**No. 14-10731**

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**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

**LITTLE PENCIL, L.L.C. and DAVID L. MILLER**

**Plaintiffs-Appellants**

**v.**

**LUBBOCK INDEPENDENT SCHOOL DISTRICT**

**Defendant-Appellee**

---

**On appeal from the United States District Court**
**for the Northern District of Texas, Lubbock Division**

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# PETITION FOR REHEARING EN BANC

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## CERTIFICATE OF INTERESTED PERSONS

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The undersigned counsel of record for the Plaintiffs certifies that the following listed persons, as described in the fourth sentence of Rule 28.2.1, have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.

1. Little Pencil, L.L.C., Plaintiff-Appellant
   Little Pencil, L.L.C. is a Texas limited liability company. It does not have a parent corporation, and no publicly-held corporation owns 10% or more of its stock.

2. David L. Miller, Plaintiff-Appellant

3. Jeremy D. Tedesco, Esq., Attorney for Plaintiffs-Appellants
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Respectfully submitted this, the 27th day of March, 2015.

/s/ Jeremy D. Tedesco
Attorney of record for Plaintiffs

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## STATEMENT OF COUNSEL

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I express a belief, based on reasoned and studied professional judgment, that the panel decision is contrary to the following decisions of the Supreme Court of the United States and the United States Court of Appeals for the Fifth Circuit, and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this Court:

*Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753 (1995)

*Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330 (5th Cir. 2001)

*Doe v. Santa Fe Indep. Sch. Dist.*, 168 F.3d 806 (5th Cir. 1999)

*Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001)

*Hall v. Bd. of Sch. Comm'rs*, 681 F.2d 965 (5th Cir. 1982)

*Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988)

*Int'l Soc. for Krishna Consciousness of Atlanta v. Eaves*, 601 F.2d 809 (5th Cir. 1979)

*Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993)

*Morgan v. Swanson*, 659 F.3d 359 (5th Cir. 2011)

*Morse v. Frederick*, 551 U.S. 393 (2007)

*Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995)

*Shanley v. Ne. Indep. Sch. Dist.*, 462 F.2d 960 (5th Cir. 1972)

*Widmar v. Vincent*, 454 U.S. 263 (1981)

*Ysleta Fed'n of Teachers v. Ysleta Indep. Sch. Dist.*, 720 F.2d 1429 (5th Cir. 1983)

I express a belief, based on a reasoned and studied professional judgment, that this appeal involves questions of exceptional importance:

1. Whether the panel's decision applying *Hazelwood* to private commercial speech in an advertising forum conflicts with precedent from the Supreme Court and this Court.

2. Whether the panel's decision permitting discrimination based upon a commercial advertiser's religious viewpoint or based upon the subjective determination of government officials that the advertisement is "proselytizing" or

"offensive" conflicts with precedent from the Supreme Court and this Court.

3. Whether the panel's decision that the Defendants' advertising policies were neither a prior restraint on speech nor void for vagueness conflicts with precedent from the Supreme Court and this Court.

4. Whether the panel's decision that the Establishment Clause allows for the censorship of private religious speech in a government forum conflicts with precedent from the Supreme Court and this Court.

Respectfully submitted this the 27th day of March, 2015.

/s/ Jeremy D. Tedesco
Attorney of record for Plaintiffs

## TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**Cases:**

## STATEMENT OF THE ISSUES ASSERTED TO MERIT EN BANC CONSIDERATION

1. The panel's opinion applying *Hazelwood* to private commercial speech in an advertising forum conflicts with precedent from the Supreme Court and this Court.

2. The panel's opinion permitting discrimination based upon a commercial advertiser's religious viewpoint or based upon the subjective determination of government officials that the advertisement is "proselytizing" or "offensive" conflicts with precedent from the Supreme Court and this Court.

3. The panel's opinion that the Defendants' advertising policies are neither a prior restraint on speech nor void for vagueness conflicts with precedent from the Supreme Court and this Court.

4. The panel's opinion that the Establishment Clause allows for the censorship of private religious speech in a government forum conflicts with precedent from the Supreme Court and this Court.

