



4. Plaintiff further seeks preliminary and permanent injunctive relief in declaring the “court order” of Judge Finch null and void.

### **JURISDICTION AND VENUE**

5. This action arises under the Constitution and laws of the United States, particularly the First, Fifth, Sixth and Fourteenth (Due Process, & Equal Protection) Amendments, to the United States Constitution. The jurisdiction of this Court, therefore, is invoked under 28 U.S.C. § 1331.

6. This is also an action under the Federal Civil Rights Act of 1871, Title 42 U.S. Code § 1983, § 1985, and § 1986, to redress the actual and threatened deprivation, under color of state law, of rights, privileges and immunities secured to Plaintiff by the Constitution of the United States, and redressable pursuant to *Bivens v. Six Unknown Narcotics Agents* 403 U.S. 388 (1971).

7. The jurisdiction of this Court, therefore, is invoked under 28 U.S.C. § 1343, pursuant to which this Court may grant: a) damages for the violation of Plaintiff’s the First, Fifth, Sixth, and Fourteenth Amendment rights; b) reasonable attorneys’ fees and costs, pursuant to 42 U.S.C. § 1988, and 28 U.S.C. § 2412.

### **PARTIES**

8. The Plaintiff, Wesley C. Smith, is a natural person currently residing in Virginia.

9. Gaylord L. Finch Jr. is a Judge in the Fairfax County Circuit Court.

10. Dawn Butorac is an attorney for the Office Of Public Defender in Fairfax County Virginia.

11. Office Of Public Defender is an organization charged with providing effective counsel to indigent Defendants in Fairfax County.

### **FACTS**

12. The Plaintiff, Mr. Smith, is a non-custodial father of a young child who has Down Syndrome. Per an order of the Circuit Court of Prince William County, dated 10/2/2003, the child’s mother was required to forward to Mr. Smith all copies of invitations to school events so that he might attend.

13. The child's Mother forwarded to Mr. Smith an invitation from the school that specifically invited parents to a school event on June 17<sup>th</sup>, 2005. Mr. Smith did attend the school event, went to the principal's office, signed in a visitor and received a visitor sticker.

14. Mr. Smith was not disruptive in any way; indeed the mother did not attend so there was no reason for conflict or concern. Mr. Smith had not been informed by the school he could not attend, indeed the school sent an invitation inviting his son's parents to attend.

15. Mr. Smith's son was pleased to have his father attend, told his father he loved him and introduced him to his friends.

16. The classroom teacher testified she hardly even noticed Mr. Smith until the police arrived, thus confirming his actions were not the cause of the police being called, but rather the personal animosity of Roger Vanderhye the school principal.

17. Va. Code Ann. § 22.1-4.3 specifically requires schools to allow non-custodial parents such as Mr. Smith to attend their children's school events unless a court order specifically prohibits attendance. There was no court order that prohibited Mr. Smith from attending.

18. School District Policy, in compliance with Va. Code Ann. § 22.1-4.3 requires school officials to provide custodial and non-custodial parents equal access to their children at school unless a court order specifically directs the school to take some other action.

19. As a result of the Custody Order, School Invitation, the mother forwarding the school invitation, and Virginia State law, Mr. Smith felt he had a legal right to attend the school event, and indeed had no idea the school would object as previous schools had not given him any trouble in attending his sons events and had even taken him on field trips with his son.

20. Mr. Vanderhye, acting contrary to state law and school district policy, called the police to harass Mr. Smith.

21. After the police arrived, Mr. Smith asked if he could leave, and after the police said yes, Mr. Smith walked off of school property to an adjacent public soccer field and was subsequently arrested and **held in solitary confinement for the entire Fathers Day weekend.**

22. At no time either prior or during the incident was Mr. Smith ever forbidden to be on school property or directed to leave.

23. Mr. Smith was ruled indigent by the Fairfax District Court and assigned Dawn Butorac, a Public 'Defender', to represent him.

24. Mr. Smith requested both orally and in writing that Ms. Butorac defend him based on state law Va. Code Ann. § 22.1-4.3 which specifically requires schools to allow non-custodial parents such as Mr. Smith to attend their children's school events unless a court order specifically prohibits attendance, combined with established case law such as O'Banion v. Com., that a person with a claim of right can't be convicted of trespass. (can't be found guilty of criminal trespass if you thought you had a right to be there, even if you were wrong).

