

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

J.S. a minor, by and through his next friend,
Katharine Smith; and KATHARINE SMITH,

Plaintiffs,

v.

HOLLY AREA SCHOOLS, Oakland County,
Michigan; TONY MAYHEW, in his official
capacity as President of the School Board; and
KENT BARNES, individually and in his
official capacity as Superintendent of Holly
Area Schools,

Defendants.

Case No.

VERIFIED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF

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Now come Plaintiffs, J.S., by and through his next friend, Katharine Smith¹, and Katharine Smith, pursuant to the Federal Rules of Civil Procedure, and for their causes of action against Defendants aver the following:

¹Pursuant to Fed. R. Civ. P. 5.2, J.S. is identified by his initials, rather than his full name.

I. INTRODUCTION

1. This is a civil rights action under 42 U.S.C. § 1983, the First Amendment, and the Fourteenth Amendment brought to remedy a violation of the constitutional rights of J.S., a student at Patterson Elementary School in Holly, Michigan, and of Katharine Smith, parent of J.S. and member of Cornerstone Church.
2. Plaintiffs bring this action challenging Defendants' censorship of Plaintiffs' religious flyer inviting students to a Youth Summer Camp at Cornerstone Church.
3. Defendants prohibited Plaintiffs' flyer solely because of the religious nature of the message pursuant to several unconstitutional policies.
4. Defendants, by policy and practice, permit students to distribute flyers which include information concerning, among other things, birthday invitations, end of year parties, etc.
5. Defendants, by policy and practice, permit community groups to distribute flyers which include information concerning, among other things, Girl Scouts, 4-H club, Dairy Queen, Office Depot, Rollhaven skating rink, Grand Blanc Gymnastics Company, the parks and recreation departments of several townships, neighborhood associations, and various nonprofit organized youth sports leagues to avail themselves of the take-home flyer forum.
6. First, Pursuant to Policy 8730, "[s]tudent publications which are not libelous, disruptive or obscene . . . may be distributed on school property during school hours in areas designated by the building principal."
7. Policy "8730-R Student Publications," requires school personnel to "consider the context of the distribution as well as the content of the material," when a student request to distribute any literature at school.

8. Pursuant to Policy 9370, “[m]aterials that have a religious content may be made available to students during non-instructional time” and the “board reserves the right to refuse distribution of any material by outside individuals or groups to the students of the district.”
9. Plaintiffs challenge these Policies both on their face and as-applied to their flyer.
10. Defendants’ draconian censorship of Plaintiffs’ religious speech, and the Policies on which that censorship was based, violate the First and Fourteenth Amendments to the United States Constitution.

II. JURISDICTION AND VENUE

11. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; and under federal law, particularly 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§ 1983 and 1988.
12. This Court possesses original jurisdiction over Plaintiffs’ claims by operation of 28 U.S.C. §§ 1331 and 1343.
13. This Court is vested with authority to issue the requested declaratory relief under 28 U.S.C. § 2201 and 2202, and pursuant to Rule 57 of the Federal Rules of Civil Procedure.
14. This Court has authority to award the requested injunctive relief under Rule 65 of the Federal Rules of Civil Procedure and under 28 U.S.C. § 1343(3).
15. This Court is authorized to award nominal damages under 28 U.S.C. § 1343(4).
16. This Court is authorized to award attorneys’ fees under 42 U.S.C. § 1988.
17. Venue is proper under 28 U.S.C. § 1391 in the Eastern District because this claim arose there, and because upon information and belief all Defendants reside within the District.

