

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FILED
U.S. DISTRICT COURT
DISTRICT OF KANSAS

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RALPH L. DELOACH
CLERK
BY *K. O'Leary* DEPUTY
AT KANSAS CITY, KS.

KRISTIE MCKEE; KLM(1), a minor,)
through his parent and guardian Kristie)
McKee; KLM(2), a minor, through his)
parent and guardian Kristie McKee; and)
KLM(3), a minor, through his parent and)
guardian Kristie McKee,)

Plaintiffs,)

v.)

Civil Action No. 06-2370 CM/GLR

PLEASANTON UNIFIED SCHOOL)
DISTRICT 344, and TIM CONRAD, in his)
official capacity as Superintendent of the)
Pleasanton Unified School District,)

Defendants.)

**VERIFIED COMPLAINT FOR DECLARATORY JUDGEMENT,
INJUNCTIVE RELIEF AND DAMAGES**

COME NOW the Plaintiffs, by counsel, and for their causes of action against the PLEASANTON UNIFIED SCHOOL DISTRICT 344 and TIM CONRAD, in his official capacity as Superintendent of the Pleasanton Unified School District 344, (collectively, "Defendants") allege and state the following:

I.
INTRODUCTION

1. Non-curriculum clubs within the Pleasanton Unified School District 344 ("District") possess certain rights and privileges, including but not limited to, the ability to use the morning announcements to announce club activities, meet during seminar period, the ability to fundraise at school, use of school vehicles for trips, use of school facilities for special events, inclusion in the yearbook as a club, STUCO representation, and the ability to have a bank account with the school to keep funds. Defendants, however, have denied these same rights and privileges to the

Fellowship of Christian Athletes Club (“FCA Club”), of which Plaintiffs are members, because it is a Christian club.

2. To redress irreparable harm to their rights, Plaintiffs seek declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 and the Equal Access Act, 20 U.S.C. §§ 4071-4074 for violation of their constitutional and statutory rights, and seek compensatory and nominal damages to redress past legal injuries.

II. **JURISDICTION AND VENUE**

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

4. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

5. This Court has authority to grant the requested injunctive relief under 28 U.S.C. § 1343(3); and attorneys’ fees under 42 U.S.C. § 1988(b).

6. Venue is proper in this Court under 28 U.S.C. § 1391(b), because the Defendants are located within the District.

III. **IDENTIFICATION OF PLAINTIFFS**

7. Plaintiff Kristie McKee is the parent and legal guardian of three minor children who attend school within the District.

8. Plaintiff KLM(1) is a junior in the Pleasanton High School (“PHS”), and is a member of the FCA Club.

9. Plaintiff KLM(2) is a sophomore in the PHS and is a member of the FCA Club.

10. Plaintiff KLM(3) is a kindergarten student within the District, and one day hopes to be a member of the FCA Club.

IV.
IDENTIFICATION OF DEFENDANTS

11. Defendant Pleasanton Unified School District 344 is a civil body politic, organized under Kansas law, and was at all times relevant to this action acting under the color of state law. It is charged with the administration and operation of the PHS and may sue and be sued in its corporate name.

12. Defendant Tim Conrad is, and was at all times relevant hereto, the Superintendent of the District. Among other things, he is charged with the responsibility of administering the District's policy and state and federal laws as they relate to student religious activities on campus, including the establishment of religious student clubs. At all times relevant to this Complaint, the conduct of this defendant was under color and authority of state law. This defendant is sued in his official capacity as Superintendent of the District.

V.
STATEMENT OF FACTS

13. PHS is a public school located in Pleasanton, Kansas, teaching grades nine through twelve.

14. PHS is a "secondary school" under Kansas law and is part of the District.

15. PHS receives federal financial assistance.

16. By policy and practice, Defendants permit, or have permitted, the following student clubs to meet within the PHS: VICA club (Vocational Industrial Clubs of America),

FCCLA (Family, Career, and Community Leaders of America), FFA (Future Farmers of America), Scholar's Bowl, Drama Club, Blu Print, Photo Club, Weight Lifting, and Forensics.

