

**STATE OF NORTH CAROLINA
COUNTY OF WILKES**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CIVIL ACTION NO: _____**

**NORTH CAROLINA PEACE ACTION,
INC., a North Carolina non-profit
corporation; SALLY FERRELL, an
individual; and BILL TOWE, an individual,**

Plaintiffs,

v.

**WILKES COUNTY SCHOOL DISTRICT,
and STEPHEN C. LAWS, individually and
in his capacity as superintendent of schools**

Defendants.

COMPLAINT

INTRODUCTION

Plaintiffs in this case are pacifists who seek to vindicate a value at the core of the First Amendment to the United States Constitution: the right not to be discriminated against on the basis of their viewpoint. Defendants have long permitted military recruiters to enter Wilkes County schools to provide information on military careers to Wilkes County students. Yet for more than three years, Defendants have refused to give Plaintiffs meaningful access to the schools to offer their perspective on that very same topic as well as other career opportunities. Now, as a last resort, Plaintiffs bring this suit to enjoin Defendants from violating the First Amendment, as well as Article I, Section 14 of the North Carolina Constitution.

JURISDICTION

1. This action is brought under 42 U.S.C. §1983. The court has authority under N.C. Gen. Stat. §1-253 et seq. (the Uniform Declaratory Judgment Act) to provide appropriate declaratory relief as to matters within its jurisdiction.

PARTIES

2. Plaintiff North Carolina Peace Action, Inc. (“N.C. Peace Action”) is a non-profit corporation, incorporated under the laws of North Carolina, with its principal place of business in Raleigh, Wake County, North Carolina. N.C. Peace Action, through its national organization, provides educational and civic programs for youth, such as its Student Peace Action Network.

3. Plaintiff Sally Ferrell (“Ms. Ferrell”) is a member of N.C. Peace Action who resides in Boomer, Wilkes County, North Carolina.

4. Plaintiff Bill Towe (“Mr. Towe”) is a member of N.C. Peace Action who resides in Cary, Wake County, North Carolina.

5. Defendant Wilkes County School District (the “School District”) is a political subdivision of the State of North Carolina. The District’s headquarters are located at 613 Cherry Street, North Wilkesboro, Wilkes County, North Carolina.

6. Defendant Stephen C. Laws (“Superintendent Laws”) is, and was at all relevant times, the superintendent of the Wilkes County School District. Superintendent Laws is, and was at all relevant times, acting under color of state law. In his capacity as Superintendent, Superintendent Laws is responsible for, *inter alia*, ensuring that the school district and its officials and employees act in conformity with the United States Constitution and applicable federal and state laws. He is sued in both his individual and official capacities.

FACTUAL ALLEGATIONS

7. On information and belief, the School District and Superintendent Laws permit recruiters from the various branches of the United States Armed Forces to enter Wilkes County high schools, set up tables, speak with interested students about military careers, and provide written materials discussing military careers.

8. Since March 2005, Ms. Ferrell, who is a pacifist, has been seeking meaningful access in order to speak to interested Wilkes County high school students about public service careers in fields other than the military (such as Peace Corps and Americorps), in the course of which she would also provide students with truthful, job-related information regarding military careers.

9. In providing information regarding military careers, Ms. Ferrell has sought to speak on the very same topics that the military recruiters address, including the substance of military commitments, working conditions in the military, the training provided to military recruits, the details of the New GI Bill, other college options available through the military, and other truthful, job-related information. Ms. Ferrell has asked for the same access afforded to military recruiters: the opportunity to enter the high schools, set up tables, and provide oral and written information on military careers and non-military public service opportunities to students. She has never sought to speak to students who do not wish to speak with her.

10. Ms. Ferrell's quest for access began more than three years ago, in March 2005. Ms. Ferrell contacted Superintendent Laws via letter, explaining her desire to present information on peaceful careers while offering balance to the information presented by military recruiters. A copy of the letter is attached hereto as Exhibit A. Specifically, Ms. Ferrell stated

that her goal was “to help young people look at career, vocational, and educational funding opportunities outside of military service, (for example Job Corp[s] and Americorp[s]) so that they may make informed decisions about their futures.” Like the military recruiters, Ms. Ferrell requested access to recruiter tables in order to speak to interested students during their lunch hour.

11. In 2005, Superintendent Laws denied Ms. Ferrell’s request. Superintendent Laws and members of the Wilkes County School Board verbally informed Ms. Ferrell that she was just being negative, and that the students should not hear anything that shows the military in an unfavorable light. Ms. Ferrell was also told that granting her access to students was not necessary because they were already exposed to the other side of the debate from watching television.