25. Ms. Butorac refused to present either the state law or the relevant case references at the trial in District Court on Aug 8, 2005; as a direct result of her negligence and malpractice Mr. Smith was convicted and given a suspended sentence.

26. Mr. Smith having not obtained a ruling based on the state law § 22.1-4.3 and case rulings appealed the case to the Circuit Court.

27. Ms. Butorac informed the Mr. Smith that her office was unwilling to represent him if he insisted on having the relevant state laws and case rulings presented. That is to say Ms. Butorac specifically stated that her office was refusing to present a credible and viable defense and insisted that he accept a plea bargain or that they would not assist Mr. Smith in any way in defending himself.

28. Mr. Smith asked Ms. Butorac if her office would at least be willing to present legal assistance/advice to subpoena documents, witnesses etc, and was told they would not.
29. On Sep 26, 2005 Mr. Smith filed a MOTION TO DISMISS on the grounds that Va. Code Ann. § 22.1-4.3 and Fairfax County School Board's regulation number 2240.3 both of which state that a non-custodial parent is allowed to attend school events unless a court orders specifically states otherwise, constitutes a bona fide claim of right and that per Virginia case law, a person with a bona fide claim of right cannot be convicted of trespass.
30. On Sep 26, 2005 Mr. Smith filed a MOTION FOR ATTORNEY requesting the court to appoint an attorney for him.
31. Mr. Smith being an advocate for equal parental rights in divorce has used his First Amendment Right to publish publicly his comments on the issue of sole custody and also post the stories of other parents and help them expose the corruption of Virginia's Judges who violate the constitutional rights of parents.
32. One such story published by Mr. Smith concerned a case handled by Judge Finch. Gaylord Finch had expressed repeated disapproval of Mr. Smith's website, ordering the parent involved to demand that Mr. Smith remove the information.
33. Judge Finch was presented with multiple motions that mentioned Mr. Smith's website specifically. Even mentioning Mr. Smith's name and home address. Judge Finch even signed official court orders that referred to Mr. Smith's website.
34. Judge Finch was so upset about Mr. Smith's website that he even ignored the 30 minute rule for motions day in order to address the issue.
35. Mr. Smith had never lived, or worked in Fairfax County, had never been to court there. His only connection to the Fairfax Circuit Court was the comments on his website about Judge Finch. The Fairfax Circuit Court had 13 Judges, so the odds of Mr. Smith accidentally getting Judge Finch

assigned to the case was only 7%. Yet Judge Finch was the Judge who heard the case giving the appearance of **intentionally taking the case in order to get revenge** for the comments about Judge Finch on Mr. Smith's website.

36. On Oct 5<sup>th</sup> 2005, The Circuit Court with Judge Finch held a trial on the trespassing charge.

37. Judge Finch denied Mr. Smith's MOTION FOR ATTORNEY without any meaningful discussion and without giving any indication he had read the motion.

38. Mr. Smith tried to present the court with a written MOTION FOR COURT REPORTER. Judge Finch refused to take the paper copy of the motion or to read the MOTION FOR COURT REPORTER.

39. Mr. Smith pointed out he would appeal if found guilty and wanted the ability to have a transcript for the appeal. Judge Finch denied the Ruled against the MOTION FOR COURT REPORTER and said he would not approve a court reporter for a misdemeanor.

40. There was a court reporter present and ready and Judge Finch instructed her not to record the hearing. When Judge Finch observed the court reporter manipulating her equipment he questioned her to ensure she was not recording the hearing.

41. Mr. Smith requested to be able to tape record the hearing and informed the court he had brought a tape recorder for that purpose. Judge Finch denied the request to tape record the hearing.

42. Mr. Smith faced a maximum penalty of one year in jail if convicted.

43. Mr. Smith requested that Judge Finch hear his MOTION TO DISMISS before hearing the motion to quash or holding the trial and pointed out that it might eliminate the need for a trial. Judge Finch **refused to rule on the motion to dismiss.**

44. Instead of hearing the MOTION TO DISMISS Judge Finch head the Schools MOTION TO QUASH WITNESS. Mr. Smith objected to hearing the motion, as it wasn't filed until the day

before the trial and he didn't receive a copy of it until the night before the trial, denying him adequate time to prepare a response.