17. Defendants do not require nor directly encourage participation in these student clubs in connection with curriculum course work.

18. Defendants permit student clubs to promote their meetings and activities by including this information in the morning broadcast announcements, and then by posting a hardcopy of the announcements on the doors of classrooms.

19. Defendants permit student clubs to meet during seminar period.

20. No classroom instruction takes place during seminar period.

21. Defendants permit student clubs to fundraise at the school.

22. Defendants permit student clubs to use school vehicles for trips.

23. Defendants permit student clubs to use school facilities for special events.

24. Defendants permit student clubs to be included in the yearbook.

25. Defendants permit student clubs to have a STUCO representative.

26. Defendants permit student clubs to have a bank account with the school to keep and maintain funds.

27. The FCA Club is also a student club within the PHS, but it is denied the same rights and privileges as the other student non-curriculum clubs.

28. The FCA Club is a student initiated, student lead club within PHS.

29. Plaintiffs KLM(1) and KLM(2) are members of the FCA Club at PHS.

30. The FCA Club would like to announce its meetings and activities during the morning announcements that are broadcasted throughout the school and that are posted on the

walls in classrooms, be able to meet during seminar period when needed, engage in fundraisers at the school, use school vehicles for trips, use school facilities for special events, be included in the yearbook, have a STUCO representative, and have a bank account with the school to keep and maintain funds.

31. The FCA club is not able to do any of these things because it is a religious club.

32. Plaintiffs are Christians whose religious beliefs compel them to conduct themselves in accordance with biblical precepts, including joining others for communal worship and study, expressing to others their belief in salvation through Christ, and speaking truth in love.

33. Plaintiffs' sincerely held religious beliefs have motivated them to participate in the FCA Club and to promote the FCA Club to other students.

34. Defendants refused, and continue to refuse to allow the FCA Club to announce its meetings and activities during the morning announcements that are broadcasted throughout the school and that are posted on the walls in classrooms, be able to meet during seminar period when needed, engage in fundraisers at the school, use school vehicles for trips, use school facilities for special events, be included in the yearbook, have a STUCO representative, and have a bank account with the school to keep and maintain funds, because it is a religious club.

35. For example, in early October, 2005, FCA applied to hold a rally after school at the Ernie Price Annex. Because Superintendent Conrad refused to recognize the FCA club, the Club was informed by the School Board that it would be charged to use the facility, even though all other non-curriculum clubs could use the facility for no charge. Ultimately, the FCA Club was forced to hold its rally at a different site because the Defendants insisted on charging the

Club a fee.

36. In late October, 2005, PHS officials scratched FCA's name from the bulletin board listing school-sponsored organizations.

37. In early November, 2005, FCA petitioned the School Board to recognize the club as an official student group. The School Board refused to do so and tabled the issue. Russell A. Reynolds, school board president, said that FCA could continue to meet on campus, but it would not be an official club and would not have access to the same school facilities as other clubs.

38. After that meeting, FCA's student representative at the PHS student council meetings was told she could no longer attend because FCA was not a recognized club.

39. On May 22, 2006, counsel for the Plaintiffs sent a letter to the Defendants demanding that they recognize the FCA Club as a non-curriculum school club with all of the rights and privileges that are afforded other student clubs.

40. On August 2, 2006, after not hearing from the Defendants, counsel for the Plaintiffs sent a second letter to the Defendants again demanding that they recognize the FCA Club as a non-curriculum school club with all of the rights and privileges that are afforded other student clubs.

41. Defendants have not responded to Plaintiffs' demands.

42. By refusing to grant equal access to Plaintiffs and the FCA club, Defendants intentionally violated federal constitutional and statutory law.

