

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

<b>AARON TOBEY,</b>  <b>Plaintiff,</b>  <b>v.</b>  <b>JANET NAPOLITANO, et al.</b>  <b>Defendants.</b>	) ) ) ) ) ) ) ) ) ) )	<b>Civil Action No. 3:11cv154-HEH</b>
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**ANSWER AND AFFIRMATIVE DEFENSES**

Defendants, Capital Region Airport Commission (the “Commission”), Victor Williams (“Williams”) and Calvin Vann (“Vann”), (collectively, the “Commission Defendants”), by counsel, state for their Answer and Affirmative Defenses to the Complaint as follows:

**ANSWER**

**Preliminary Statement**

To the extent that the unnumbered “Preliminary Statement” alleges facts with respect to actions of the Commission Defendants, they are denied.

**I. Jurisdiction**

1. The Commission Defendants admit that there is federal question jurisdiction by this Court, to the extent those claims survive, but deny any deprivation of civil rights or any other right protected by the U.S. Constitution or federal or state law.
2. The Commission Defendants admit that pendant jurisdiction exists over the state law claims to the extent that the federal claims are viable.

## **II. Venue**

3. The Commission Defendants admit that venue is proper in the Eastern District of Virginia. The Commission Defendants deny they engaged in any acts that give rise to plaintiff's claims.

## **III. Parties**

4. On information and belief, the allegations in paragraph 4 are admitted.

5. The allegations in paragraph 5 are directed at another defendant to which no response by the Commission Defendants is required.

6. The allegations in paragraph 6 are directed at another defendant to which no response by the Commission Defendants is required.

7. With respect to the allegations in paragraph 7, the Commission Defendants admit the first sentence. With respect to the second sentence, the Commission Defendants state that the powers and authority of the Commission are set out in its Enabling Act, 1980 Acts of Assembly, Chapter 380, and deny any allegations inconsistent therewith. The allegations in the third sentence are admitted. With respect to the allegations in the fourth sentence, the Commission Defendants deny that the Commission engages in operations with TSA and the Henrico County Division of Police jointly or has agreements to do so, admits that the Commission has entered into separate agreements with TSA and Henrico County police and deny any allegations inconsistent with the terms of such agreements.

8. With respect to the allegations in paragraph 8, the Commission Defendants state that Williams is Director of Public Safety and Operations at the Commission and has some management, direction and supervisory responsibilities of the

Police employed by the Commission and some responsibilities with respect to programs, policies, practices and procedures over police employed by the Commission with respect to supervision and interaction of such police with other agencies. All other allegations in paragraph 8 are denied.

9. The Commission Defendants lack sufficient information with respect to the allegations in paragraph 9 to admit or deny, and, therefore, they are denied.

10. The allegations in paragraph 10 are admitted.

11. The Commission Defendants lack sufficient information with respect to the allegations in paragraph 11 to admit or deny, and, therefore, they are denied.

#### **IV. Factual Allegations**

12. On information and belief, the allegations in paragraph 12 are admitted.

13. On information and belief, the allegations in paragraph 13 are admitted.

14. On information and belief, the allegations in paragraph 14 are admitted.

15. On information and belief, the allegations in paragraph 15 are admitted.

16. The Commission Defendants lack sufficient information with respect to the allegations in paragraph 16 to admit or deny, and, therefore, they are denied.

17. With respect to the allegations in paragraph 17, the Commission Defendants state that the terms of TSA Management Directive No. 100.4 speak for themselves and deny any allegations inconsistent therewith and lack sufficient information to admit or deny the remaining allegations, and, therefore, they are denied.

18. The Commission Defendants state that TSA Management Directive No. 100.4 speaks for itself and deny any allegation inconsistent therewith.

19. With respect to the allegations in paragraph 19, the Commission Defendants state that TSA Management Directive No. 100.4 speaks for itself and deny any allegation inconsistent therewith.

20. With respect to the allegations in paragraph 20, the Commission Defendants admit that the Commission has entered into agreements with the TSA, the terms of which speak for themselves and deny any allegations inconsistent therewith.

