

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

DESIREE SHELTON, SARAH
LINDSTROM;

Civil No. _____

Plaintiffs,

vs.

ANOKA-HENNEPIN SCHOOL
DISTRICT; CHAMPLIN PARK HIGH
SCHOOL; DENNIS CARLSON, in his
official capacity as the Superintendent of
Anoka-Hennepin School District;
MICHAEL GEORGE, in his official
capacity as the Principal of Champlin Park
High School;

COMPLAINT

Defendants.

Plaintiffs DESIREE SHELTON and SARAH LINDSTROM, through their undersigned counsel, sues Defendants ANOKA-HENNEPIN SCHOOL DISTRICT; CHAMPLIN PARK HIGH SCHOOL; DENNIS CARLSON, in his official capacity as the Superintendent of Anoka-Hennepin School District; and MICHAEL GEORGE, in his official capacity as the Principal of Champlin Park High School. By this Complaint, Plaintiff seeks preliminary and permanent injunctive relief, declaratory relief, damages, and costs and attorneys fees.

NATURE OF THE ACTION

1. This is a free speech and civil rights case on behalf of Plaintiffs Desiree Shelton and Sarah Lindstrom, both of whom are twelfth-grade student at Champlin Park

High School (“CPHS”), which is within the Anoka-Hennepin School District (the “District”). Desiree and Sarah are both eighteen years old. Like many of their classmates, Desiree and Sarah have been excited to participate in the annual Snow Days Week celebration, scheduled for January 31 through February 5, 2011. In particular, Desiree and Sarah were both elected by their peers to be members of the Snow Days Royalty Court, and desired to process across the CPHS Field House as a couple during the Pep Fest and Coronation Ceremony.

2. Desiree and Sarah would like to participate in the Pep Fest and Coronation procession as a couple, but are prohibited from doing so because CPHS Principal Defendant Michael George has told them that the Royalty Court procession has been canceled and, instead, the assembly will begin with the Royalty Court seated on stage.¹ Such actions were taken for the purpose of suppressing the viewpoint of Plaintiffs’ constitutionally protected speech.

3. Prior to bringing this lawsuit, Desiree and Sarah attempted to informally resolve these issues with the District, including meeting with George, and requesting in writing through their counsel that Defendants reinstate the Pep Fest and Coronation procession and allow Plaintiffs to participate as a couple. *See* Letter from Sam Wolfe to Defendants Carlson and George, dated January 28, 2011, attached hereto as Exhibit A. Plaintiffs’ efforts were unsuccessful.

¹ Based on a telephone conversation with school-district attorney Paul H. Cady on Friday, January 28, 2011, it appears that the Defendants are still considering other alternatives to the traditional procession—for example, having the Royalty Court enter the assembly in a single-file line. Any alternative to the traditional procession, however, constitutes a violation of the Plaintiffs’ constitutional and statutory rights, and the analysis remains the same.

4. The Defendants' prohibitions and actions against Desiree and Sarah constitute impermissible viewpoint discrimination under the First Amendment to the United States Constitution, violate their equal protection rights under the Fourteenth Amendment to the United States Constitution and the Minnesota Constitution, and constitute prohibited discrimination under the Minnesota Human Rights Act.

JURISDICTION AND VENUE

5. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 for violations of the freedom of expression under the First Amendment to the United States Constitution and violation of equal protection rights under the Fourteenth Amendment to the United States Constitution. Plaintiffs also bring this action pursuant to Minn. Stat. §§ 363A.28, subd. 1 and 363A.33, subd. 1 for violations of Plaintiffs statutory rights as outlined in the Minnesota Human Rights Act.

6. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights). This Court has supplemental jurisdiction over the state law claims being asserted herein pursuant to 28 U.S.C. § 1367.

7. This Court has jurisdiction to declare the rights of the parties and to award any further necessary and proper relief pursuant to 28 U.S.C. §§ 2201 and 2202. Rule 65 of the Federal Rules of Civil Procedure authorizes injunctive relief. This Court has authority to award costs and attorney's fees under 42 U.S.C. § 1988 and Minn. Stat. § 363A.33, subd. 7.

8. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391(b) because the events or omissions giving rise to Plaintiffs' claims occurred in Champlin, Minnesota, which is within the District of Minnesota.

PARTIES

9. Plaintiff Desiree Shelton is, and was at all relevant times to this Complaint, a twelfth-grade student at CPHS. She is eighteen years old. As a student at CPHS, Desiree remains subject to the authority and directives of the Defendants.

