal place of business in Bexar County, Texas.

Factual Allegations

10. Plaintiff is a Christian high school student.

11. Plaintiff is academically gifted and is an exemplary student. She was awarded a place in Academy after completing a rigorous application process which requires, among other things, that she have no history of disciplinary infractions, that she have good grades and that she provide a suitable essay.

12. District, by and through its Board of Trustees, has determined to pilot a "Student Locator Project" in John Jay High School and Academy in an effort to increase public funding for District. Pursuant to the Project, students have been instructed to wear around their necks "Smart ID" badges. The badges are implanted with chips that transmit radio signals, thus allowing school officials to track the location of students wearing the badges on campus.

13. Defendants' stated rationale for the Student Locator Project is the belief that the Project will increase public funding for District by increasing the rate of student attendance in classes.

14. Plaintiff has not demonstrated a pattern of unexcused absence from classes.

15. Plaintiff and her father object to the requirement that Plaintiff wear the Smart ID badge on the basis of Scriptures found in the book of Revelation. According to these Scriptures, an individual's acceptance of a certain code, identified with his or her

person, as a pass conferring certain privileges from a secular ruling authority, is a form of idolatry or submission to a false god.

16. When Plaintiff and her father communicated to Defendants their religious objection to Plaintiff's wearing of the Smart ID badge, Plaintiff was offered an "accommodation" whereby the radio chip would be removed from Plaintiff's badge. Under this "accommodation," however, Plaintiff would still be required to wear the badge around her neck as an outward symbol of her "participation" in the Project.

17. By written letter, Plaintiff and her father informed Defendants that the proposed "accommodation" was unacceptable, because it would give the appearance of Plaintiff's participation in the program. By expressing support for the Project through wearing its visible symbol on her person, Plaintiff would be expressing support for a program to which she adamantly objects on the basis of her sincere religious beliefs.

18. Plaintiff and her father invoked District's duly-enacted procedures to resolve their grievance with Defendants.

19. During the pendency of Plaintiff's grievance, Plaintiff has continued to carry her old student identification card, which has, in the past, achieved the District's legitimate interest in identifying students but does not entail the use of technology to subject students to such a degree of submission to government officials as does the SmartID badge.

20. On September 25, 2012, Defendant Harris interfered with Plaintiff's distribution of fliers and petitions to her peers on school property after school hours. The documents expressed Plaintiff's objections to the Student Locator Project.

21. Defendant Harris informed Plaintiff on September 25, 2012, that because

the materials she was distributing to peers “went against” a program supported by the District, she was prohibited from distributing the materials on school property.

22. Plaintiff’s Level II hearing on the issue of the conflict between Plaintiff’s religious beliefs and the requirement that she participate in the Student Locator Project was scheduled for Friday, November 16th. Nonetheless, Defendants Harris and Sumpter sent Plaintiff’s father a letter dated November 13th, informing him that because Plaintiff had refused to don the SmartId badge, she would be withdrawn from Academy on November 26th. A copy of this letter is attached hereto as Exhibit A.

23. While the letter implies that Plaintiff’s refusal to wear the badge violates Academy’s rules, policies, and procedures, the student handbook which sets forth duly-enacted District rules, policies, and procedures, does not contain any rules, policies, or procedures regarding the badges.

24. Plaintiff is not aware of any duly-enacted District rule, policy or procedure providing students with notice that they may be disciplinarily transferred from their academic programs as a consequence of their failure to wear the badge.

25. Plaintiff has observed a large number of other students at John Jay High School and/or Academy who have similarly refused to wear the SmartID badges, but as far as Plaintiff is aware, they have not been subjected to the intense retaliation and discipline that has been imposed upon Plaintiff

26. As a result of the actions of Defendants, Plaintiff has incurred non-pecuniary damages, including, but not limited to, humiliation, mental anguish, loss of enjoyment of life, and loss of opportunities to communicate ideas to her peers.

27. Defendants’ letter advising Steve Hernandez that Plaintiff will be

withdrawn from Academy as of November 26, 2012, constitutes an imminent threat of irreparable injury to Plaintiff's fundamental civil rights. Plaintiff, among other things, will be unable to complete her Web Technology class as no such course is available at her "home" school, Taft, where she will be returned. She will lose the opportunity to continue her education in science and technology with such courses as the Web Technology class which is presently teaching managing an building website and which is her chosen field to pursue at both the Science and Technology Academy at John Jay and, eventually in college. Further, she will have a record of being withdrawn from this prestigious Academy for purportedly breaking a "rule", the text of which the Defendants have not provided to Plaintiff or her father. This withdrawal will be recorded on her transcript and available for review by prospective colleges and others who convey scholarships. Further, Plaintiff is less than two months from final exams in the courses she has been taking at John Jay and will suffer disruption if she is moved from those classes she is presently taking to new classes at Taft.

