

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

HAROLD SKLAR and JACQUELINE  
McKENZIE,

*Plaintiffs,*

v.

BOARD OF EDUCATION OF THE  
COUNTY OF HARRISON;  
CARL FRIEBEL JR., in his official  
capacity as Harrison County Superintendent  
of Schools; and LINDY BENNETT, in his  
official capacity as Principal of Bridgeport  
High School,

*Defendants.*

Civil Action No. 1106-CV-103

**COMPLAINT**

**Introduction**

1. The Harrison County school district prominently displays a large portrait of Jesus outside the principal's office at Bridgeport High School. The portrait is readily visible to students, faculty, staff, and school visitors. It is not part of any larger display.

2. The Jesus portrait has engendered conflict within the Bridgeport community for years, as school-district officials have refused to remove the display and have instead resolutely retained it despite repeated complaints, thereby publicly aligning the district with one faith — Christianity. Each of the plaintiffs here has, for the past decade or more, urged the Harrison County Board of Education to remove the portrait, but to no avail. What is more, the school administration actively sought to suppress criticism of the display. And school officials hid the

Jesus portrait from school inspectors, replacing it on the wall once the inspectors had left, thus demonstrating their awareness that the display is controversial and likely to evoke disapprobation.

3. The Harrison County school district has displayed religious iconography at Bridgeport High School without regard for (a) the community's religious diversity; (b) the constitutional right of Bridgeport parents to decide what religious instruction their children will receive; or (c) the right of faculty and staff, as public employees, to be free from government-sponsored religion in their workplace. In so doing, the school district has sent a powerful visual message to all who enter the school that Christian students are more valued than others and that students who wish to curry favor with the administration should adhere to the school district's preferred religious views and refrain from questioning or challenging the district's favoritism toward a particular faith. The district's actions thus violate the Establishment Clause of the First Amendment to the United States Constitution. This Court should vindicate parents', students', and teachers' religious-freedom rights by ordering the school district to remove the portrait.

#### **Jurisdiction and Venue**

4. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

5. This Court has the authority to grant declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b).

### **Parties**

7. Plaintiff Harold Sklar is a citizen of West Virginia and has resided in Bridgeport for 13 years. He pays property tax, which goes to fund the Harrison County schools. He is a lawyer with the United States Department of Justice and is a member of the Civil Air Patrol. He has served as a leader for both the Boy Scouts and the Girl Scouts, and has taught Sunday-school classes at Vincent Memorial Methodist Church. He has also been a guest lecturer at Bridgeport High School and taught a course for the Harrison County schools on preparing for the ACT college-entrance examination. Mr. Sklar is Jewish. He has three children: a son who graduated Bridgeport High School in 2004; a daughter who will begin classes there in August; and a daughter who will enter the seventh grade at Bridgeport Middle School in August and will attend Bridgeport High School beginning in fall 2008. As a parent, Mr. Sklar believes that it is his responsibility — not the Harrison County School District's — to provide for his children's religious education. He objects to and is offended by the Board of Education's decision to expose his children to a Jesus portrait at school because he believes that by doing so, the Board has elevated Christianity over other religions and over nonreligion, and that the Board is communicating the message that Mr. Sklar's children are outsiders with respect to the school community. Having himself visited Bridgeport High School on numerous occasions, both as a parent and as a guest lecturer, and having seen the Jesus-portrait display dozens of times, Mr. Sklar also objects to, and is offended by, the school district's imposition of its preferred religious expression on him. And he objects to, and is injured by, the school district's using his tax dollars to maintain the portrait.