21. With respect to the allegations in paragraph 21, the Commission Defendants state that the terms of the Memorandum of Agreement speak for themselves and deny any allegations inconsistent therewith.

22. With respect to the allegations in paragraph 22, the Commission Defendants state that the terms of the Memorandum of Agreement speak for themselves and deny any allegations inconsistent therewith.

23. With respect to the allegations in paragraph 23 concerning TSA, the Commission Defendants state that the terms of the Memorandum of Agreement speak for themselves and deny any allegations inconsistent therewith. With respect to the allegations in paragraph 23 concerning Henrico County Police, they are denied.

24. With respect to the allegations in paragraph 24, the Commission Defendants state that the terms of the Memorandum of Agreement speak for themselves and deny any allegations inconsistent therewith.

25. With respect to the allegations in paragraph 25, the Commission Defendants admit that at approximately 2:00 P.M. on December 30, 2010, plaintiff entered the security checkpoint at RIC with a ticket to Wausau, Wisconsin but lacks

sufficient information to admit or deny the remaining allegations, and, therefore, they are denied.

26. With respect to the allegations in paragraph 26, the Commission Defendants admit that after 2:00 P.M. on December 30, 2010, plaintiff had the words of the 4<sup>th</sup> Amendment to the U.S. Constitution written across his chest but lack sufficient information to admit or deny the remaining allegations, and, therefore, they are denied.

27. With respect to the allegations in paragraph 27, the Commission Defendants lack sufficient information to admit or deny the allegations and therefore, they are denied.

28. On information and belief, the allegations in paragraph 28 are admitted.

29. With respect to the allegations in paragraph 29, the Commission Defendants admit that plaintiff proceeded to the conveyor belt area but lack sufficient information to admit or deny the remaining allegations, and, therefore, they are denied.

30. With respect to the allegations in paragraph 30, the Commission Defendants lack sufficient information to admit or deny the allegations, and, therefore, they are denied.

31. With respect to the allegations in paragraph 31, the Commission Defendants admit that the plaintiff removed his clothing while standing by the conveyor, but lack sufficient information to admit or deny the remaining allegations, and, therefore, they are denied.

32. The Commission Defendants lack sufficient information with respect to the allegations in paragraph 32 to admit or deny, and, therefore, they are denied.

33. The Commission Defendants lack sufficient information with respect to the allegations in paragraph 33 to admit or deny, and, therefore, they are denied.

34. With respect to the allegations in paragraph 34 of the Complaint, the Commission Defendants admit that Vann and another Commission police officer approached plaintiff, but lack sufficient information with respect to the remaining allegations, and, therefore, they are denied.

35. The allegations in paragraph 35 are denied.

36. With respect to the allegations in paragraph 36, the Commission Defendants admit that a Commission police officer collected plaintiff's belongings with assistance from a TSA agent. Any allegations inconsistent therewith is denied.

37. With respect to the allegations in paragraph 37, the Commission Defendants admit that after advising the Commission officers that plaintiff had removed his clothes, no TSA agent communicated with the Commission's officers on any subject regarding the plaintiff. All other allegations are denied.

38. With respect to the allegations in paragraph 38, the Commission Defendants lack sufficient information to admit or deny the allegations, and, therefore, they are denied.

39. The allegations in paragraph 39 are denied.

40. On information and belief, the allegations in paragraph 40 are admitted with respect to Defendant Vann but the Commission Defendants lack information sufficient to admit or deny the remaining allegations and, therefore, they are denied.

41. The allegations in paragraph 41 are denied.

42. As there is no paragraph 42, no answer is required.

43. The allegations in paragraph 43 are denied.

44. The allegations in paragraph 44 are denied.

45. With respect to allegations in paragraph 45, the Commission Defendants state that a background check was performed with respect to plaintiff while he was at the RIC police station. All other allegations are denied.

46. With respect to the allegations in paragraph 46, the Commission Defendants admit plaintiff had his photograph taken but the Commission Defendants lack information sufficient to admit or deny the remaining allegations, and, therefore, they are denied.

