

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

[REDACTED]

Superintendent Craig Witherspoon, and BPD – have created a police state within the City’s public high schools, stationing police officers known as School Resource Officers (“SRO”) in each school, arming them with chemical weapons, and authorizing them to use those weapons to

~~enforce school discipline. Further, Defendants have not provided SROs with any training~~

on the use of chemical agents in school settings or on children. Teachers, school administrators, and law enforcement operate in close concert with one another, with school personnel frequently

~~if SROs are to be used to enforce school discipline, they must be trained in the use of chemical weapons.~~

while attending schools. Mace is used so frequently and so indiscriminately in Birmingham's public high schools that each Class Representative – and all BCS students – faces a real and

potential risk of future and repeated injury.

9th grader at Woodlawn High School and was subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

[REDACTED]

At the time of the incident...

[REDACTED]

0- [REDACTED]

High School, a school operated by BCS, at the time of the incidents described below in

1-100-1 1-140-1 [REDACTED]

such delegation” *Id.* Defendant Witherspoon is named as a defendant to this action in his

[REDACTED]

12 Defendant A. C. Roper is the Chief of the Birmingham Police Department (“RPD”) a law

[REDACTED]

enforcement agency created by the Birmingham City Council. BPD is “charged with the

17. Defendant Officer M. Benson is a BPD employee assigned to the Special Victims Division, Youth Services Unit, as a School Resource Officer (SRO). She is named as a

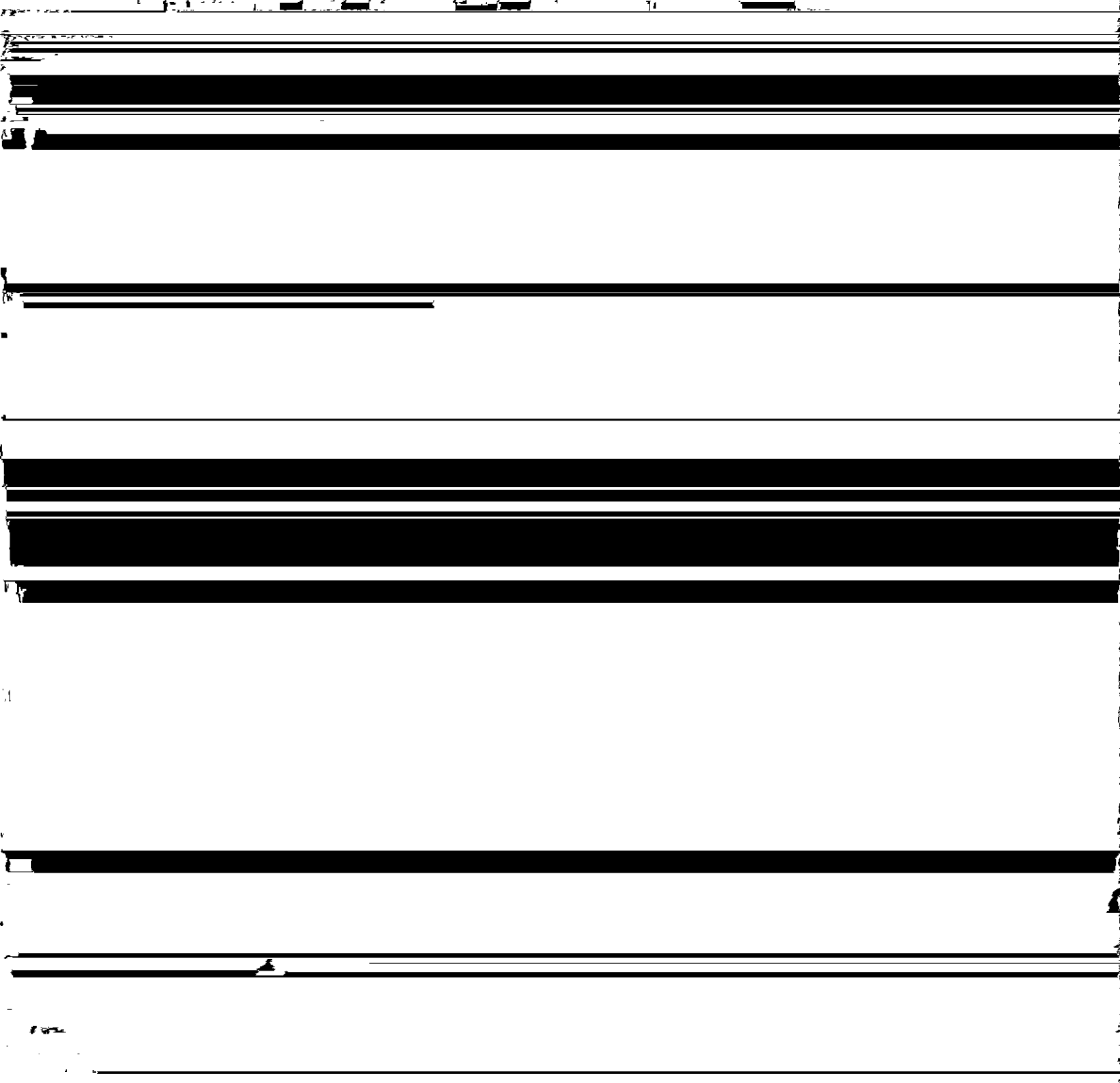
[REDACTED]