45. Mr. Smith presented e-mail from the superintendent in which the superintendent made statements about the case, including one where superintendent Jack Dale stated, "The father in question has several court orders prohibiting contact and presence on school property. The principal was following police and court directives."

46. Judge Finch had previously personally met with Jack Dale and did not make that fact known to the Mr. Smith.

47. In spite of the superintendent having made specific statements about why Mr. Smith was charged with trespassing, Judge Finch ruled to quash the subpoena for the superintendent.

48. Mr. Smith again requested again that Judge Finch rule on his MOTION TO DISMISS. Judge Finch again refused to rule on the MOTION TO DISMISS and said the Jury was waiting and that he wasn't going to keep them waiting any longer. Mr. Smith pointed out that a ruling on the MOTION TO DISMISS might eliminate the need for the Jury.

49. Mr. Smith gave his opening statement, including holding up a CD recording of the incident in question and told them he would play it for them so they could judge for themselves instead of having to rely on witnesses unreliable recollections of the incident. During the trial Judge Finch repeatedly refused to let Mr. Smith play the recording, introduce it as evidence, or to use it or the transcripts made from it to impeach the Commonwealth's witnesses.

50. Under cross-examination Mr. Vanderhye went on and on with claims that Mr. Smith had a website with comments about the custody case that Mr. Vanderhye didn't approve of. Mr. Smith objected to Mr. Vanderhye going on about these claims instead of answering the question asked of him. Judge Finch refused to order Mr. Vanderhye to answer the question and allowed him to continue his tirade against Mr. Smith's website.

51. Mr. Smith was confused why a Judge would allow such comments that were not related to the case, but after Mr. Vanderhye went on about being called a “White Collar Child Abuser” on the website it became clear that Judge Finch was allowing the commentary due to Judge Finch having been upset with the content website in connection with an unrelated case.

52. Judge Finch handled the custody case of Ron Jagannathan and ordered Ron Jagannathan to have pages referring to Janine Saxe and Mr. Robert Machen as “White Collar Child Abuser” s removed from Mr. Smith’s web site. The attempt by Judge Finch to have information removed from the Mr. Smith’s website is a gross abuse of his First Amendment Rights that Judge Finch had no legal authority to attempt. His actions were privately motivated and not as a result of his honoring his office or judicial responsibilities.

53. Once Mr. Smith realized that Judge Finch was the same Judge who was previously upset with his website and that Judge Finch appeared to be abusing his discretion as a result, Mr. Smith made an oral motion for the Judge to recuse himself. Judge Finch refused to recuse himself.

54. Judge Finch added a blatant lie that he had never heard the phrase “White Collar Child Abuser” before, nor heard of Mr. Smith before. (see official court documents for proof his statement was incorrect – that is if Judge Finch reads orders before he signs them)

55. At several points during the cross-examination Mr. Smith held up copies of the recordings and transcripts of the incident and District Court trial and attempted to use them to impeach the testimony of Mr. Vanderhye as his testimony differed in material details from that which was recorded during the incident as well as that which he testified to at the District Court Trial.

56. Judge Finch repeatedly refused to let Mr. Smith use the transcripts and recordings to impeach Mr. Vanderhye and to show that his testimony differed from his previous testimony and differed from what actually occurred during the incident. Mr. Smith was repeatedly quite insistent on using

the transcripts even going so far as to continue reading from them after the Judge interrupted him to say he wasn't going to allow use of the transcripts or recordings.

57. At the end of the prosecutions case Mr. Smith made a MOTION TO STRIKE pointing out that the prosecution had not presented evidence to show that he did not have a claim of right to attend, that he had any criminal intent. Judge Finch ruled against the Defendants MOTION TO STRIKE.

58. Ms. Richards, his son's teacher, stated that the Mr. Smith was not disruptive, that he behaved appropriately. Ms. Richards stated that his son was happy to see Mr. Smith. Ms. Richards indicated that the problem wasn't with the conduct of Mr. Smith but rather that Mr. Vanderhye had told her that according to the mother Mr. Smith was not to have any contact with their son without her permission.