## STATEMENT OF THE COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

On January 28, 2014, Little Pencil, LLC and David L. Miller (collectively "Little Pencil") filed the present suit in the U.S. District Court for the Northern District of Texas challenging Lubbock Independent School District's ("LISD") denial of its commercial advertisement and the policies upon which that denial was based. On January 31, 2014, Little Pencil filed a Motion for Preliminary Injunction

seeking to enjoin LISD's denial of its advertisement. On February 24, 2014, LISD filed its Answer and a response to the Motion for Preliminary Injunction. Correctly ascertaining that the case presents primarily questions of law, the district court asked the parties to proceed directly to summary judgment. On March 21, 2014, the parties submitted a Statement of Stipulated Facts. ROA.481-503. The parties filed their cross-motions for summary judgment on April 13, 2014.

On May 29, 2014, the district court granted LISD's Motion for Summary Judgment and denied Little Pencil's Motion for Summary Judgment and Motion for Leave to File Supplemental Evidence. Little Pencil timely filed its Notice of Appeal, and Amended Notice of Appeal, on June 26, 2014.

On March 13, 2015, the panel entered its *per curiam* opinion affirming the judgment of the district court without any substantive reasoning. On March 27, 2015, Little Pencil timely filed its Petition for Rehearing En Banc.

## STATEMENT OF THE FACTS

The facts in this case are not in dispute and were predominantly stipulated to by the parties. ROA.481-503; ROA.1410-1420.

For many years, LISD has welcomed a multitude of for-profit and non-profit, religious and secular advertisers to promote their purposes, products, and services at various locations, including Lowrey Field and its jumbotron, high school gymnasiums, on fences around high school campuses, and even on football

game tickets and programs. ROA.1413. Advertisers' access to this forum is governed by LISD's Policy GKB (LOCAL). ROA.507. Policy GKB welcomes nonschool-related organizations—which LISD stipulated includes "nonprofit and for-profit organizations," ROA.1413, and "local churches," ROA.1420. They are invited to use school facilities to "advertise … for any nonschool-related purpose," subject to the "prior approval of the Superintendent or designee." ROA.1441.

Numerous commercial entities such as restaurants, soda companies, car manufacturers, banks, and retail stores advertise their purposes, products, and services in LISD's forum. ROA.589; ROA.654; ROA.1414. Non-profit support groups, universities, and even churches also promote their purposes, products, and services to the diverse crowds at games. ROA.591; ROA.1414; ROA.1420. These advertisers commonly use photographs, logos, website addresses, mottos/taglines, and descriptions of their purposes, products, or services in their ads. ROA.1414.

Little Pencil, a for-profit company seeking "to share the Bible's teachings" and promote its products and services, ROA.508; ROA.516, developed a marketing campaign centered around an allegorical Jesus Tattoo video. ROA.515. In the video, people's emotional pain—symbolized by a negative word tattooed on them—is taken away by a Christ-like figure, who changes those negative words representing "emotional scars" into positive ones. ROA.515. On the Jesus Tattoo website (jesustattoo.org), visitors can watch the video, access its biblically-based

counseling services regarding addiction, thoughts of suicide, divorce, family issues, grief, and finances, and purchase Jesus Tattoo products. ROA.516.

Little Pencil sought to purchase advertising space on the Lowrey Field jumbotron. Its proposed ad depicted a Christ-like figure marked with negative words, representing the emotional scars of others he took on himself, and provided the Jesus Tattoo website address. ROA.1417-1418. The ad would run for 15 seconds twice a game—a mere 30 seconds out of a multi-hour event and amidst numerous other advertisements. ROA.1417.

Little Pencil was initially told that its ad was denied because it contained tattoos. ROA.1419. Even though LISD's Policy GKB governing advertisements does not prohibit depictions or references to tattoos on submitted advertisements, Little Pencil, in the spirit of cooperation, offered to remove the tattoos from the advertisement—as stipulated to by LISD. ROA.1419. LISD nonetheless reaffirmed the denial based upon the ad's religious message. ROA.502-503.

## ARGUMENT

Without providing any analysis of the critical First Amendment questions raised in this case, the panel summarily concluded that there was "no reversible error" and affirmed in full the erroneous decision of the district court. The panel's curt per curiam opinion, which did not cite a single case to support its outcome, stands in stark contrast to this Court's usual practice of providing substantive

reasoning in deciding First Amendment questions that affect fundamental rights—even when the Court ultimately finds no reversible error. *See, e.g.*, *Brister v. Faulkner*, 214 F.3d 675 (5th Cir. 2000); *Williams v. Riley*, 536 F. App'x 468 (5th Cir. 2013); *Gregory v. Texas Youth Comm'n*, 111 F. App'x 719 (5th Cir. 2004); *Dean v. Teeuwissen*, 479 F. App'x 629 (5th Cir. 2012).