10. Plaintiff Sarah Lindstrom is, and was at all relevant times to this Complaint, a twelfth-grade student at CPHS. She is eighteen years old. As a student at CPHS, Sarah remains subject to the authority and directives of the Defendants.

11. Defendant Anoka-Hennepin School District is a school district operating in Minnesota under color of state law and is located in Anoka and Hennepin Counties, Minnesota.

12. Defendant Champlin Park High School is a high school operated by the Anoka-Hennepin School District.

13. Defendant Dennis Carlson is, and was at all relevant times to this Complaint, the Superintendent of Anoka-Hennepin School District. Carlson is sued in his official capacity.

14. Defendant Michael George is, and was at all relevant times to this Complaint, the Principal of CPHS. George is sued in his official capacity.

FACTS GIVING RISE TO THIS ACTION

15. Desiree Shelton is eighteen years old and a senior at CPHS.
16. Desiree is a lesbian.
17. Desiree's sexual orientation is known by many of the students at CPHS as well as the teachers and administrators at CPHS.
18. Sarah Lindstrom is eighteen years old and a senior at CPHS.
19. Sarah is a lesbian.
20. Sarah's sexual orientation is known by many of the students at CPHS as well as the teachers and administrators at CPHS.
21. Desiree and Sarah are currently in a relationship and consider themselves to be girlfriends.
22. Snow Days Week is an annual celebration at CPHS held during the winter. It consists of a week of events starting with a Pep Fest and Coronation assembly on Monday and ends with a formal dance on Saturday. In 2011, Snow Days Week takes place from January 31 through February 5.
23. Every year, the student body at CPHS elects students that comprise the Snow Days Week Royalty Court. Selection as a member of the Royalty Court is considered an honor as the Royalty Court is a central component of Snow Days Week. A Snow Days Week Royalty Court has existed at CPHS since the school was founded in 1992. Freshman, sophomore, and junior classes each select two males and two females from their class to serve on the Royalty Court. The senior class elects six males and six females to serve as royalty. In 2011, voting for royalty occurred on Wednesday, January

19.

24. All CPHS students are encouraged to attend the Snow Days Pep Fest and Coronation Ceremony. The assembly is staged with a decorated arch on one end of the Field House and a stage on the other end.

25. At the beginning of the assembly, the Royalty Court processes into the Field House through the arch. The members of the Royalty Court are coupled as they process into the Field House.

26. Historically, members of the Royalty Court were allowed to choose their processional partner if they had a particular preference. When the students do not have a preference, a CPHS staff member pairs-up the students randomly as opposite-sex couples. When two students who are boyfriend and girlfriend are selected, it has been common practice to allow them to walk in the processional together.

27. As the coupled royalty process into the Field House, the couple is announced, then usually does something humorous in front of the school body, and finally processes across the Field House and onto the stage. As each couple is processing to the stage, an announcer states facts about the particular students. The entire procession of all twelve Royalty Court couples takes approximately five minutes.

28. The rest of the Pep Fest and Coronation Ceremony consists of the announcement of the Snow Days Queen and King, a fun activity, and various performances by the Dance Team and the winner of the Talent Show. In 2011, the assembly is scheduled to take place from 1:27 PM to 2:25 PM—a total of fifty-eight minutes.

29. Both Desiree and Sarah campaigned to be elected by their peers to be members of the Royalty Court so they could participate in the Pep Fest and Coronation procession together. Their intention was to make a political and public statement about gender roles and the visibility of LGBT students and couples at CPHS.

30. Both Desiree and Sarah were elected by their peers to the Snow Days Royalty Court.

31. When Desiree and Sarah found out that they had both been elected to the Royalty Court, they had every expectation that they would be able to process into the Field House as a couple and this was known among many students, CPHS staff, and administrators. Two male members of the senior Royalty Court have volunteered to process into the Field House together to maintain the couple format of the procession.

32. On Tuesday, January 25, Desiree and Sarah were in a CPHS hallway between classes when a teacher informed them that the CPHS administration decided that they could not process in the Pep Fest and Coronation together. The teacher informed them that they would be called to the office of the CPHS principal, Defendant George, for a further explanation.

