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20 **UNITED STATES DISTRICT COURT**  
21 **SOUTHERN DISTRICT OF CALIFORNIA**

22 V.A.,  
23  
24 Plaintiff,

25 v.

26 SAN PASQUAL VALLEY UNIFIED  
27 SCHOOL DISTRICT; BOARD OF  
28 TRUSTEES OF THE SAN  
29 PASQUAL VALLEY UNIFIED  
30 SCHOOL DISTRICT, MONICA  
31 MONTAGUE, BERNADINE SWIFT  
32 ARROW, REBECCA RAMIREZ,  
33 SALLY ANN DECORSE, LISA  
34 AGUERRO, in their official capacity  
35 as members of the Board of Trustees;  
36 RAUNA FOX, in her official capacity  
37 as DISTRICT SUPERINTENDENT;  
38 DARRELL PECHTL, in his official  
39 capacity as PRINCIPAL;

40 Defendants.

Case No. '17CV2471 BAS AGS

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF FOR  
VIOLATION OF FREE SPEECH,  
BASED ON:**

- (1) DEPRIVATION OF RIGHTS UNDER COLOR OF STATE LAW [42 U.S.C. § 1983];
- (2) CAL. EDUC. CODE §§ 48950, 48907
- (3) CAL. CIV. CODE § 52.1

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**INTRODUCTION**

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1. Plaintiff V.A. is a Native American student-athlete at San Pasqual Valley High School in the San Pasqual Valley Unified School District (“SPVUSD” or “the District”) located in Winterhaven, Imperial County, California. He is currently a senior in high school and was a member of the 2017 San Pasqual Valley High School varsity football team and is currently a member of the varsity basketball team. He has actively participated in sports throughout high school and plans to play for the rest of his senior year, and next year to participate in organized sports at the collegiate level.
2. The SPVUSD recently implemented a speech suppression and compulsion policy applicable to all who participate in school athletic activity that, if not disapproved by this Court, would force V.A. to give up his rights to free expression if he wants to continue to be a successful high school athlete. He seeks through this Complaint to enforce his free speech rights, and those of other students, under the United States Constitution and California law, including the right to be free from compelled speech and to exercise freedom of expression in a conscientious, peaceful and respectful manner at the outset of athletic events, as he has done in the recent past. Specifically, Plaintiff seeks to vindicate and protect his right to silently kneel during the playing of the national anthem at school athletic events.
3. This litigation challenges Defendants’ adoption of a compulsory anthem policy that requires all student-athletes and coaching staff to stand during the national anthem at school athletic events and prohibits them from kneeling, sitting, or engaging in similar forms of protest or expression (“Compulsory Anthem Policy”, or “CAP”). According to the CAP, students who violate the policy may be removed from the team and prohibited from participating on any other school teams in the future. Coaching staff are subject to discipline

1 and termination of employment.

2 4. The District announced and implemented its Compulsory Anthem Policy on  
3 October 11, 2017 in the aftermath of an away football game at Mayer High  
4 School in Mayer, AZ on October 6, 2017 at which Plaintiff V.A. silently and  
5 respectfully kneeled during the playing of the national anthem. According to  
6 Defendants, in a letter dated October 12, 2017, “political protests by students  
7 and staff of San Pasqual during the playing/singing of the national anthem  
8 were not well-received by the students, staff, and community of Mayer, AZ.”  
9 In fact, San Pasqual students were subjected to verbal and physical  
10 harassment after the game, including the use of racial slurs. As Defendant  
11 Superintendent Rauna Fox acknowledged, “our students were subjected to  
12 verbal assaults, other kinds of assaults, other incidents including the throwing  
13 of water and the use of racial slurs and gestures.” Instead of addressing the  
14 unlawful threatening and racially abusive behavior of the Mayer High School  
15 Students, for which Mayer High School officials later apologized, Defendants  
16 chose to impose prohibitions and restrictions on the protected speech and  
17 expression rights of San Pasqual students and teaching staff. In addition, San  
18 Pasqual officials informed the Arizona Interscholastic Association they would  
19 no longer accept games versus Mayer High on its schedule.