[REDACTED]

[REDACTED]

JURISDICTION AND VENUE

presence of a conspiracy between BPD and BOE and their collective employees to violate the Plaintiffs' rights, the reasonableness of using mace against children who pose no public safety risk, and the scope of the BOE's duty to protect students from harm. Common factual issues



particularly in a closed environment and with respect to a population with a higher than average

incidence of asthma. Fed. R. Civ. P. 23(a)(2)

[REDACTED]

[REDACTED]

"We put SROs (school resource officers) in there to manage the school and

interim Birmingham school Superintendent Barbara Allen. "But sometimes we have principals who call them to break up a fight. They are busy, and I think it's

"They have over-relied on our officers, and our officers have responded," Roper said. "I think the school system should handle minor violations and the SROs should be present and respond when it rises to a criminal level."

"The way [redacted] should have been minimized, and that's not the goal," he said

eye, (f) chemical injury to the eye, (g) blurred vision and redness in the eye, (h) blistering of the eyelids, (i) blistering and scarring of the eyeball, and (j) corneal abrasion of the eye.

43 Exposure to a pepper spray product such as Freeze +P also has severe respiratory effects

47. African American children comprise approximately 96% of the Birmingham City School System.

48. Applicable safety standards for use of chemical agents, such as mace or pepper spray, warn that directing the chemical directly into the eyes and face increases the risk of injury to the eyes and that the stream from chemical agents should be directed towards the clothing on the chest.

49. The primary concern for individuals affected by pepper spray is to immediately ensure

11

access to a flowing air source (removing them from the chemical-filled environment), and to

51. BPD policy on the use of chemical weapons provides some limited guidance on decontamination procedures:

- A. Following the use of chemical spray the officer will ensure that the subject receives adequate decontamination as soon as practical. The officer should supply immediate medical attention if requested by the subject.

reasonable belief that a crime has been committed and that the intended target committed the crime.

55. The BPD's Use of Force policy defines control as "[t]he force an officer uses to influence or neutralize the unlawful, physical actions of a subject under arrest."

56. The expansive language contained in paragraph "C" of BPD's policy on Chemical Spray Subject Restraint: Non-Deadly Use of Force permits and encourages BPD officers, including SROs, to recklessly deploy chemical weapons against individuals, including children, in

60 In each of the incidents described below, the Defendant Officers' conduct was consistent

[REDACTED]

62. As provided below, these practices and customs have resulted in injury to the named

[REDACTED]

under the U.S. Constitution

[REDACTED] Defendants are aware that SDOs routinely use Freeze +D against students in the

...and that a 17-year-old DCS high school student was arrested with ...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