33. After being notified of the administration's decision, Plaintiffs immediately sought out Mathew Mattson, CPHS Assistant Principal for Activities and a primary organizer of the Snow Days Week activities. Plaintiffs objected and asked why the decision was made. Mattson told them that they would not be allowed to process into the Field House as a couple because it is a tradition for only a boy and girl to process in together, that it would make the two male students who volunteered to process in together

uncomfortable even if they had already agreed to do so, that Plaintiffs had been elected to the Royalty Court as individuals and not as a couple, and that it would make some students uncomfortable to see two women walking together as a couple. Mattson stated that he had discussed the matter with George, and Monica Nikko, the other staff organizer of Snow Days Week, and that they concurred with the decision. Mattson called George's office so that George could further discuss the matter with Plaintiffs, but George was not available at the time. Plaintiffs scheduled a meeting with George for the next day, Wednesday, January 26.

34. At 11:15 AM on Wednesday, January 26, Plaintiffs met with George along with a number of teachers. George heard from Plaintiffs as they explained why they wanted to process into the Field House together. He was primarily worried about how the rest of the student body would react to two women processing in together. He also told Plaintiffs that it was a tradition at CPHS to have only male-female couples processing together in the Pep Fest and Coronation Ceremony. George stated that a final decision had not yet been made because he wanted to consult with the Superintendent of the Anoka-Hennepin School District, Defendant Carlson, and other principals in the school district. A follow-up meeting was scheduled for after school on Thursday, January 27.

35. Later in the day on January 26, the administration was considering having all members of the Royalty Court process individually instead of as couples in response to Plaintiffs' intention to process into the Field House together.

36. After school on Thursday, January 27, Plaintiffs met with Mattson and George. George stated that after consulting with Carlson and other principals, the

decision was made that the procession would be canceled and that the Pep Fest and Coronation would begin with all members of the Royalty Court seated on stage. George stated that this outcome would make everyone comfortable.

37. In this meeting, George further stated that even if the two male students who volunteered to process in together were comfortable with the arrangement, their parents may not be and he did not want to upset the parents. Mattson suggested that even if the male students stated that they were comfortable with the decision now, they may not be three months from now when a picture of them processing together surfaces and rumors get started that they are gay. Mattson hypothesized that they might then get bullied, commit suicide, and their parents would blame the school district.

38. Mr. George also stated that at a School Board meeting on January 24 a number of parents praised the school board for keeping the gays out of the schools and were otherwise hostile toward gays and lesbians. George suggested that this caused him to have concerns about student safety if he allowed Plaintiffs to process into the Pep Fest together.

39. Plaintiffs desire to participate in the procession together in order to peacefully express that they are lesbians and their political and social viewpoint that it is appropriate for gay and lesbian students to process together in long-standing school event.

40. The communicative content of this act would be understood by other students, as well as teachers and administrators, at the assembly.

41. If Plaintiffs are unable to participate together in the Fun Fest and Coronation procession on January 31, 2011, Plaintiffs will suffer irreparable harm for which there is no adequate remedy at law.

42. Defendants have expressed an intent to cancel the procession for the purpose of suppressing the viewpoint of Plaintiffs' constitutionally protected speech.

43. If Defendants are not enjoined from canceling or otherwise altering the Pep Fest in order to suppress Plaintiffs' speech, Plaintiffs will suffer irreparable harm for which there is no adequate remedy at law.

44. At all times, Defendants have acted under color of state law.

COUNT I: FREEDOM OF EXPRESSION

Violation of First Amendment, as applied to the states under the Fourteenth Amendment
(Against All Defendants, 42 U.S.C. § 1983)

45. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs in this Complaint.

46. Defendants are liable pursuant to 42 U.S.C. § 1983 and the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, for promulgating, implementing, ratifying, and/or enforcing rules and acts that deprive, and continue to deprive, Plaintiffs of their right to freedom of expression.

47. In depriving Plaintiffs of these rights, Defendants acted under color of state law. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. § 1983.

COUNT II: FEDERAL EQUAL PROTECTION

Violation of the Equal Protection Clause of the Fourteenth Amendment
(Against All Defendants, 42 U.S.C. § 1983)

48. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs in this Complaint.

49. Defendants are liable pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution, for promulgating, implementing, ratifying, and/or enforcing rules and acts that deprive, and continue to deprive, Plaintiffs of their right to equal protection of the laws.

50. In depriving Plaintiffs of these rights, Defendants acted under color of state law. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. § 1983.

COUNT III: STATE EQUAL PROTECTION

Violation of Minnesota Constitution, Article I, § 2
(Against All Defendants)

51. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs in this Complaint.