III. IDENTIFICATION OF THE PLAINTIFFS

18. Plaintiff J.S., a minor, is a student at Patterson Elementary School, at all times relevant to this Complaint, a resident of Holly, Michigan.
19. Plaintiff Katharine Smith, as next friend, is J.S.'s parent and guardian, and is a member of Cornerstone Church, and at all time relevant to this Complaint, is and was a resident of Holly, Michigan.
20. J.S. and Mrs. Smith desire to distribute religious literature, specifically a flyer detailing a Youth Summer Camp at Cornerstone Church, at Defendants' schools without facing censorship or punishment.
21. J.S. is an adherent of the Christian faith and desires to share his religious views with his classmates.
22. Mrs. Smith is an adherent of the Christian faith and desires to share her religious views and distribute flyers on behalf of her church to parents and friends or classmates at Defendants' schools.
23. Both J.S. and Mrs. Smith, pursuant to their sincerely held religious beliefs, desire to send other Cornerstone Church flyers home with students in Defendants' schools via full access to Defendants' take-home flyer forum.
24. Both J.S. and Mrs. Smith desire to distribute other flyers and materials with similar religious messages at Defendants' schools.
25. Both J.S. and Mrs. Smith desire to distribute religious flyers and materials to students attending Defendants' schools for the same reason other community groups desire to have their flyers distributed – to let parents know about upcoming church meetings and activities

so that they may make an informed decision as to whether their child can participate.

IV. IDENTIFICATION OF THE DEFENDANTS

26. Defendant Holly Area Schools (“District”) is organized under the laws of the State of Michigan and may sue and be sued.
27. The District is charged, inter alia, with the administration, operation, and supervision of Patterson Elementary School, a public primary school.
28. The District is charged with the formulation, adoption, implementation, and enforcement of District policies, including those challenged herein.
29. The District is responsible for the enforcement of its Policies by its employees.
30. The District is responsible for the enactment, enforcement, and existence of policies and practices related to access by students, community groups, businesses, and public entities to the flyer forum, in which elementary students take home approved flyers to their parents distributed by students, community groups, businesses, and public entities.
31. The District is responsible for excluding Plaintiffs from the take-home flyer forum pursuant to its policy and practice, through implementation by its legal counsel and otherwise.
32. The District is likewise responsible for the implementation and application by the Superintendent of its policies and practices pertaining to access to its take-home flyer forum.
33. The District is similarly responsible for delegating to the Superintendent final authority as to the approval and denial of the distribution of flyers by students, community groups, businesses, and public entities.
34. Defendant Tony Mayhew is the President of the School Board and is sued in his official capacity.

35. As President of the Board, he is responsible for the formulation, adoption, implementation, and enforcement of District policies, including those challenged herein.
36. The District is responsible for the enforcement of its Policies by its employees.
37. Mr. Mayhew is responsible for the enactment, enforcement, and existence of policies and practices related to access by students, community groups, businesses, and public entities to the flyer forum, in which elementary students take home approved flyers to their parents distributed by students, community groups, businesses, and public entities.
38. Mr. Mayhew is responsible for excluding Plaintiffs from the take-home flyer forum pursuant to the District's policy and practice, through implementation by its legal counsel and otherwise.
39. Mr. Mayhew is likewise responsible for the implementation and application by the Superintendent of its policies and practices pertaining to access to its take-home flyer forum.
40. Mr. Mayhew is similarly responsible for delegating to the Superintendent final authority as to the approval and denial of the distribution of flyers by students, community groups, businesses, and public entities.
41. Defendant Kent Barnes is the Superintendent of the District's public schools.
42. Defendant Barnes possesses responsibility, final authority, and discretion, as delegated by the District, as to administration of District policies as they relate to the District's flyer forum, in which elementary students take home flyers to their parents distributed by students, community groups, businesses, and public entities.
43. Defendant Barnes is responsible for the Policies and practice leading to the denial of take-home flyer forum access to the Plaintiffs, as well as for the denial itself.

44. Defendant Barnes is sued in his individual and official capacity.
45. Defendant Barnes made the decision to deny Plaintiffs access to the flyer forum pursuant to the Policy and practice implementation and direction of the District, and through its legal counsel.
46. This decision by Defendant Barnes to deny flyer forum access to Plaintiffs was made at the direction of the District.

