

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

Jane Doe I and Jane Doe II<sup>1</sup>,

Plaintiffs,

Civil Action No. 6:15-cv-785-Orl-31TBS

-vs-

VALENCIA STATE COLLEGE BOARD OF TRUSTEES in its official capacity; LINDA  
SHAHEEN, BARBARA BALL, and MAUREEN BUGNACKI in their individual capacities.

Defendants

\_\_\_\_\_ /

**COMPLAINT AND DEMAND FOR JURY TRIAL**

PLAINTIFFS Jane Doe I (“Doe” or “Plaintiff(s)”) and Jane Doe II (“Doe” or  
“Plaintiff(s)”) sue Valencia State College’s Board of Trustees (“Valencia”); Linda Shaheen  
 (“Shaheen” or “Defendant(s)”; Barbara Ball (“Ball” or “Defendant(s)”; and Maureen Bugnacki  
 (“Bugnacki” or “Defendant(s)”), and states the following in good support of this Complaint:

**NATURE OF THE ACTION**

1. This is a 42 U.S. Code § 1983 federal civil rights case under the First and Fourth  
Amendments of the United States Constitution as applied to the States under the United States  
Constitution’s Fourteenth Amendment for the Defendants’ individual and collective personal,  
malicious, and unlawful violations under color of state law of Plaintiffs’ individual and collective

---

<sup>1</sup> Consistent with other federal courts’ treatment of party names in highly sensitive cases involving sexual and quasi-sexual activity, see, e.g.,  
*Doe v. Erskine College*, Case No. 8:04-23001, 2006 WL 1473853 (D.S.C. May 25, 2006), and to protect the privacy, safety, and dignity of  
Plaintiffs and their families, Plaintiffs are proceeding anonymously in this initial pleading.

constitutional rights to free speech and protection against unreasonable search of Plaintiffs' bodies as well as state tort claims for civil conspiracy.

2. Defendants committed these unlawful violations of Plaintiff's constitutional and state rights under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

## I. JURISDICTION AND VENUE

3. Plaintiffs bring this action pursuant 42 U.S.C. § 1983 for violations of civil rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution.

4. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights); 28 U.S.C. § 1367 provides supplemental jurisdiction over the state law tort claims that arose from the same common nuclei of facts.

5. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391(b) and M.D. Fla. Loc. R. 1.02 (c). Defendants' primary employment is in this district and division, and Defendants' independent and collective malicious and unlawful violations under color of state law of Plaintiff's constitutional rights giving rise to the claims herein accrued within this district and division.

6. At all material times, Defendants committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiffs' human, safety, and property rights.

7. These constitutional law violations are "capable of repetition, yet evading review." *Roe v. Wade*, 410 U.S. 113, 125 (1973) (citing *Southern Pacific Terminal Co. v. ICC*,

219 U. S. 498, 515 (1911), *Moore v. Ogilvie*, 394 U. S. 814, 816 (1969), *Carroll v. Princess Anne*, 393 U. S. 175, 178-179 (1968), *United States v. W. T. Grant Co.*, 345 U. S. 629, 632-633 (1953)).

## II. PARTIES

**8.** Plaintiff Jane Doe I is an adult female Florida resident residing within this Court's jurisdiction and otherwise sui juris. Plaintiff is a former Valencia State College Sonography Program student.

**9.** Plaintiff Jane Doe II is an adult female Florida resident residing within this Court's jurisdiction and otherwise sui juris. Plaintiff is a former Valencia State College Sonography Program student.

**10.** Defendant Valencia Board of Trustees is now and has at all material times has been the governing body of Valencia State College, a political subdivision of the State of Florida.

**11.** Defendant Barbara Ball is now and has been at all material times the Program Chair for Valencia State College's Medical Diagnostic Sonography Program. Ball is a State employee.

**12.** Defendant Linda Shaheen is now and has been at all material times the Clinical and Laboratory Coordinator for Valencia State College's Medical Diagnostic Sonography Program. Shaheen is a State employee.

