

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DEANNA MICHALEK, LYNNE NOVAK,
ANN HUMPHREY, and THOMAS PETEK,

Plaintiffs,

v.

GARFIELD HEIGHTS BOARD OF
EDUCATION;

Defendant.

Case No.

VERIFIED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF

Now come Plaintiffs Deanna Michalek, Lynne Novak, Ann Humphrey, and Thomas Petek, pursuant to the Federal Rules of Civil Procedure, and for their causes of action against Defendant Garfield Heights Board of Education, aver the following:

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 Deanna Michalek, Lynne Novak, Ann Humphrey, and Thomas Petek, the organizers of Bible Education programs, activities, and clubs for the students in the Garfield Heights City School District (the "District").

2. Plaintiffs bring this action challenging Defendant Garfield Heights Board of Education's (the "Board") censorship of Plaintiffs' religious flyer inviting students to an After School Christmas Story Hour held on December 20, 2010.
3. The Board prohibited Plaintiffs' religious flyer pursuant to several unconstitutional policies.
4. The Board, by policy and practice, permits community groups and individuals to distribute flyers and advertisements which are sent home with students.
5. Under the District's take-home flyer forum, the flyers are placed in each teacher's school mailbox, who then distributes the flyers to the students to take home with them and give to their parents for review and consideration.
6. The flyers distributed by community groups and individuals include information concerning, among other things, a Halloween Skate party, an indoor soccer program, softball leagues, other sports leagues, the American Heart Association Jump Rope for Heart, Boy Scouts, and Girl Scouts.
7. The Board has, by practice and policy, prohibited the Plaintiffs from distributing their religious flyers at District schools through this take-home flyer forum.
8. First, Policy 5223, "Absences for Religious Instruction," states that "No solicitation for attendance at religious instruction shall be permitted on District premises."
9. Second, Policy 9700, "Relations with Special Interest Groups," states:

Any request from civic institutions, charitable organizations, or special interest groups which involve such activities as ... sending promotional materials home with students ... must be carefully reviewed to ensure that such activities promote student interests.

It is the policy of the Board of Education that students, staff members, and District facilities not be used for ... promoting the interests of any nonschool agency or organization, public or private, without the approval of the Board or its designee.

...

No outside organization ... may distribute or post literature on that organization's behalf on District property either during or after school hours without the permission and prior review of the Superintendent.

10. Plaintiffs challenge Policy 5223 and 9700 (collectively the "Policies") both on their face and as-applied to their flyer.
11. The Board's 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

12. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, under federal law, particularly 28 U.S.C. §§ 2201, 2202, 42 U.S.C. §§ 1983 and 1988.
13. This Court possesses original jurisdiction over Plaintiffs' claims by operation of 28 U.S.C. §§ 1331 and 1343.
14. 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.
15. 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).
16. This Court is authorized to award nominal damages under 28 U.S.C. § 1343(4).
17. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.
18. Venue is proper under 28 U.S.C. § 1391 in the Northern District of Ohio because these claims arose there and because all parties reside within the Northern District of Ohio.

III. IDENTIFICATION OF THE PLAINTIFFS

19. Plaintiff Deanna Michalek is an adult citizen of the United States, and at all times relevant

to this Complaint, is and was a resident of Garfield Heights, Ohio.

20. Plaintiff Lynne Novak is an adult citizen of the United States, and at all times relevant to this Complaint, is and was a resident of Garfield Heights, Ohio.
21. Plaintiff Ann Humphrey is an adult citizen of the United States, and at all times relevant to this Complaint, is and was a resident of Garfield Heights, Ohio.
22. Plaintiff Thomas Petek is an adult citizen of the United States, and at all times relevant to this Complaint, is and was a resident of Parma, Ohio.
23. Plaintiffs are the organizers and/or leaders of the Garfield Hts. Moms Group, which sponsors Bible Education programs, activities and clubs for the students of all grade levels in District schools.
24. Plaintiffs desire to distribute religious literature, specifically flyers inviting school children to the Bible Education programs and activities at nearby churches and Bible clubs operated by the Plaintiffs, at District schools without facing censorship or punishment.
25. Plaintiffs are adherents of the Christian faith and desire to share their religious views with parents and students at District schools.
26. Plaintiffs, pursuant to their sincerely held religious beliefs, desire to send other religious flyers home with students in District schools via full access to the district's take-home flyer forum.
27. Plaintiffs desire to distribute other flyers and materials with similar religious messages at District schools, including a flyer for an upcoming Easter event sponsored by the Plaintiffs' Garfield Hts. Moms Group.
28. Plaintiffs desire to distribute religious flyers and materials to students attending District schools for the same reason other community groups desire to have their flyers distributed

