

MAR 25 2009

JAMES N. HATTEN, Clerk
[Signature]
Deputy Clerk

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ANDREA SHELTON, on her own behalf)
and as a parent and next friend of J.S.,)
a minor,)

Plaintiffs,)

vs.)

ATLANTA PUBLIC SCHOOLS; and)
DR. BEVERLY L. HALL, individually)
and in her official capacity as)
Superintendent of Atlanta Public Schools,)

Defendants.)
_____)

Civil Action No.

1 09-CV-0806

**VERIFIED COMPLAINT
FOR INJUNCTIVE AND DECLARATORY RELIEF**

COME NOW the Plaintiffs Andrea Shelton and J.S.,¹ pursuant to the Federal Rules of Civil Procedure, and for their causes of action against the Defendants, state the following:

¹In accordance with Section II.I.1 of the Court's Electronic Case Filing and Administrative Procedures Manual, Plaintiff J.S. is identified by his initials, rather than his full name, in order to keep his identity private.

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 violations of the constitutional and statutory rights of Andrea Shelton and her son J.S., a student at Sutton Middle School (“Sutton”) located in Atlanta, Georgia.

2. Plaintiffs bring this action not because they desire any form of special treatment. Rather, they simply want *equal* treatment, for the Defendants insist on denying their religious Student to Student Club (“STS”) the same rights, privileges, and benefits received by all other Sutton student clubs.

3. In accordance with their policies and practice, the Defendants permit many student clubs that are non-curriculum related, including Outward Bound, Power Over Prejudice, Puppetry Club, O (“Oprah”) Ambassadors Girls Club, Knitting Club, Girl Scouts, and All Pro Dads, among others.

4. Defendants permit these clubs to meet free of charge in school facilities during non-instructional time, and also afford them access to a wide range of communicative channels to publicize club meetings and activities. These include flyers, tickets, morning and afternoon announcements, emails, an electronic sign at

the entrance to Sutton, “calling post” phone reminders, the Sutton Sentinel newsletter, and having their club listed on the Sutton school website.

5. Yet, over the previous six months, the Defendants have attempted to shirk their responsibilities under the Equal Access Act and the First Amendment by putting different labels on their non-curriculum related clubs, apparently believing that this permits them to treat Plaintiffs’ religious STS Club inferior to all other non-curriculum related clubs.

6. For example, in September, 2008, Plaintiffs sought permission for J.S. to form the STS Club, similar to the many other student clubs that were currently meeting. But the Defendants denied the request by labeling STS as a “student-initiated” club which, Defendants alleged, were not permitted at Sutton.

7. Attempting to satisfy the Defendants’ changing directives, Ms. Shelton then requested to form the STS Club on behalf of interested Sutton students, including J.S. But the Defendants denied this request by labeling STS as a “parent-led” club which, Defendants alleged, were not allowed at Sutton. Defendants, however, permit “parent-led” clubs like Girl Scouts and All Pro Dads (a club started by Ms. Shelton and led by her husband where students and their dads regularly meet).

8. And then, after Plaintiffs were told by the Defendants that only “teacher-sponsored” student clubs were allowed – a label lacking legal or practical significance, since non-curriculum student clubs across the country are “sponsored” by volunteer teachers or staff – Plaintiffs applied to meet as a “teacher-sponsored” club. Plaintiffs even knew of Sutton teachers who would be good candidates for sponsoring the STS Club.

9. However, the Defendants flatly denied Plaintiffs’ request and even went so far as to prohibit Plaintiffs from even talking with any Sutton teacher about overseeing the STS Club.

10. Defendants thus made one excuse after another in an effort to deter Plaintiffs and in a thinly veiled campaign to keep the religious STS Club from operating on equal terms with all other non-curriculum clubs.

11. Plaintiffs were consequently left with one other so-called “option” to form their STS Club, and that was to establish it as an “outside” organization. They did so, and while the Club is currently permitted to conduct meetings before school, it is far from being treated equally by the Defendants in comparison to other Sutton student clubs.

12. Unlike their counterparts, STS is forced to pay monthly rent, maintain insurance coverage and, significantly, is denied equal access to benefits and privileges given to all other Sutton clubs, including the valuable communicative channels listed above.