**13.** Defendant Maureen Bugnacki is now and has been at all material times a Valencia State College laboratory technician in Valencia State College's Medical Diagnostic Sonography Program. Bugnacki is a State employee.

### III. FACTUAL ALLEGATIONS

1. Valencia State College is a State of Florida educational institute located solely within the Middle District of Florida.

2. Valencia State College has its own rules of governance, policies, and procedures. Each state college in Florida operates independently from other state colleges, and each state college is governed by its own Board of Trustees. Doe I & Doe II sue Valencia State College's Board of Trustees in its official capacity, for the actions of its co-defendants, who are Valencia employees. See *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658 (1978), *inter alia*.

3. All defendants are State actors, and as such, the United States Constitution governs their individual and collective actions when acting on Valencia's behalf.

4. Valencia's formal and informal policies, written or unwritten, allowed, encouraged or enabled Defendants Shaheen, Ball, and Bugnacki to violate Plaintiffs' individual constitutional rights and conspire to commit these constitutional violations. Furthermore, Valencia has ratified its co-defendants' behavior in subsequent administrative hearings.

5. This issue is a matter of great public concern. As a public school, Valencia's formal and informal policies, practices, practices, and procedures have great impact upon its students, their families, and Florida's citizenry. This particular State conduct would make any ordinary member of society stand up and proclaim, "That's outrageous!"

6. Valencia retaliated against Doe I & Does II's exercise of their free speech rights when Plaintiffs peacefully protested Valencia's policy of warrantless vaginal probes of female

sonography students, and Valencia acted with reckless indifference to Doe I & Doe II's First and Fourth Amendment rights under the United States Constitution.

7. Plaintiffs were formerly enrolled in Valencia State College's Medical Diagnostic Sonography Program in 2013. The Medical Diagnostic Sonography Program is highly competitive and Valencia State College admits only a handful of students each year; therefore, Plaintiffs' expended tremendous energies to get into the program and maintain their grade point averages.

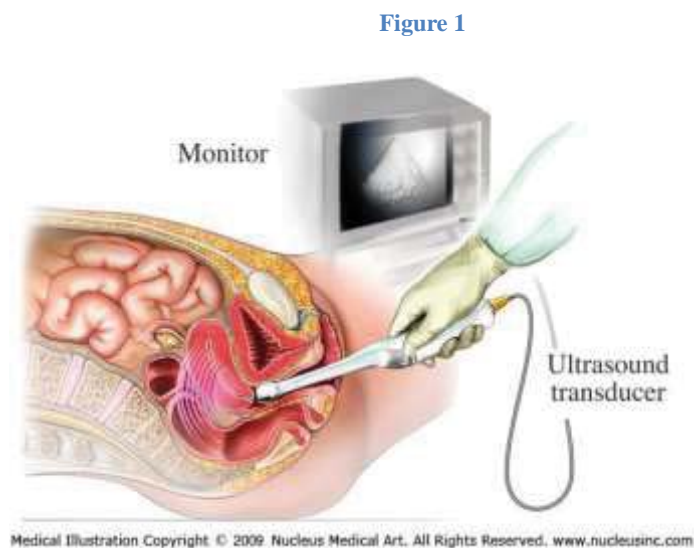
8. Plaintiffs also had to review the Medical Diagnostic Sonography Program's guidelines and requirements before acceptance into Valencia's program. After acceptance into the program, Valencia State College required Plaintiffs to attend an orientation that further described the program and set Plaintiffs' expectations about how the program operated. During that orientation, Valencia State College had a second year student, Jennifer Astor (nicknamed the "TransVag Queen") explained the Medical Diagnostic Sonography Program's faculty believed that students should undergo invasive transvaginal ultrasound procedures in order to become better sonography technicians. Valencia positioned these transvaginal probes as voluntary, but its actual policy and practice was that they were not.