V. ALLEGATIONS OF FACT

47. Patterson Elementary School (“Patterson”) is a public elementary school located in Holly, Michigan.
48. Patterson is under the direction of the District and includes kindergarten through fifth grade.
49. The District is the official policy maker and as such has enacted the Policies challenged herein.
50. Defendants permit students and community groups to distribute literature and materials pursuant to Policies 7800-R, 8730, 8730-R, and 9370.
51. Pursuant to Policies 7800-R and 9370, “[m]aterials that have a religious content may be made available to students during non-instructional time,” and the District shall “impose content neutral, time, place, and manner restrictions on the dissemination of religious materials . . .”
52. Pursuant to Policy 9370, the “board reserves the right to refuse distribution of any material by outside individuals or groups to the students of the district.”
53. Pursuant to Policy 8730, “[s]tudent publications which are not libelous, disruptive or obscene . . . may be distributed on school property during school hours in areas designated by the

building principal.”

54. Pursuant to Policy 8730-R, when “determining whether a student publication is disruptive, school personnel should consider the context of the distribution as well as the content of the material.”
55. Pursuant to Policy 8730-R, “[p]ublication’ means any book, magazine, pamphlet, newspaper, yearbook, picture, photograph, drawing or any other written or printed matter or visual representation of a faculty sponsor.”
56. Defendants permit students to distribute literature and publications even if they contain the expression of unpopular, critical, controversial, tasteless or offensive ideas.
57. Defendants permit a broad range of community groups, businesses and public entities to send home with students informational flyers about upcoming group meetings, activities or business advertisements through a take-home flyer forum.
58. Defendants permit students to distribute literature and materials.
59. Students regularly distribute literature and materials with all types of messages promoting clubs, camps, birthday invitations, end of year party invitations, etc.
60. In addition, local community groups, businesses, and public entities regularly distribute literature and materials with all types of messages promoting office supply companies, karate lessons, gymnastics lessons, rollerskating rinks, township parks and recreation activities, garage sales, etc.
61. In June, 2009, J.S. brought flyers to school inviting his classmates and friends to the Youth Summer Camp at Cornerstone Church. The flyers were placed in individually sealed envelopes, which also contained a letter from Mrs. Smith describing the Youth Summer

Camp.

62. J.S. handed out one flyer to a friend in the hallway outside of class and before class started.
63. J.S. then began placing the flyer envelopes in the cubbyholes, where all other flyers are placed.
64. Ms. King asked what the flyers were, and J.S. told her they were invitations to church.
65. Ms. King ordered J.S. to stop distributing the flyers and told him that anything that comes from a church cannot be distributed at all at school.
66. Ms. King removed the flyers from the cubbies and told J.S. to put them back in his backpack
67. When Ms. King removed the flyers and ordered J.S. to stop distributing them, J.S. thought he had done something wrong.
68. At no time did J.S.'s flyers cause a disruption at school.
69. Mrs. Smith gave the teacher and the Principal one of the envelopes so they could see the flyer.
70. In or about July, 2009, Mrs. Smith spoke to Dennis Inhulsen, Principal of Patterson, seeking permission to distribute the flyer.
71. Mr. Inhulsen informed Mrs. Smith that because of the so-called separation of church and state, religious materials could not be distributed at schools in the District pursuant to Policies 7800 and 7800-R.
72. In August, 2009, Mrs. Smith again contacted Mr. Inhulsen by e-mail and asked for permission and clarification why the flyers could not be distributed.
73. On or about August 24, 2009, Mr. Inhulsen responded to Mrs. Smith by e-mail and informed her that under District policy, neither students nor adults may distribute religious materials

at District schools.

74. Mr. Inhulsen further informed Mrs. Smith that religious materials could be placed in the lobby area at Patterson that adults can choose to read; however, such materials must include a statement saying “Not associated with Holly Area Schools.”
75. Patterson does not have a table for flyers in the lobby area.
76. Even if such a table suddenly came into existence, it would not permit Plaintiffs to reach their intended audience, nor would it treat them equally to other students or community groups.
77. On or about August 25, 2009, Mrs. Smith then contacted Defendant Kent Barnes, Superintendent of the District, by e-mail to again seek permission to distribute the flyers and to inquire why religious literature could not be distributed at Patterson.
78. Mrs. Smith asked if J.S. could distribute the flyers directly to his friends, whether before school, at recess, after school, or some other time. Mrs. Smith also asked if J.S. could distribute the flyers in the hallway.
79. On or about August 26, 2009, Defendant Barnes responded to Mrs. Smith by e-mail and informed her that J.S. could not distribute the religious flyers that no other resolution was possible.
80. Defendant Barnes also wrote: “Distributing religious invitations/materials/explanations within the elementary school day is not appropriate. I contacted our legal firm as well to ensure my understanding is correct, and they agreed. It is not a matter of whether your child is standing or sitting in the classroom, hallway, or cafeteria. Simply stated, your request for your child to distribute religious materials/invitations to the classmates cannot be