8. Plaintiff Jacqueline McKenzie is a citizen of West Virginia and a resident of Bridgeport. She pays property tax, which goes to fund the Harrison County schools. She is Catholic, attends All Saints Catholic Church, and serves as Vice-Regent of the Catholic Daughters of the Americas. She previously held statewide office in that organization as District Deputy. Ms. McKenzie has been a teacher since 1969, specializing in grades 9 through 12. She served as a substitute teacher in the Harrison County school system from 1993 to 1995, spending several months teaching at Bridgeport High School. During that period, she saw the Jesus portrait dozens of times in the course of performing her teaching duties. Ms. McKenzie resumed substitute teaching in the Harrison County schools during spring 2006, and she intends to continue serving as a substitute teacher in the district for at least the next three academic years. Ms. McKenzie reasonably expects that she will be asked to teach at Bridgeport High School in the future, and will be forced to view the Jesus-portrait display in performing her teaching duties. She has also seen the Jesus portrait while (i) observing classes at Bridgeport High School earlier this year as part of her state-mandated teacher recertification process; (ii) serving as president of the Bridgeport Academic Boosters; (iii) serving on the School Improvement Council; (iv) acting as a Quiz Bowl organizer and volunteer; and (v) serving on the Bridgeport Arts Council. Additionally, Ms. McKenzie's daughter and three stepsons all attended Bridgeport High School. So among other occasions, Ms. McKenzie also viewed the Jesus portrait while at the school for academic conferences, for athletic events, and for her daughter and stepson's graduation in 1995 (which was held in the gymnasium because of stifling heat outdoors, where commencement exercises would otherwise have been held). Ms. McKenzie objects to, and is offended by, the school district's imposition of its preferred religious expression on her, and most especially by the fact that she must subject herself to the school district's official

religious expression in order to fulfill her obligations as a substitute teacher and as a volunteer at Bridgeport High School. She also objects to, and is injured by, the school district's using her tax dollars to maintain the portrait.

9. Defendant Board of Education of the County of Harrison is a public corporation authorized by state statute to "control and manage all of the [public] schools and school interests for all school activities and upon all school property" in Harrison County. W. VA. CODE § 18-5-13(a). Bridgeport High School is located in the Harrison County school district. The Board has authority over, and makes policy for, Bridgeport High School.

10. Defendant Carl Friebel Jr. is County Superintendent of Schools for Harrison County. He is being sued in his official capacity. As superintendent, Friebel serves as chief executive officer for the Harrison County school district, and accordingly makes policy for Bridgeport High School. *See* W. VA. CODE § 18-4-10(1).

11. Defendant Lindy Bennett is principal of Bridgeport High School. He is being sued in his official capacity. As principal, Bennett manages and makes policy for the school.

#### **General Allegations**

12. The Jesus portrait displayed at Bridgeport High School is a full-color commercial reproduction of Warner Sallman's *Head of Christ*. The Sallman painting, which has been reproduced more than 500 million times, is one of the best-known depictions of Jesus and is instantly recognizable as Christian iconography. It is a devotional work that is the subject of numerous religiously themed books and articles, including ones by Christian theologians (representing a variety of denominations) who take issue with the depiction as historically or

theologically inaccurate, and therefore as inconsistent with their faith traditions. A photograph of the Jesus portrait is attached to the Katskee Declaration as Exhibit A.

13. Bridgeport High School is a public high school located in Harrison County, West Virginia.

14. Bridgeport High School is becoming increasingly religiously diverse as the Bridgeport community becomes more diverse: The student body currently includes, among others, Christian, Jewish, Muslim, and Hindu students, as well as students of other faiths and students who are not religious.

15. The Jesus portrait apparently has been hanging at Bridgeport High School since the school was built more than forty years ago. *See* Justin D. Anderson, *Jesus Portrait at Heart of Dispute*, CHARLESTON DAILY MAIL, Mar. 24, 2006 (attached to Katskee Decl. as Ex. B).

16. It initially hung in a guidance counselor's office, but school officials later moved it to the hallway outside the principal's office, where the school has since displayed it continuously, with the exception of the brief periods described in paragraphs 25 and 26 below. *See* Ex. B.

17. On information and belief, school officials have at times claimed that the portrait's purpose is to cover a crack in the wall.

18. The portrait is displayed prominently in a central location in the school, near the principal's office, cafeteria, gymnasium, and auditorium. Students, faculty, and staff regularly walk past the portrait in the course of the school day. A photograph from the local newspaper showing the portrait's location in a central hallway at the school is attached to the Katskee Declaration as Exhibit C.