52. Defendants are liable pursuant to Article I, section 2 of the Minnesota Constitution for promulgating, implementing, ratifying, and/or enforcing rules and acts that deprive, and continue to deprive, Plaintiffs of their right to equal protection of the laws.

53. In depriving Plaintiffs of these rights, Defendants acted under color of state law.

COUNT IV: DISCRIMINATION
ON THE BASIS OF SEX AND SEXUAL ORIENTATION

Violation of the Minnesota Human Rights Act
(Against All Defendants, Minn. Stat. §§ 363A.01 et seq.)

54. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs in this Complaint.

55. The Minnesota Human Rights Act (“MHRA”) prohibits discrimination in access to education based on sex and sexual orientation. *See* Minn. Stat. § 363A.13.

56. The Defendants’ actions discriminate against the Plaintiffs on the basis of their sex and sexual orientation in violation of the MHRA.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully pray for the following relief:

1. An order preliminarily and then permanently enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants, employees and all other persons or entities in active conceit or privity or participation with them, from canceling or otherwise materially altering the Snow Days Fun Fest and Coronation procession in such a manner as to deny Plaintiffs’ rights, scheduled for January 31, 2011;

2. An order preliminarily and then permanently enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants, employees and all other persons or entities in active conceit or privity or participation with them, from restraining, prohibiting, or suppressing Plaintiffs from processing with one another as a couple at the beginning of the assembly;

3. An order enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants, employees and all other persons or entities in active conceit or privity or participation with them, from taking retaliatory action against Plaintiffs for bringing this lawsuit;

4. A declaration that Defendants' policies violate Plaintiffs' constitutional rights to freedom of expression and equal protection of the law and statutory right to be free from unfair discriminatory practices;

5. An entry of judgment for Plaintiffs against Defendant Anoka-Hennepin School District for damages;

6. Reasonable attorneys' fees and costs; and

7. Any other relief to which Plaintiffs may be entitled.

Dated: January 28, 2011

FAEGRE & BENSON LLP

s/ Michael A. Ponto

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January 28, 2011

Dennis Carlson
Superintendent
Anoka-Hennepin School District
11299 Hanson Blvd. N.W.
Coon Rapids, MN 55433

Michael George
Principal
Champlin Park High School
6025 109th Ave. N
Champlin, MN 55327

Dear Superintendent Carlson and Principal George:

The National Center for Lesbian Rights, the Southern Poverty Law Center, and Faegre & Benson, LLP represent Desiree Shelton and Sarah Lindstrom, seniors at Champlin Park High School (CPHS). They have informed us that the school has canceled the royalty processional, a traditional part of its Snow Days Pep Fest and Coronation, in order to keep them from participating as a same-sex couple. We are writing to notify you that the school's actions violate their rights under the First and Fourteenth Amendments to the United States Constitution, the Minnesota Constitution, and the Minnesota Human Rights Act. **If the school does not notify Desiree and Sarah before 12:00 noon on Friday, January 28, 2011, that it is rescinding these discriminatory actions, we will file an action for a temporary restraining order with the U.S. District Court for the District of Minnesota.**

Desiree and Sarah are lesbians and have identified themselves as lesbians to school administrators and many of their fellow students. They are in a dating relationship together. Both girls were selected by their peers as "royalty" for the Snow Days winter formal dance at CPHS. In keeping with tradition, CPHS has planned a school-wide Snow Days Pep Fest and Coronation, scheduled for Monday, January 31, 2011 at 1:27 pm at the Fieldhouse, to promote the Snow Days Week and dance. At this assembly, CPHS has a long tradition of holding a "processional" in which the members of the court enter the assembly walking in pairs. Historically, CPHS allows students elected as royalty to choose their processional partner if they have a preference. When two students who are boyfriend and girlfriend are selected, it has been common practice to allow them to walk in the processional together.