43. A reasonable person would have known that refusing to grant equal access to the Plaintiffs and the FCA Club would violate clearly established statutory and constitutional law.

44. Due to Defendants' policies and actions, Plaintiffs have been damaged.

ALLEGATIONS OF LAW

45. Each and all of the acts of the Defendants, their officers, agents, employees and servants, were executed or are threatened to be executed by the Defendants, not as individuals, but under the color and pretense of the statutes, ordinance, regulation, customs and usages of the District.

46. Plaintiffs are suffering irreparable injury from the conduct of Defendants.

47. Unless the conduct of Defendants is enjoined, Plaintiffs will continue to suffer irreparable injury.

CLAIMS FOR RELIEF

COUNT I - VIOLATION OF FREE SPEECH RIGHTS UNDER THE UNITED STATES CONSTITUTION

48. Plaintiffs re-allege and incorporate herein by reference the above numbered paragraphs, and do further allege as follows:

49. Defendants denied Plaintiffs the right to establish and maintain the FCA Club, a religious club, on the same terms and conditions as other student clubs because of the religious nature of its expressive activities.

50. By its policy and practice of permitting student clubs to meet at PHS, Defendants created a limited public forum for private student speech.

51. The Defendants engaged in content- and viewpoint-based discrimination of expression in refusing to allow Plaintiffs and the FCA Club the same rights and privileges as other student clubs.

52. The Defendants' content- and viewpoint-based discrimination of expression is not

supported by a compelling governmental interest nor is it narrowly tailored.

53. Defendants' policies and actions are an unconstitutional prior restraint of private speech.

54. There is nothing in the District's policy that prohibits the Superintendent or the School Board from denying access to Plaintiffs of rights and privileges of being a recognized student club at PHS based on Plaintiffs' viewpoint.

55. Defendants have unbridled discretion to deny Plaintiffs and the FCA club the rights and privileges of being a recognized school club.

56. There are no time limits within which Defendants must approve Plaintiffs' request to be a recognized student club and to grant them all rights and privileges of being a recognized club.

57. There is no right to an immediate appeal if Plaintiffs' request to be a recognized student club is denied.

58. Defendants have no compelling reason that would justify its policies and actions.

59. Defendant's policies and actions are not narrowly tailored to achieve any legitimate governmental interest.

60. Plaintiffs have suffered irreparable harm to their constitutional rights as a result of the Defendant's policies and actions.

61. Unless and until Defendants are enjoined from discriminating against Plaintiffs' speech, Plaintiffs will continue to suffer irreparable harm to their constitutional rights.

62. Defendants' policies and actions have chilled, and will chill the exercise of First Amendment rights by other individuals and organizations.

63. Facially and as applied, Defendant's policies and actions that prohibit religious clubs from being recognized as school clubs interfere with private speech protected by the First and Fourteenth Amendments to the United States Constitution because they promote and protect virtually all secular speech, while denying equal access for, and thereby inhibiting, speech having religious content or viewpoint.

64. Defendants' policies and actions have violated Plaintiffs' right to freedom of association as protected by the Free Speech Clause of the First Amendment of the United States Constitution.

WHEREFORE Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

**COUNT II - VIOLATION OF RIGHT TO EQUAL PROTECTION OF THE LAWS
UNDER THE FOURTEENTH AMENDMENT**

65. Plaintiffs re-allege and incorporate herein by reference the above numbered paragraphs, and do further allege as follows:

66. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat equally all persons similarly situated.

67. By discriminating against the content and viewpoint of Plaintiffs' speech, Defendants are treating Plaintiffs differently from other similarly situated public school students within the District on the basis of the religious content of the Plaintiffs' speech and views.

68. By failing to recognize the FCA Club as a school club, and thus denying them all of the rights and privileges of being a recognized school club, Defendants are treating Plaintiffs differently from all other similarly situated public school students at PHS.