## I. The Panel's Decision Erroneously Applied *Hazelwood* to Private Speech.

Importantly, neither the district court nor the panel undertook any substantive analysis of Little Pencil's viewpoint discrimination claim, which the district court dismissed in a footnote. ROA.1436-1437. The district court leap-frogged the viewpoint analysis by erroneously applying *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), based on its determination that the private ads in LISD's advertising forum are school-sponsored speech. But this holding conflicts with *Morse v. Frederick*, where Justice Alito, in his controlling concurrence, explained that *Hazelwood* only "allows a school to regulate what is in essence the school's own speech." 551 U.S. 393, 423 (2007). As this Court explained in *Morgan v. Swanson*, "school-sponsored" speech is limited to "'activities that may fairly be characterized as part of the curriculum,' which are 'supervised by faculty members,' and designed to impart particular knowledge or skills" to students. 659 F.3d 359, 408 (5th Cir. 2011). Private advertisements—and especially religious, church ads solicited by LISD, ROA.487—simply cannot be

considered "the school's own speech." Thus, the panel erred in affirming *Hazelwood*'s application to the advertising forum.

## II. The Panel's Decision Conflicts with Supreme Court and Fifth Circuit Precedent Prohibiting Viewpoint Discrimination in a Speech Forum.

The opinion stands contrary to precedent from this Court prohibiting viewpoint discrimination when public schools create forums for private expressive activity. *See Morgan*, 659 F.3d at 401 ("[V]iewpoint discrimination 'strikes at the very heart of the First Amendment.'") (quoting *Morse*, 551 U.S. at 423 (Alito, J., concurring)); *Chiu v. Plano Indep. Sch. Dist*., 260 F.3d 330, 349 (5th Cir. 2001) (viewpoint discrimination would "violate the First Amendment whether Math Nights were designated or limited/nonpublic forums"). Supreme Court decisions likewise forbid viewpoint discrimination by schools operating forums for private speech. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995) ("Discrimination against speech because of its message is presumed to be unconstitutional."); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 107-10 (2001) (school committed viewpoint discrimination when it prohibited a religious club from using facilities to teach morals and character development to children from a religious perspective); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393-94 (1993) (same).

LISD broadly opens its doors to a variety of commercial and non-commercial advertisers, including churches. Contrary to the district court's

conclusion that the forum is "limited to the electronic advertising on the jumbotron," ROA.1425, the advertising forum properly consists of all advertising locations—the jumbotron, gymnasium, fences, tickets, etc.—because they are all governed by the same Policy GKB. As the Supreme Court explained in *Good News Club*, the scope of the forum is determined by whether the use "is a permissible purpose under [the District's] policy." 533 U.S. at 108 (describing the scope of the school's forum by reference to hypothetical situations the "policy would allow").

Within this broad forum spanning multiple venues, LISD chose to exclude a single message—that of Little Pencil. ROA.489 ("[T]he District has not rejected any nonschool-related organizations' advertising request, except Plaintiffs").

LISD claims that it was the depiction of tattoos on the 15 second ad that justified the rejection. This is pretextual. Nowhere in LISD's advertising policies are depictions of tattoos prohibited. *See* ROA.494-497. The only "policy" that LISD can point to is an inapplicable student/teacher dress code that prohibits pictures of "tattoos that depict gang symbols/letters profanity, or inappropriate pictures," ROA.1293—not the allegorical depictions of tattoos in Little Pencil's ad. Furthermore, Little Pencil offered to remove the tattoos from its ad. ROA.1410.

LISD's true motive for rejecting Little Pencil's ad was the ad's specific religious viewpoint. ROA.502-03; ROA.518. The ad was no different than those of other commercial advertisers: it was designed to raise awareness of Little Pencil,

L.L.C.'s marketing campaign and invite viewers to its website to learn more, access services, and buy products. But because Little Pencil's commercial advertisement was "too religious," it alone was censored.