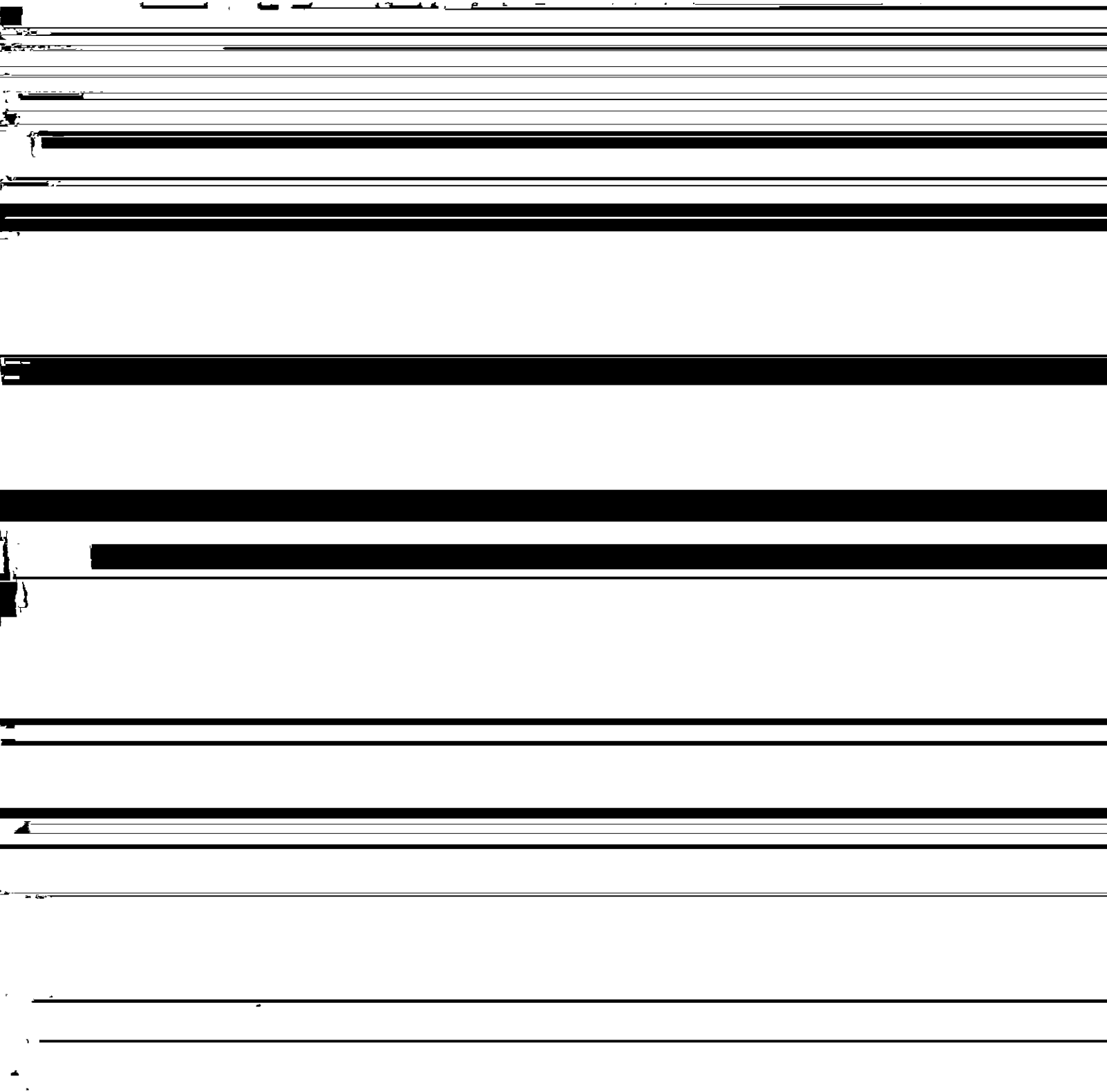
with a copy of an Order by the Honorable Scott Vowell, Presiding Judge of the Jefferson County

Circuit Court. That Order provided, in pertinent part:

1 A copy of this Order shall be served by the Clerk of the Family Court [b]

Neither policy addresses any of the following issues:

76. Despite this knowledge, Defendant Roper has not made any effort to amend BPD policy, practices, and customs to provide specific guidance to officers on the use of force on children. Further, Defendant Roper has not made any effort to provide specialized training to officers to



children, in closed environments, and/or within populations with a higher than average incidence

from the altercation.

80. Defendant Nevitt and an unknown SRO responded to the incident. The unknown SRO

85. As a direct and proximate result of Defendant Nevitt's actions, which were authorized by

Plaintiff, Plaintiff suffered emotional, psychological, and

03 G.S. Plaintiff D.S. had been approaching G.S. when Defendant Clerk arrived

G.S. for the first time. When P.S. was about five feet away from G.S., an unknown SRO

with a badge and a gun approached G.S. and P.S. and asked them to follow him to the station.

physical state and threatened to arrest her if she continued to ask about her daughter's well-being.

99. Eventually, a Huffman faculty member escorted Ms. Stearnes into the school's office,

but she waited 15 minutes before finally being allowed to see C.S. While she was forced to

Plaintiff T.L.P.

104. At all relevant times, T.L.P. was five feet, two inches tall, 120 pounds, and petite in stature.

105. [REDACTED]

[Redacted]

[Redacted]

v. 1

[Redacted]

Pursuant to BCS policy, Defendant BOE "does not allow the use of corporal punishment as an

enforce this policy and ensure that BCS personnel refrain from engaging in corporal punishment
as a means of discipline

backpack accidentally bumped Tarrant in the chest. T.A.P. then saw Tarrant reach for his belt.

Because she did not know what he was reaching for, T.A.P. panicked and ran.

100 - T.A.P. saw she was approximately seven feet. He grabbed her from

behind and threw her down into some bushes on the lawn

wear the contaminated clothing until she was released to her mother, Barbara Pettaway, at 5:00 p.m. that evening.

127. Barbara Pettaway contacted Defendant BOE the next day to complain about Tarrant's

reckless and dangerous use of Force ID against T.A.B. A DOE representative advised that the

Doctors advised that they could not take any action against the ...

131. Gaston ordered B.J. out of the classroom. Although the substitute teacher's only complaints were that B.J.'s shirt had been untucked and that he might have used profanity, Gaston immediately began to pat him down and go through his pockets. As the illegal search continued, B.J. repeatedly proclaimed his innocence and struggled to free himself from Gaston's

hold. At one point, B.J. tripped and fell to the ground, landing on his stomach. While B.J. lay on the ground, Gaston continued to search his back pockets. After a few minutes, Gaston called

Assistant Principal Gates to the scene. Gates is a six-foot tall male with an average build.