13. Defendants not only deny to Plaintiffs the ability to access these valuable communicative channels used by clubs to publicize meetings and activities, but they also have issued a flat ban on Plaintiffs even mentioning the STS Club to other interested students or parents while on Sutton grounds.

14. Moreover, even though Girl Scouts and All Pro Dads are “outside” organizations that require no teacher or administrator involvement, they do not pay rental fees and they enjoy access to all communicative avenues.

15. In sum, Plaintiffs have repeatedly tried to set up the STS Club within whatever parameters insisted upon by the Defendants, and they have done so in a good faith attempt to avoid the need to seek legal redress. But rather than simply complying with the law and treating Plaintiffs and STS the same way that it treats other Sutton non-curriculum related clubs, the Defendants continue to change their “rules” and persist in denying equal treatment to Plaintiffs and their Club simply because the Club is religious in nature.

16. This conduct cannot be squared with the Equal Access Act, nor with the First and Fourteenth Amendments, which prohibit governmental discrimination of this type and guarantee access and treatment of religious student clubs equal to that of other non-curriculum related student clubs.

17. Defendants cannot lawfully prohibit religious clubs from forming and meeting through the means by which other student clubs may meet.

18. Again, Plaintiffs only seek to be treated the same way that other student clubs at Sutton are treated. To this end, Plaintiffs respectfully ask the Court (i) to enjoin Defendants from violating their constitutional and statutory rights, as well as the rights of other STS Club members, and (ii) to order Defendants to grant STS the same rights, benefits, and privileges received by all other student clubs at Sutton.

JURISDICTION AND VENUE

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

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

21. 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.

22. This Court is authorized to grant Plaintiffs' requested injunctive relief pursuant to 42 U.S.C. § 1983 and Rule 65 of the Federal Rules of Civil Procedure.

23. This Court is authorized to award nominal and compensatory damages under 28 U.S.C § 1343.

24. This Court is authorized to award attorneys' fees in accordance with 42 U.S.C. § 1988.

25. Venue is proper under 28 U.S.C. § 1391 in the United States District Court for the Northern District of Georgia 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

26. Plaintiff Andrea Shelton is an adult female who resides in Atlanta, Georgia. She brings this action on her own behalf and on behalf her minor child, J.S.

27. Ms. Shelton is a professing Christian.

28. Pursuant to her sincerely held religious beliefs, Ms. Shelton volunteers her time and efforts to help out with the STS Club, which meets twice a month before school.

29. Also in accordance with her sincerely held religious beliefs, and in relation to her duties as an STS Club volunteer, Ms. Shelton desires to be able to meet in Sutton facilities free of charge like all other Sutton student clubs and to receive full access to all communicative channels made available to such clubs.

30. Through these communicative channels, which include flyers, tickets, emails, morning and afternoon school announcements, an electronic sign at the entrance to Sutton, “calling post” phone reminders, the Sutton Sentinel newsletter, and lists of clubs posted on Sutton’s website, Ms. Shelton desires to let students and their parents know about upcoming meetings and activities and to attract new members.

31. J.S., Ms. Shelton’s minor child, resides in Atlanta, Georgia and attends Sutton Middle School.

32. J.S. is a professing Christian.

33. Pursuant to his sincerely held religious beliefs, J.S. desires to meet with other students through the STS Club at Sutton.

34. In accordance with his sincerely held religious beliefs, J.S. desires to share his Christian faith with fellow students at Sutton through STS Club activities.

35. J.S. desires to pray, play games, discuss topics of faith and lessons learned from the Bible, and enjoy fellowship with other students at STS Club meetings at Sutton.

36. At the Club meetings, Plaintiffs desire to discuss, from a Biblical perspective, a variety of issues facing students, including those related to serving others in the school and community; leadership; developing good morals and character; respecting others; resolving conflicts and addressing problems; and citizenship, just to name a few.

IDENTIFICATION OF THE DEFENDANTS

37. Defendant Atlanta Public Schools (“APS”) is a body politic and corporate and may sue and be sued in its corporate name.

38. APS is organized under the laws of the State of Georgia.

39. APS is charged with the administration and operation of Sutton.

40. APS is responsible for the enactment, enforcement, and existence of policies and practices related to the formation and organization of student clubs at Sutton.

41. APS is also responsible for the enactment, enforcement, and existence of policies and practices related to the rights, benefits, and privileges afforded to such student clubs at Sutton.

