

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

ALIV CLUB; and A.Z., a minor, by and
through his next friend, Scott Zipp,

Plaintiffs,

v.

INDEPENDENT SCHOOL DISTRICT
#885 (ST. MICHAEL-ALBERTVILLE
PUBLIC SCHOOLS);

Defendant.

Case No. _____

VERIFIED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF

Civil Rights Action (42 U.S.C. § 1983)

COME NOW the Plaintiffs, ALIV Club and A.Z.¹, by and through his next friend, Scott Zipp, pursuant to the Federal Rules of Civil Procedure, and for their causes of action against Defendant, aver the following:

INTRODUCTION

1. This is a civil rights action under 42 U.S.C. § 1983, the Equal Access Act, 20 U.S.C. § 4071, *et seq.*, and the First and Fourteenth Amendments to the United States Constitution, brought to remedy a violation of the constitutional and statutory rights of the ALIV Club, a pro-life student club, and A.Z., a student at St. Michael-Albertville High School (“STMA HS”), located in St. Michael, Minnesota.

2. Plaintiffs ALIV Club and A.Z. bring this suit because their pro-life student club, the ALIV (All Life is Valuable) Club, was not approved to become an officially

¹ In accordance with the Courts Electronic Case Filing Procedures III.B.1.c., A.Z. is a minor and is therefore identified by his initials, rather than his full name, in order to maintain the privacy of his identity.

recognized club.

3. District officials denied the Club because it allegedly “does not support the student body as a whole.”

4. Apparently the Diversity club, the Environmental club, and the Anime club (among others), however, are deemed to “support the student body as a whole” as they were all permitted to become officially recognized clubs.

5. Officially recognized clubs receive certain benefits and privileges including meeting during a club period, making announcements, engaging in fundraising, among other benefits.

6. The Defendant District has implemented policies and practices which permit official recognition of clubs that are both curriculum related and non-curriculum related.

7. District Policy 564, entitled “ATHLETIC & SPEECH ACTIVITIES,” states that “[t]he primary philosophy of the extra / co-curricular programs in the St. Michael-Albertville School District is to promote the physical, mental, social, emotional, and moral well-being of the participants.”

8. Further, District Policy 801, entitled “EQUAL ACCESS TO SCHOOL FACILITIES,” states that “The purpose of this policy is to implement the Equal Access Act by granting equal access to secondary school facilities for students who wish to conduct a meeting for religious, political, or philosophical purposes during non-instructional time.”

9. Pursuant to Policies 564 and 801 and District practice (the “Policies”), the ALIV Club, however, has not been officially recognized and has been denied the benefits and

privileges given to other student clubs.

10. Plaintiffs challenge Policy 564 both facially and as-applied and Policy 801 as-applied to the denial of Plaintiffs' pro-life ALIV Club.

11. The ALIV Club has been relegated to second-class status and is only permitted to meet unofficially before or after school and receives none of the other club benefits.

12. The Defendants readily afford official recognition and accompanying benefits and privileges to a over a dozen different clubs.

13. The Equal Access Act, along with the First and Fourteenth Amendments, prohibit governmental discrimination of this type and guarantee religious and political student clubs access and treatment equal to that of other non-curriculum related student clubs.

14. The ALIV Club and A.Z. bring this action seeking equal treatment, and respectfully ask the Court (i) to enjoin Defendant from violating their constitutional and statutory rights, as well as the rights of others interested in the ALIV Club, and (ii) to order Defendant to immediately grant official club status to the ALIV Club, with all of the accompanying rights, benefits, and privileges given to other officially recognized student clubs.

JURISDICTION AND VENUE

15. This action arises under the United States Constitution, specifically the First and Fourteenth Amendments, and under federal law, particularly 28 U.S.C. § 2201, 2202, 42 U.S.C. §§ 1983 and 1988, and the Equal Access Act, 20 U.S.C. §§ 4071-4074.

16. This Court possesses jurisdiction over Plaintiffs' claims by operation of 28 U.S.C. §§ 1331 and 1343.

17. This Court is vested with authority to grant Plaintiffs' requested declaratory relief by operation of 28 U.S.C. §§ 2201 and 2202, and pursuant to Rule 57 of the Federal Rules of Civil Procedure.