69. Defendants do not have a compelling state interest for such disparate treatment.

70. Defendants have no compelling, substantial, or rational interest in discriminating against an individual or club that incorporates religious content or expresses a religious viewpoint.

71. The policy and actions of Defendants violate Plaintiffs' rights to equal protection of the laws as guaranteed by the Fourteenth Amendment, United States Constitution.

WHEREFORE Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

**COUNT III - VIOLATION OF RIGHT TO DUE PROCESS OF LAW UNDER THE
FOURTEENTH AMENDMENT**

72. Plaintiffs re-allege and incorporate herein by reference the above numbered paragraphs, and do further allege as follows:

73. Defendants' actions and policies are unconstitutional under the vagueness doctrine because they are unclear and ambiguous, lack sufficient standards, and are subject to discriminatory enforcement.

74. Defendants' refusal to extend the same rights and privileges to the FCA Club as it does to all other non-curriculum clubs is arbitrary and capricious.

75. Defendants' actions and policies violate the due process rights of Plaintiffs 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.

**COUNT IV - VIOLATION OF RIGHT TO FREE EXERCISE OF RELIGION UNDER
THE FIRST AMENDMENT**

76. Plaintiffs re-allege and incorporate herein by reference the above numbered

paragraphs, and do further allege as follows:

77. Plaintiffs desire to establish and maintain the FCA Club on the basis of a sincerely held religious belief to share the message of their religious speech with others.

78. Defendants' policy and actions constitute the imposition of special disabilities on Plaintiffs because of religion, and their intent to engage in religious expression.

79. These special disabilities placed on Plaintiffs are not neutral and of general applicability.

80. The Defendants' policy and actions cannot be justified by a compelling governmental interest nor is it narrowly tailored to advance any such interest.

81. The Defendants' policy and actions have violated, and continue to violate, the Free Exercise Clause of the First Amendment, United States Constitution.

WHEREFORE Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

COUNT V - VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE UNITED STATES CONSTITUTION

82. Plaintiffs re-allege and incorporate herein by reference the above numbered paragraphs, and do further allege as follows:

83. Defendants have a duty under the Establishment Clause of the First Amendment to the United States Constitution to be neutral in their treatment of religion and religious beliefs.

84. The policy and actions of Defendants, however, are not neutral toward religion. Rather, by forbidding equal access and equal rights because the FCA Club is of a religious nature, while favoring other student clubs, Defendants have demonstrated hostility toward religion and specific religious beliefs, and preferred religion over irreligion, in violation of the

Establishment Clause.

85. Instead of neutrality, Defendants have discriminated against Plaintiffs on the basis of the religious content and viewpoint of their speech.

86. The Establishment Clause affirmatively mandates that Defendant cannot treat Plaintiffs as second-class citizens merely because they incorporate religious content or express a religious viewpoint.

87. Defendants' denial of Plaintiffs' access to an important government benefit in the form of rights and privileges of being a recognized student club conveys a governmental message that Plaintiffs are outsiders and not full members of the community, and contravenes the First Amendment's Establishment Clause as incorporated and applied to the states by the Fourteenth Amendment.

88. Defendants' refusal to recognize the FCA Club as a student club and its refusal to extend to Plaintiffs or the FCA Club all of the rights and privileges of being a recognized student club, serves no secular purpose, has the primary effect of inhibiting religion, and excessively entangles government with religion and contravenes the First Amendment's Establishment Clause as incorporated and applied to the states by the Fourteenth Amendment.

89. A reasonable observer in the community, knowing that the District permits all kinds of student clubs to be recognized and extends rights and privileges to all kinds of student clubs, but denies those same rights to Plaintiffs and the FCA Club, would perceive that the District is disfavoring religion.

90. This discrimination is a violation of the Establishment Clause of the First Amendment, United States Constitution.

WHEREFORE Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

COUNT VI - VIOLATION OF THE EQUAL ACCESS ACT

91. Plaintiffs re-allege and incorporate herein by reference the above numbered paragraphs, and do further allege as follows:

92. Defendants created a "limited open forum" within the meaning of the Equal Access Act, Title 20 U.S.C. §§ 4071, *et seq.* by permitting one or more clubs to meet on school premises during non-instructional time.