42. APS itself has denied Plaintiffs' STS Club the same rights, benefits, and privileges received by all other Sutton student clubs, and has done so pursuant to its policies and practice.

43. APS is likewise responsible for the implementation and application by the Superintendent and Sutton Principal of its policies and practices pertaining to student clubs.

44. APS has also charged Plaintiffs a discriminatory fee, which Plaintiffs have paid.

45. APS is similarly responsible for delegating to the Superintendent and Sutton Principal final authority as to the formation and organization of student clubs, including the rights, benefits, and privileges extended to these clubs.

46. Defendant Dr. Beverly L. Hall is the Superintendent of APS, which includes Sutton Middle School.

47. Defendant Hall possesses responsibility, final authority, and discretion, as delegated by APS, as to the administration of APS policies as they relate to student activities on campus.

48. Defendant Hall possesses responsibility, final authority, and discretion, as delegated by APS, as to the administration of APS policies related to the establishment of student clubs and to the benefits said clubs receive.

49. In this capacity, Defendant Hall possesses final supervisory responsibility over the Principal of Sutton.

50. Defendant Hall is responsible for the Policies and practice leading to the denial of equal benefits to the STS Club.

51. Defendant Hall has denied equal rights, benefits, and privileges to the STS Club in accordance with APS Policy and practice and at the direction of APS.

52. Defendant Hall is sued both in her individual capacity and in her official capacity as Superintendent of APS.

FACTUAL ALLEGATIONS

Sutton Middle School

53. Sutton is a public middle school located in Atlanta, Georgia.

54. Sutton is under the direction of APS.

55. Sutton includes grades 6 through 8.

56. Sutton constitutes a secondary school under Georgia law.

57. Upon information and belief, Sutton and APS receive federal financial assistance.

Defendants' Policies

58. APS has promulgated Policy LC, entitled "School-Community Programs," which governs "all organized activities for students during non-school hours . . . [i]ncluding before-school, after-school, holiday, Saturday, and summer-care programs that provide adult supervision during non-school hours." (A true and correct copy of Policy LC is attached as Exhibit 1.)

59. Policy LC "recognizes the need for safe and constructive recreation, academic enrichment, and personal development of children and youth outside of the regular school day and the growing interest in making school facilities available for such activities that address children's needs." *Id.*

60. While the Policy appears to facially permit free facility access for a variety of student clubs and activities, with no prohibition of those that are religious, Defendants are not applying it as such.

61. The Policy delegates final implementation authority to the Superintendent.

62. The Policy does not provide any guidance by which decisions related to student clubs must be made.

63. There are no criteria contained in the Policy to determine the manner in which clubs will be permitted to meet, or any relevant guidelines.

64. The Policy also fails to provide a specific and prompt time frame in which the decision-maker must grant or deny access to a student club.

Student Clubs

65. APS itself, and acting through Defendant Hall as Superintendent, allows many non-curriculum related student clubs to meet free of charge at Sutton during non-instructional time.

66. Just a sample of these non-curriculum related clubs include Outward Bound, Power Over Prejudice, O Ambassadors Girls Club, Puppetry Club, Knitting Club, Girl Scouts, and All Pro Dads.

67. The issues addressed by these clubs are wide-ranging, and they include (among others) issues pertaining to community service, leadership, physical fitness,

compassion toward others, respect, character development, creative problem solving, conflict resolution, and becoming active citizens that make a difference.

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

69. Participation in such clubs is not directly encouraged by school faculty in connection with curriculum course work.

70. Defendants, pursuant to their Policy and practice, permit non-curriculum related clubs to, among other things:

- conduct meetings free of charge during non-instructional time on campus;
- invite new members;
- publicize club meetings and activities through morning and afternoon announcements;
- publicize club meetings and activities through Sutton emails, flyers, tickets, an electronic sign at the entrance to Sutton, “calling post” phone reminders, and the Sutton Sentinel newsletter; and
- list the club along with other clubs on the Sutton website.

Defendants' Denial of Equal Access

71. During the previous six months, the Defendants have attempted to put different labels on their non-curriculum related clubs in an attempt to treat Plaintiffs' religious STS Club inferior to all other non-curriculum related clubs.

72. For instance, in September, 2008, Plaintiffs sought permission for J.S. to form the STS Club, similar to the many other student clubs that were meeting at Sutton.