19. Bridgeport High School spends taxpayer funds to maintain the Jesus portrait.

20. Because the school requires all visitors to register at the principal's office, it necessarily subjects them to the devotional portrait.

21. Bridgeport High School graduation ceremonies are held in the gymnasium in case of inclement weather. Graduating seniors, family members, and guests are exposed to the Jesus portrait on their way to and from those ceremonies.

22. The portrait is also visible to people entering and exiting the Bridgeport High School auditorium and gymnasium and to those entering or exiting the bathrooms near the gymnasium.

23. Because the Bridgeport elementary school, middle school, and high school all hold events in the high-school auditorium and in the high-school cafeteria, children at all grade levels are exposed to the Jesus portrait.

24. Because the high-school auditorium is also the venue for public events, including musical acts and comedy shows, performers and members of the community attending those events are similarly exposed to the portrait.

25. On information and belief, Superintendent FriebeI removed the portrait approximately five years ago, in response to complaints that the school district had received about it. Within days, however, the school board insisted that FriebeI restore it to the school. Obeying the board's directive, FriebeI had the portrait returned to the wall outside the principal's office.

26. On information and belief, school officials have removed the Jesus portrait during school inspections associated with the Blue Ribbon Schools program, hiding it from the inspectors and restoring it to the wall only after the inspectors left the building.

27. Ms. McKenzie first saw the portrait in 1991, when she went to Bridgeport High School to enroll her four children (one of whom is Christian while the other three are not) in the

Bridgeport schools. At that time, she complained to principal Bennett and to then-assistant-principal Jim Romeo about the display. Ms. McKenzie informed Bennett and Romeo that she believes a Jesus-portrait display in a public high school is unconstitutional, and she asked that the unlawful display be removed.

28. Ms. McKenzie repeatedly voiced her complaints about the portrait between 1991 and 1995 — including in 1993, when she began substitute teaching at the high school.

29. She wrote to Superintendent Friebel in April 2006, again requesting that the district remove the Jesus portrait. A copy of her letter is attached to the Katskee Declaration as Exhibit G.

30. Ms. McKenzie received no formal response to any of her complaints or requests to have the portrait removed.

31. On information and belief, the father of another Bridgeport High School student complained to Principal Bennett about the Jesus portrait in 1993. Bennett did not respond to the complaint.

32. Mr. Sklar first complained about the Jesus portrait in 1996, to then-Superintendent Robert Kittle and the Harrison County Board of Education's attorney at the time, Basil Legg. Mr. Sklar informed Kittle and Legg that a Jesus-portrait display in a public school is unconstitutional; he called the Board's attention to the decision of the United States Court of Appeals for the Sixth Circuit in *Washegesic v. Bloomington Public School Board*, 33 F.3d 679 (6th Cir. 1994), in which the court struck down a public school's display of the Sallman *Head of Christ* portrait as an Establishment Clause violation; and he asked that the unlawful display be removed. But he received no formal response to his complaint.



33. In August 2001, Mr. Sklar wrote a letter to superintendent Friebel, explaining once again that, under *Washegesic*, the school district's display of the portrait violated the Establishment Clause. Again, he received no response — although it was around this time that the school district initially removed the portrait, after which the Board directed school officials to restore the display (which is bolted to the wall). A copy of Mr. Sklar's letter is attached to the Katskee Declaration as Exhibit D.

34. In December 2005, Mr. Sklar approached Superintendent Friebel and the school district's counsel, Richard M. Yurko Jr., reminding them of the *Washegesic* case and asking them once again to remove the portrait. In early March 2006, Yurko informed Sklar that school officials were not inclined to remove the portrait.

35. On March 7, therefore, Mr. Sklar made a presentation to the Harrison County Board of Education, in which he urged the Board to remove the portrait. Mr. Sklar provided board members with, among other things, historical information about Warner Sallman and his *Head of Christ* portrait, as well the text of the *Washegesic* decision. Yet again, the board declined to respond.

