

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

GAVIN GRIMM,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 4:15-cv-00054-AWA-RJK
)	
GLOUCESTER COUNTY SCHOOL)	
BOARD,)	
)	
Defendant.)	
_____)	

MOTION TO STRIKE JURY DEMAND AND SET CASE FOR BENCH TRIAL

Plaintiff Gavin Grimm respectfully submits this motion to strike Defendant’s jury demand and reset this case for bench trial. In support of the motion, Plaintiff states as follows:

1. Plaintiff’s original redacted Complaint, which was filed on June 11, 2015, sought declaratory relief, preliminary and permanent injunctive relief, damages in an amount determined by the Court, reasonable costs and attorneys’ fees, and such other relief as the Court deems just and proper. ECF No. 8 at 14-15.
2. Defendant’s Answer to the original Complaint, which was filed on July 6, 2016, included a demand for trial by jury. ECF No. 77 at 13.
3. Unlike the original Complaint, the Amended Complaint, filed on August 22, 2017, did not seek compensatory or punitive damages; it sought only nominal damages, declaratory relief, injunctive relief, and reasonable costs and attorneys’ fees. ECF No. 113 at 17.
4. Defendant’s Answer to the original Complaint, filed on July 20, 2018, did not reassert a demand for a jury trial.

5. At the Scheduling Conference held on September 17, 2018, counsel for Plaintiff stated that this case should be scheduled for a bench trial, instead of a jury trial, because the Amended Complaint does not seek compensatory or punitive damages. Counsel for Defendant disagreed and did not consent to withdraw Defendant's original jury demand.

6. Under Fourth Circuit precedent, claims for nominal damages—which are limited to a maximum of one dollar, *see Cent. Radio Co., Inc. v. City of Norfolk, Va.*, No. 2:12-CV-247, 2016 WL 8199737, at *2 (E.D. Va. Aug. 5, 2016)—do not confer a right to jury trial under the Seventh Amendment: “[T]he [S]eventh [A]mendment requires a jury trial upon demand where the amount in controversy exceeds twenty dollars. If plaintiff's allegations . . . entitle him to no more than nominal damages, the [S]eventh [A]mendment will not be applicable because of an insufficient amount in controversy.” *Burt v. Abel*, 585 F.2d 613, 616 n.7 (4th Cir. 1978) (citations omitted).

7. Accordingly, because the Complaint seeks only nominal damages, declaratory relief, and reasonable costs and attorneys' fees, this Court should strike Defendant's jury demand and set trial in this case for a bench trial.

8. Counsel for Defendant has informed Plaintiff's counsel that Defendant consents to Plaintiff's motion.

For the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's motion to strike Defendant's jury demand and reset this case for bench trial.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
OF VIRGINIA FOUNDATION, INC.

/s/

Eden B. Heilman*
Jennifer Safstrom**
Nicole Tortoriello (VSB No. 91129)
ACLU of Virginia
701E. Franklin Street, Suite 1412
Richmond, VA 23219
(804) 644-8022 (Phone)
(804) 649-2733 (Fax)
eheilman@acluva.org
jsafstrom@acluva.org
ntortoriello@acluva.org

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
Joshua A. Block*
Leslie Cooper*
Shayna Medley-Warsoff*
125 Broad Street
18th Floor
New York, NY 10004
(212) 549-2627 (Phone)
(212) 549-2650 (Fax)
jblock@aclu.org
lcooper@aclu.org
smedley@aclu.org

* Admitted *pro hac vice*

** Admission pending, notice of appearance forthcoming

Counsel for Plaintiff

Dated: October 29, 2018

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

GAVIN GRIMM,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 4:15-cv-00054-AWA-RJK
)	
GLOUCESTER COUNTY SCHOOL)	
BOARD,)	
)	
Defendant.)	
_____)	

PROPOSED ORDER

Having considered Plaintiff’s Motion to Strike Jury Demand and Set Case for Bench Trial, and there being no objection thereto, it is hereby ORDERED that Plaintiff’s Motion is GRANTED for good cause shown. It is further ORDERED that this case shall be set for bench trial.

Entered this ____ day of _____, 2018.

The Honorable Arenda Wright Allen
United States District Judge