18. This Court is authorized to grant Plaintiffs' requested injunctive relief pursuant to 28 U.S.C. § 1343(4) and Rule 65 of the Federal Rules of Civil Procedure.

19. This Court is authorized to award nominal damages under 28 U.S.C. § 1343(4).

20. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.

21. Venue is proper under 28 U.S.C. § 1391 in the United States District Court for the District of Minnesota because the events giving rise to the claim occurred within the District and because all parties are residents of the District.

IDENTIFICATION OF THE PLAINTIFFS

22. Plaintiff ALIV Club is an unincorporated association of like-minded students ranging from 9th-12th grade who desire to start a pro-life club at STMA HS.

23. Plaintiff A.Z., a minor, is a resident of St. Michael, Minnesota, and a student at STMA HS.

24. A.Z. is a professing Christian. A.Z. is an officer and a leader of the Club.

25. Pursuant to the Club's and A.Z.'s sincerely held religious beliefs, they desire to meet with other like-minded students through the ALIV Club.

26. In accordance with their sincerely held religious beliefs, the Club and A.Z.

desire to share their Christian faith with fellow members and students through ALIV Club activities.

27. At the Club meetings, A.Z. and other club members desire to a variety of issues facing students, including those related to faith and religion, life, abortion, abstinence from premarital sex, personal responsibility, keeping and raising children in the event of pregnancy, leadership, community service, peer pressure, promoting respect and dignity for all others, reading and studying various governmental and political issues, and the attainment of knowledge, just to name a few.

28. Scott Zipp, next friend, is A.Z.'s parent and guardian, and at all times relevant to this Complaint, is a resident of St. Michael, Minnesota.

IDENTIFICATION OF THE DEFENDANTS

29. Defendant Independent School District (ISD) No. 885 (aka St. Michael-Albertville Public Schools) is a body politic and corporate and may sue and be sued in its corporate name.

30. The District is organized under the laws of the State of Minnesota.

31. The District, through its Board, is charged with the administration, operation, and supervision of STMA HS.

32. The Board is responsible for the formulation, adoption, implementation, and enforcement of District policies and practices related to STMA HS.

33. The Board is also responsible for formulation, adoption, implementation, and enforcement of the District policies and practices, including the specific Policies challenged

herein, related to the formation and organization of student clubs and the rights, benefits, and privileges afforded to such student clubs at STMA HS.

34. The Board has denied official club status to Plaintiff A.Z. and the ALIV Club, as well as the rights, benefits, and privileges attendant to official club status, pursuant to its Policies.

35. The Board is likewise responsible for the implementation, application and enforcement by the Superintendent and/or Principal of its Policies pertaining to student clubs.

36. The Board is similarly responsible for delegating to the Superintendent and/or Principal final authority as to the official recognition of student clubs.

FACTUAL ALLEGATIONS

37. STMA HS is a public high school located in St. Michael, Minnesota.

38. STMA HS is under the direction of the District through the Board.

39. STMA HS includes grades 9 through 12.

40. STMA HS constitutes a secondary school under Minnesota law.

41. Upon information and belief, STMA HS and the school district receive federal financial assistance.

42. The Board itself, and acting through the Superintendent and/or Principal, grants official club status to non-curriculum related student clubs at STMA HS.

43. The Board itself, and acting through the Superintendent and/or Principal, allows said clubs to meet on school premises at STMA HS during club periods and other non-instructional time.

44. There are over a dozen non-curriculum related clubs currently recognized by the Board including, among others, Diversity club, Environmental club, Anime club, and Book club.

45. These clubs address issues involving, among others, promoting respect and dignity for all, the pursuit of reading and attainment of knowledge, community service and leadership.

46. Participation in such clubs is not required by school faculty in connection with curriculum course work.

47. Defendants, pursuant to their Policies, permit officially recognized non-curriculum related clubs to, among other things, conduct meetings during a club period and other non-instructional time on campus, use school facilities, utilize the STMA HS public address system and bulletin boards for announcements, and participate in fund raising activities.