In this case, it was known to staff organizers and school administrators that Desiree and Sarah intended to walk together in order to make a statement about their relationship and their sexual orientation. They told the school officials that two of their male friends on the court had agreed

Exhibit A

to walk together, so no student would have to walk alone. Nevertheless, CPHS told Desiree and Sarah they could not walk together, solely because both girls are of the same sex. When Desiree and Sarah persisted in their request, CPHS responded by informing them on Thursday, January 27, 2011, that it would cancel the traditional processional part of the assembly entirely and the Pep Fest and Coronation would begin with the student royalty already seated.¹

The Minnesota Human Rights Act explicitly prohibits schools from discriminating against students based on their sex or sexual orientation. Minn. Stat. § 363A.13, Subd. 1. Such discrimination is also prohibited by the Fourteenth Amendment to the United States Constitution, see *Romer v. Evans*, 517 U.S. 620 (1996), and the equal protection provision of the Minnesota Constitution, art. I, § 2. The school's actions also violate the First Amendment, which protects the rights of students to bring same-sex dates to school-sponsored events. See *McMillen v. Itawamba County Sch. Dist.*, 702 F.Supp.2d 699 (N.D. Miss. 2010); *Fricke v. Lynch*, 491 F.Supp.381 (D.R.I. 1980).

This case bears a striking similarity to a case decided by a federal court in Mississippi just last year, *McMillen v. Itawamba County School District*. There, a high-school senior, Constance McMillen, sought permission to bring a same-sex date to the senior prom and to wear a tuxedo. 702 F.Supp.2d at 701. The school initially informed her that the two girls could not attend prom together as a couple or slow dance together, because it could “push people’s buttons.” *Id.* The school also told her that all girls must wear dresses. *Id.* Upon receiving a letter informing the district that these policies were unlawful, the district elected to cancel the prom altogether. *Id.* The court held that Constance’s effort to “communicate a message by wearing a tuxedo and to express her identity through attending prom with a same-sex date” was “the type of speech that falls squarely within the purview of the First Amendment,” *id.* at 705, and concluded that the district had violated her First Amendment rights under “the clearly established case law.” *Id.* at 704. The court also concluded that Constance had shown a substantial threat of irreparable injury and the harm to Constance would “clearly outweigh” the burden that an injunction might cause the district. *Id.* at 705.²

The decision in *Fricke v. Lynch* also affirmed the First Amendment right of students to bring a same-sex date to a school dance. In that case, the principal of the school testified that the school’s policy against same-sex dates was based on concern about the potential for disruption and violence at the prom by objecting students. While the court noted that the principal had apparently acted out of a sincere belief that prohibiting the plaintiff from attending prom with another boy was necessary to protect the plaintiff’s safety, it nonetheless held that the school could not attempt to protect him by “stifl[ing his] free expression.” 491 F.Supp at 388. To permit such actions even in the name of safety or good order “would completely subvert free speech in

¹ According to a telephone call with Paul Cady, attorney for the District, as of this morning, the plan for the procession has evolved to a single-file processional. The discriminatory effect is the same.

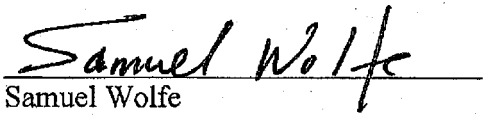
² The court declined to order a preliminary injunction in that case only because the district assured the court that a privately sponsored prom would go forward at which all students, including Constance, would be welcome. *Id.* at 705. When in fact the private prom excluded Constance, she sued again, and district agreed to a substantial settlement. See ACLU Press Release, *Victory for Constance McMillen!* (July 20, 2010), at <http://www.aclu.org/blog/lgbt-rights/victory-constance-mcmillen>.

the schools by granting other students a 'heckler's veto'." *Id.* at 387. The court granted the plaintiff's request for a preliminary injunction against the district. *Id.* at 389.

Because CPHS's actions in this matter violate clearly established law, we respectfully demand that the Anoka-Hennepin School District and CPHS immediately inform Desiree and Sarah that they may walk in the processional together. We further request that the District make clear to Principal George and to all District staff that it is unlawful and a violation of the First Amendment for schools to censor student expression of their sexual orientation, gender identity, or support for lesbian, gay, bisexual, and transgender (LGBT) rights.

If we do not receive an acceptable response by 12:00 noon today, we will file a motion for a temporary restraining order with the U.S. District Court for the District of Minnesota. In the absence of immediate and satisfactory corrective action by CPHS, judicial intervention will be necessary to prevent an imminent and irreparable violation of Desiree and Sarah's statutory and constitutional rights to participate in the assembly planned for Monday afternoon.

Sincerely,


Samuel Wolfe
Staff Attorney, LGBTQ Rights Project
Southern Poverty Law Center

Shannon Minter
Legal Director
National Center for Lesbian Rights

Michael A. Ponto
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Faegre & Benson LLP

cc: Paul Cady
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