12. On September 1, 2005, the American Civil Liberties Union of North Carolina Legal Foundation (“ACLU-NCLF”) sent a letter on Ms. Ferrell’s behalf to Superintendent Laws, expressing concern with the School District’s refusal to permit access. A copy of the letter is attached hereto as Exhibit B. The letter expressed the concern that Ms. Ferrell was being denied access solely on the basis of her viewpoint, in violation of the First Amendment. The letter also sought copies of any School District policies regarding access given to career recruiters, including military recruiters, at the Wilkes County high schools. No policies were provided in response.

13. During the latter part of 2005 and early 2006, the School District responded to the ACLU-NCLF, stating that the School District was devising a new policy regarding employment

and military recruitment. The School District adopted the new policy in July 2006. It provides, in relevant part:

Policy on Recruiters:

The Board of Education acknowledges the legal requirement that if military recruiters are permitted to have access to students on campus, equal access must be provided to organizations that wish to present alternatives to military service, such as the Peace Corps and Americorps. This policy of equal access does not include individuals or ad hoc collections of individuals. Organizations must have some degree of established form and ongoing public purpose. Principals may require some tangible proof of organizational status, such as evidence of incorporation or other organizational creation, evidence of tax-exempt status, or evidence of an established office.

Wilkes County School District Policy 5240 (the “Recruiters Policy”) is attached hereto as Exhibit C.

14. On October 13, 2006, in compliance with the Recruiters Policy, Ms. Ferrell again sought access to the Wilkes County high schools, this time as a representative and a member of Plaintiff N.C. Peace Action. She provided “tangible proof of organization status” in the form of a copy of N.C. Peace Action’s registration with the North Carolina Secretary of State. A copy of a letter to one of the principals and Superintendent Laws is attached hereto as Exhibit D.

15. Despite Ms. Ferrell’s and N.C. Peace Action’s compliance with the new Recruiters Policy, Superintendent Laws again denied Ms. Ferrell direct access to students at Wilkes County high schools. *See* Letter from Superintendent Laws dated October 23, 2006, attached hereto as Exhibit E. Specifically, Superintendent Laws asserted that Ms. Ferrell and N.C. Peace Action were not entitled to access under Policy 5240 because N.C. Peace Action was not itself offering positions to students. *See id.* This newly articulated rationale does not appear in School District Policy 5240.

16. Nevertheless, in an effort to resolve this matter without litigation, during November and December 2006, Ms. Ferrell attempted to seek direct access to Wilkes County high school students by contacting each of the five Wilkes County high school principals, as directed by the policy. She received access to only one high school – West Wilkes High. The other four principals either refused to respond to Ms. Ferrell’s request or informed her that they were seeking written authorization from Superintendent Laws before they would allow her access to the students. Upon information and belief, Superintendent Laws had informal discussions with each of the Wilkes County principals, in which he counseled them to refuse access to Ms. Ferrell and N.C. Peace Action. On December 7, 2006, the ACLU-NCLF sent a letter to Superintendent Laws on behalf of Ms. Ferrell and N.C. Peace Action, seeking assurances that Ms. Ferrell and N.C. Peace Action would be granted direct access to students under the Recruiters Policy. A copy of this letter is attached hereto as Exhibit F.

17. In the Spring of 2007, N.C. Peace Action was granted access to the schools. Superintendent Laws sent a memo to principals informing them that N.C. Peace Action was approved for access and that “accurate information which some might interpret as criticism or as discouragement is permissible.” A copy of this memo is attached hereto as Exhibit G. Ms. Ferrell visited all five high schools and received no complaints from parents, students, or teachers. 470 students stopped at Ms. Ferrell’s table and picked up one or more items.

18. Despite the lack of incident during Ms. Ferrell’s visits, the Defendants soon changed course to limit Ms. Ferrell’s access once again. In September 2007, one of the principals told N.C. Peace Action that some of the literature that Ms. Ferrell wished to hand out to students in person were discouraging enlistment and could not be brought to the school. Ms.

Ferrell immediately appealed the restrictions on her literature via email to Superintendent Laws. Superintendent Laws did not respond to her appeal.

19. When Ms. Ferrell, on behalf of N.C. Peace Action, attempted to schedule the second visit of the fall semester, her emails and phone calls to the principals went unanswered. Eventually, one principal told her that he understood Ms. Ferrell and N.C. Peace Action would not be allowed access to his student body.