9. In fact, Valencia's established and widespread policy was to browbeat students who did not consent to those invasive probes and threaten Plaintiffs' academic standing as well as their future careers until the students complied. This policy, although not express, was a widespread practice that was so permanent and well settled as to constitute a custom or usage with the force of law.

**10.** A transvaginal ultrasound probe is a procedure a technician uses an ultrasound transducer (“probe”) to detect problems with fertility (among others). See <http://www.webmd.com/women/pelvic-ultrasound>

**11.** The ultrasound transducer is a probe a sonography technician insert into a female’s vagina. It is a large device and not recommended for females who have not had sexually intercourse (“virgins”) or those females with small vaginal orifices. The probe must be lubricated before insertion due to its girth and length. It is extremely invasive and often painful.

**12.** After a sonography technician inserts this large probe into a patient’s vagina, the technician observes the patient’s cervix and other reproductive anatomy on a monitor and searches for structural/organic abnormalities. See Plaintiffs' Incorporated Exhibit Figure 1 (below).



**13.** In fall 2013, Plaintiffs expressed concern to Defendant Ball about having to undergo invasive vaginal probes throughout the program, one of many concerns being the

program had a male student who would also probe the female Plaintiffs on a regular basis. Defendant Ball told Plaintiffs they could find another school if they did not wish to be probed. This is despite the fact that Defendant Shaheen had described the probes as voluntary and not a program requirement during Orientation in April 2013.<sup>2</sup>

**14.** In March 2014, Plaintiffs and their Program cohorts began practicing ultrasound vaginal probes upon one another. Plaintiffs endured these invasive probes nearly every week, yet Valencia State College's Medical Sonography Program had and still has anatomically correct simulators designed specifically for students to practice sonography exams upon them.<sup>3</sup>

**15.** Additionally, Plaintiffs and all other students had clinical practice at Central Florida hospitals where Plaintiffs practiced upon actual patients in a medical setting. There was no State rational basis or need for Valencia State College to force Plaintiffs to endure these invasive probes of their reproductive organs.<sup>4</sup>

**16.** Plaintiffs endured these invasive probes without a modicum of privacy. Plaintiffs would disrobe in a restroom, drape themselves in towels, and traverse the