28. Plaintiff has alleged a cause of action against Defendants, and as indicated in this Petition, Plaintiff has shown a probable right of recovery and likelihood of success on the merits, Plaintiff will suffer imminent, irreparable harm without Court intervention, and there is no adequate remedy at law.

29. As a direct and proximate result of Defendants' wrongful actions, as alleged in this Petition, Plaintiff has suffered and will continue to suffer imminent injury that will be irreparable and for which no remedy at law exists without the protections of a

temporary restraining order and injunctive relief. Plaintiff is willing to post the necessary reasonable bond to facilitate the injunctive relief requested.

30. The only adequate, effective and complete relief to Plaintiff is to restrain Defendants from engaging and/or further engaging in certain proscribed activities, as set forth below.

First Cause of Action
Texas Religious Freedom Act, Tex. Code Ann. § 110.001 *et seq.*

31. Plaintiff's refusal to wear the SmartID badge, with or without the radio chip, is substantially motivated by her sincere religious belief.

32. Defendants' denial of Plaintiff's request for an exemption from participating in the Student Locator Project substantially burdens Plaintiff's religious beliefs and is not the least restrictive means of furthering any compelling government interest.

33. While Defendants have had actual notice, for several weeks, of the Conflict between the Student Locator Project and Plaintiff's religious beliefs, Plaintiff has today sent by certified mail, return receipt requested, a letter outlining this conflict in compliance with Tex. Code Ann. § 110.006.

34. Plaintiff brings this action for immediate relief pursuant to Tex. Code Ann. § 110.006(b)(1), because the exercise of government action is imminent, as indicated by the letter from Defendants Harris and Sumpter advising Mr. Hernandez that Plaintiff will be withdrawn from her academic program as of November 26, 2012, due to her refusal to submit to the requirements of the Student Locator Project.

Wherefore, Plaintiff demands judgment against Defendants for:

- a. A declaratory judgment declaring that Defendants' denial of Plaintiff's requested exemption from the Student Locator Project to accommodate her religious beliefs is in violation of Texas' religious freedom statute;
- b. A temporary restraining order and preliminary injunction forbidding Defendants from withdrawing Plaintiff from Academy on account of her refusal to participate in the Student Locator Project and requiring Defendants to exempt Plaintiff from participation in the Project;
- c. A permanent injunction against further burdening of Plaintiff's religious beliefs by Defendants;
- d. Reasonable attorneys' fees, court costs, and expenses; and
- e. Such other and further relief as this Court may deem appropriate and just.

Second Cause of Action

Violation of Plaintiff's Free Speech Rights Under the First Amendment

35. The requirement that Plaintiff wear the SmartID badge as a show of support for and participation in the Student Locator Project purports to compel Plaintiff to communicate a message that violates her conscience and her sincerely held religious beliefs.

36. Plaintiff's right to distribute petitions and fliers at school during non-instructional time is protected by the First Amendment.

37. Plaintiff's peaceful, expressive activities at school did not cause any substantial disruption of school activities.

38. Defendant Harris' interference with Plaintiff's expressive activities was based on the viewpoint of the materials Plaintiff sought to distribute.

Wherefore, Plaintiff demands judgment against Defendants for:

- a. A declaratory judgment declaring that Defendants' actions in attempting to compel Plaintiff to express a particular message and in prohibiting her from distributing written materials that are critical of the District's position are unconstitutional;
- b. A temporary restraining order and preliminary injunction forbidding Defendants to compel Plaintiff to express approval of the Student Locator Project by wearing the SmartID badge and forbidding Defendants to interfere with Plaintiff's distribution of literature on school property at appropriate times;
- c. A permanent injunction against Defendants forbidding them to interfere with Plaintiff's free speech rights any further;
- d. Compensatory damages in an amount to be determined;
- e. Nominal damages, in the event that no compensatory damages are awarded;
- f. Reasonable attorneys' fees, court costs, and expenses; and
- g. Such other and further relief as this Court may deem appropriate and just.

Third Cause of Action
Violation of Plaintiff's Due Process Rights Under The Fourteenth Amendment

39. Plaintiff has not, to date, been notified that she has violated any duly-enacted District rule or policy by refusing to wear the SmartID badge.