20. On February 12, 2008, the school board attorney informed Ms. Ferrell via letter that she would not be allowed to hand out the literature in person, but would instead only be permitted to apply to have the literature placed on a table in the schools for “passive distribution,” with no opportunity to explain the material or answer questions. On information and belief, the military is not limited to passive distribution of literature containing truthful, job-related information on military careers. The school board attorney’s letter also did not specify whether Ms. Ferrell would be allowed to speak to students about military careers. A copy of the February 12 letter is attached hereto as Exhibit H.

21. The next fall, at the beginning of the 2008 school year, Ms. Ferrell sent requests for access to each of the five Wilkes County high school principals via email, in accordance with the Recruiters Policy. Ms. Ferrell expressed her desire to “provide students with information regarding public service careers in fields other than the military as well as truthful, job-related information on military careers.” Similar to previous requests, Ms. Ferrell asked for the access afforded military recruiters: namely, the opportunity to “set up a table, speak with students, and distribute written materials during lunch one day during the month of September.” A copy of one of these emails is attached hereto as Exhibit I. Mr. Towe, an individual who is a military

veteran, and another member of N.C. Peace Action who is a former Americorps volunteer, intended to accompany Ms. Ferrell on some or all of these visits.

22. In response to Ms. Ferrell's email, several of the principals requested a copy of the materials Ms. Ferrell and Mr. Towe wished to distribute during their visits. On or about September 2, 2008 Ms. Ferrell sent each principal a packet of the materials she and the other Plaintiffs wished to distribute during their visits to the high schools.

23. On September 5, 2008, Ms. Ferrell received a response to her submission of materials to the principals in the form of an email from Superintendent Laws. In his response Superintendent Laws specifically addressed the literature that Ms. Ferrell previously had not been allowed to bring, and said, "I will assume that this information is for the designated student information area in each school and not for dispersal at the recruiting table." He also stated that "Our policy regarding negative recruiting at schools has not changed." A copy of this email is attached as Exhibit J. On information and belief, military recruiters are not required to disperse their written materials via the "designated student information area."

24. In a final effort to exercise her constitutional rights without the necessity of litigation, Ms. Ferrell sent an email on September 12, 2008 requesting access to the high schools. She agreed not to distribute in person the publication that, on information and belief, Superintendent Laws most disagreed with, despite her constitutional right to do so, "out of respect for [his] reaction to that pamphlet and in the hope that we may reach an agreeable compromise on this issue." Ms. Ferrell sought permission to bring other pamphlets which had previously been rejected by Superintendent Laws. She also again sought a clear expression of permission to speak with interested students about military careers, and enumerated examples of

the truthful, job-related information she wished to relate. A copy of that request is attached hereto as Exhibit K.

25. On September 14, 2008, Superintendent Laws denied the Plaintiffs' request for access to the Wilkes County high schools on the terms Ms. Ferrell proposed. Specifically, Superintendent Laws stated "We will not allow negative or counter recruiting to occur at our student access recruiting tables. Until such time as you can present to me in writing your willingness and commitment to abide by Wilkes County Board of Education policy, your access to students at recruiting table [sic] is denied." A copy of this email is attached as Exhibit L.

26. The Wilkes County Board of Education and Superintendent Laws have continuously and repeatedly denied Ms. Ferrell, N.C. Peace Action, and Mr. Towe meaningful access to Wilkes County high schools to engage in constitutionally protected activity.

27. Plaintiffs are currently being excluded on the basis of their viewpoint even though Superintendent Laws at one time specifically instructed principals that "accurate information which some might interpret as criticism or as discouragement is permissible."

28. In denying and restricting the Plaintiffs' meaningful access to the Wilkes County schools on the basis of their viewpoint, Defendants have acted intentionally, with malice, and in knowing disregard of the Plaintiffs' rights under the United States and North Carolina Constitutions.

COUNT I

(Violation of the First Amendment to the United States Constitution)

29. Plaintiffs reassert and reallege paragraphs 1-28 as if fully set forth herein.

30. Defendants are currently denying Plaintiffs access to Wilkes County high schools to provide truthful, job-related information on military careers.

31. Under the First Amendment to the United States Constitution, the school district cannot give access to military recruiters to provide information on military careers while denying access to groups that wish to provide truthful information on the same topic.

32. Defendants' consistent refusal to provide N.C. Peace Action, Ms. Ferrell, and Mr. Towe with direct access to students to exercise these rights is based upon unconstitutional and intentional viewpoint discrimination.