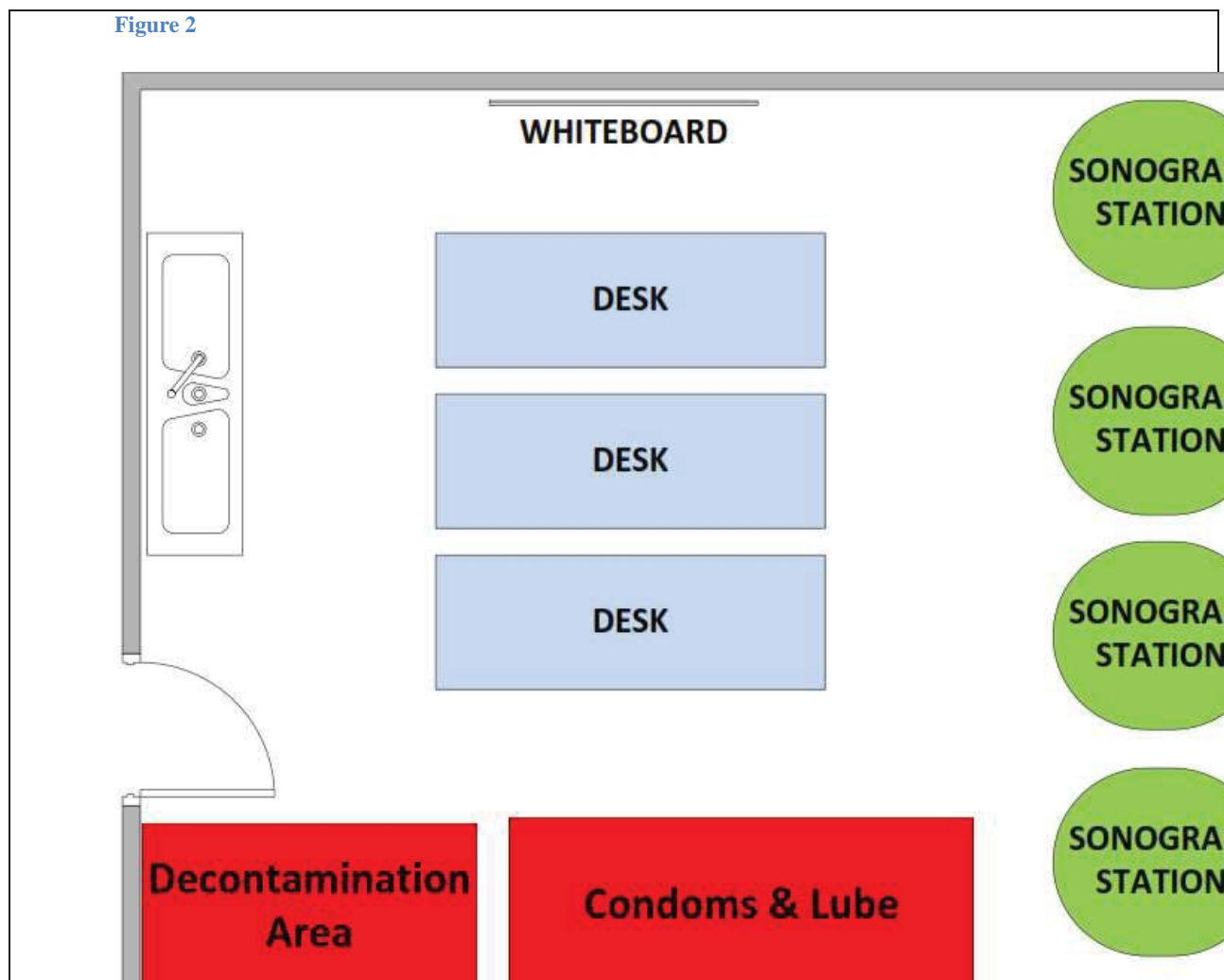
---

<sup>2</sup> Defendant Ball's comments can only be described as bizarre during some of these forced probing sessions. She allegedly approached one student, Kim LeMay, during a probing session and stated LeMay was "sexy" and should be an "escort girl" (prostitute). Defendants believe this type of behavior casts serious doubts upon Ball's motivation for insisting upon these forced vaginal probing sessions.

<sup>3</sup> Plaintiffs have been unable to locate another sonography program in which students practice probing upon one another; indeed, Valencia State College proudly advertises its use of simulator dummies in its other programs. See <https://www.youtube.com/watch?v=V34Xla-yYK0>

<sup>4</sup> It is worthy of repetition Valencia State College is a political subdivision of the State of Florida and must comply with the Constitution's First and Fourth Amendment despite being an educational institution. See *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). Although *Tinker* was a symbolic free speech case that involved minor children, the Supreme Court ruled that public educational institutions must comply with the Constitution's Free Speech Clause.

Sonography classroom in full view of instructors and other students to reach one of the four Sonography Stations. See Plaintiffs' Incorporated Exhibit Figure 2 (below).



17. A student would place a condom over the probe and then apply generous amounts of lubrication to the probe. In some cases, the student would have to sexually “stimulate” Plaintiffs in order to facilitate inserting the probe into Plaintiffs’ vaginas. Plaintiffs experienced discomfort and embarrassment each time they had to endure this forced probing of their sexual organs.



**18.** In March 2014, Plaintiff Doe II complained to Defendant Shaheen about the unnecessary vaginal probes. Defendant Shaheen stated Plaintiffs would be academically and professionally penalized for not submitting to the forced vaginal probes.