[REDACTED]

[REDACTED]

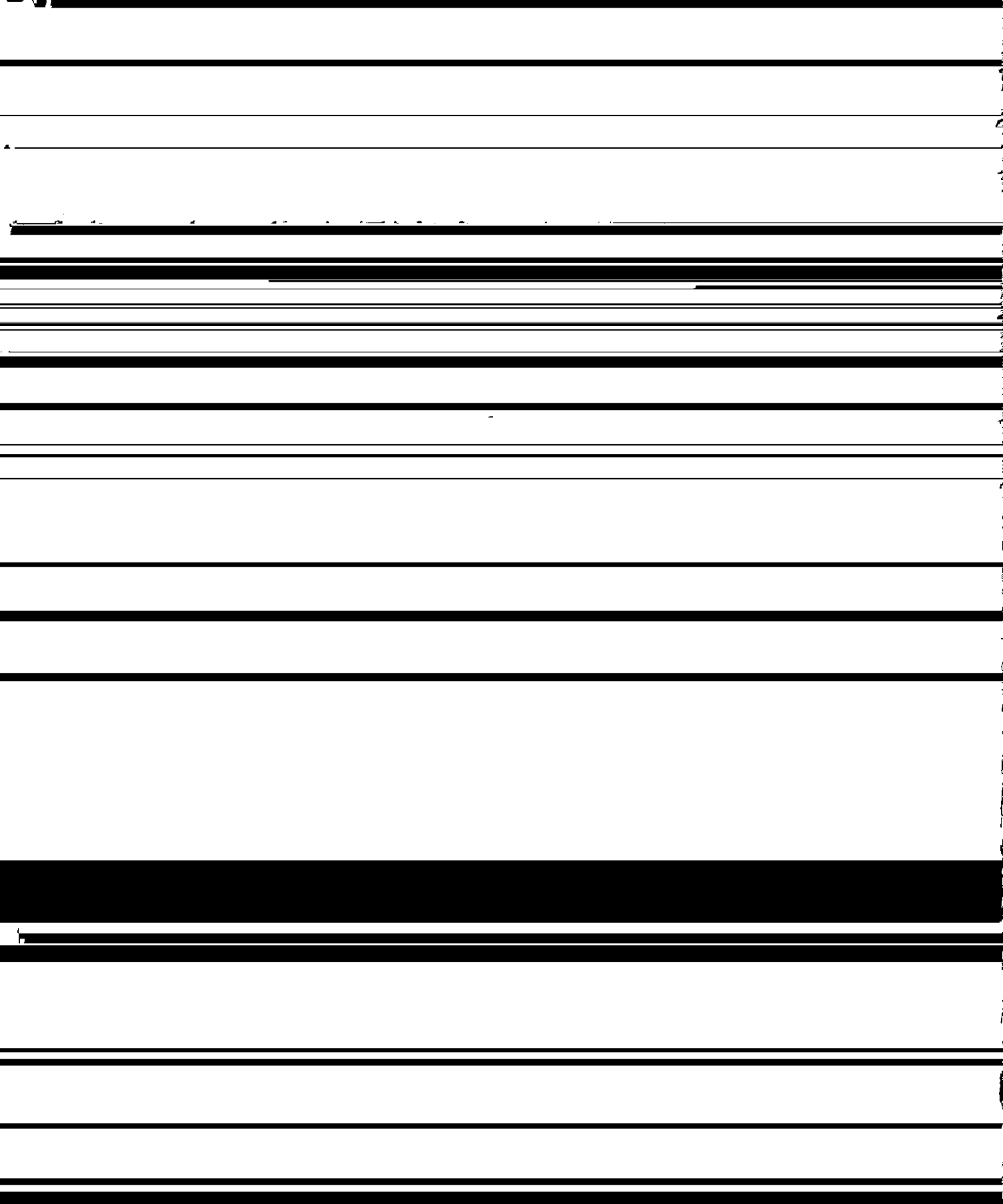
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

142. As a direct and proximate result of Officer Benson's actions, B.J. suffered emotional, psychological, and physical injury. B.J. endured nausea, violent vomiting, blindness for more



CLASS CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF

COUNT I

¶

Amendment Rights to be Free from Excessive Force
Defendant Roper, in his official capacity

14 C.F.R. § 1.101 (b) (1) (i) (ii) (iii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi) (xii) (xiii) (xiv) (xv) (xvi) (xvii) (xviii) (xix) (xx) (xxi) (xxii) (xxiii) (xxiv) (xxv) (xxvi) (xxvii) (xxviii) (xxix) (xxx)

Roper has violated and continues to violate the Fourth and Fourteenth Amendment rights of the Plaintiff class.