93. Defendants denied, and continue to deny, Plaintiffs and their club equal access to and a fair opportunity to exercise their student club rights and privileges on school premises, discriminating against Plaintiffs on the basis of the religious content of their speech.

94. Defendants have therefore abridged and continue to violate the rights of Plaintiffs under the Equal Access Act, 20 U.S.C. §§ 4071-4074.

WHEREFORE Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

a. That this Court preliminarily and permanently enjoin the conduct of Defendants, their officers, agents, servants, and employees which violates the First and Fourteenth Amendments of the United States Constitution;

b. That this Court preliminarily and permanently enjoin Defendants, their officers, agents, servants, and employees from denying Plaintiffs' equal access and equal rights based on

the religious content and viewpoint of their speech;

c. That this Court preliminarily and permanently enjoin Defendants, their officers, agents, servants, and employees from denying the FCA Club at PHS all of the rights and access equal to all other student groups;

d. That this Court issue a preliminary and permanent injunction restraining Defendants, their officers, agents, servants, and employees from denying Plaintiffs' rights under the Equal Access Act, 20 U.S.C. §§ 4071-4074, in any manner so as to deny the FCA Club equal access and equal rights on the same terms and conditions as other student clubs; and

e. That this Court render a Declaratory Judgment declaring the complained of conduct denying equal access and equal rights to Plaintiffs, to be invalid and unconstitutional in all respects under the First and Fourteenth Amendments to the United States Constitution;

f. That this Court render a Declaratory Judgment declaring that Defendants' refusal to allow Plaintiffs' equal access and equal rights, because of the religious content of their speech, is unconstitutional and constitutes content and viewpoint discrimination against the speech and religious beliefs of Plaintiffs, which violates Plaintiffs' First Amendment rights to freedom of speech and free exercise of religion;

g. That this Court render a Declaratory Judgment that allowing other clubs rights and access while denying Plaintiffs the same use and rights of school facilities because of the religious content of their speech, violates Plaintiff's Fourteenth Amendment equal protection rights;

h. That this Court render a Declaratory Judgment declaring that Defendants' denial of access to exercise student rights and privileges because of the religious nature of Plaintiffs'

activities, violates Plaintiffs' First Amendment free exercise of religion rights;

i. That this Court render a Declaratory Judgment declaring that Defendants' refusal to allow the FCA Club equal use of school facilities while making the same available to other student groups constitutes a denial of official recognition and equal access in violation of the Equal Access Act, 20 U.S.C. §§ 4071-4074;

j. That this Court render a Declaratory Judgment declaring that Defendants' denial to Plaintiffs of equal rights and equal access to its campus facilities on the basis of the religious content of their speech constitutes hostility and a lack of neutrality to religion and violates the First Amendment's Establishment Clause;

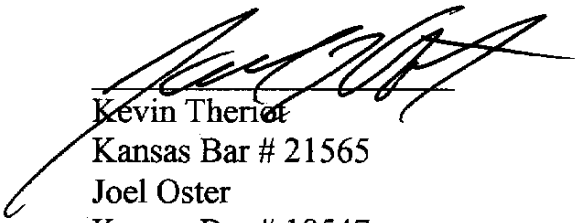
k. Grant to Plaintiffs compensatory and nominal damages;

l. Grant to Plaintiffs an award of their costs of litigation, including reasonable attorneys' fees and expenses.

m. Grant such other and further relief as this Court deems just and proper.

THIS CASE IS TO BE FILED IN THE KANSAS CITY, KANSAS DIVISION.

Respectfully submitted this 7th day of September, 2006.



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ATTORNEYS FOR PLAINTIFFS

VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 7th day of September, 2006.


Kristie McKee