40. Plaintiff has not, to date, been advised of any duly-enacted District rule or policy permitting students to be disciplinarily transferred from Academy as a result of their refusal to wear the SmartID badge.

41. Defendants have not employed proper District procedures and protocols in unilaterally determining to permanently “withdraw” Plaintiff from Academy as a result of her refusal to wear the SmartID badge.

Wherefore, Plaintiff demands judgment against Defendants for:

- a. A declaratory judgment that Defendants have violated Plaintiff’s due process rights by withdrawing her from Academy without having first provided her with fair notice that withdrawal might be a consequence of Plaintiff’s failure to wear a certain badge and without following duly-enacted procedures and protocols;
- b. A temporary restraining order and preliminary injunction forbidding Defendants from withdrawing Plaintiff from Academy on account of her refusal to participate in the Student Locator Project;
- c. Compensatory damages in an amount to be determined;
- d. Nominal damages, in the event that no compensatory damages are awarded;
- e. Reasonable attorneys’ fees, court costs, and expenses; and
- f. Such other and further relief as this Court may deem appropriate and just.

Fourth Cause of Action
Violation of Plaintiff’s Equal Protection Rights Under The Fourteenth Amendment

42. Plaintiff has been singled out for disfavored treatment by Defendants due to her refusal to participate in the Student Locator Project on the basis of her sincerely held religious beliefs, while students who have refused or failed to participate for other reasons have been treated less harshly.

Wherefore, Plaintiff demands judgment against Defendants for:

- a. A declaratory judgment that Defendants have violated Plaintiff's equal protection rights by treating her less favorably than others similarly situated on account of her religious beliefs;
- b. A temporary restraining order and preliminary injunction forbidding Defendants from treating Plaintiff less favorably than others similarly situated on account of her religious beliefs;
- c. Compensatory damages in an amount to be determined;
- d. Nominal damages, in the event that no compensatory damages are awarded;
- e. Reasonable attorneys' fees, court costs, and expenses; and
- f. Such other and further relief as this Court may deem appropriate and just.

Prayer for Relief

WHEREFORE, Plaintiff prays that judgment be entered against Defendants as follows:

1. That a declaratory judgment be entered pursuant to Tex. Civ. Prac. & Rem. Code § 110.006(b), declaring Defendants' actions as described herein to violate

Plaintiff's rights under Texas' Religious Freedom Act and to be unconstitutional under the First and Fourteenth Amendments to the United States Constitution;

2. That a temporary restraining order and, upon hearing, a preliminary injunction be entered Pursuant to Tex. Civ. Prac. & Rem. Code § 110.006(b), Tex. R. Civ. P. 680 *et seq.*, and Tex. Civ. Prac. & Rem. Code § 65.001 *et seq.*, in order to preserve the status quo during the pendency of this action by forbidding the Defendants, their officers and agents from withdrawing Plaintiff from Academy on account of her refusal to participate in the Smart Locator Project;

3. That, upon trial and final judgment, an order be entered permanently enjoining the Defendants, their officers, and agents from further interfering with Plaintiff's free speech and free exercise rights by coercing her to participate in the Student Locator Project, compelling her to express any message, or prohibiting her from distributing literature on school property at appropriate times;

4. That this Court award Plaintiffs nominal and compensatory damages in an amount to be determined at trial;

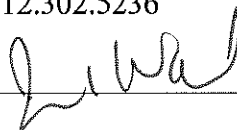
5. That this Court order Defendants to pay Plaintiffs' attorney fees pursuant to 42 U.S.C. § 1988 and Tex. Code § 110.001 *et seq.*, together with the costs of this litigation; and

6. Any and all such other and further relief as this Court may deem proper.

Dated: November 22, 2012

RESPECTFULLY SUBMITTED,

Garlo Ward, P.C.
907 Ranch Road 620 S., Ste. 101
Lakeway, TX 78734
Tel: 512.302.1103
Fax: 512.302.5236

A handwritten signature in black ink, appearing to read "J. Ward", is written over a horizontal line.

Jerri Lynn Ward
SBN 20844200

Affiliate Attorney with
THE RUTHERFORD INSTITUTE

Attorney for Plaintiff.