150 D. C. 11/11/10 11:11 AM

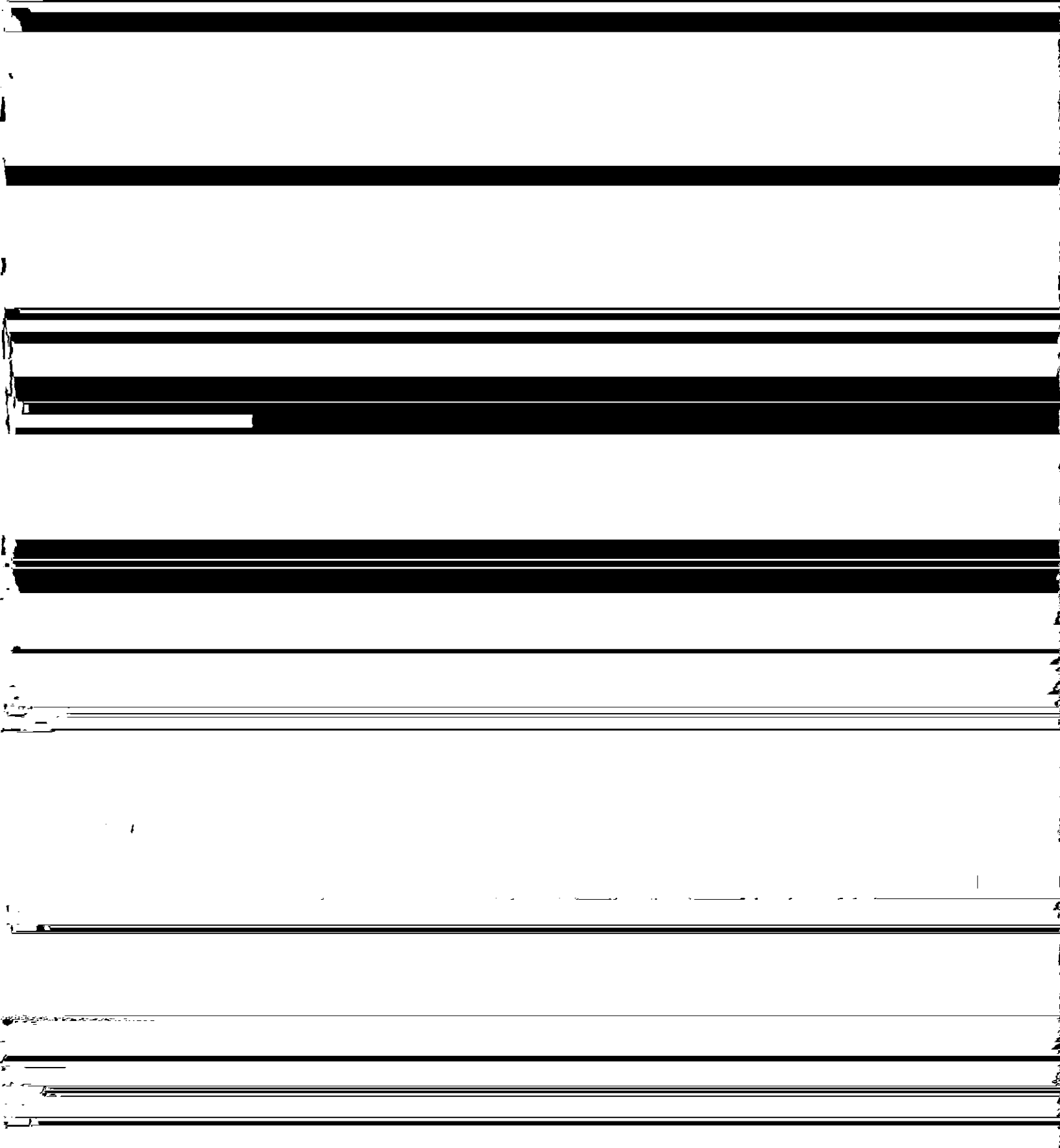
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file complaints against students for truancy while DDD is off-duty. 1/7/11

complaints, but also physically transport truant students back to school.