48. The Board is the official policy maker and as such has enacted the Policies challenged herein.

49. On or about the end of January, 2011, A.Z. met with Principal Carlson and asked permission to start a pro-life club.

50. Principal Carlson was apparently unsure whether the Policies permitted the Club and, upon information and belief, conferred with other District officials and the District's attorney.

51. Finally, after waiting several weeks, A.Z. was informed by Principal Carlson

that the club was not approved because it did not “support the student body as a whole.”

52. The denial was made pursuant to District Policies that grant unbridled discretion to District officials in their decisions whether to grant official recognition to student clubs.

53. Although Policy 801 allegedly requires the District to grant equal access to student clubs, it has failed to do so.

54. Policy 564 entitled “Athletic and Speech Activities” states that extra-curricular activities “promote the physical, mental, social, emotional, and moral well-being of the participants.”

55. Yet, Defendant has decided that the ALIV Club satisfies none of these requirements.

56. Defendant has also denied official recognition to the Fellowship of Christian Athletes (FCA) Club, of which A.Z. is a member. FCA is denied equal access to the benefits and privileges given to other non-curriculum student clubs at STMA HS.

57. The Defendant’s Policies give the District Officials unbridled discretion to determine whether they believe clubs, such as the ALIV Club and FCA, “support the student body as a whole” or “promote the physical, mental, social, emotional, and moral well-being of the participants.”

58. But the Policies provides no standards or guidelines as to how that determination is made.

59. Under the Policies, the Board, by itself or through the Superintendent/Principal,

retains the sole discretion to decide whether or not official recognition will be granted to any club, including to the ALIV Club.

60. Defendant's Policies are vague and give the District officials unbridled discretion to grant or deny official status to clubs at STMA HS.

61. Pursuant to Defendant's Policies and practices concerning official recognition of curriculum and non-curriculum related clubs, Defendant has denied, and continues to deny, Plaintiffs ALIV Club and A.Z. the right to meet, and the rights, benefits, and privileges equal to those received by other clubs which are permitted to meet at STMA HS.

ALLEGATIONS OF LAW

62. Students do not shed their constitutional rights at the schoolhouse gate.

63. Religious and political speech is fully protected by the First Amendment.

64. All of the acts of Defendants, their officers, agents, employees, and servants were executed and are continuing to be executed by the Defendants under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of Minnesota.

65. Plaintiffs ALIV Club and A.Z. are suffering irreparable harm from the Policies and conduct of the Defendant by being prohibited from speaking on the same terms as and exercising the same rights as other STMA HS student clubs and their members.

66. The ALIV Club and A.Z. have no adequate or speedy remedy at law to correct or redress the deprivation of their rights by Defendant.

67. Unless the conduct of Defendant is enjoined, the ALIV Club and A.Z. will

continue to suffer irreparable injury.

FIRST CAUSE OF ACTION: VIOLATION OF THE EQUAL ACCESS ACT

68. Plaintiffs ALIV Club and A.Z. re-allege and incorporate herein, as though fully set forth, paragraphs 1-67 of this Complaint.

69. STMA HS is a public secondary school under Minnesota law, located in St. Michael.

70. On information and belief, the school district and STMA HS receive federal financial assistance.

71. Defendants have created a “limited open forum” at STMA HS within the meaning of the Equal Access Act, 20 U.S.C. § 4071, *et seq.*, by permitting one or more non-curriculum related student groups to meet on school premises during non-instructional time.

72. Such clubs include a Diversity club, Environmental club, Book Club, Anime Club, among others.

73. These clubs address issues involving, among others, promoting respect and dignity for all, the pursuit of reading and attainment of knowledge, community service and leadership, just to name a few.

74. The ALIV Club has voluntary membership.

75. The ALIV Club is open to any student at STMA HS.

76. The ALIV Club desires to assemble on the campus of STMA HS during non-instructional time for the purpose of Club meetings, exchange of ideas and information, and discussion of issues, from a religious and political perspective, that are significant to them.