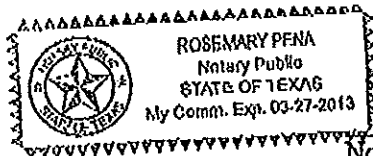
STATE OF TEXAS
COUNTY OF BEXAR

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Before me, the undersigned Notary Public, on this day personally appeared Steven Hernandez, who, after being duly sworn, stated under oath that he is the guardian and next friend of the Plaintiff in this action; that he and Plaintiff have read the above Plaintiff's Original Petition And Application For Temporary Restraining Order And Injunction; and that every statement contained in the "Factual Allegations" section of Plaintiff's Original Petition And Application For Temporary Restraining Order And Injunction is within his/her personal knowledge and is true and correct.

Signature: [Handwritten Signature]
Print Name: Steven Hernandez

SUBSCRIBED AND SWORN TO BEFORE ME by Rosemary Peña on this the 20th day of November, 2012, to certify which witness my hand and official seal of office.



[Handwritten Signature]

Notary Public in and for the State of Texas

My commission expires: 3/27/2013

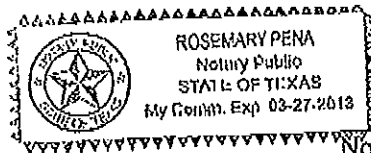
STATE OF TEXAS
COUNTY OF BEXAR.

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Before me, the undersigned Notary Public, on this day personally appeared Andrea Hernandez, after being duly sworn, stated under oath that she is the Plaintiff she has read the above Plaintiff's Original Petition And Application For Temporary Restraining Order And Injunction; and that every statement contained in the "Factual Allegations" section of Plaintiff's Original Petition And Application For Temporary Restraining Order And Injunction is within her personal knowledge and is true and correct.

Signature: Andrea Hernandez
Print Name: Andrea Hernandez

SUBSCRIBED AND SWORN TO BEFORE ME by Rosemary Pena on this the 20th day of November, 2012, to certify which witness my hand and official seal of office.



Rosemary Pena

Notary Public in and for the State of Texas

My commission expires: 3/27/2013

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Plaintiff's Original Petition and Application for Temporary Restraining Order , Injunctive Relief and Declaratory Relief has been delivered to the following parties of record in accordance with the Texas Rules of Civil Procedure on this 22nd day of November, 2012:

Robb D. Decker
Attorney at Law
100 N.E. Loop 410, #900,
San Antonio, Tx 78216
Via Facsimile 210-979-7024

Northside Independent School District
c/o Brian Woods, Superintendent
5900 Evers Road
San Antonio, TX 78238
Via Email: brian.woods@nisd.net

Robert Harris, Principal
John Jay High School
7611 Marbach Road
San Antonio, TX 78227
Via Email: robert.harris@nisd.net

Jay Sumpter, Principal
John Jay Science and Engineering Academy
7611 Marbach Road
San Antonio, TX 78227
Via Email: jay.sumpter@nisd.net



Jerri Lynn Ward

Northside Independent School District

John Jay High School

7611 Marbach Road
San Antonio, TX 78227-1608
210-397-2700

Robert Harris
Principal

Brian T. Woods, Ed.D.
Superintendent

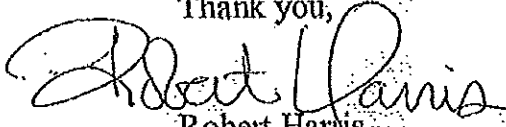
November 13, 2012

Mr. Hernandez,

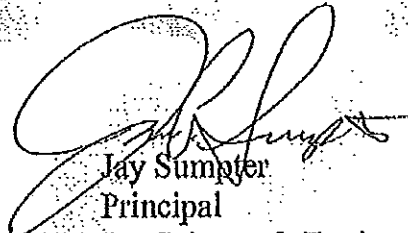
Our records indicate that you received our response to your Level I grievance on Saturday October 13, 2012. John Jay High School and the Science and Engineering Academy are now in full implementation of the Smart ID program and all students are expected to comply with the Smart ID policy.

As with all magnet school programs, students are expected to follow the school's rules, policies, and procedures. Because your daughter Andrea has refused to wear the badge given to her this year, she will be withdrawn to her home school of William Howard Taft HS on Monday, November 26. In the event that you change your stance on wearing the ID with the battery and chip removed as has been offered to you on two occasions, we will be more than willing to rescind this withdrawal notice.

Thank you,



Robert Harris
Principal
John Jay High School
(210) 397-2700



Jay Sumpter
Principal
Jay Science & Engineering Academy
(210) 397-2773

CC: Stephen Daniel
Assistant Supt. For Secondary Administration