Additionally, organizations like Little Pencil that offer counseling and rehabilitation services advertise in the forum. ROA.484-85. LISD allowed Lubbock Area Amputee Support Group and Mission Rehab Services to advertise their programs that "help[] people overcome issues and circumstances that are negatively impacting their lives." ROA.1416. Little Pencil offers the same type of assistance—helping "transform a person's negative past into a positive future," ROA.515—but from a religious perspective. The only meaningful difference between these advertisers was Little Pencil's religious viewpoint. "[S]peech discussing otherwise permissible subjects cannot be excluded … on the ground that the subject is discussed from a religious viewpoint." *Good News Club*, 533 U.S. at 112. By affirming the district court's decision, the panel ignored precedent from the Supreme Court and this Circuit forbidding the censorship of religious viewpoints on an otherwise permissible subject matter.

LISD also discriminated among religious advertisers. LISD accepted ads from religious groups like Full Armor Ministries, Bethany Baptist Church, and Lubbock Christian University. ROA.484-85. Indeed, LISD actively solicited churches to advertise on the jumbotron at Lowrey Field. ROA.487. But it rejected

Little Pencil's advertisement, claiming that it was "proselytizing," LISD's Br. at 43-47. The district court agreed that the ad is "a proselytizing message" that can be censored, ROA.1429, a decision that was affirmed by the panel.

This conclusion directly conflicts with Supreme Court decisions, which have rebuffed attempts to "exclude[] from free-speech protections religious proselytizing." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995); *accord Widmar v. Vincent*, 454 U.S. 263, 269 n.6 (1981) (there is "no reason why the Establishment Clause, or any other provision of the Constitution, would require different treatment for religious speech designed to win religious converts"). This Court's ruling in *Morgan,* 659 F.3d at 412 n.28, likewise rejected efforts to treat proselytizing as second-class speech in the public school context:

> To the extent that the principals characterize the [religious] speech as "proselytizing," such a characterization does not affect our holding that religious viewpoint discrimination is not permissible against private student speech …. There is no such thing as "good religious speech" and "bad religious speech."

The panel's decision endorses this exact dichotomy: ads from churches and Christian colleges are "good religious speech" while Little Pencil's ad is "bad religious speech." Little Pencil's ad was "bad" because, according to the district court, "no other advertisement… contained such levels of controversy, religious proselytizing, [or] perceived endorsement of a religion." ROA.1436. But having opened the door to religious advertisers through its unabashed solicitation of

churches, ROA.487, LISD "must respect the lawful boundaries it has itself set," *Rosenberger*, 515 U.S. at 829, and must allow Little Pencil's ad. The panel's contrary decision conflicts with the Supreme Court's and this Court's long-established protection for proselytizing viewpoints, including Little Pencil's.[1]

Finally, the panel's affirmation of the district court's holding that LISD could censor Little Pencil's ad because it might create "controversy" or "be offensive to some" cannot be squared with the Supreme Court's decision in *Morse*, which repudiated the authority of school officials to ban "offensive" speech. Although the student's "Bong Hits 4 Jesus" banner was "no doubt offensive to some," 551 U.S. at 401, the Supreme Court held that schools may not censor "speech that could fit under some definition of 'offensive.' After all, much political and religious speech might be perceived as offensive to some." *Id*. at 409. This Court recently agreed with that proposition in *Texas Div., Sons of Confederate Veterans, Inc. v. Vandergriff*, 759 F.3d 388, 398 (5th Cir. 2014) ("We understand that some members of the public find the Confederate flag offensive. But that fact does not justify the Board's decision; this is exactly what the First Amendment was designed to protect against.") *cert. granted sub nom. Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 752 (2014).

[1] All advertising is proselytizing. As the Third Circuit recognized in *C.E.F. of New Jersey, Inc. v. Stafford Township Sch. Dist.*, 386 F.3d 514, 528 (3d Cir. 2004), "[t]o proselytize means both 'to recruit members for an institution, team, or group' and 'to convert from one religion, belief, opinion, or party to another.'" The purpose of advertising is to convince or sway others to join causes, use services, or buy products.

The district court's inappropriate refusal to consider the plain evidence of viewpoint discrimination in this case, along with the panel's unexplained affirmance, failed to give Little Pencil's First Amendment claims the deliberation they deserve and squarely contradict the seriousness with which the Supreme Court and this Court treat encroachments on fundamental rights. En banc review is necessary to ensure that all speakers, including those with a religious perspective, are protected from government censorship of their specific viewpoint.