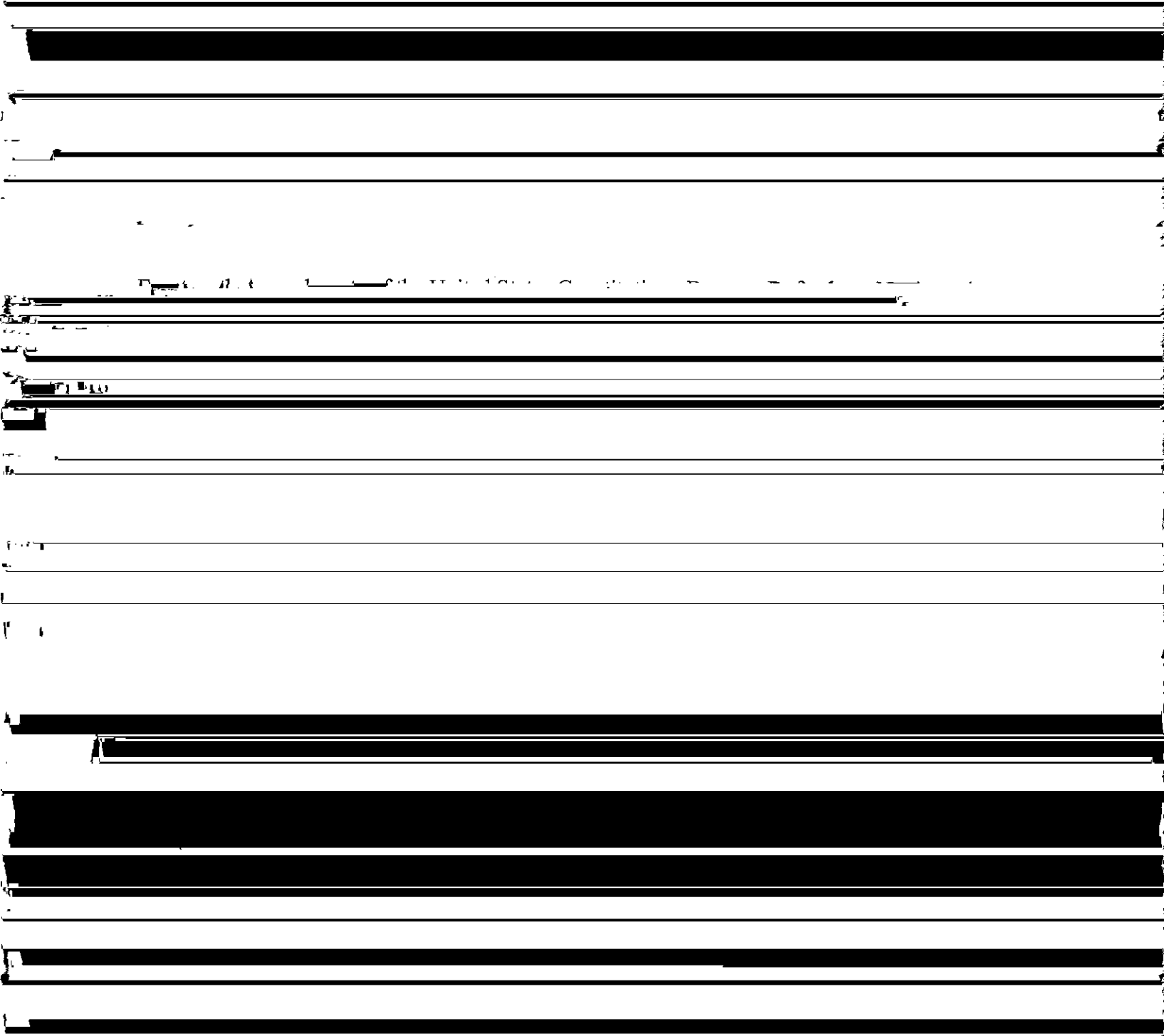
157 As a result of the above, the DDD is not responsible for the

157 D.C. 1-1-11 10:11:11 AM



deemed justified at its inception, which it was not, the use of a chemical weapon against Plaintiff J.W. was unconstitutional in that it was not reasonably related in scope to the circumstances justifying the interference.

161. Defendants Roper and Nevitt are liable pursuant to 42 U.S.C. § 1983 for sanctioning, enforcing, and implementing a policy, custom, and practice of subjecting BCS students, including Plaintiff J.W., to excessive force and illegal seizures in violation of the Fourth and



interference in the first place, and were calculated to injure, punish, humiliate, and intimidate