– to let parents know about Bible Education programs and activities at nearby churches and Bible clubs so that they may make an informed decision as to whether their child can participate.

IV. IDENTIFICATION OF THE DEFENDANT

29. Defendant Board is a body corporate and politic organized under the laws of the State of Ohio and may sue and be sued.
30. The Board is charged, inter alia, with the administration, operation, and supervision of all District schools, including Maple Leaf Intermediate School.
31. The Board is charged with the formulation, adoption, implementation, and enforcement of Board policies, including the Policies challenged herein.
32. The Board is responsible for the enforcement of its Policies by its employees.
33. The Board is responsible for the enactment, enforcement, and existence of policies and practices related to access by community groups and individuals, businesses, and public entities to the take-home flyer forum, in which elementary students take home approved flyers distributed by community groups and individuals, businesses, and public entities.
34. The Board excluded Plaintiffs from the take-home flyer forum pursuant to its Policies and practices.
35. The Board is responsible for the implementation and application by the Superintendent, District officials, and local principals of its Policies and practices pertaining to distribution of written materials through the take-home flyer forum.
36. The Board is similarly responsible for delegating to the Superintendent, District officials, and local principals final authority as to the approval and denial of the distribution of flyers by community groups and individuals, businesses, and public entities, and for the denial of

Plaintiffs' flyers.

V. ALLEGATIONS OF FACT

37. Maple Leaf Intermediate School ("Maple Leaf") is a public intermediate school located in Garfield Heights.
38. Maple Leaf is under the direction of the Board and includes fourth and fifth grade.
39. The Board is the official policy maker and as such has enacted the Policies challenged herein.
40. The Board permits community groups and individuals to distribute literature and materials through the take-home flyer forum pursuant to its Policies.
41. The Board permits a broad range of community groups and individuals, businesses and public entities to send home with students informational flyers about upcoming group meetings, activities or fundraisers through the take-home flyer forum.
42. Local community groups and individuals, businesses, and public entities regularly distribute literature and materials with all types of messages promoting events such as a Halloween Skate party, a Futsal (Indoor Soccer) program, softball leagues, Jump Rope for Heart, Boy Scouts, Girl Scouts, etc.
43. In December 2010, Plaintiffs contacted Maple Leaf Principal Gwen Abraham to request permission to distribute flyers to the 4th and 5th grade students at Maple Leaf through the take-home flyer forum.
44. The flyers advertised an After School Christmas Story Hour sponsored by Plaintiffs' Garfield Hts. Moms Group and being held at a nearby church within walking distance from Maple Leaf.
45. The flyer provided a brief description of the event, the date, the time, and the location.
46. The flyer also contained a detachable form for a child's parent to sign giving the child

permission to attend the After School Christmas Story Hour.

47. The flyer stated that the event was “Sponsored by the Garfield Hts. Moms Group and not affiliated with Garfield Hts. School District.”
48. Principal Abraham informed the Plaintiffs that under a new District policy, no religious flyers could be distributed at any schools within the District.
49. Principal Abraham told the Plaintiffs that they needed to speak with Superintendent Linda Reid if they had any further questions.
50. At the December 20, 2010 School Board Meeting, Plaintiff Michalek addressed the Board publicly seeking clarification as to whether the Board had a policy prohibiting religious flyers from being sent home with students.
51. Superintendent Reid responded that the District did not allow religious flyers to be sent home with students based upon the “laws of separation between church and state.”
52. In January 2011, Plaintiffs sent an e-mail to each of the members of the Board inquiring about the new policy prohibiting religious flyers. The e-mails stated:

We are concerned because we were not allowed to put our flyers for an after school Christmas Story and Activity Hour in the hands of the students at Maple Leaf school this past December. We thought we had worked this out with Mrs. Reid in a late summer meeting. We were surprised to be told a policy had come down to not permit us to pass out the flyers.