73. However, the Defendants denied the request by labeling STS as a "student-initiated" club which, Defendants alleged, were not allowed at Sutton.

74. Trying to satisfy the Defendants' changing directives, Ms. Shelton then asked to form the STS Club on behalf of interested Sutton students, including J.S.

75. The Defendants, however, denied this request by labeling STS as a "parent-led" club which, Defendants alleged, were not permitted at Sutton (even though Defendants permit Girl Scouts and All Pro Dads). Defendants later even chastised Ms. Shelton for mentioning the STS Club at a P.T.A. meeting.

76. Ms. Shelton had initiated All Pro Dads at Sutton by introducing the club to Sutton Principal Audrey Sofianos, who offered no hesitation whatsoever and immediately approved of Ms. Shelton's efforts.

77. Furthermore, Mr. Sofianos fully cooperated with Ms. Shelton concerning All Pro Dads by announcing their meetings, allowing Ms. Shelton to distribute flyers, permitting Ms. Shelton to speak about the club at P.T.A. meetings, and publicizing the club in weekly email communications and “calling post” phone reminders to parents.

78. After Defendants labeled STS as “parent-led” and denied Plaintiffs’ request, Defendants then told Plaintiffs that only “teacher-sponsored” student clubs could exist (even though the label “teacher-sponsored” has zero legal or practical significance, given that non-curriculum student clubs across the nation are “sponsored” by teachers or staff).

79. Plaintiffs thus applied to meet as a “teacher-sponsored” club.

80. Plaintiffs had even identified teachers who would be possible sponsors for the STS Club.

81. Yet, the Defendants flatly denied Plaintiffs’ request and even went so far as to prohibit Plaintiffs from even talking with any Sutton teacher about involvement in the STS Club.

82. The only “option” Defendants would allow was for Plaintiffs to form STS as an “outside” organization – one that would technically be permitted to meet

during non-instructional time, but would be required to pay monthly rent (unlike “outside” organizations, such as Girl Scouts and All Pro Dads), obtain insurance coverage (again, unlike other student clubs), and would have zero access to valuable communicative channels to publicize Club events and activities to students and parents.

83. Defendants even prohibited Plaintiffs from merely talking about the Club and its activities with other interested students or parents while on Sutton grounds. This ban extended not only to Ms. Shelton, but to J.S. and any discussions he and other STS Club members might have about the Club while at school.

84. But even when Plaintiffs attempted to form the STS Club as an “outside” organization pursuant to the Defendants’ evolving scheme, it ran into District employed roadblocks.

85. For instance, when Plaintiffs properly submitted the required facilities use form to Principal Sofiano, she stated that she “did not know quite how to deal with this” and proceeded to take no action on the application for weeks, thereby denying it permission to begin meeting.

86. After waiting for several weeks, Plaintiffs again submitted the form (a true and accurate copy is attached as Exhibit 2) in January, 2009, along with the required \$25.00 application fee and \$65.00 fee for the first month's rent to APS.

87. Plaintiffs conducted their first STS meeting before school on February 11, 2009, and have paid APS an additional \$65.00 for rent since their initial payment.

88. Defendants continue to charge Plaintiffs to operate the STS Club, and have denied and continue to deny Plaintiffs' requests to publicize STS Club activities through the communicative channels available to all other Sutton student clubs and to be able to reach new members.

89. Defendants have not afforded Plaintiffs and their STS Club equal recognition, rights, benefits, and privileges due to the religious nature and speech of the Club.

ALLEGATIONS OF LAW

90. 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 Georgia.

91. Plaintiffs are suffering irreparable harm from the conduct of Defendants by being prohibited from speaking on the same terms as other Sutton student clubs and their members.

92. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivation of their rights by Defendants.

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

FIRST CAUSE OF ACTION: VIOLATION OF THE EQUAL ACCESS ACT

94. Plaintiffs re-allege and incorporate herein, as though fully set forth, all previous paragraphs of this Complaint.

95. Sutton, located in Atlanta, Georgia, is a public secondary school under Georgia law.

96. APS and Sutton receive federal financial assistance.

97. Defendants have created a “limited open forum” at Sutton within the meaning of the Equal Access Act, Title 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.

98. Such clubs include Outward Bound, Power Over Prejudice, Puppetry Club, O Ambassadors Girls Club, Knitting Club, Girl Scouts, and All Pro Dads, among others.