33. By reason of Defendants' unconstitutional acts, Plaintiffs have been damaged.

COUNT II

(Violation of the North Carolina Constitution, Article I, Section 14)

34. Plaintiffs reassert and reallege paragraphs 1-33 as if fully set forth herein.

35. Defendants are currently denying Plaintiffs access to Wilkes County high schools to provide truthful, job-related information on military careers.

36. Under the North Carolina Constitution, Article I, Section 14, the school district cannot give access to military recruiters to provide information on military careers while denying access to groups that wish to provide truthful information on the same topic.

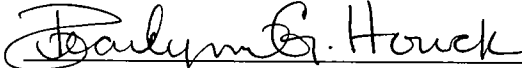
37. Defendants' consistent refusal to provide N.C. Peace Action, Ms. Ferrell, and Mr. Towe with direct access to students to exercise these rights is based upon unconstitutional viewpoint discrimination.

38. By reason of Defendants' unconstitutional acts, Plaintiffs have been damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief:

1. A preliminary and permanent injunction compelling Defendants to give Plaintiffs North Carolina Peace Action, Inc., Ms. Ferrell, and Mr. Towe access to Wilkes County high schools in order to provide information regarding military service and alternatives to military service to Wilkes County high school students;
2. A declaratory judgment that Plaintiffs North Carolina Peace Action, Inc., Ms. Ferrell, and Mr. Towe are entitled to access to Wilkes County high schools on the same basis and to the same extent as military recruiters;
3. A declaratory judgment that Plaintiffs North Carolina Peace Action, Inc., Ms. Ferrell, and Mr. Towe are entitled to present truthful, job-related information about military careers, even when such information could be interpreted as disadvantages of military careers;
4. Nominal damages;
5. An award of attorneys' fees and costs pursuant to 42 U.S.C. §1988; and
6. Any and all other just relief as this Court deems proper.



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***Co-Counsel for Plaintiffs North Carolina Peace
Action, Inc., Sally Ferrell, and Bill Towe***

Exhibit A

March 15, 2005

To: Dr. Steven Laws, Superintendent

Re: Alternatives to Military Recruitment

Dear Dr. Laws:

As many Wilkes County high school students approach graduation I imagine they are concerned about their futures, especially given the current economic climate. I am writing to you to request an opportunity to visit your school and speak with students about life after high school.

We are a few members of Wilkes Open Forum (WOF). (You presented an excellent program for us last year on "No Child Left Behind"). It has come to our attention (as parents and from talking to students) that military recruiters regularly & aggressively present their agenda to high school students in Wilkes County. Such access is I believe a provision of the "No Child Left Behind" legislation. We are concerned that the recruiters present biased, incomplete information on military enlistment and military life. We would like the opportunity to make information available to your students that will balance & complete the picture provided by the military recruiters. This proposal is an offshoot of the WOF mission to educate the adult community on important issues.

While we understand that military service can be an honorable choice, our goals are to help young people look at career, vocational, and educational funding opportunities outside of military service, (for example Job Corp and Americorp) so that they may make informed decisions about their futures. Our approach is not anti-military, but rather to provide young people with information military recruiters don't offer about the reality of life in the military. To this end, we plan to have some veterans with us to speak from experience.

If you are concerned about the legality of allowing alternative information about military service in your schools, let me reassure you that several federal district and appellate courts have repeatedly upheld Equal Access laws that enable students to get alternative information. For example, in 1986 the 9th Circuit Court of Appeals ruled that under the First and Fourteenth Amendments schools creating a forum for proponents of the military must also provide equal access for those with opposing points of view. Military recruiters are aware of these legal precedents, recognizing that such laws protect their access to schools as well as the access of organizations with alternative perspectives.

Ideally we would hope to present our materials (I have enclosed a sample though we are still gathering appropriate handouts) and be available for informal discussions with students at an information table in or near the lunchroom during lunch hour (possibly in the same location the military uses) or as a presentation in the auditorium or classrooms. I will call you within a week to discuss the possibility of school visits in April or May or you may feel free to call me at 921-3602 or email me at [saferrell@wilkes.net](mailto:safferrell@wilkes.net). I am copying this letter to your Associate Superintendent, Kaye Lamb, so she will be up to speed on the proposal. I look forward to speaking with you and/ or Kaye.

Sincerely,

(Ms) Sally Ferrell , 647 Boone Gap Road, Boomer NC 28606

Exhibit B