implemented. Please note that flyers can be put in the office as other flyers, not throughout the school building.”

81. There is no location in the office where other flyers are located for distribution or pick-up.
82. Even if such location was created, it would not permit Plaintiffs to give to J.S.’s friends and classmates and their parents religious invitations or materials, nor would it treat Plaintiffs equally to other students and community members.
83. After months of attempting to work with Defendants to secure her and her son’s rights to distribute religious flyers, Mrs. Smith decided to secure her rights through legal avenues.
84. Defendants had already stated that their denial was legally appropriate, and that they had confirmed the legality of their denial through their attorneys.
85. J.S. is a Bible-believing Christian who desires to share his faith and beliefs with other students and to invite them to church events.
86. J.S.’s sincerely held religious beliefs compel him to share his faith and beliefs with his friends and classmates at school.
87. One way J.S. accomplishes this goal at school is through inviting his friends to events at his church.
88. In the future, J.S. desires to engage in religious speech through the distribution of religious literature, including the flyer that was censored here, absent fear of reprisal and without facing punishment or being prohibited from doing so.
89. Mrs. Smith is also a Bible-believing Christian who desires to share her faith and beliefs with parents and students in her son’s classes and to invite them to church events with permission from their parents.

90. Mrs. Smith's sincerely held religious beliefs compel her to share her faith and beliefs with parents of her son's friends and classmates at school.
91. On behalf of her church, Mrs. Smith accomplishes this goal at her son's school through inviting parents and their children to events at their church.
92. In the future, Mrs. Smith desires to engage in religious speech through the distribution of religious literature on behalf of her church, including the flyer that was censored here, without being prohibited from distributing her message.

VI. ALLEGATIONS OF LAW

93. Students do not shed their constitutional rights at the schoolhouse gate.
94. Non-disruptive, private student expression is protected by the First Amendment.
95. Private speakers are entitled to equal, viewpoint neutral access to public fora.
96. Religious speech is fully protected by the First Amendment.
97. Prior restraints on speech may not delegate overly broad discretion to government decision-makers, may not allow for content based restrictions, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication.
98. The government may never discriminate against speech based on its viewpoint.
99. Content-based restrictions on speech in a public forum are presumptively unconstitutional and are subject to strict scrutiny.
100. Time, place, and manner restrictions on speech must be content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.

101. All of the acts of Defendants, its 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 Michigan.
102. Plaintiffs are suffering irreparable harm from the conduct of Defendants.
103. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivation of their rights by Defendants.
104. Unless Defendants' Policies are enjoined, Plaintiffs will continue to suffer irreparable injury.
105. Plaintiffs' church continues to hold events and activities and Plaintiffs desire to share this information through flyers and literature distribution immediately, in addition to J.S. wishing to distribute to his friends religious flyers not associated with the church.

FIRST CAUSE OF ACTION: VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

106. Plaintiffs re-allege and incorporate herein, as though fully set forth, Paragraphs 1 through 105 of this Complaint.
107. The First Amendment's Freedom of Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits censorship of religious expression.
108. Defendants' Policies and practice create two fora by permitting students to distribute literature, and by permitting community groups, businesses, and public entities to distribute literature through a take-home flyer forum.
109. Through its creation of two public fora and the attendant access given to the above mentioned groups and others, Defendants permit the distribution of flyers to students and

parents that promote recreational, cultural, community, charitable, and education-related activities.