20 5. Mayer High School is a predominantly white high school with racial and  
21 ethnic demographics that are very different from those of San Pasqual Valley  
22 High School. Over 77% of all students at Mayer High School are white,  
23 whereas less than 4% of all students who attend San Pasqual Valley High  
24 School are white. SPVHS has a predominantly Hispanic (52%) and Native  
25 American (40%) student population.

26 6. The disorderly conduct engaged in by students and even adults from Mayer  
27 High School on October 6th occurred hours after Plaintiff took a knee during  
28 the national anthem. There was no audible or visible response to Plaintiff’s

1 kneeling as he knelt, immediately thereafter, or at any point during the game  
2 or at halftime. It was not until the game had completely finished and San  
3 Pasqual students were getting ready to head home that a few students from the  
4 rival school began yelling racial slurs and spraying them with water.

5 7. In the aftermath of the Mayer, AZ game, Defendants promulgated their CAP  
6 to suppress what they viewed as peaceful protest and commanded a single  
7 manner of expressing oneself during the playing of the national anthem,  
8 rather than proceeding cautiously with due regard to the valuable rights at  
9 stake.

10 8. Public school students have constitutional rights to freedom of speech and  
11 expression that they do not shed at the schoolhouse gate, on the playing field,  
12 or on the basketball court.

13 9. Schools must achieve a balance between protecting the safety and well-being  
14 of students and respecting the students' constitutional rights.

15 10. As the Supreme Court has acknowledged, "Any word spoken (or not spoken),  
16 in class, in the lunchroom, or on the campus, that deviates from the views of  
17 another person may start an argument or cause a disturbance. But our  
18 Constitution says we must take this risk [internal citation omitted]; and our  
19 history says that it is this sort of hazardous freedom – this kind of openness –  
20 that is the basis of our national strength and of the independence and vigor of  
21 Americans who grow up and live in this relatively permissive, often  
22 disputatious, society." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.* 393 U.S.  
23 503, 508-509 (1969).

24 **PARTIES**

25 11. Plaintiff V.A. is a 17 year old senior and student-athlete at San Pasqual Valley  
26 High School (SPVHS) of the San Pasqual Valley Unified School District  
27 located in Imperial County. SPVHS has approximately 173 students enrolled,  
28 almost all of whom are either Native American or Latino. Plaintiff V.A. has

1 played a number of school sports including football and basketball throughout  
2 his enrollment in the District. During the current (2017-2018) school year,  
3 V.A. has played and continues to play high school sports. He played on the  
4 varsity football team at the start of the school year and with football season's  
5 end, now plays on the varsity basketball team.

6 12. During this year's football season, V.A. began silently taking a knee during  
7 the playing of the national anthem to protest racial injustice. V.A. wishes to  
8 continue taking a knee during the national anthem at athletic events, including  
9 at high school basketball games, but he fears he will be disciplined as stated  
10 in the Compulsory Anthem Policy including being removed from the  
11 basketball team and prohibited from playing any future sports. Plaintiff does  
12 not want to be compelled to stand for something he does not believe in or  
13 agree with. Neither does Plaintiff want to be prohibited from peacefully  
14 expressing his point of view by taking a knee during the national anthem.  
15 Plaintiff V.A. does not want to have to choose between exercising his  
16 constitutional rights and participating in school sports, but the CAP  
17 unconstitutionally imposes that coercive choice.