**19.** Throughout Plaintiffs' tenure in the program, Defendants Ball and Shaheen threatened to reduce Plaintiffs' grades and interfere with their future employment opportunities if Plaintiffs did not submit to the classroom vaginal probes. Defendants Ball and Shaheen conspired with Defendant Bugnacki to retaliate against Plaintiffs for exercising their First Amendment free speech rights to protest those forced vaginal probes. Defendant Bugnacki repeatedly threatened to "blacklist" Plaintiffs at Central Florida hospitals if Plaintiffs did not submit to these unconstitutional and unwarranted probes of their reproductive organs.

**20.** Plaintiffs continued to suffer Defendants' individual and collective retaliation for voicing their concerns over these unconstitutional forced vaginal probes. Plaintiffs' complaints to Valencia State College administrators, faculty, and staff fell upon deaf ears.

**21.** Plaintiffs eventually resigned from Valencia State College's Medical Diagnostic Sonography Program. Plaintiffs suffered general damages consisting of personal humiliation, pain emotional and suffering as well as being unable to enroll in other sonography programs. Plaintiffs also suffered special damages consisting of monies they spent on tuition, textbooks, and other tangible and intangible investments the program required.

**22.** Valencia has apparently ended its Medical Diagnostic Sonography Program's policy of probing students' reproductive organs after Plaintiffs' attorneys became involved in the case, yet even after Valencia ended the practice, Defendants Ball and Shaheen as well as

other instructors conspired to have students petition Valencia State College to reinstate its policy of coerced vaginal probing female students. Plaintiffs believe Defendants may “reboot” their policies of coerced vaginal probing of students after the furor of this case dies down unless this Court enters an order forbidding the practice of forcing unwilling students to undergo State-mandated reproductive organ probings.<sup>5</sup>

**23.** These deprivations under color of state law are actionable under and may be redressed by 42 U.S.C. §1983. Plaintiffs will seek their attorneys’ fees and costs under 42 U.S.C. §1988 if and when they prevail.

#### **IV. COUNTS**

##### **COUNT I: § 1983 CLAIM OF RETALIATION FOR EXERCISE OF FIRST AMENDMENT PROTECTED FREE SPEECH ACTIVITY AGAINST DEFENDANTS BALL, SHAHEEN & BUGNACKI**

**24.** Plaintiffs re-allege and incorporate by reference all of the preceding paragraphs in this complaint.

**25.** Defendants Ball, Shaheen & Bugnacki personally, maliciously, and under color of state law deprived Plaintiffs of Plaintiffs’ rights under the First Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by maliciously retaliating against Plaintiffs for Plaintiffs’ exercise of the constitutional right of free speech to protest government activity of great public interest of which Plaintiffs disapproved and protested peacefully without interfering with the State’s operations.

---

<sup>5</sup> Plaintiffs do not oppose Defendants’ probing willing students or hired models so long as there are proper constitutional safeguards in place **and** ensure Defendants obtain full and proper consent. Forced “consent,” though, particularly in a school setting, is not consensual. Plaintiffs believe injunctive relief is the only safeguard against further forced vaginal probes.

26. In depriving Plaintiffs of these rights, Defendants committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiffs' human, safety, and property rights.

27. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

**COUNT II: § 1983 CLAIM OF FOURTH AMENDMENT ILLEGAL SEARCH AND SEIZURE OF PLAINTIFFS' BODIES AGAINST DEFENDANTS BALL, SHAHEEN & BUGNACKI**

28. Plaintiffs re-allege and incorporate by reference all of the preceding paragraphs in this complaint.

29. Defendants Ball, Shaheen & Bugnacki personally, recklessly, maliciously, and under color of state law deprived Plaintiff of Plaintiff's liberty rights under the Fourth Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by forcing Plaintiffs to undergo forced vaginal probings with a transducer without a warrant or any probable cause to believe Plaintiff committed any crime.