77. Such issues include, among others, faith and religion, those related to life, abortion, abstinence from premarital sex, leadership, community service, peer pressure, promoting respect and dignity for all others, reading and discussing various governmental and political issues, such as legislative and judicial processes and decision making, and the attainment of knowledge on these subjects.

78. The ALIV Club's activities are voluntary, student-initiated, and student-directed.

79. The ALIV Club and A.Z. do not desire school officials to lead, direct, plan, sponsor, or otherwise control the content or direction of the ALIV Club's meetings.

80. The ALIV Club's activities on campus will not materially and substantially interfere with the orderly conduct of educational activity within STMA HS.

81. Defendant has denied a fair opportunity, has discriminated against, and has denied A.Z. and the Club equal access to all school facilities, benefits, and privileges based on the content of the Club's meetings.

82. Defendant's conduct cannot be justified by a compelling governmental interest, nor is it narrowly tailored to advance any such interest.

83. Defendant has accordingly abridged and continue to violate the rights of A.Z. and the Club under the Equal Access Act, 20 U.S.C. §§ 4071-4074.

WHEREFORE, Plaintiffs ALIV Club and A.Z. respectfully ask that the Court grant the declaratory and injunctive relief set forth in the prayer for relief.

SECOND CAUSE OF ACTION: VIOLATION OF THE FREE SPEECH CLAUSE

84. Plaintiffs ALIV Club and A.Z. re-allege and incorporate herein, as though fully set forth, paragraphs 1-67 of this Complaint.

85. The First Amendment's Freedom of Speech Clause prohibits censorship of religious and political expression.

86. Defendant has, by its Policies and practice, created an open forum by permitting the formation of student clubs at STMA HS.

87. Defendant's Policies and practice have lead to the lack of equal treatment to A.Z.'s and the ALIV Club's religious and political speech in this forum.

88. Pursuant to its Policies and practice, Defendant prohibited the ALIV Club's and A.Z.'s religious and political speech, despite the fact that they desire to address the same or similar issues currently being addressed by other student clubs.

89. The unequal treatment of A.Z.'s and the ALIV Club's religious and political speech or activities is a content-based restriction in an otherwise open forum.

90. Pursuant to Defendant's Policies and practice, the denial of A.Z.'s and the ALIV Club's religious and political speech while permitting other secular speech also constitutes viewpoint discrimination.

91. Policies which cause such viewpoint discrimination are unconstitutional in any type of forum.

92. The Free Speech Clause also recognizes and protects the right to association.

93. A.Z.'s ALIV Club is an expressive association that desires to advocate its

religious and political message and viewpoints at STMA HS.

94. Defendant, by and through the Policies, violates A.Z.'s and the Club's right to association by denying its status as an officially recognized student club, and all the rights, privileges, and benefits attendant thereto, which have the effect of discrimination against A.Z.'s and the Club's religious and political speech, ideologies, philosophies, and beliefs.

95. Defendant's Policies are vague and allow unbridled discretion because they do not provide guidance regarding what constitutes a club's "support [of] the student body as a whole" or whether a club "promote[s] the physical, mental, social, emotional, and moral well-being of the participants."

96. Defendant's Policies impose an unconstitutional prior restraint because they vest District officials with the unbridled discretion to permit or refuse protected speech equal access to the forum.

97. In addition to Defendant's written Policies relating to official recognition of student clubs, they have added a practice amounting to a Policy that requires a club to "relate to the student body as a whole."

98. Defendant's Policies are overbroad because they sweep within their ambit protected First Amendment rights in the form of religious and political speech.

99. The overbreadth of Defendant's Policies chills protected speech by discouraging individuals and groups from applying for recognition in the forum for purposes of engaging in certain protected speech.

100. Defendant's Policies chill, deter, and restrict the ALIV Club and A.Z. from

using District facilities on an equal basis with others and from discussing pro-life issues from a religious and political perspective.

101. Defendant has interpreted and applied the Policies to disqualify the ALIV Club and A.Z. from accessing equally all facilities under the Defendant's control and otherwise open to student groups, thereby discriminating against the religious and political content and viewpoint of the ALIV Club's and A.Z.'s speech and activities.