36. On information and belief, shortly after Mr. Sklar's March 7 presentation, a Bridgeport resident and parent suggested to school officials that they preserve the Jesus portrait by surrounding it with portraits of other people, including Abraham Lincoln, Mother Teresa, Malcolm X, and Princess Diana, in order to create a display of "the world[']s most influential teachers."

37. On March 20, plaintiffs' counsel wrote a letter to Superintendent Friebel and the board members, once again explaining that the Jesus-portrait display is unconstitutional, and requesting its removal. Neither plaintiffs nor their counsel received any response. A copy of the March 20 letter is attached to the Katskee Declaration as Exhibit E.

38. Two months later, on May 23, plaintiffs' counsel sent a final-demand letter to the school district's attorney. Plaintiffs' counsel reiterated that the display is unconstitutional, explained that an enhanced display would not cure the violation, and stated that suit would be filed if the district failed to remove the portrait by June 8 — two days after the Board's next-scheduled meeting. A copy of the May 23 letter is attached to the Katskee Declaration as Exhibit F.

39. On June 6, the Board met and debated in closed session whether to remove the Jesus portrait. The Board then voted in the public portion of the meeting to retain the display.

### **Claim for Relief**

#### **Establishment Clause Violation**

40. Paragraphs 1 through 39 above are incorporated as if fully set forth here.

41. The Establishment Clause of the First Amendment to the U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion." The Establishment Clause applies with full force and effect to the acts of local public-school officials under the Fourteenth Amendment's Due Process Clause.

42. The primary purpose of the Jesus-portrait display is to advance religion. None of the defendants has offered a legitimate secular justification for the display of obviously Christian iconography in a public school.

43. The Jesus portrait, which the Harrison County School District displays alone and without any broader context, is a devotional work that constitutes unconstitutional religious expression by the district.

44. The expenditure of public funds to maintain the Jesus portrait is unconstitutional.

45. In short, the Harrison County School District has violated plaintiffs' rights under the Establishment Clause, as well as the rights of the students, parents, teachers, and other members of the Bridgeport community generally, because:

- The Jesus-portrait display has as its primary purpose the advancement of religion.
- The display has as its primary effect the advancement of religion.
- The display excessively entangles government with religion.
- The display constitutes an unconstitutional governmental endorsement of religion.
- The display coercively exposes students, teachers, and others to unwanted religious expression.

46. Were the school district to undertake the proposed display of "the world[']s most influential teachers," it would not cure the constitutional violation here. On the contrary, the district would merely compound that violation by employing a *post hoc* rationalization for the Jesus-portrait display, without altering the display's real purpose and effect of officially advancing and endorsing religion and a particular religious view.

47. By violating the Establishment Clause in the ways described above, defendants have, under color of federal and state statutes, ordinances, regulations, policies, custom, or usage, deprived plaintiffs of rights secured by the First and Fourteenth Amendments to the U.S. Constitution, entitling them to a remedy under 42 U.S.C. § 1983.

**Prayer for Relief**

48. Paragraphs 1 through 47 above are incorporated as if fully set forth here.

**A. Declaratory Judgment**

49. An actual controversy exists between the parties as to whether the display of the Jesus portrait violates the Establishment Clause. Accordingly, plaintiffs respectfully request a declaratory judgment that defendants are violating the U.S. Constitution by displaying the Jesus portrait at Bridgeport High School.

**B. Injunction**

50. Plaintiffs have no adequate remedy at law. They therefore respectfully request a preliminary and permanent injunction ordering defendants to remove the Jesus portrait.

**C. Nominal Damages**

51. Plaintiffs request nominal damages.

**D. Attorneys' Fees and Costs**

52. Plaintiffs further request an order awarding them the costs of this action, including attorneys' fees, under 28 U.S.C. §§ 1988 and 2412.

**E. Other Relief**

53. Plaintiffs further request any other relief that the Court deems just and proper.

Respectfully submitted,



/s/ Richard B. Katskee

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Dated: June 28, 2006

\* Motion for admission *pro hac vice* pending.

+ Admitted only in the State of New York and in the Commonwealth of Massachusetts (inactive); supervised by Richard B. Katskee, a member of the bar for the District of Columbia and for the State of Maryland.