

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

EDUCATIONAL MEDIA COMPANY
AT VIRGINIA TECH, INC., and
THE CAVALIER DAILY, INC.,

Plaintiffs,

v.

CIVIL ACTION NO. 3:06cv396

SUSAN R. SWECKER, ESTHER H. VASSAR,
and PAMELA O'BERRY EVANS, Commissioners, Virginia
Alcoholic Beverage Control Commission, W. CURTIS
COLEBURN, III, Chief Operating Officer, Virginia
Department of Alcoholic Beverage Control, and
FRANK MONAHAN, Director, Law Enforcement
Bureau of the Virginia Department of Alcoholic
Beverage Control,

Defendants.

ANSWER AND DEFENSES

Defendants, Susan R. Swecker, Esther H. Vassar, Pamela O'Berry Evans, W. Curtis Coleburn, III, and Frank Monahan (collectively "Defendants"), in their official capacities and by counsel, state as follows for their Answer (as well as for their Affirmative and/or other Defenses) to the Complaint:

ANSWER

1. With respect to the allegations of Paragraph 1 of the Complaint (references herein shall be to the paragraphs of the Complaint as numbered therein), the allegations are jurisdictional statements and conclusions of law to which no response is required. To the extent a response is

required, the Defendants admit that they are officials of the Virginia Department of Alcoholic Beverage Control and that the challenged regulations relate to the advertisement of alcoholic beverages. Defendants deny that the Plaintiffs' constitutional rights have been violated and that the challenged regulations violate the First or Fourteenth Amendments of the Constitution of the United States.

2. With respect to the allegations of Paragraph 2, the allegations are jurisdictional statements and conclusions of law to which no response is required.

3. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 3.

4. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 4.

5. The allegations of Paragraph 5 are admitted.

6. The allegations of Paragraph 6 are admitted.

7. The allegations of Paragraph 7 are admitted.

8. The allegations of Paragraph 8 are conclusions of law to which no response is required. To the extent a response is required, the allegations of Paragraph 8 are admitted.

9. With respect to the allegations of Paragraph 9, the Defendants aver that 3 VAC 5-20-40A speaks for itself and deny any and all assertions by the Plaintiffs that are inconsistent therewith.

10. With respect to the allegations of Paragraph 10, the Defendants aver that 3 VAC 5-20-40B speaks for itself and deny any and all assertions by the Plaintiffs that are inconsistent therewith.

11. With respect to the allegations of Paragraph 11, the Defendants aver that 3 VAC 5-

20-40 speaks for itself and deny any and all assertions by the Plaintiffs that are inconsistent therewith.

12. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 12.

13. With respect to the allegations of Paragraph 13, the Defendants aver that the August 22, 2005 letter of the ABC Standards Committee speaks for itself and deny any and all assertions by the Plaintiffs that are inconsistent therewith.

14. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 14.

15. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 15.

16. Defendants admit that the Virginia Tech Community is comprised of undergraduate, graduate and professional students as well as full and part time faculty and staff. The Defendants are without sufficient knowledge to admit or deny the remaining allegations of Paragraph 16.

17. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 17.

18. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 18.

19. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 19.

20. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 20.

21. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 21.

22. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 22.

23. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 23.

24. Defendants admit that the ABC Standards Committee precludes placing advertisements for alcoholic beverages in the *Collegiate Times*. The Defendants are without sufficient knowledge to admit or deny the remaining allegations of Paragraph 24.

25. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 25.

26. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 26.

27. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 27.

28. The allegations of Paragraph 28 are denied as stated. By way of further response, the Defendants admit only that no such determination has yet been made regarding Plaintiff, *The Cavalier Daily, Inc.*

29. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 29.

30. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 30.

31. The Defendants are without sufficient knowledge to admit or deny the allegations

of Paragraph 31.

32. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 32.

33. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 33.

34. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 34.

35. The Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 35.

36. The Defendants deny that there has been any determination that 3 VAC 5-20-40 applies to those wishing to advertise in the *Cavalier Daily*. The Defendants are without sufficient knowledge to admit or deny the remaining allegations of Paragraph 36.