102. Defendant's Policies, as interpreted and applied by them to prohibit equal use as requested by the ALIV Club and A.Z., are not the least restrictive means necessary to serve any compelling interest which Defendant seeks thereby to secure.

103. Defendant's Policies are not reasonably related to any legitimate pedagogical concerns.

104. Censoring students' religious and political speech *per se* is not and cannot be a legitimate pedagogical concern.

105. Defendant's Policies accordingly violate the ALIV Club's and A.Z.'s right to Free Speech as guaranteed by the First Amendment to the United States Constitution as incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, Plaintiffs ALIV Club and A.Z. respectfully ask that the Court grant the declaratory and injunctive relief set forth in the prayer for relief.

THIRD CAUSE OF ACTION: VIOLATION OF THE EQUAL PROTECTION CLAUSE

106. Plaintiffs ALIV Club and A.Z. re-allege and incorporate herein, as though fully set forth, paragraphs 1-67 of this Complaint.

107. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated persons or organizations equally.

108. Defendant has opened the forum by permitting the formation of other student clubs and must allow A.Z.'s ALIV Club equal access to this forum regardless of the content or the viewpoint expressed by its members.

109. Defendant, however, through its Policies, has denied A.Z. and the ALIV Club equal access to club benefits and privileges.

110. Defendant's Policies have the effect of treating A.Z. and the ALIV Club differently from other similar situated public school students and student clubs and of discriminating against the religious and political content and viewpoint of A.Z.'s and the Club's speech.

111. Defendant's Policies violate various fundamental rights of A.Z., and the Club, such as rights of free speech, equal protection, and free exercise.

112. Defendant's Policies have in fact, and in practice, discriminated against A.Z.'s and the Club's rights of free speech, equal protection, and free exercise of religion.

113. When government regulations, like the Defendant's Policies challenged herein, infringe on fundamental rights, discriminatory intent is presumed.

114. Defendant lacks a rational or compelling state interest for its Policies which are causing the disparate treatment of A.Z. and the Club.

115. The denial of access to A.Z. and the Club caused by the Defendant's Policies is not narrowly tailored as applied because the speech does not implicate any legitimate

interests Defendant might have.

116. Defendant's Policies are over inclusive because they prohibit A.Z.'s and the Club's religious and political expression even though it is not disruptive.

117. The Defendant's Policies, both facially and as applied, accordingly violate A.Z.'s and the Club's right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff ALIV Club and A.Z. respectfully ask that the Court grant the declaratory and injunctive relief set forth in the prayer for relief.

FOURTH CAUSE OF ACTION: VIOLATION OF THE DUE PROCESS CLAUSE

118. Plaintiffs ALIV Club and A.Z. re-allege and incorporate herein, as though fully set forth, paragraphs 1-67 of this Complaint.

119. Defendant allegedly bases its decision to deny official status to the ALIV Club on its Policies that allow District Officials to determine whether they believe clubs "support the student body as a whole" or "promote the physical, mental, social, emotional, and moral well-being of the participants."

120. Defendants' Policies are vague and allow for unbridled discretion in determining which student clubs do and do not satisfy club criteria and thus qualify to receive official club status.

121. Defendants' Policies grant unbridled discretion in that they lack any definitions or guidelines as to how to determine whether a student club satisfies these "standards."

122. These vague terms utilized in the Defendant's Policies leave censorship of

student speech and recognition of official club status to the whims of the Defendant and its officials.

123. Defendant's Policies, both facially and as applied, accordingly violate the Club's and A.Z.'s rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs ALIV Club and A.Z. respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

FIFTH CAUSE OF ACTION: VIOLATION OF THE FREE EXERCISE OF RELIGION CLAUSE

124. Plaintiff ALIV Club and A.Z. re-allege and incorporate herein, as though fully set forth, paragraphs 1-67 of this Complaint.

125. The ALIV Club and A.Z. desire to engage in expressive activities on the basis of sincerely held religious beliefs and to share their beliefs with others.