47. With respect to the allegations in paragraph 47, the Commission Defendants admit that plaintiff was advised that he was to be transported to the Henrico County magistrate's office. All other allegations are denied.

48. With respect to the allegations in paragraph 48, the Commission Defendants admit that plaintiff's belongings were searched while he was at the RIC police station, but lack sufficient information to admit or deny the remaining allegations, and, therefore, they are denied.

49. With respect to the allegations in paragraph 49, the Commission Defendants admit that plaintiff was advised that the University of Cincinnati Police Department would be informed of his detention, but all other allegations are denied.

50. The allegations in paragraph 50 are denied.

51. The allegations in paragraph 51 are denied.

52. The allegations in paragraph 52 are denied.

53. With respect to the allegations in paragraph 53, the Commission Defendants state that plaintiff was advised that he would be released on summons. All other allegations are denied.

54. The allegations in paragraph 54 are denied.

55. On information and belief, the allegations in paragraph 55 are admitted.

56. On information and belief, the allegations in paragraph 56 are admitted.

57. On information and belief, the allegations in paragraph 57 are admitted.

58. The allegations in paragraph 58 are denied.

59. With respect to the allegations in paragraph 59, the Commission Defendants lack sufficient information to admit or deny the allegations, and, therefore, they are denied.

60. On information and belief, the allegations in paragraph 60 are admitted.

61. With respect to the allegations in paragraph 61, the Commission Defendants lack sufficient information to admit or deny the allegations, and, therefore, they are denied.

62. With respect to the allegations in paragraph 62, the Commission Defendants lack sufficient information to admit or deny the allegations, and, therefore, they are denied.

63. On information and belief, the allegations in paragraph 63 are admitted.

64. With respect to the allegations in paragraph 64, the Commission Defendants lack sufficient information to admit or deny the allegations, and, therefore, they are denied.

65. The allegations in paragraph 65 are denied.



66. With respect to the allegations in paragraph 66, the Commission Defendants lack sufficient information to admit or deny as to what plaintiff observed, and, therefore, they are denied.

67. With respect to the allegations in paragraph 67, the Commission Defendants state that the terms of the Commission's rules and regulations speak for themselves and deny any allegations inconsistent therewith.

68. With respect to the allegations in paragraph 68, the Commission Defendants admit that the Commission's rules and regulations provide for First Amendment expression, including picketing and handbilling, under appropriate time, place and manner restrictions but state that such rules speak for themselves and deny any allegations inconsistent therewith.

69. With respect to the allegations in paragraph 69, the Commission Defendants admit that the Commission rules and regulations permit solicitation, but state that such rules speak for themselves and deny any allegations inconsistent therewith.

70. With respect to the allegations in paragraph 70, the Commission Defendants admit that at the time of the incident, and at other times, the Commission has permitted a variety of speech activities at RIC, including those listed in paragraph 70, under appropriate time, place and manner restrictions. All other allegations are denied.

71. The Commission Defendants admit that plaintiff has accurately quoted from Virginia Code § 18.2-415, but state that the language of the code section speaks for itself and deny any characterization inconsistent therewith.

72. The allegations in paragraph 72 are denied.

73. On information and belief, the allegations in paragraph 73 are admitted.

74. On information and belief, the allegations in paragraph 74 are admitted.

75. With respect to the allegations in paragraph 75, the Commission Defendants lack sufficient information to admit or deny the allegations, and, therefore, they are denied.

76. On information and belief, the allegations in paragraph 76 are admitted.

77. On information and belief, the allegations in paragraph 77 are admitted.

78. With respect to the allegations in paragraph 78 and to the extent that “message” is used to encompass the time, place and manner, the allegations are denied.

79. With respect to the allegations in paragraph 79, the Commission Defendants deny that the clothing removed at the screening area was unnecessary and lack sufficient information to admit or deny the motive for removal of such clothing and, therefore, deny the same. All remaining allegations are denied.