## III. The Panel Erred by Affirming that LISD's Policy Is Neither a Prior Restraint on Speech Nor Impermissibly Vague.

Little Pencil's ad perfectly complies with LISD's advertising policies. And although it does not apply to advertisers, Little Pencil's ad also conforms to LISD's student/teacher dress code, which only prohibits pictures of "tattoos that depict gang symbols/letters profanity, or inappropriate pictures." ROA.1293.

Given Little Pencil's evident compliance with LISD's advertising policy, LISD resorted to the unbridled discretion built into Policy GKB to censor Little Pencil's protected speech. Specifically, Policy GKB requires all ads to receive the "prior approval of the Superintendent or designee." ROA.494.

The panel's opinion wrongly refused to address Little Pencil's argument that Policy GKB creates a prior restraint on speech. Upholding such unbridled discretion conflicts with Circuit precedent striking down similar school policies. *See Shanley v. Ne. Indep. Sch. Dist.*, 462 F.2d 960, 965 (5th Cir. 1972) (striking

down a policy banning literature distribution "without the specific approval of the principal"); *Hall v. Bd. of Sch. Comm'rs*, 681 F.2d 965, 967-69 (5th Cir. 1982) (striking down a policy that required "prior approval of the Assistant Superintendent" but did "not furnish sufficient guidance to prohibit the unbridled discretion"); *Ysleta Fed'n of Teachers v. Ysleta Indep. Sch. Dist.*, 720 F.2d 1429, 1431 (5th Cir. 1983) (striking down a policy that permitted literature distribution when it "does not interfere with school use as determined by the Superintendent").

To survive constitutional scrutiny, LISD's policies "must include guidelines stating clear and demonstrable criteria that school administrators should utilize to evaluate [advertising] materials." *Shanley*, 462 F.2d at 977. But neither Policy GKB, nor its supplemental Policy GKD (LOCAL) that governs "Nonschool Use of School Facilities," contain the narrow, objective, and definite standards for administrators required by the Constitution. By failing to address Little Pencil's prior restraint claim, the panel sent the wrong message that a school can allow administrators to regulate private speech without any meaningful guidance, paving the way for widespread abuse of discretionary authority.

LISD's Policies are vague for many of the same reasons, an issue that both the panel and the district court failed to address. "[V]ague measures regulating first amendment freedoms enable low-level administrative officials to act as censors, deciding for themselves which expressive activities to permit. The very existence

of this censorial power, regardless of how or whether it is exercised, is unacceptable." *Int'l Soc. for Krishna Consciousness of Atlanta v. Eaves*, 601 F.2d 809, 822-23 (5th Cir. 1979).

Policy GKB lacks any standards to guide the hand of LISD officials when approving or rejecting advertising. In similar circumstances, this Court struck down policies as impermissibly vague. *See Shanley*, 462 F.2d at 977 (literature distribution policy requiring prior approval yet lacking guidelines was void-for-vagueness); *Hall*, 681 F.2d at 971 (failure to define terms like "political or sectarian" and "special interest" render policy vague). By upholding LISD's vaguely worded Policy GKB instructing LISD officials to "act consistent with the First Amendment," the panel created internal conflict within this Circuit as to the standard that government officials are held to when drafting restrictions on speech.

## IV. The Panel Erred by Affirming that the Establishment Clause Justifies Censorship of Private Speech at a School Event.

The panel incorrectly affirmed the district court's conclusion that LISD could exclude Little Pencil's ad because "running Plaintiffs' advertisement on the jumbotron during Friday night football games could be viewed as Defendant's endorsement of the message." ROA.1431. Although the district court relied on *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), to do so, it overlooked an important caveat: the *Santa Fe* school district did not create a private speech forum. *See id.* at 302 ("[W]e are not persuaded that the pregame

invocations should be regarded as 'private speech.'"). This Court has previously articulated the legal significance of creating a forum for private speech—a forum similar to what LISD created through its advertising program here:

> [I]f a graduation program, open … [to] a limited number of student-elected or selected speakers, constitutes a limited public forum, the graduation prayer policy blessed in *Clear Creek II* [requiring prayers to be nonproselytizing] would, in fact, be *un* constitutional—not, however, as a violation of the Establishment Clause, but as impermissible viewpoint discrimination: Once the State has established a limited public forum, it cannot discriminate against speech because of the message, even if that message is religious….

