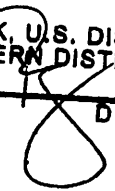


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

DEC -6 2011

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

CHRISTA SCHULTZ and DANNY)
SCHULTZ, both Individually and as)
Parents and Guardians of Minor Child)
C.S.,; and TREVOR SCHULTZ,)
Individually,)

Plaintiffs,)

V.)

MEDINA VALLEY INDEPENDENT)
SCHOOL DISTRICT,)

Defendant.)

CIVIL ACTION NO. SA-11-CA-422-FB

**ORDER REGARDING DEFENDANT'S MOTION TO AMEND
PROTECTIVE ORDER AND PLAINTIFFS' MOTION TO
RECONSIDER RULINGS ON JURY TRIAL AND ANONYMITY**

Before the Court are Defendant's Motion to Amend Protective Order (docket no. 84), Plaintiffs' Motion to Reconsider Rulings on Jury Trial and Anonymity (docket no. 85-1), and defendant's response (docket no. 90-2) to plaintiffs' motion. Plaintiffs filed a formal response to Defendant's Motion to Amend Protective Order (docket no. 92) and have also responded within Plaintiffs' Motion to Reconsider Rulings on Jury Trial and Anonymity.

The core issue of this case is whether the defendant governmental entity, Medina Valley Independent School District ("MVISD"), is establishing or promoting a particular religious view with taxpayer funds. Defendant has strenuously denied the allegation. The Court first addresses its Amended Order on Pending Motions (docket no. 76) of November 7, 2011, requiring proposed plaintiff Pat Doe to join the lawsuit on or before December 20, 2011, as a named and non-anonymous plaintiff. Plaintiffs had asked the Court to delete such requirement and allow Pat Doe to be a plaintiff and remain anonymous throughout the trial save and except for defendant's representative being in the courtroom in a closed, nonpublic trial.

While the Court acknowledges that *Homo sapiens* can exhibit bullying, retaliation and downright meanness, the Doe declaration is necessarily speculative because Doe has not become known. Throughout history, there have been people who take risks to stand up for what they believe to be right, and sometimes unfortunate consequences flow from their courage. Young people the same age as Corwin Schultz and Pat Doe lie in the cemeteries of Normandy because they did not shrink from their duty to scale the cliffs of Omaha Beach and ultimately defeat a government which would, if undefeated, have continued to oppress the Jewish minority.¹

Within the American constitutional experience, Rosa Parks, Congressman John Lewis, and other African Americans could have gone quietly to the back of the bus, continued to go to separate restrooms and water fountains and subjugated their freedom and their right to vote to the will of the majority government holding power.² Pat Doe wanted to assert as an unnamed plaintiff that the governmental entity, MVISD, through its agents and employees, is imposing its majority will against plaintiffs in the minority. Pat Doe has now decided he/she does not want to take the risk or pay the price of going to trial.

This Court's oath is to preserve, protect and defend the Constitution of the United States of America, which includes the right of all parties, majority or minority, to due process of law and proper judicial process. Though couched in legal terms, the concept may also be understood in athletic or

¹"Had the mammoth amphibious operation launched on June 6, 1944, failed, however, the world we live in today would be a very different place, and certainly not a better one. The successful execution of Operation Overlord—the code name used by the allied leadership for the invasion of Normandy—was the first great moral victory on the Western Front against the military forces of the Third Reich. Indeed, the Allied beachhead in northern France helped turn the tide of the war." RANDY HOLDERFIELD & MICHAEL J. VARHOLA, *D-DAY: THE INVASION OF NORMANDY* i (2000); "But when the test came, when freedom had to be fought for or abandoned, they fought. They were the soldiers of democracy. They were the men of D-Day, and to them we owe our freedom." STEPHEN E. AMBROSE, *D-DAY: JUNE 6, 1944: THE CLIMACTIC BATTLE OF WORLD WAR II* 28 (1994).

²ROBERT WEISBROT, *FREEDOM BOUND: A HISTORY OF THE AMERICAN CIVIL RIGHTS MOVEMENT* (W.W. Norton & Co. ed., 1990).

academic competition terms. There has to be a level playing field with fair and balanced procedures and independent and impartial umpires.