What is the policy concerning religious flyers being sent home with the students? In previous years flyers were allowed to be sent home with the children. Was the policy changed and did you vote for the change?

53. However, at the instruction of Superintendent Reid, none of the Board Members responded to Plaintiffs’ e-mail.
54. On January 14, 2011, Plaintiffs sent an e-mail to Superintendent Reid seeking further information about the ban on religious flyers. The e-mail stated:

In December, 2010, the Garfield Hts. Moms Prayer Group sponsored an after school Christmas Story Activity and snack for the students at Maple Leaf school. The moms were preparing to distribute the flyers, but were told by the school principal that they could not pass them out in the school's mailboxes. The reason was that a school policy had come down that no religious flyers were to be passed out in any of our city schools. The principal directed us to speak to you about this change.

We request clarification on this new policy. In previous years, flyers for church activities were allowed to be advertised through the school mailboxes. Was the policy changed and did the Board of Education have opportunity to discuss and vote on this?

55. On January 26, 2011, Superintendent Reid responded to Plaintiffs' e-mail. Superintendent Reid told Plaintiffs that they should meet later in February to discuss the matter further.
56. On February 23, 2011, the Plaintiffs met with Superintendent Reid to discuss the censorship of their religious flyers and the policies on which the censorship was based.
57. At the meeting, Superintendent Reid told the Plaintiffs that flyers with religious content cannot be distributed to students through the take-home flyer forum.
58. Superintendent Reid claimed that allowing teachers to pass out religious flyers would violate the separation of church and state.
59. Superintendent Reid admitted that community flyers for ice skating, indoor soccer, baseball, and the Jump Rope for Heart were allowed to be passed out.
60. But she insisted that flyers with religious content were prohibited.
61. Superintendent Reid claimed that she was merely enforcing Board policies and that the prohibition on religious flyers is implicit in the Constitution's separation of church and state.
62. Superintendent Reid further told the Plaintiffs that she had consulted an attorney on the issue.
63. Superintendent Reid told the Plaintiffs that they could place 25 copies of the flyer in the Maple Leaf office for students to pick up.

64. However, no other flyers from community groups or individuals are displayed in the office, and there is no designated location in the school office for such flyers.
65. In addition, no other community groups or individuals are restricted to placing a limited number of flyers in the Maple Leaf school office; rather, as admitted by Superintendent Reid, flyers from other community groups or individuals are freely permitted to be distributed through the District's take-home flyer forum.
66. Plaintiffs are Bible-believing Christians who desires to share their faith and beliefs with parents and students at District schools and to invite them to events and activities sponsored by the Plaintiffs' Garfield Hts. Moms Group.
67. Plaintiffs' sincerely held religious beliefs compel them to share their faith and beliefs with parents and students at District schools.
68. On behalf of their Garfield Hts. Moms Group, Plaintiffs accomplish this goal at District schools through inviting children, with their parents' written consent, to after-school activities and events sponsored by Plaintiffs' Garfield Hts. Moms Group.
69. In the future, Plaintiffs desire to engage in religious speech through the distribution of religious flyers on behalf of their Garfield Hts. Moms Group, including flyers inviting students at District school to future events, such as an upcoming Easter activity, that are currently being planned by the Garfield Hts. Moms Group, without being prohibited from distributing their message.

VI. ALLEGATIONS OF LAW

70. Private speakers are entitled to equal, viewpoint neutral access to public fora.
71. Religious speech is fully protected by the First Amendment.