110. Plaintiffs proposed flyers promote similar educational, cultural, charitable, community, and recreational activities, albeit from a religious perspective, but Plaintiffs are barred from distributing their flyers through the fora.
111. Defendants' Policies and practice prohibit J.S. and Mrs. Smith from distributing a religious flyer about their church summer camp based solely on the religious nature of their expression.
112. This unequal treatment of J.S. and Mrs. Smith based solely on the religious expression that they seek to engage in is a content-based restriction in otherwise open fora.
113. This denial of J.S.'s and Mrs. Smith's speech – while permitting similar speech – also constitutes viewpoint discrimination, which is unconstitutional in any type of forum.
114. J.S.'s religious expression on campus does not materially and substantially interfere with the orderly conduct of educational activity within the school.
115. Defendants' Policies and practice additionally impose an unconstitutional prior restraint because they vest District officials with unbridled discretion to permit or refuse protected religious speech.
116. Defendants' Policies and practice also allow District officials to act with unbridled discretion when deciding if a student's speech is "disruptive," or when considering the "context of the distribution as well as the content of the material," or by "reserv[ing] the right to refuse distribution of any material by outside individuals or groups to the students of the district."
117. Defendants' Policies and practice are additionally overbroad because they sweep within their

ambit protected First Amendment expression.

118. The overbreadth of Defendants' Policies and practice chill the speech of third parties who might seek to engage in private religious expression through the take-home flyer forum.
119. Defendant's Policies and practice chill, deter, and restrict Plaintiffs from freely expressing their religious beliefs.
120. Defendants' Policies, as interpreted and applied by them to prohibit religious speech are not the least restrictive means necessary to serve any compelling interest which Defendants seek thereby to secure.
121. Defendants' Policies and practice are not reasonably related to any legitimate pedagogical concerns.
122. Censoring students' and community groups' religious speech per se is not and cannot be a legitimate pedagogical concern.
123. Defendants' Policies and practice, both facially and as applied, accordingly violate Plaintiffs' right to Free Speech as guaranteed by the First Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

SECOND CAUSE OF ACTION: VIOLATION OF THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

124. Plaintiffs re-allege and incorporate herein, as though fully set forth, Paragraphs 1 through 105 of this Complaint.
125. Defendants' Policies and practice, by expressly targeting J.S.'s and Mrs. Smith's private religious expression for special disabilities, violate their constitutional right to the free

exercise of religion.

126. J.S. and Mrs. Smith desire to engage in expressive activities described above on the basis of their sincerely held religious beliefs.
127. Defendants' Policies and practice explicitly exclude – and thus discriminate against – religious expression.
128. Defendants' Policies and practice substantially burden J.S.'s and Mrs. Smith's free exercise of religion by conditioning their ability to speak on foregoing their free exercise rights.
129. Defendants' Policies and practice force J.S. and Mrs. Smith to choose between engaging in religious speech and being censored, or foregoing the free exercise of religion to be able to speak without censorship or punishment.
130. Defendants' Policies and practice substantially burden J.S.'s and Mrs. Smith's free exercise of religion by denying them the right to include private religious speech in the fora.
131. Defendants' Policies and practice constitutes the imposition of special disabilities on J.S. and Mrs. Smith due to their religion and their intent to include private religious expression in the fora.
132. These special disabilities placed on Plaintiffs are neither neutral nor of general applicability.
133. Defendants' Policies and practice of banning J.S.'s and Mrs. Smith's religious flyer selectively imposes a burden on expression based on the religious nature of the expression by singling out their expression for discriminatory treatment.
134. Defendants' Policies and practice cannot be justified by a compelling governmental interest and are not narrowly tailored to advance any such interest.
135. Defendants' interpretation and application of their Policies chill J.S.'s and Mrs. Smith's

freedom of religious expression and exercise, both of which are fundamental rights guaranteed to Plaintiffs by the First Amendment.