37. The allegations of Paragraph 37 are conclusions of law to which no response is required. To the extent any response is required, the allegations of Paragraph 37 are denied.

38. The Defendants reassert, and incorporate by reference, their previous responses to Paragraphs 1 through 37 herein.

39. The allegations of Paragraph 39 are conclusions of law to which no response is required. To the extent any response is required, the allegations of Paragraph 39 are denied.

40. The allegations of Paragraph 40 are conclusions of law to which no response is required. To the extent any response is required, the allegations of Paragraph 40 are denied.

41. The allegations of Paragraph 41 are conclusions of law to which no response is required. To the extent any response is required, the allegations of Paragraph 41 are denied.

42. The allegations of Paragraph 42 are conclusions of law to which no response is

required. To the extent any response is required, the allegations of Paragraph 42 are denied.

43. The Defendants reassert, and incorporate by reference, their previous responses to Paragraphs 1 through 42 herein.

44. The allegations of Paragraph 44 are conclusions of law to which no response is required. To the extent any response is required, the allegations of Paragraph 44 are denied.

45. The allegations of Paragraph 45 are conclusions of law to which no response is required. To the extent any response is required, the allegations of Paragraph 45 are denied.

46. The allegations of Paragraph 46 are conclusions of law to which no response is required. To the extent any response is required, the allegations of Paragraph 46 are denied.

47. The Defendants deny any and all allegations not specifically admitted herein and state that the Plaintiffs, jointly or severally, are entitled to no relief on the basis of the Complaint or the relief requested therein.

AFFIRMATIVE AND OTHER DEFENSES

1. The Defendants affirmatively aver that, to the extent 3 VAC 5-20-40 (and/or any subpart thereof) regulates commercial speech that is protected by the First Amendment, it advances a substantial governmental interest. The Defendants further affirmatively aver that 3 VAC 5-20-40 (and/or any subpart thereof) directly advances that substantial governmental interest and is no more extensive than necessary to serve such interest.

2. The Defendants affirmatively aver that the present action is not cognizable under 42 U.S.C. § 1983 and/or any federal statute.

3. The Defendants affirmatively aver that Plaintiffs lack standing to challenge 3 VAC 5-20-40 since, by way of illustration but not limitation, no final determination has yet been made

that either the *Collegiate Times* or *The Cavalier Daily* constitutes a "college student publication."


4. The Defendants affirmatively aver that the Complaint is devoid of merit and there are no facts to support Plaintiffs' conclusory allegations that their constitutional rights have been violated and/or that the regulations at issue herein violate the First and/or Fourteenth Amendments of the Constitution of the United States.

4. The Defendants deny that the Plaintiffs have suffered any cognizable injury or damages as a result of the passage and/or enforcement of the regulations at issue herein.

5. The Defendants reserve the right to assert all applicable affirmative defenses to the extent that such defenses may be supported by further investigation, discovery, and/or evidence presented at the trial of this matter.

Wherefore, the Defendants, by counsel, respectfully request that the Court dismiss Plaintiffs' Complaint *with prejudice*, enter judgment in Defendants' favor, award Defendants' their costs and fees incurred in this action, and grant Defendants any other relief that the Court deems just and appropriate.

Respectfully submitted,
SUSAN R. SWECKER, ESTHER H. VASSAR,
PAMELA O'BERRY EVANS, W. CURTIS
COLEBURN, III, and FRANK MONAHAN

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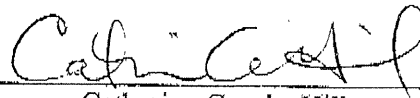
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer and Defenses was sent via first class mail, postage prepaid, this 7th day of July 2006, to: Frank M. Feibelman, Esquire, Cooperating Attorney for the ACLU of Virginia, 5206 Markel Road, Suite 102, Richmond, Virginia 23230 and Rebecca K. Glenberg, Esquire, American Civil Liberties Union of Virginia Foundation, Inc., 530 East Main Street, Suite 310, Richmond, Virginia 23219, Counsel for Plaintiffs.



Catherine Crooks Hill