72. 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.
73. The government may not discriminate against speech based on its viewpoint, regardless of the forum.
74. Content-based restrictions on speech in a public forum are presumptively unconstitutional and are subject to strict scrutiny.
75. 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.
76. All of the acts of the Board, its officers, agents, employees, and servants were executed and are continuing to be executed by the Board under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of Ohio.
77. Plaintiffs are suffering irreparable harm from the conduct of the Board.
78. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivation of their rights by the Board.
79. Unless the Board's Policies are enjoined, Plaintiffs will continue to suffer irreparable injury.
80. Plaintiffs' Garfield Hts. Moms Group continues to hold events and activities and Plaintiffs desire to share this information through flyers and literature distribution immediately.

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

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

82. 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.
83. The Board's Policies and practice permit community groups and individuals, businesses, and public entities to distribute literature through a take-home flyer forum at Maple Leaf and other District schools.
84. Through its creation of these public fora and the attendant access given to the above mentioned groups and others, the Board permits the distribution of flyers to students and parents that promote recreational, cultural, community, charitable, and educational activities.
85. Plaintiffs proposed flyers promote similar recreational, cultural, charitable, community, and educational activities, albeit from a religious perspective, but Plaintiffs are barred from distributing their flyers.
86. The Board permits the distribution of flyers covering a wide range of secular events including a Halloween Skate party, Futsal (indoor soccer) league, softball league, other sports leagues, Boy Scouts, Girl Scouts, and Jump Rope for Heart.
87. In contrast, the Board's Policies and practice prohibit Plaintiffs from distributing a flyer for a religious event sponsored by their Garfield Hts. Moms Group.
88. This unequal treatment of Plaintiffs' religious expression is a content-based restriction in an otherwise open fora.
89. The Board permits community groups such as the Parks and Recreation Department, Boy Scouts, Girls Scouts, sports leagues, American Heart Association, etc. to distribute flyers at Maple Leaf and other District schools through the take-home flyer forum.

90. In contrast, the Board's Policies and practice prohibit Plaintiffs from distributing a religious flyer because said flyer contained religious content.
91. Similarly, the Board permits the Parks and Recreation Department to distribute a flyer advertising a community-wide Halloween Skate party celebrating the Halloween holiday. The Halloween Skate was held on October 30, 2010 where there were be "candy bags," "games, prizes, face painting & costume contests." A \$2.00 admission was charged.
92. In contrast, the Board's Policies and practice discriminate against Plaintiffs' religious viewpoint by prohibiting them from distributing a religious flyer about a community-wide After School Christmas Story celebrating the Christmas holiday. The After School Christmas Story was a party where students would learn about the Christmas Story, enjoy snacks, and fellowship with other students. The event was free for all students.
93. This denial of Plaintiffs' religious speech promoting a community-event for students, while permitting similar speech from other organizations advertising a community-event for students, also constitutes viewpoint discrimination, which is unconstitutional in any type of forum.
94. The Board's Policy 5223, which prohibits "solicitation for attendance at religious instruction" is both content-based and viewpoint-based on its face due to its censorship of "religious" materials.
95. The Board's Policies and practice additionally impose an unconstitutional prior restraint because they vest District officials with unbridled discretion to permit or refuse protected religious speech by community groups and individuals.

96. The Board's Policy 9700 and practice allow District officials to act with unbridled discretion when deciding if promotional materials from community groups or individuals "promote student interests."
97. The Board's Policies and practice also allow District officials to act with unbridled discretion when deciding if promotional materials from community groups or individuals solicit "attendance at religious instruction."
98. The Board's Policies and practice also allow District officials to act with unbridled discretion when deciding whether to allow the distribution of materials from community groups and individuals.
99. Board Policy 9700 further states that "staff members and District facilities [may] not be used for ... promoting the interest of any nonschool agency or organization, public or private, without the approval of the Board or its designee."
100. The Board's Policies, both on their face and as applied, give District officials, including the superintendent, unbridled discretion to prohibit certain community groups and individuals from distributing flyers in the take-home flyer forum while allowing other community groups and individuals to have access to this forum.
101. None of the policies contain any specific guidelines or restrictions as to when District officials may ban or prohibit literature distribution by community groups or individuals.
102. The Board's Policies and practice are additionally overbroad because they sweep within their ambit protected First Amendment expression.
103. The overbreadth of the Board's Policies and practice chill the speech of community groups and individuals who might seek to engage in private religious expression through the distribution of flyers through the take-home flyer forum.