80. The allegations in paragraph 80 are denied.

81. The allegations in paragraph 81 are denied.

82. The allegations in paragraph 82 are denied.

83. The allegations in paragraph 83 are denied.

84. The allegations in paragraph 84 are denied.

85. The allegations in paragraph 85 are denied.

86. The allegations in paragraph 86 are denied.

87. The allegations in paragraph 87 are denied.

88. With respect to the allegations in paragraph 88, the Commission Defendants deny any action which would give rise to plaintiff’s claims.

89. The allegations in paragraph 89 are denied.

- 90. The allegations in paragraph 90 are denied.
- 91. The allegations in paragraph 91 are denied.
- 92. The allegations in paragraph 92 are denied.
- 93. The allegations in paragraph 93 are denied.
- 94. The allegations in paragraph 94 are denied.
- 95. The allegations in paragraph 95 are denied.
- 96. The allegations in paragraph 96 are denied.
- 97. The allegations in paragraph 97 are denied.

**V. Claims**

98. The Commission Defendants incorporate their answers to paragraphs 1 through 97 as set forth above.

- 99. The allegations in paragraph 99 are denied.
- 100. The allegations in paragraph 100 are denied.
- 101. The allegations in paragraph 101 are denied.
- 102. The allegations in paragraph 102 are denied.
- 103. The allegations in paragraph 103 are denied.

**Second Claim**

104. The Commission Defendants incorporate their answers to paragraphs 1 through 103 as set forth above.

- 105. The allegations in paragraph 105 are denied.
- 106. The allegations in paragraph 106 are denied.
- 107. The allegations in paragraph 107 are denied.
- 108. The allegations in paragraph 108 are denied.

109. The allegations in paragraph 109 are denied.

**Third Claim**

110. The Commission Defendants incorporate their answers to paragraphs 1 through 109 as set forth above.

111. The allegations in paragraph 111 are denied.

112. The allegations in paragraph 112 are denied.

113. The allegations in paragraph 113 are denied.

114. The allegations in paragraph 114 are denied.

115. The allegations in paragraph 115 are denied.

116. The allegations in paragraph 116 are denied.

**Fourth Claim**

117. The Commission Defendants incorporate their answers to paragraphs 1 through 116 as set forth above.

118. The allegations in paragraph 118 are denied.

119. The allegations in paragraph 119 are denied.

120. The allegations in paragraph 120 are denied.

**Fifth Claim**

121. The Commission Defendants incorporate their answers to paragraphs 1 through 120 as set forth above.

122. The allegations in paragraph 122 are denied.

123. With respect to the allegations in paragraph 123, the allegations contain characterizations that require no response by the Commission Defendants.

124. The allegations in paragraph 124 are denied.

125. The allegations in paragraph 125 are denied.

#### **VI. Need for Relief**

126. The Commission Defendants admit that plaintiff purports to seek a declaratory judgment, but deny that the Commission Defendants violated the U.S. Constitution, laws or regulations and deny that plaintiff is entitled to injunctive relief as to them.

127. The allegations in paragraph 127 are denied.

128. The allegations in paragraph 128 are denied.

#### **Prayer For Relief**

The Commission Defendants deny that plaintiff is entitled to any relief against them and pray that all claims as to them be dismissed with prejudice.

#### **AFFIRMATIVE DEFENSES**

1. The Commission and the individual Commission employees sued in their official capacities are immune from the state law claims under the doctrine of sovereign immunity.
2. The Commission employees sued in their individual capacities are immune from the federal and state law claims under the doctrine of qualified immunity.
3. Plaintiff fails to state a Section 1983 claim against the Commission or Williams and Vann acting in their official capacities.
4. Plaintiff's alleged damages are caused by Plaintiff's conduct and/or the conduct of others and not the conduct of the Commission Defendants.

Respectfully Submitted,

CAPITAL REGION AIRPORT  
COMMISSION; VICTOR WILLIAMS and  
CALVIN VANN

/s/ Belinda D. Jones

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of May, 2011, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record, including:

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