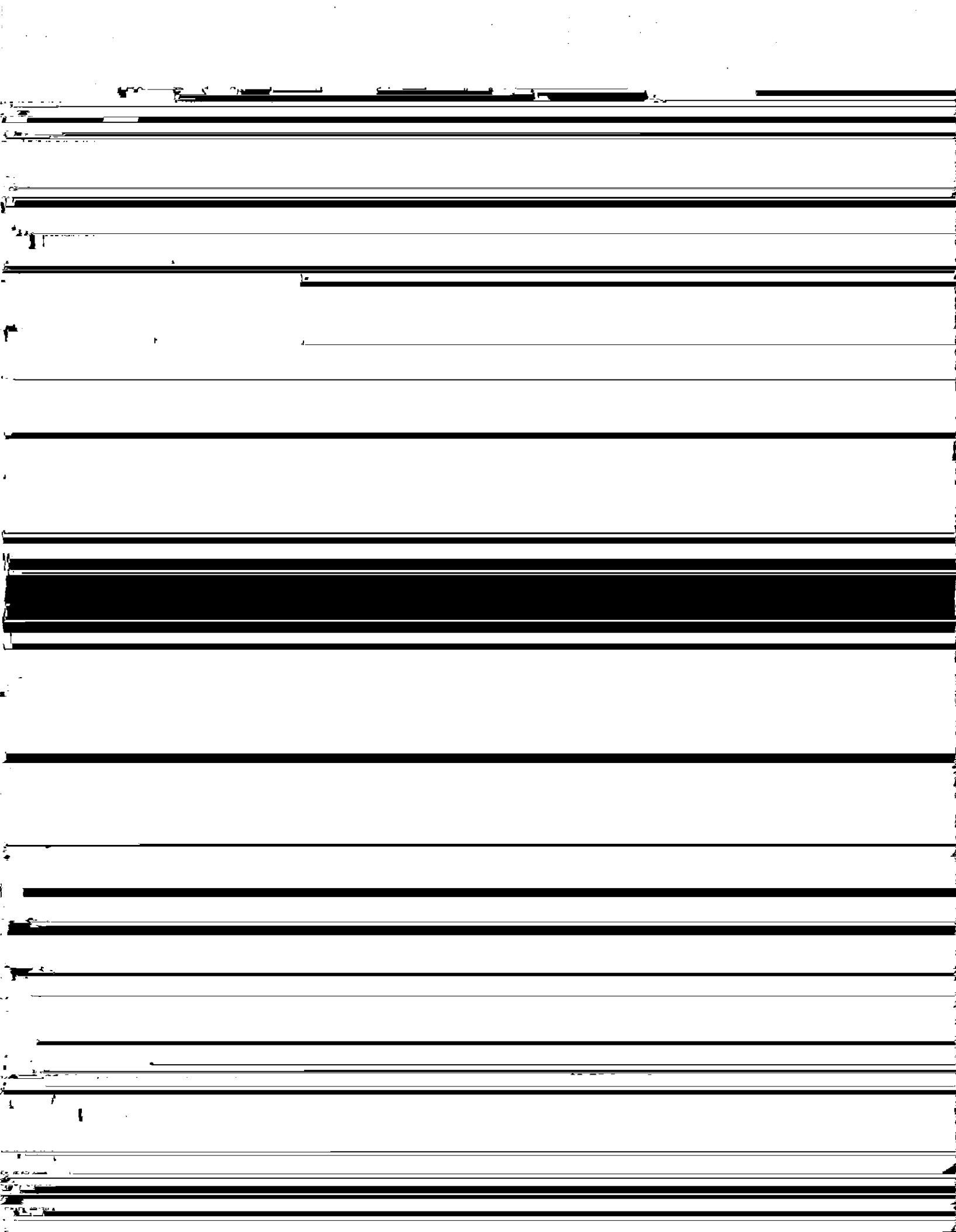
Plaintiff G.S. Accordingly, Defendant Clark's actions constitute an excessively intrusive seizure

Plaintiff P.S. in the face. The deployment of Freeze +P against Plaintiff P.S. was also unconstitutional in that it was not reasonably related in scope to the circumstances justifying the interference.

167. Defendants Roper and Clark are liable pursuant to 42 U.S.C. § 1983 for sanctioning,

[REDACTED]

[REDACTED]



173. By the forgoing actions and inactions, Defendants Roper and Tarrant are liable pursuant to 42 U.S.C. § 1983 for sanctioning, enforcing, and implementing a policy, practice and custom of unreasonably and unconstitutionally subjecting BCS students, including Plaintiff T.A.P., to excessive force in violation of the Fourth and Fourteenth Amendments of the United States Constitution. Because Defendants Tarrant and Roper acted in clear violation of well established

law, of which a reasonable person would have been aware, they are not entitled to qualified immunity. The actions of these Defendants were intentional, malicious, reckless, and showed a
eghellon d'agreed for the whole of Plaintiff T.A.P.

176

By the foregoing actions and inactions Defendants Boner and Renson are liable pursuant

4-10-10 10:00 AM

179. By the forgoing actions and inactions, these Defendants are liable pursuant to 42 U.S.C.

§ 1982 under the Fourteenth Amendment of the United States Constitution. ~~_____~~

I

I ~~W~~ ~~from~~ Defendant Dener's unlawful and illegal policies, practices, and systems. Dener

G.S. from Defendant Roper's unlawful and illegal policies, practices, and customs. Because

Defendants BOE and Witherspoon breached their duty to protect G.S. as required by the

Report of the American Bar Association and acted in clear violation of well established law of which a

reasonable person would have been aware, they are not entitled to qualified immunity.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

COUNT XIV

[REDACTED]

COUNT XV

Damages for Fourteenth Amendment Violations: Failure to Protect Plaintiff B.J.