59. Officer Colwell stated he told Mr. Smith he needed to leave now. Mr. Smith asked if it wasn't the case that instead it was Mr. Smith who asked to leave instead of being told to leave. Mr. Smith again tried to refer to the transcript and again Judge Finch interrupted and refused to let Mr. Smith use the transcript to correct the statement of the officer.

60. Mr. Smith attempted to present photo's of the soccer fields to show he was not on school property when arrested and Judge Finch refused to let him present most of them.

61. During closing statements by the Mr. Smith, Judge Finch interrupted and objected to the Mr. Smith reading a portion from state law 22.1-4.3.

62. During the entire trial the demeanor of Judge Finch toward Mr. Smith was dismissive.

63. About 15 minutes after starting deliberations the Jury asked a question which the Judge read. The Jury had requested to know if Mr. Vanderhye had told Mr. Smith to leave before or after the police were called. Judge Finch said his response to the Jury was that they would have to rely on the testimony of the witnesses.

64. Mr. Smith pointed out he had recordings and transcripts that would show the truth that Mr. Vanderhye **never instructed him to leave either before or after the police arrived** and suggested the evidence be provided to the Jury

65. Judge Finch refused to provide the Jury with the recordings or transcripts that would have answered their question.

66. The Jury deliberated for about another hour and 15 minutes before returning a guilty verdict and a \$100 fine.

67. Mr. Smith tried to appeal the case but the Virginia Court Of Appeals rejected it due to lack of record, which Judge Finch intentionally prevented Mr. Smith from having. Judge Finch prevented Mr. Smith from having a court reporter or a recording of the hearing, thus Judge Finch effectively prevented Mr. Smith from having an appeal.

**Count 1**  
**Violation Of Plaintiff's Right To Free Speech (Amendment 1)**

68. Gaylord Finch has violated Mr. Smith's Right to Freedom Of Speech by signing orders attempting to pressure Mr. Smith into removing information from his website and when that failed Mr. Finch retaliated by holding a Kangaroo Court Trial to convict Mr. Smith instead of dismissing the charge as required by Virginia case law.

**Count 2**  
**Violation Of Plaintiff's Right To A Due Process (Amendments 5 & 14)**

69. Gaylord Finch denied Mr. Smith Due Process by refusing to rule on his Motion To Dismiss, refusing to let Mr. Smith present relevant evidence (audio recording & transcripts), and refusing to let Mr. Smith impeach witnesses, refusing to appoint an attorney, refusing to let Mr. Smith record the hearing or provide a court reporter, refusing evidence, and refusing to recuse himself.

70. Gaylord Finch also denied Due Process by not providing a jury instruction informing the jury of the law in Virginia, as defined in O'Banion, that a belief of right to be on the property is

sufficient to defeat a trespassing charge (even if the belief is wrong). Indeed Mr. Finch went farther in not only not mentioning this himself, but in interfering with Mr. Smith's comments when he was trying to bring that to the Jury's attention. - "A defendant cannot get a fair trial if the jury doesn't know what the law is"

71. Gaylord Finch also violated due process by not recusing himself when there was an appearance that he was not impartial due to his concern about Mr. Smith's web site.

**Count 3**  
**Violation Of Plaintiff's Right To Confront Witnesses (6<sup>th</sup> Amendment)**

72. Gaylord Finch denied Mr. Smith 6<sup>th</sup> Amendment Right to confront witnesses by improperly quashing a witness subpoena for Jack Dale, thus preventing Mr. Smith from calling a material witness in his defense. Mr. Dale's testimony would have significantly harmed the credibility of the Commonwealth's main witness.

73. Gaylord Finch also refused to let Mr. Smith impeach the commonwealth's witnesses and refused to order those witnesses to answer questions in cross-examination.

**Count 4**  
**Violation of Right To Effective Counsel (6<sup>th</sup> Amendment)**

74. Dawn Butorac, the appointed counsel for Mr. Smith, denied him effective counsel by refusing to present credible and established legal arguments in his defense. Specifically in the district court trial she refused to present Va. Code Ann. § 22.1-4.3 which specifically requires schools to allow non-custodial parents such as Mr. Smith to attend their children's school events unless a court order specifically prohibits attendance, combined with established case law such as O'Banion v. Com., that a person with a claim of right can't be convicted of criminal trespass.