99. These other clubs address issues such as community service, leadership, physical fitness, compassion toward others, respect, character development, creative problem solving, conflict resolution, and becoming active citizens that make a difference, just to name a few.

100. STS Club has voluntary membership.

101. STS Club is open to any student at Sutton, regardless of religious affiliation.

102. STS Club desires to assemble on the campus of Sutton during non-instructional time for the purpose of Club meetings, exchange of ideas and information, and the discussion of issues, from a religious perspective, that are significant to them.

103. Such issues include, among others, those related to serving others in the school and community; leadership; developing good morals and character; respecting others; resolving conflicts and addressing problems; and citizenship.

104. STS Club's activities are voluntary and student-initiated.

105. Plaintiffs do not desire school officials to lead, direct, plan, sponsor, or otherwise control the content or direction of STS Club meetings.

106. STS Club activities on campus will not materially and substantially interfere with the orderly conduct of educational activity within Sutton.

107. Defendants have denied a fair opportunity, have discriminated against, and have denied Plaintiffs equal access to all school facilities, benefits, and privileges, because of the religious content of the speech and association at STS Club meetings.

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

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

WHEREFORE, Plaintiffs 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

110. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1-93 of this Complaint.

111. Defendants have, by Policy and practice, created an open forum by permitting the formation of student clubs at Sutton.

112. Defendants' Policies and practice prohibit the equal treatment of Plaintiffs' religious Club.

113. Defendants are prohibiting Plaintiffs' religious speech despite the fact that they desire to address the same or similar issues currently being addressed by other student clubs, including issues related to serving others in the school and community; leadership; developing good morals and character; respecting others; resolving conflicts and addressing problems; and citizenship, just to name a few.

114. The unequal treatment of Plaintiffs' Club containing religious speech or activities is a content-based restriction in an otherwise open forum.

115. Defendants' denial of Plaintiffs' religious speech while permitting other secular speech also constitutes viewpoint discrimination.

116. Such viewpoint discrimination is unconstitutional in any type of forum.

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

118. Plaintiffs' STS Club is an expressive association that desires to advocate its Christian message and viewpoints at Sutton.

119. Defendants violate Plaintiffs' Club's right to association by denying them equal rights, privileges, and benefits based solely on the Club's intended religious speech, ideologies, philosophies, and beliefs.

120. Defendants' Policies impose an unconstitutional prior restraint because they vest APS officials with unbridled discretion to permit or refuse protected speech equal access to the forum.

121. Defendants' Policies also allow school officials to act with unbridled discretion when deciding whether a club can meet free of charge or who can organize, lead, or oversee a club.

122. Defendants' Policies also impose an unconstitutional prior restraint because they fail to specify a time frame in which the decision-maker must act on a request to form a club, and because they fail to specify the effect of the decision-maker's failure to act on such a request.

123. Defendants' Policies and practice are overbroad because they sweep within their ambit protected First Amendment rights in the form of religious speech.

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

125. Defendants' Policies and practice chill, deter, and restrict Plaintiffs from using District facilities on an equal basis with others and from discussing issues from a religious perspective.

126. Even though Plaintiffs' Club fits within their Policies and practice, Defendants have interpreted and applied them to disqualify Plaintiffs from accessing equally all facilities under their control and otherwise open to student groups, solely because of the religious nature of Plaintiffs' activities and the religious content and viewpoint of the STS Club's speech.

127. Defendant's Policies and practice, as interpreted and applied by them to prohibit equal use as requested by Plaintiffs, are not the least restrictive means necessary to serve any compelling interest which Defendants seek thereby to secure.

128. Defendants' Policies and practice accordingly violate Plaintiffs' 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 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

129. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1-93 of this Complaint.

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

131. Defendants have opened the forum by permitting the formation of other student clubs and must allow Plaintiffs' STS Club equal access to this forum.

132. Defendants, however, have denied Plaintiffs' STS Club equal access to school facilities, benefits, and privileges.

133. By discriminating against the content and viewpoint of Plaintiffs' speech, Defendants are treating Plaintiffs and their Club differently from other similarly situated public school students and student clubs on the basis of the religious content and viewpoint of Plaintiffs' speech.

134. Defendants' Policies and practice violate various fundamental rights of Plaintiffs, such as rights of free speech and free exercise.