18 13. Defendant SAN PASQUAL VALLEY UNIFIED SCHOOL DISTRICT is,  
19 and at all times mentioned herein was, a local educational agency duly  
20 organized and existing under the laws of the State of California. The District  
21 is located in Imperial County near Yuma, Arizona. Over 46% of all students  
22 enrolled are Native American, 45% are Hispanic and 94% of all students are  
23 low-income. The District is charged with providing a public education and  
24 education-related services to all school aged children within its boundaries.  
25 SPVUSD is, and at all times mentioned herein was, a local agency as that  
26 term is defined in 2 California Code of Regulations § 11150, receives  
27 financial assistance from the State of California and is funded directly by the  
28 State of California to provide educational services to children who reside

1 and/or are enrolled in public schools within its boundaries. Additionally,  
2 SPVUSD receives, and at all times mentioned herein has received, federal  
3 financial assistance and/or sub-grants of federal financial assistance from the  
4 State of California to provide educational services to children who reside  
5 and/or are enrolled in public schools within its boundaries.

6 14. Defendant BOARD OF TRUSTEES OF SAN PASQUAL VALLEY  
7 UNIFIED SCHOOL DISTRICT and its members, defendants Monica  
8 Montague, Bernadine Swift Arrow, Rebecca Ramirez, Sally Ann DeCorse,  
9 and Lisa Aguerro (referred to collectively as "BOARD OF TRUSTEES"), are  
10 charged with determining the policies governing SPVUSD schools and with  
11 adopting and promulgating rules and regulations for the supervision and  
12 administration of its programs that are not inconsistent with the U.S. and  
13 California Constitutions and laws of the State of California. They are charged  
14 with the oversight of SPVUSD and its compliance with state and federal laws  
15 regarding the education of its students. The above-named Respondent  
16 members of the BOARD OF TRUSTEES are sued in their official capacities.  
17 The Fourteenth Amendment protects the citizen against the State itself and all  
18 of its creatures, including this Board of Education.

19 15. Defendant RAUNA FOX is the Superintendent of SPVUSD and Plaintiff sues  
20 her for actions taken in her official capacity. As Superintendent of the  
21 District she is charged with the oversight of SPVUSD and its compliance with  
22 the U.S. and California Constitutions and state and federal laws regarding the  
23 education of its students. Defendant Fox, acting in her capacity as  
24 Superintendent, instituted and approved the Compulsory Anthem Policy and  
25 provided letters describing and/or interpreting the policy to all coaching staff  
26 on October 11, 2017 and to parents on October 12, 2017 in which disciplinary  
27 sanctions for violators were described.

28 16. Defendant DARRELL PECHTL is the Principal of San Pasqual Valley High

1 School. Plaintiff sues him for his actions taken in his official capacity. As  
2 Principal, he is charged with the oversight of San Pasqual Valley High School  
3 and its compliance with the U.S. and California Constitutions and state and  
4 federal laws regarding the education of its students.

5 17. Defendants, including the individual members of the Board of Trustees,  
6 Superintendent Fox, and Principal Pechtl, acted under color of their  
7 governmental authority and under color of the customs and usages of the  
8 District when developing, adopting, and implementing the Compulsory  
9 Anthem Policy.

#### 10 **JURISDICTION AND VENUE**

11 18. Plaintiff's claims occurred in the state of California. This action arises under,  
12 inter alia, the Fourteenth Amendment of the United States Constitution and  
13 presents a federal question within this Court's jurisdiction under Article III of  
14 the Constitution and 28 U.S.C. §§ 1331, 1343, and 1367.

15 19. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28  
16 U.S.C. §§ 2201 and 2202, by Federal Rules of Civil Procedure 57 and 65, and  
17 by the inherent equitable powers of this Court.

18 20. This Court has supplemental jurisdiction over Plaintiff's state law claims  
19 pursuant to 28 U.S.C. § 1367(a), because these claims are based on and share  
20 a common nucleus of operative facts with Plaintiff's federal civil rights  
21 claims and form parts of the same case or controversy under Article III of the  
22 United States Constitution.

23 21. Venue is proper under 28 U.S.C. §1391(b) because a substantial part of the  
24 events or omissions giving rise to the Plaintiff's claims occurred in this  
25 district.

#### 26 **STATEMENT OF FACTS**

27 22. On September 29, 2017, Plaintiff began taking a knee during the playing of  
28 the national anthem at football games as a form of peaceful political protest to