Pat Doe, an adult, sought to have the Court tie one arm behind defendant's back. Moreover, plaintiffs bring this suit under the First Amendment to the Constitution, but would deprive defendant of its constitutional right to due process of law.³

In addition to Pat Doe's withdrawn desire to proceed anonymously, plaintiffs ask to have a trial closed to the public. While early Americans came to the United States for freedom from government imposed religion,⁴ they also came to escape the star chamber of secret trials.⁵ In the modern era, the abhorrent practice of secret trials continued, with the end of the trial being a trip to the Gulag.⁶

Although the Sixth Amendment right to confrontation applies to criminal trials, civil trials, as a Socratic search for the truth, have nevertheless evolved to include cross-examination and attempts to

³All persons enjoy a constitutional right of access to the courts, although the source of this right has been variously located in the First Amendment right to petition for redress, the Privileges and Immunities Clause of Article IV, section 2, and the Due Process Clauses of the Fifth and Fourteenth Amendments. Morello v. James, 810 F.2d 344, 346 (2nd Cir. 1987); see also Simmons v. Dickhaut, 804 F.2d 182, 183 (1st Cir. 1986) (collecting cases).

⁴CAROL BERKIN, ET AL., MAKING AMERICA: A HISTORY OF THE UNITED STATES, VOLUME ONE TO 1877 (Wadsworth Publishing, 5th ed. 2007). After some of the separatists' leaders began reading Captain John Smith's published descriptions of America, they considered moving to the New World, where they could create a society from top to bottom, with no interferences or distractions to draw them away from their chosen faiths. TIM MCNEESE, DISCOVERING U.S. HISTORY: COLONIAL AMERICA 1543-1763 56 (Richard Jensen ed., 2010).

⁵JOHN SOUTHERDEN BURN, THE STAR CHAMBER (2008) (discussing secret court which held arbitrary and unconstitutional control of certain legal matters in England for upwards of a century).

⁶Most of those convicted in these secret trials were sent to camps where conditions were extremely harsh. "Prisoners received inadequate food rations and insufficient clothing, which made it difficult to endure the severe weather and the long working hours; sometimes the inmates were physically abused by camp guards. As a result, the death rate from exhaustion and disease in the camps was high. After Stalin died in 1953, the Gulag population was reduced significantly, and conditions for inmates somewhat improved. Forced labor camps continued to exist, although on a small scale, into the Gorbachev period, and the government even opened some camps to scrutiny by journalists and human rights activists. With the advance of democratization, political prisoners and prisoners of conscience all but disappeared from the camps." Revelations from the Russian Archives: The GULAG, Library of Congress, <http://www.loc.gov/exhibits/archives/gula.html> (last visited Dec. 5, 2011).

impeach the opposing side's witnesses. For this cross-examination procedure to mean anything, defense counsel must have an opportunity to prepare. Anything less would not be a fair trial.

Separate and apart from this case being distinguishable from those cited by plaintiffs, as a practical matter, Pat Doe would be in some public areas within the courthouse complex under the watchful eye of the media and interested observers. It is hardly likely that Pat Doe's identity would have remained secret.

Turning now to the issue of whether to have a jury trial, advisory or otherwise, the Court first notes that plaintiffs, in addition to nominal damages, are also seeking attorneys' fees, no doubt far in excess of \$20.⁷ While the Court is the final arbiter of the judgment to be entered, classical notions of Seventh Amendment jurisprudence argue in favor of a cross section of the community rendering its opinion in the Court's search for the truth.

Accordingly, the jury trial schedule for January 30, 2012, will occur, unless the parties can reach an agreement among themselves or submit the matter on cross motions for summary judgment based on a stipulation of undisputed facts.

With reference to the latter possibility, the Court is quite aware of the deposition discovery which has been and is taking place. Because paper discovery is not filed with the Court, the Court is unaware of whether discovery procedures including requests for admissions have been employed, though it would seem axiomatic to believe that the allegations of religious practices and proselytizing at various taxpayer events either happened or did not happen, leading to a question of law for the Court.

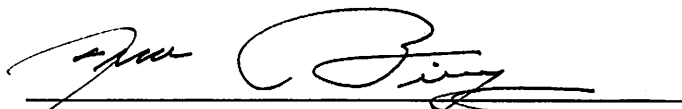
⁷"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." U.S. CONST. AMEND. VII.

Accordingly, Plaintiffs' Motion to Reconsider Rulings on Jury Trial (docket no. 85-1) is DENIED. Because Pat Doe has withdrawn the request for anonymity, that issue is also MOOT and Pat Doe is DELETED as a plaintiff.

Because defendant's main concern in its motion to amend the protective order was the prospect of Pat Doe continuing as a party and he/she has now withdrawn, Defendant's Motion to Amend Protective Order (docket no. 84) is DENIED at this time as MOOT, with leave granted to defendant or plaintiffs to move to amend the Protective Order as may be necessary for a particular individual.⁸

It is so ORDERED.

SIGNED this 6th day of December, 2011.



FRED BIERY
CHIEF UNITED STATES DISTRICT JUDGE

⁸Based on a conference call with counsel for plaintiffs and defendant on December 6, 2011.