136. Defendants' Policies and practice, both facially and as applied, constitute an excessive burden on J.S.'s and Mrs. Smith'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, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

THIRD CAUSE OF ACTION: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

137. Plaintiffs re-allege and incorporate herein, as though fully set forth, Paragraphs 1 through 105 of this Complaint.
138. The Due Process Clause of the Fourteenth Amendment prohibits government from censoring speech pursuant to vague or overbroad standards that grant unbridled discretion.
139. The determination by Defendants of what is and is not forbidden religious speech violates this norm.
140. Defendants' Policies and practice are vague and allow for unbridled discretion in determining which student and community group speech satisfies their Policies.
141. Defendants' Policies lack any definitions or guidelines as to how to determine whether student speech is "disruptive," or when considering the "context of the distribution as well as the content of the material," or by "reserv[ing] the right to refuse distribution of any material by outside individuals or groups to the students of the district."
142. These vague terms utilized in Defendants' Policies leave censorship of student speech and

community group speech to the whim of Defendants.

143. The Policies' language holds no discernible meaning and can be applied to prohibit any disfavored speech, which is exactly how it has been applied to Plaintiffs.
144. Defendants' Policies and practice, both facially and as applied, accordingly violate Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

FOURTH CAUSE OF ACTION: VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

145. Plaintiffs re-allege and incorporate herein, as though fully set forth, Paragraphs 1 through 105 of this Complaint.
146. Defendants' Policies and practice embody hostility toward religious expression and require excessive entanglement with religion, both forbidden under the First Amendment's Establishment Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution.
147. Defendants' Policies and practice of banning J.S.'s and Mrs. Smith's religious expression evinces discriminatory suppression of private speech that is not neutral, but rather is hostile toward religion.
148. Defendants, pursuant to their Policies and practice of suppressing any private Christian religious expression sends the message to students and community groups that religious speakers such as J.S. and Mrs. Smith are second-class citizens, outsiders, and not full

members of the academic community.

149. Defendants send the message that Christians like J.S. and Mrs. Smith are outsiders by excluding a religious points of view and events while concurrently permitting all other points of view and events.
150. Defendants' Policies and practice compel District officials to classify private student and community group speech according to their perceived religious-versus-nonreligious nature.
151. Drawing this distinction necessarily requires District officials to inquire into the significance of words and practices to different religious faiths, and in varying circumstances by the same faith.
152. Such inquiries by District officials entangle it with religion in a manner forbidden by the First Amendment.
153. Entanglement problems exist because District officials must attempt to discern which private student and community group expression is too religious in nature to be permitted.
154. District officials must make theological interpretations in order to conclude that some student and community group speech is religious, while other student speech is not.
155. Defendants denied J.S. and Mrs. Smith the right to distribute their religious flyer because it contained a religious point of view, actions that represent the antithesis of neutrality.
156. No compelling state interest exists to justify the censorship of J.S.'s and Mrs. Smith's religious expression.
157. Defendants' Policies and practice therefore violate the Establishment Clause of the First Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter

in the Prayer for Relief.

FIFTH CAUSE OF ACTION: VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

158. Plaintiffs re-allege and incorporate herein, as though fully set forth, Paragraphs 1 through 105 of this Complaint.
159. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated persons and groups equally.
160. Pursuant to their Policies and practice, Defendants have allowed other similarly situated students and community groups to access the fora with secular expression.
161. Defendants have treated J.S. disparately when compared to similarly situated students by banning only J.S.'s religious expression.
162. Defendants have treated Mrs. Smith disparately when compared to similarly situated community groups by banning only Mrs. Smith's religious expression on behalf of Cornerstone Church.
163. By discriminating against the content and viewpoint of J.S.'s and Mrs. Smith's speech, Defendants are treating J.S. and Mrs. Smith differently than other similar situated public school students and private community groups on the basis of the religious content and viewpoint of their speech.
164. Defendants' Policies and practice violate various fundamental rights of J.S. and Mrs. Smith, such as rights of free speech and free exercise of religion.
165. When government regulations, like Defendants' Policies and practice challenged herein, infringe on fundamental rights, discriminatory intent is presumed.