104. The Board's Policies and practice chill, deter, and restrict Plaintiffs from freely expressing their religious beliefs.
105. The Board's Policies, as interpreted and applied by them to prohibit religious speech, are not the least restrictive means necessary to serve any compelling interest which the Board seeks thereby to secure.
106. The Board's Policies and practice are not reasonably related to any legitimate pedagogical concerns.
107. Censoring community groups' and individuals' religious speech per se is not and cannot be a legitimate pedagogical concern.
108. The Board's 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 grants the declaratory and injunctive 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

109. Plaintiffs re-allege and incorporate herein, as though fully set forth, all previous paragraphs of this Complaint.
110. The Board's Policies and practice, by expressly targeting Plaintiffs' private religious expression for special disabilities, violate Plaintiffs' constitutional right to the free exercise of religion.
111. Plaintiffs desire to engage in expressive activities described above on the basis of their sincerely held religious beliefs.
112. The Board's Policies and practice explicitly exclude – and thus discriminate against – religious expression.

113. The Board's Policies and practice substantially Plaintiffs' free exercise of religion by conditioning their ability to speak on foregoing their free exercise rights.
114. The Board's Policies and practice force Plaintiffs 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.
115. The Board's Policies and practice substantially Plaintiffs' free exercise of religion by denying them the right to include private religious speech in the fora.
116. The Board's Policies and practice constitute the imposition of special disabilities on Plaintiffs due to their religion and their intent to include private religious expression in the fora.
117. These special disabilities placed on Plaintiffs are neither neutral nor of general applicability.
118. The Board's Policies and practice of Plaintiffs' religious flyer selectively imposes a burden on expression based on the religious nature of the expression by singling out their expression for discriminatory treatment.
119. The Board's Policies and practice cannot be justified by a compelling governmental interest and are not narrowly tailored to advance any such interest.
120. The Board's interpretation and application of its Policies chill Plaintiffs' freedom of religious expression and exercise, both of which are fundamental rights guaranteed to Plaintiffs by the First Amendment.
121. The Board's Policies and practice, both facially and as applied, constitute an excessive burden on Plaintiffs' rights to freedom of exercise of their religion and have violated the Free Exercise Clause of the First Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that the Court grants the declaratory and injunctive 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

122. Plaintiffs re-allege and incorporate herein, as though fully set forth, all previous paragraphs of this Complaint.
123. The Due Process Clause of the Fourteenth Amendment prohibits the government from censoring speech pursuant to vague or overbroad standards that grant unbridled discretion.
124. The determination by the Board of what is and is not forbidden religious speech violates this norm.
125. The Board's Policies and practice are vague and allow for unbridled discretion in determining which community groups' and individuals' speech satisfies its Policies.
126. The Board's Policies lack any guidelines or directives to guide the decisions of District officials when approving flyers and other literature sought to be distributed by community groups and individuals.
127. The Board's Policy 5223 prohibits "solicitation for attendance at religious instruction" but lacks any guidelines for determining whether a given event is "religious instruction."
128. Similarly, the Board's Policy 9700 allow District officials to act with unbridled discretion when deciding whether the speech of a community group or individual "promote[s] student interests" or whether it "promot[es] the interests of any nonschool ... organization."
129. Board Policy 9700 also lacks any guidelines to restrain District officials.
130. The discretion given to District officials in the Board's Policies leave censorship of community groups' and individuals' speech to the whim of District officials.

131. The Board's 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 grants the declaratory and injunctive 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

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

133. The Board's 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.

134. The Board's Policies and practice of Plaintiffs' religious expression evinces discriminatory suppression of private speech that is not neutral, but rather is hostile toward religion.