75. Clearly given that the custody order required Mr. Smith to be invited to school events, the school invited the parents, and the mother forwarded the invitation, Mr. Smith had every reason to

believe he had a right to attend. Thus it was only thru gross incompetence or willful negligence that Ms. Butorac did not present this argument in a motion to dismiss and/or at trial.

76. Given that Mr. Smith had even requested in writing that Ms. Butorac present Va. Code Ann. § 22.1-4.3 and the O'Banion case, the fact that Ms. Butorac did not do so was an intentional action on her part not to provide effective counsel.

77. Indeed prior to the district court trial, Ms. Butorac refused to have anything but very limited contact with Mr. Smith including refusing to discuss the case with him while sitting in the court hallway, preferring to just sit and read her newspaper and drink coffee rather than learn the facts of the case prior to trial.

78. Ms. Butorac gave the distinct impression she either felt the case wasn't worth her time or that she actually wanted Mr. Smith convicted.

79. The Office Of Public Defender participated in denying Mr. Smith effective counsel by refusing to defend Mr. Smith in the Circuit Court if he insisted on the attorney presenting the O'Banion case and VA § 22.1-4.3. Several officials of their office repeatedly told Mr. Smith he had to agree to a plea instead of making a valid motion to dismiss.

80. The Office Of Public Defender refused to provide any legal assistance of any kind after Mr. Smith informed them he was absolutely going to insist on the use of § 22.1-4.3 and the O'Banion case.

81. The Office Of Public Defender is supposed to defend indigent defendants not simply force innocent defendants to accept plea bargains.

82. The Office Of Public Defender is well recognized as not fulfilling its duty to represent indigent defendants at that time. In August 2005 the executive director of Virginia's Indigent Defense Commission was asked to, and did resign, due to complaints, also Joanmarie I. Davoli,

Fairfax County's top public defender, resigned in frustration in July 2005 saying she did not have adequate resources to defend the poor in Virginia's wealthiest county.

83. Gaylord Finch cooperated with the Public Defenders Office by refusing to appoint another attorney that would actually present a credible defense, even after Mr. Smith filed written motion asking for an attorney that would present § 22.1-4.3 and the O'Banion case.

**Count 6**  
**Violation of Equal Protection (14<sup>th</sup> Amendment)**

84. Mr. Finch denied Mr. Smith Equal Protection by not treating him the same as any other defendant. Mr. Finch ruled based on his personal animosity towards Mr. Smith and his website rather than making rulings based on state law and case precedence.

85. Mr. Finch also denied Mr. Smith those rights that rich defendants, who could afford attorneys, would have had. Mr. Finch would not have refused to rule on motions for someone that could afford a high priced attorney.

86. Mr. Finch also effectively denied Mr. Smith the right to appeal, by denying all requests to record or a court reporter, with the result of denying Mr. Smith a record upon which to base an appeal. A rich person who could afford a court reporter would have been able to appeal the case.

**PRAYER FOR RELIEF**

**WHEREFORE**, for all of the reasons set forth above, the Plaintiff demands:

1. Enter a judgment and decree declaring that the Defendants' actions were unconstitutional;
2. Decree that the conviction order is null and void due to Due Process errors.
3. Order that Gaylord Finch and Dawn Butorac shall apologize for their misconduct.
4. Order the Office Of Public Defender to stop providing half-assed legal assistance, to stop forcing defendants to accept plea bargains to spare them the cost of trials, and that if unable to provide effective representation due to lack of funding, that it file suit in state and/or federal courts to get the funds necessary to provide effective counsel for all indigent defendants, or

injunctions to prohibit the commonwealth from prosecuting indigent defendants until sufficient funds are provided.

5. Award Plaintiff compensatory damages, from Gaylord Finch and Dawn Butorac (not the state), in an amount to be determined at trial;
6. Issue declaratory relief as this Court deems appropriate just;
7. That this action be tried by jury;
8. The cost of this action, including all out of pocket expenses and reasonable attorney fees;
9. Such other and further relief as may be just and equitable.

**Respectfully Submitted,  
Wesley C. Smith**

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**VERIFICATION OF COMPLAINT**

I, Wesley C. Smith, a citizen of the United States, and resident of Virginia, hereby declare under penalty of perjury pursuant to 28 U.S.C 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 5<sup>th</sup> day of October, 2007

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Wesley C. Smith