166. Defendants' Policies and practice have also in fact, and in practice, been applied to intentionally discriminate against J.S.'s and Mrs. Smith's rights of free speech and free exercise of religion.
167. Defendants lack a rational or compelling state interest for such disparate treatment of J.S. and Mrs. Smith.
168. Defendants' denial of access to J.S. and Mrs. Smith are not narrowly tailored in that they restrict students and community groups private religious expression unrelated to any asserted interest Defendants may have.
169. Defendants' Policies and practice are not narrowly tailored as applied to J.S. and Mrs. Smith because their speech does not implicate any of the interests Defendants might have.
170. Defendants' Policies and practice are overinclusive because they prohibit J.S.'s and Mrs. Smith's religious expression even though it is not disruptive.
171. Defendants' Policies and practice burden more of J.S.'s and Mrs. Smith's speech than necessary because they are foreclosed from using religious content and viewpoints in their speech even though it is not disruptive.
172. The Policies and practice of Defendants, both facially and as applied, thus violate J.S.'s and Mrs. Smith's right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

SIXTH CAUSE OF ACTION: VIOLATION OF ART. I § 4 OF THE MICHIGAN CONSTITUTION

173. Plaintiffs re-allege and incorporate herein, as though fully set forth, Paragraphs 1 through 105 of this Complaint.
174. Defendants' Policies and practice, by expressly targeting J.S.'s and Mrs. Smith's private religious expression for special disabilities, violates their state constitutional right to freedom of worship and religious belief.
175. J.S. and Mrs. Smith desire to engage in expressive activities described above on the basis of their sincerely held religious beliefs.
176. Defendants' Policies and practice explicitly exclude – and thus discriminate against – religious expression.
177. Defendants' Policies and practice substantially burden J.S.'s and Mrs. Smith's freedom of worship and belief by conditioning their ability to speak on foregoing these freedoms.
178. Defendants Policies and practice force J.S. and Mrs. Smith to choose between engaging in religious speech and being censored, or foregoing the freedom of worship and belief to be able to speak without censorship or punishment.
179. Defendants' Policies and practice substantially burden J.S.'s and Mrs. Smith's freedom of worship and belief by denying them the right to include private religious speech in the fora.
180. Defendants' Policies and practice constitutes the imposition of special disabilities on J.S. and Mrs. Smith due to their religion and their intent to include private religious expression in the fora.
181. Defendants' Policies and practice of banning J.S.'s and Mrs. Smith's religious flyer

selectively imposes a burden on expression based on the religious nature of the expression by singling out their expression for discriminatory treatment.

182. Defendants' Policies and practice cannot be justified by a compelling governmental interest and are not narrowly tailored to advance any such interest.
183. Defendants' interpretation and application of their Policies chill J.S.'s and Mrs. Smith's freedom of worship and belief through religious expression, both of which are fundamental rights guaranteed to Plaintiffs by the First Amendment of the United States Constitution and Article I § 4 of the Michigan Constitution.
184. Defendants' Policies and practice, both facially and as applied, constitute an excessive burden on J.S.'s and Mrs. Smith's rights to freedom of worship and belief and have violated Article I § 4 of the Michigan Constitution.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgement as follows:

- a. That this Court issue a Preliminary and Permanent Injunction, restraining Defendants, its officers, agents, employees, and all other persons acting in active concert with it, from enforcing the Policies challenged herein that violate J.S.'s and Katharine Smith's constitutional rights by banning religious expression;
- b. That this Court render a Declaratory Judgment, declaring as unconstitutional facially and as-applied the District's Policies and practice challenged herein that ban religious expression in violation of the First and Fourteenth Amendments to the United States

Constitution;

- 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 J.S.'s and Katharine Smith's costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. § 1988.
- f. That this Court award nominal damages for the violation of J.S.'s and Katharine Smith's constitutional rights;
- g. That this Court issue the requested injunctive relief without a condition of bond or other security being required of J.S. or Katharine Smith; and
- h. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.

Dated this 28th day of October, 2009.

s/ David A. Cortman
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VERIFICATION

I, Katharine Smith, a citizen of the United States and a resident of the State of Michigan, have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 21st day of October, 2009 in Holly, Michigan.

Katharine A. Smith
Katharine Smith