

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

ROBERT L. PASCO,)
)
 Plaintiff,)
)
 v.)
)
 HANK ZIMMERMAN,)
 individually and in his official capacity)
 as Chairman of the Board of Trustees)
 of the Shenandoah County Library)
)
 BOARD OF TRUSTEES of the)
 SHENANDOAH COUNTY LIBRARY,)
)
 SHENANDOAH COUNTY LIBRARY,)
)
 and)
)
 JAMES DALLAS MOORE,)
)
 Defendants.)

Civil Action No.: 5:11-cv-00087

MOTION TO DISMISS

COMES NOW the defendant, JAMES DALLAS MOORE (“Moore”), by counsel, and moves this court pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the plaintiff’s suit with prejudice for failure to state claims upon which relief may be granted and lack of subject matter jurisdiction; in support thereof, defendant states as follows:

1. The plaintiff has failed to state a claim or cause of action for which relief may be granted against this defendant under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. §§ 1983 and 1988, on the grounds that, based on the actual facts alleged in the complaint, the actions attributed to defendant Moore were clearly not taken

against the plaintiff under color of state law, do not constitute state action, and do not give rise to a federal claim as recognized under the authorities cited by the plaintiff in his complaint.

2. Inasmuch as the plaintiff has failed to state a claim for relief against this defendant for violation of any federal rights protected by the United States Constitution or pursuant to 42 U.S.C. § 1983, this court is without subject matter jurisdiction as to the claims alleged against defendant Moore.

3. All claims, including the state law claims, should be dismissed. There are no compelling reasons or circumstances that would justify this court's retention of the state law claims raised against this defendant and, therefore, these should be dismissed.

WHEREFORE, defendant Moore respectfully requests that for all of the reasons set forth in his memorandum in support of motion to dismiss, and for any additional reasons to be argued at hearing of this matter, the court grant defendant Moore's motion to dismiss pursuant to Rule 12(b)(6) and dismiss this matter as to any allegations and claims brought against him.

JAMES DALLAS MOORE

By Counsel

/s/

Julia B. Judkins
Virginia State Bar No. 22597
Bancroft, McGavin, Horvath & Judkins, P.C.
3920 University Drive
Fairfax, Virginia 22030
(703) 385-1000 (telephone)
(703) 385-1555 (facsimile)
jjudkins@bhmjlaw.com
Counsel for Defendant James Dallas Moore

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2011, I electronically filed the foregoing **Motion to Dismiss** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Timothy E. Cupp (VBN 23017)
CUPP & CUPP
1951-D Evelyn Byrd Avenue
P.O. Box 589
Harrisonburg, Virginia 22803
Cupplaw@comcast.net
Counsel for Plaintiff

/s/

Julia B. Judkins
Virginia State Bar No. 22597
Bancroft, McGavin, Horvath & Judkins, P.C.
3920 University Drive
Fairfax, Virginia 22030
(703) 385-1000 (telephone)
(703) 385-1555 (facsimile)
Judkins@bmhjlaw.com
Counsel for Defendant James Dallas Moore