126. Defendants Policies substantially burden the Club's and A.Z.'s free exercise of religion by denying them permission to access all facilities equally in order to meet with like-minded individuals to discuss religious topics and to spread their message.

127. Defendant's Policies substantially burden the Club's and A.Z.'s free exercise of religion by denying their ability to receive all of the same club benefits and privileges received by other clubs.

128. Defendant's conduct constitutes the imposition of special disabilities on the Club and A.Z. due to their religion and their intent to engage in religious expression through the ALIV Club.

129. These special disabilities placed on the Club and A.Z. are neither neutral nor of general applicability.

130. Defendant's Policies which lead to the denial of the ALIV Club selectively impose a burden on religious expression by singling out the Club's and A.Z.'s expression for discriminatory treatment.

131. Defendant's conduct cannot be justified by a compelling governmental interest and is not narrowly tailored to advance any such interest.

132. Defendant's interpretation and application of its Policies chill the Club's and A.Z.'s freedom of religious discussion and exercise, both of which are fundamental rights guaranteed by the First Amendment.

133. Defendant's Policies, both facially and as applied, constitute an excessive burden on the Club's and A.Z.'s rights to freedom in the exercise of religion and have violated the Free Exercise Clause of the First Amendment to the United States Constitution.

WHEREFORE, Plaintiff ALIV Club and A.Z. respectfully ask that the Court grant the declaratory and injunctive relief set forth in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ALIV Club and A.Z. respectfully pray for judgement as follows:

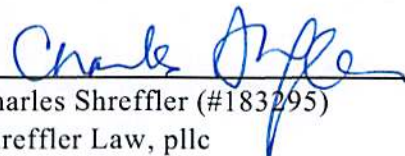
- a. That this Court issue a Preliminary and Permanent Injunction, restraining Defendant, its officers, agents, employees, and all other persons acting in active concert with them from enforcing the Policies that prohibit the ALIV Club and FCA from receiving official recognition and equal access to all club

benefits and privileges, thereby requiring Defendants to immediately approve the ALIV Club and FCA for official recognition and equal access;

- b. That this Court render a Declaratory Judgment declaring District Policy 564 that prohibits the ALIV Club, A.Z. and other Club members from receiving official recognition and equal access to all club rights, benefits, and privileges, to be unconstitutional on its face and as-applied and declaring Policy 801 to be unconstitutional as-applied;
- c. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment;
- d. That this Court retain jurisdiction of this matter for the purpose of enforcing any orders;
- e. That the Court award the ALIV Club and A.Z. the costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. §§ 1988 and the Equal Access Act;
- f. That this Court award nominal damages for the violation of the Club's and A.Z.'s constitutional rights;
- g. That this Court issue the requested injunctive relief without a condition of bond or other security being required; and
- h. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.

Respectfully submitted this 7th day of April, 2011.

DAVID A. CORTMAN*
GSB 188810
J. MATTHEW SHARP*
GSB 607842
ALLIANCE DEFENSE FUND
1000 Hurricane Shoals Road, NE
Building D, Suite 600
Lawrenceville, GA 30043
Telephone: (770) 339-0774
Facsimile: (770) 339-6744
dcortman@telladf.org
msharp@telladf.org


Charles Shreffler (#183295)
Shreffler Law, PLLC
410 11th Ave. So.
Hopkins, MN 55343
Telephone: (612) 872-8000
Facsimile: (651) 925-0080
chuck@chucklaw.com
Local Counsel

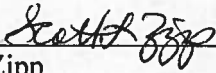
Attorneys for Plaintiffs ALIV Club and A.Z.

* Application for admission *pro hac vice* filed herewith

VERIFICATION

I, Scott Zipp, verify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have reviewed the foregoing Complaint and the facts contained therein are true and correct.

Executed this 28 day of March, 20 11, in St. Michael, Minnesota.




Scott Zipp

VERIFICATION

I, A.Z., verify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have reviewed the foregoing Complaint and the facts contained therein are true and correct.

Executed this 28 day of March, 2011, in St. Michael, Minnesota.



A.Z.