30. In depriving the Plaintiffs of these rights, Defendants committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

31. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

**COUNT III: STATE TORT OF CIVIL CONSPIRACY AGAINST DEFENDANTS BALL, SHAHEEN & BUGNACKI**

32. Plaintiffs re-allege and incorporate by reference all of the preceding paragraphs in this complaint.

33. Defendants Ball, Shaheen & Bugnacki conspired together to commit illegal searches of Plaintiffs' bodies in violation of the United States Constitution's Fourth Amendment as applied to the States via the Fourteenth Amendment. These coerced vaginal probes by State employees were done without a warrant and with reckless indifferences to Plaintiffs' rights.

34. Defendants conspired to retaliate against Plaintiffs for Plaintiffs' clearly established First Amendment constitutional right to voice disapproval of Valencia's unconstitutional coerced vaginal probes of unwilling students.

35. Defendants, together, retaliated against Plaintiffs by reducing Plaintiffs' grades, threatening to blacklist Plaintiffs from local medical establishments so Plaintiffs could not obtain employment, and ultimately forcing Plaintiffs to resign from Valencia State College's Medical Sonography Program and otherwise injure Plaintiffs.

36. The actions underlying this conspiracy are illegal under the United States Constitution's First and Fourth Amendments as applied to the States via the Fourteenth Amendment.

37. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983 and 28 U.S.C. §1367.

**COUNT IV: 42 U.S.C. § 1983 CLAIM AGAINST VALENCIA STATE COLLEGE BOARD OF TRUSTEES FOR RECKLESS INDIFFERENCE TO PLAIFFS' CLEARLY ESTABLISHED CONSTUTIONAL RIGHTS**

38. Plaintiffs re-allege and incorporate by reference all of the preceding paragraphs in this complaint.

39. Valencia's official and unofficial policies and customs encouraged, caused, allowed, and/or enabled Defendants Ball, Shaheen & Bugnacki to violate Plaintiffs' constitutional and state rights without fear of discipline for those violations. See *Monell v. Department of Soc. Svcs.*, 436 U.S. 658 (1978).

40. Valencia has not disciplined Defendants Ball, Shaheen & Bugnacki for their violations of Plaintiff's constitutional rights and therefore has implicitly approved, ratified, or adopted Ball, Shaheen & Bugnacki's unconstitutional actions, yet Valencia is responsible for Defendants' supervision, training, and discipline through its policy-making powers and personnel decisions.

41. There is an obvious need for Valencia to train all its employees on First and Fourth Amendment rights. Valencia State College, therefore, has demonstrated a policy of deliberate indifference to such civil rights violations. See *City of Canton v. Harris*, 489 U.S. 378, 389 (1989).

42. Valencia's callous, reckless, wanton, and malicious actions under color of state law before, during, and after this loss, has caused Plaintiffs to suffer and continue to suffer the damages Plaintiffs have described.

43. These deprivations under color of state law are actionable under and may be redressed by 42 U.S.C. §1983.

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs respectfully request the following relief:

- A. Plaintiffs re-alleges and incorporates by reference all of the preceding paragraphs in this complaint,
- B. Trial by jury on all issues so triable;
- C. General and special compensatory damages;
- D. Punitive damages;
- E. Injunctive relief ordering Valencia to cease its forced vaginal probing of its students;
- F. Award to Plaintiffs of reasonable attorneys' fees and costs incurred in connection with this action from the Defendants pursuant to 42 U.S.C. §1988;
- G. Pretrial interest on compensable attorney's fees; and,
- H. Such further and different relief as is just and proper or that is necessary to make the Plaintiff whole.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I filed today, on Thursday, May 14, 2015, the foregoing with the Federal Clerk of the Court for the Middle District of Florida, which will send notification of such filing to all persons registered for this case, including the Defendants' counsel.

/s/Christopher R. Dillingham II, Esq.

---

Plaintiff's Trial Counsel  
FL Bar Number 98382  
Gagnon Eisele Dillingham, P.A.  
1881 Lee Road  
Winter Park, FL 32789  
Email: cd@gagnoneisele.com  
Phone: 407-463-3506