135. The Board, pursuant to its Policies and practice of suppressing any private Christian religious expression sends the message to students and community groups and individuals that Christians like Plaintiffs are outsiders by excluding religious points of view and events while concurrently permitting all other points of view and events.

136. The Board's Policies and practice compel District officials to classify private community group speech according to its perceived religious-versus-nonreligious nature.

137. Drawing this distinction necessarily requires District officials to inquire into the significance of words and practices to different religious faiths.

138. Such inquiries by District officials entangle them with religion in a manner forbidden by the First Amendment.
139. Entanglement problems exist because District officials must attempt to discern which private community groups' or individuals' expression is "religious instruction" or is too religious in nature to be permitted.
140. District officials must make theological interpretations in order to conclude that some community group or individual speech is religious and/or religious instruction, while other community group or individual speech is not.
141. The Board denied Plaintiffs the right to distribute their religious flyer because it contained religious content and a religious point of view, actions that represent the antithesis of neutrality.
142. No compelling state interest exists to justify the censorship of Plaintiffs' religious expression.
143. The Board's Policies and practice therefore violate the Establishment Clause of the First Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that the Court grants the declaratory and injunctive 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**

144. Plaintiffs re-allege and incorporate herein, as though fully set forth, all previous paragraphs of this Complaint.
145. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated persons and groups equally.

146. Pursuant to its Policies and practice, the Board has allowed other similarly situated community groups and individuals to access the take-home flyer forum with secular expression.
147. The Board has treated Plaintiffs disparately when compared to similarly situated community groups and individuals by banning only Plaintiffs' religious expression
148. By discriminating against the content and viewpoint of Plaintiffs' speech, the Board is treating Plaintiffs' religious speech differently than other similar situated private community groups and individuals.
149. The Board's Policies and practice violate various fundamental rights of Plaintiffs, such as rights of free speech and free exercise of religion.
150. When government regulations, like the Board's Policies and practice challenged herein, infringe on fundamental rights, discriminatory intent is presumed.
151. The Board's Policies and practice have also in fact, and in practice, been applied to intentionally discriminate against Plaintiffs' rights of free speech and free exercise of religion.
152. The Board lacks a rational or compelling state interest for such disparate treatment of Plaintiffs.
153. The Board's denial of access to Plaintiffs is not narrowly tailored in that the Board restricts community groups' and individuals' private religious expression unrelated to any asserted interest the Board may have.
154. The Board's Policies and practice are not narrowly tailored as applied to the Plaintiffs because their speech does not implicate any of the interests the Board might have.

155. The Board's Policies and practice burden more of Plaintiffs' speech than necessary because they are foreclosed from using religious content and viewpoints in their speech even though it is not disruptive.

156. The Policies and practice of the Board , both facially and as applied, thus violate Plaintiffs' 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 grants the declaratory and injunctive 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 the Board, its officers, agents, employees, and all other persons acting in active concert with it, from enforcing the Policies challenged herein that infringe upon Plaintiffs' constitutional rights by banning religious expression, and immediately allowing Plaintiffs' to distribute religious flyers through the take-home flyer forum.
- b. That this Court render a Declaratory Judgment, declaring as unconstitutional facially and as-applied the Board'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 Plaintiffs' costs and expenses of this action, including a reasonable attorney's fees award, in accordance with 42 U.S.C. § 1988.
- f. That this Court award nominal 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.

Dated this 6th day of April, 2011.

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*Application for Admission Pro Hac Vice Submitted Herewith

VERIFICATION

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

Executed this 1st day of April, 20 , in Garfield Heights, Ohio.

Deanna Michalek
Deanna Michalek

VERIFICATION

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

Executed this 1st day of April, 2011, in Garfield Heights, Ohio.



Lynne Novak

VERIFICATION

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

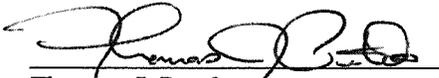
Executed this 1st day of April, 2011, in Garfield Heights, Ohio.


Ann Humphrey

VERIFICATION

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

Executed this 1st day of April, 2011, in Parma, Ohio.


Thomas J. Petek