135. Defendants lack a rational or compelling state interest for such disparate treatment of Plaintiffs.

136. Defendants' denial of access to Plaintiffs is not narrowly tailored.

137. The conduct of Defendants accordingly violates Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs 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

138. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1-93 of this Complaint.

139. Plaintiffs sought, and continue to seek, equal access to all benefits and privileges provided to other clubs.

140. Further, Plaintiffs' Club satisfies the criteria in Defendants' Policies for club recognition, for it addresses childrens' needs by providing a safe and constructive recreational environment, assisting childrens' personal development, and fostering academic enrichment, all during non-school hours.

141. Despite Plaintiffs' demonstrated satisfaction of the Policies, Defendants have denied equal treatment to the STS Club based on its religious speech.

142. Defendants' Policies and practice are vague and allow for unbridled discretion in determining which student clubs do and do not satisfy club criteria and

thus qualify to meet free of charge as a Sutton student club with access to all attendant benefits and privileges.

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

144. Defendants' Policies contain no definitions or guidelines on how to determine whether a club can meet free of charge or who can organize or lead a club.

145. Defendants' Policies and practice 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 declaratory and injunctive relief set forth hereinafter in the prayer for relief.

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

146. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1-93 of this Complaint.

147. Plaintiffs desire to engage in expressive activities on the basis of sincerely held religious beliefs and to share their beliefs with others.

148. Defendants' Policies and practice substantially burden Plaintiffs' free exercise of religion by conditioning receipt of government benefits on foregoing their free exercise rights.

149. Defendants' Policies and practice force Plaintiffs to choose between engaging in religious speech and foregoing the governmental benefit of equal access to the STS Club, or foregoing the free exercise of religion to receive the access.

150. Defendants' Policies and practice substantially burden Plaintiffs' 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.

151. Defendants' Policies and practice substantially burden Plaintiffs' free exercise of religion by denying them the ability to, *inter alia*: conduct meetings free of charge during non-instructional time on campus; invite new members; publicize club meetings and activities through morning and afternoon announcements; publicize club meetings and activities through Sutton emails, flyers, tickets, "calling post" phone reminders, an electronic sign at the entrance to Sutton, and the Sutton Sentinel newsletter; and list the club along with other clubs on the Sutton website.

152. Defendants' conduct constitutes the imposition of special disabilities on Plaintiffs due to their religion and their intent to engage in religious expression through the STS Club.

153. These special disabilities placed on Plaintiffs are neither neutral nor of general applicability.

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

155. Defendants' interpretation and application of their Policies chill Plaintiffs' freedom of religious discussion and exercise, both of which are fundamental rights guaranteed Plaintiffs by the First Amendment.

156. Defendants' conduct constitutes an excessive burden on Plaintiffs' rights to freedom in the exercise of religion and has violated the Free Exercise Clause of the First Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully ask that the Court grant the declaratory and injunctive relief set forth 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, their officers, agents, employees, and all other persons acting in active concert with them from enforcing the Policies that prohibit the STS Club from official recognition and from receiving equal access to all club benefits and privileges, thereby requiring Defendants to grant the STS Club equal access;
- b. That this Court render a Declaratory Judgment declaring the APS Policies and practice that prohibit Plaintiffs and other Club members from official recognition, from receiving equal access to all club rights, benefits, and privileges, and from being charged a discriminatory rental fee to be unconstitutional on their face and 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 Plaintiffs 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 and compensatory damages for the violation of Plaintiffs' constitutional rights;
- g. That this Court issue the requested injunctive relief without a condition of bond or other security being required of Plaintiffs; and
- h. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.

Respectfully submitted this 25th day of March, 2009.



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Attorneys for Plaintiffs

VERIFICATION

I, Andrea Shelton, a citizen of the United States and a resident of the State of Georgia, 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 19th day of March, 2009 in Atlanta, Georgia.

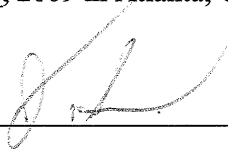
A handwritten signature in black ink, appearing to read 'Andrea Shelton', is written over a horizontal line.

Andrea Shelton

VERIFICATION

I, J.S., a citizen of the United States and a resident of the State of Georgia, 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 19th day of March, 2009 in Atlanta, Georgia.



J.S.