*Doe v. Santa Fe Indep. Sch. Dist.*, 168 F.3d 806, 821 (5th Cir. 1999). This Court, sitting en banc, affirmed the distinction in *Morgan v. Swanson*, holding that *Santa Fe* applied only when "a government employee is selecting the religious message, delivering the religious message, endorsing the religious message, or giving an otherwise private speaker preferential access to a forum." 659 F.3d at 411.

Here, the stipulated facts clearly show that only private speech exists in the advertising forum, not officially sanctioned, government-endorsed speech. LISD did not dictate the message in Little Pencil's ad. The ad was neither "delivered" by an LISD employee, nor was it (or any other ad) endorsed by LISD.

As this Court held in *Morgan*, the Establishment Clause is only implicated when government-endorsement of religious speech has occurred. "[T]he [Supreme] Court's Establishment Clause jurisprudence draws a sharp distinction between *government* speech endorsing religion, which the Establishment Clause forbids,

and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." 659 F.3d at 409 (quotation omitted). "[S]chool officials need not fear an Establishment Clause violation from allowing schoolchildren with religious views to speak under the same reasonable, viewpoint-neutral terms as other students." *Id*. at 411 n.27. *Accord Good News Club*, 533 U.S. at 115 ("[W]e have never extended our Establishment Clause jurisprudence to foreclose private religious conduct during nonschool hours merely because it takes place on school premises where elementary school children may be present.").

In fact, by condoning the actions of LISD, the panel's opinion "risk[s] fostering a pervasive bias or hostility to religion [and between religions], which could undermine the very neutrality the Establishment Clause requires." *Rosenberger*, 515 U.S. at 845-46. The panel's affirmance of the notion that the Establishment Clause justifies restricting private religious speech—rather than protecting Little Pencil from the hostility displayed here— thus creates a conflict with both Fifth Circuit and Supreme Court precedent.

## CONCLUSION

For the foregoing reasons, this Court should grant rehearing en banc to correct the errors of the panel and ensure that the fundamental rights guaranteed to Little Pencil under the First and Fourteenth Amendments are applied in a manner consistent with the precedent of the Supreme Court and this Court.

Respectfully submitted this 27th day of March, 2015.

By: /s/Jeremy D. Tedesco

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served upon counsel for all parties to this proceeding as identified below through the court's electronic filing system as follows:

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this 27th day of March, 2015.

/s/ Jeremy D. Tedesco
Jeremy D. Tedesco

## CERTIFICATE OF COMPLIANCE WITH RULE 35(b)(2)

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 35(b)(2) because:

[x] this brief is fifteen (15) pages in length, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*

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[x] this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in Times New Roman font, *or*

this 27th day of March, 2015.

/s/ Jeremy D. Tedesco
Jeremy D. Tedesco

# IN THE UNITED STATES COURT OF APPEALS
# FOR THE FIFTH CIRCUIT

No. 14-10731

United States Court of Appeals
Fifth Circuit
**FILED**
March 13, 2015
Lyle W. Cayce
Clerk

LITTLE PENCIL, L.L.C.; DAVID L. MILLER,

Plaintiffs - Appellants

v.

LUBBOCK INDEPENDENT SCHOOL DISTRICT,

Defendant - Appellee

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 5:14-CV-14

Before JOLLY and DENNIS, Circuit Judges, and RAMOS,* District Judge.

PER CURIAM:**

The plaintiffs seek to display an image and website address on the jumbotron at the Lubbock Independent School District ("LISD") football field. LISD refused to allow the ad for several reasons. Shortly thereafter, the plaintiffs sued LISD under 42 U.S.C. § 1983, claiming multiple violations of the First and Fourteenth Amendments. After reviewing the evidence, the district court granted summary judgment in favor of LISD.

* District Judge of the Southern District of Texas, sitting by designation.

** Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

The plaintiffs now appeal. Having studied the record and briefs, and having heard the oral argument of the parties, we have once again reviewed in careful detail the thorough and cogent opinion of the district court and find no reversible error. The judgment of the district court is therefore AFFIRMED. *See* 5th Cir. R. 47.6.

AFFIRMED.