Defendant's Motion to Dismiss Plaintiff's Complaint

in his official and individual capacity

COUNT XVI

**Damages for Conspiracy to Violate the Civil Rights of Plaintiff J.W.
under the Fourth and Fourteenth Amendments**

Plaintiff J.W. seeks damages for conspiracy to violate the Fourth and Fourteenth Amendments of the United States Constitution.

[REDACTED]

COUNT XVII

~~Defendant Roper, Defendant Birmingham Board of Education, and Defendant Witherspoon~~

1.

under the Fourth and Fourteenth Amendments

*Defendant Roper, Defendant Birmingham Board of Education, and Defendant Witherspoon,
in their official and individual capacities*

200 Defendant Roper, BOE, and Witherspoon have agreed in a consent to violate

203. Plaintiff G.S. seeks compensatory damages from these Defendants.

COUNT XVIII

**Damages for Conspiracy to Violate the Civil Rights of Plaintiff P.S.
under the Fourth and Fourteenth Amendments**

*Defendant Roper, Defendant Birmingham Board of Education, and Defendant Witherspoon,
in their official and individual capacities*

204. Defendants Roper, BOE, and Witherspoon

civil rights under the Fourth and Fourteenth Amendments - 42 U.S.C. § 1983

COUNT XIX

Damages for Conspiracy to Violate the Civil Rights of Plaintiff T.L.P.
under the Fourth and Fourteenth Amendments

*Defendant Roper, Defendant Birmingham Board of Education, and Defendant Witherspoon,
in their official and individual capacities*

208. Defendants Roper, BOE, and Witherspoon have engaged in a conspiracy to violate T.L.P.'s civil rights under the Fourth and Fourteenth Amendments of the U.S. Constitution. As

COUNT XX

**Damages for Conspiracy to Violate the Civil Rights of Plaintiff T.A.P.
under the Fourth and Fourteenth Amendments**

*Defendant Roper, Defendant Birmingham Board of Education, and Defendant Witherspoon,
in their official and individual capacities*

212. Defendants Roper, BOE, and Witherspoon have engaged in a conspiracy to violate

PLAINTIFF'S CONSTITUTIONAL RIGHTS TO EQUAL PROTECTION AND DUE PROCESS

COUNT XXII

Damages for Excessive Corporal Punishment inflicted upon Plaintiff T. A. D.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

in Violation of the Fourteenth Amendment

[REDACTED]

[REDACTED]

[REDACTED]

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enforcing, and implementing policies, customs, and practices that subject BCS students, including G.S., to bodily harm in violation of Alabama law. Defendants Clark and Roper acted

COUNT XXV

Damages for Assault and Battery on Plaintiff T.A.P., in Violation of Alabama Law
Defendant Roper, Defendant Moss, and Defendant Tarrant, in their official and individual capacities

228. By deploying chemical spray against Plaintiff T.A.P. as a means of intimidation, Defendant Tarrant committed the tort of assault and battery against T.A.P., in violation of

also kicked B.I. to the ground after denloving the chemical in B.I.'s face. Her actions were

intended to physically harm B.J. and caused him to fear imminent bodily harm.

232. Defendants Roper and Benson are liable pursuant to Alabama law for sanctioning, enforcing, and implementing policies, customs, and practices that subject BCS students, including B.I. to bodily harm in violation of Alabama law. Defendants Benson and Roper acted

maliciously, they are not entitled to discretionary function immunity provided by Alabama law.

226 PL-10155 C.F. Code § 37-2-201(b) does not protect these Defendants.

violation of Alabama law. Defendant Tarrant intentionally and recklessly sprayed a young child

incapacitated by five adult men. Defendant Tarrant's actions caused T.A.P. physical and

emotional distress that no reasonable child could be expected to endure

Defendants Benson and Roper acted willfully, maliciously, and with a callous disregard or indifference to B.J.'s rights. Because Defendants Benson and Roper acted willfully and maliciously, they are not entitled to discretionary function immunity provided by Alabama law.

245 Plaintiff B.J. seeks compensatory damages from these Defendants

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court grant the following relief:

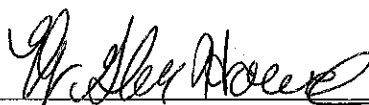
1. Assume jurisdiction over this matter;

2. Certify this action as a class action pursuant to Fed. R. Civ. P. 23(c) - 1(d)(2)

Respectfully submitted this 7th day of January, 2011.

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Attorneys for Plaintiffs



CERTIFICATE OF SERVICE

I hereby certify that on 7th day of January, 2011, a true and exact copy of the foregoing was served by United States mail, postage prepaid, addressed as follows:

Mark S. Boardman
Clay Carr
Boardman, Carr, Hutcheson and Bennett, P.C.
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FILED 11-1-2011 8:50:18 AM

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