

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

N.M. a minor, by and through his next §
friend, Michael Metcalf, §

Plaintiff, §

v. § Case No.

Nederland Independent School District, §

Defendant. §

VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Now comes Plaintiff, N.M.,¹ by and through his next friend, Michael Metcalf, pursuant to the Federal Rules of Civil Procedure, and for his causes of action against Defendant avers 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 N.M., a student at Hillcrest Elementary School in Nederland, Texas.
2. Plaintiff brings this action challenging Defendant Nederland Independent School District’s (“District”) refusal to allow him to distribute religious handwritten invitations to an AWANAs event at Plaintiff’s church.
3. The District prohibited Plaintiff from distributing these religious handwritten invitations to each of his classmates pursuant to its policies.
4. The District, by policy and practice, permits students to distribute literature and other written materials in the classroom during non-instructional time via student-to-student

¹ Pursuant to Federal Rule of Civil Procedure 5.2(a), N.M. is identified by his initials, rather than his full name.

distribution.

5. The District has previously permitted students to distribute invitations during non-instructional time to off-campus events such as birthday parties.
6. District Policy FNAA (Local), entitled “Student Expression – Distribution of Nonschool Literature,” for example, allows students to distribute “material from a source other than the District” provided the “materials . . . include the name of the organization or individual sponsoring the distribution” and do not include “obscene, vulgar, or otherwise inappropriate” material, such as speech “endors[ing] actions endangering the health or safety of students” or speech that “advocates imminent lawless or disruptive action and are likely to incite or produce such action.”
7. Plaintiff’s religious invitations fulfilled these requirements as they were signed with N.M.’s first and last name, included the name and location of his church, and did not contain any proscribed material.
8. Because Plaintiff’s religious invitations fulfilled the written requirements, but were nonetheless denied by the District, it is apparent that the District has in place additional unwritten criteria governing student literature distribution that it relied upon to deny Plaintiff’s request to distribute his handwritten religious invitations.
9. Pursuant to the District’s Policy FNAA (Local) and these additional unwritten criteria (collectively the “Distribution Policy”) and its practice, the District singled out Plaintiff’s religious handwritten invitations for prohibition and censure even though there was no evidence that N.M.’s invitations would create a material and substantial disruption at school.
10. This unconstitutional action violated the District’s own policies, which recognize that students’ right to “distribut[e] literature [is] protected by the First Amendment,” District

Policy FNAA (Legal), and that “[s]tudent expression on an otherwise permissible subject may not be excluded . . . because the subject is expressed from a religious viewpoint.”

District Policy FNA (Legal).

11. Plaintiff challenges the District’s Distribution Policy and practice as applied to his religious handwritten invitations.
12. The District’s censorship of Plaintiff’s religious speech, and the Distribution Policy and practice on which that censorship was based, violate the First and Fourteenth Amendments to the United States Constitution.

II. JURISDICTION AND VENUE

13. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments. 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§ 1983 & 1988.
14. This Court possesses original jurisdiction over Plaintiff’s claims by operation of 28 U.S.C. §§ 1331 and 1343.
15. This Court is vested with authority to issue the requested declaratory relief under 28 U.S.C. § 2201 and 2202 and Federal Rule of Civil Procedure 57.
16. This Court has authority to award the requested injunctive relief under 28 U.S.C. § 1343(a)(3) and Federal Rule of Civil Procedure 65.
17. This Court is authorized to award nominal damages under 28 U.S.C. § 1343(a)(4).
18. This Court is authorized to award attorneys’ fees under 42 U.S.C. § 1988.
19. Venue is proper under 28 U.S.C. § 1391 in the Eastern District of Texas because N.M.’s claims arose there and because Defendant is located in the Eastern District of Texas.

III. IDENTIFICATION OF THE PLAINTIFF

20. Plaintiff N.M., a minor, is a third grade student at Hillcrest Elementary School, and at all times relevant to this Complaint, a resident of Nederland, Texas.

21. N.M. is an adherent of the Christian faith and desires to share his religious views with his schoolmates.
22. Pursuant to his sincerely held religious beliefs, N.M. desires to distribute religious literature to his schoolmates, including invitations to events at Plaintiff's church, at District schools without facing censorship or punishment.
23. In addition, pursuant to his sincerely held religious beliefs, Plaintiff desires the opportunity to access all other communicative mediums the District makes generally available to students.
24. N.M. desires to distribute religious invitations and materials to students attending District schools for the same reason other students desire to distribute their materials—to invite friends and classmates to beneficial activities that N.M. believes his friends and classmates will enjoy.

IV. IDENTIFICATION OF THE DEFENDANT

25. Defendant Nederland Independent School District is organized under the laws of the State of Texas and may sue and be sued. Texas Education Code § 11.151(a) (recognizing that an independent school district may “sue and be sued”).
26. The District is charged, *inter alia*, with the administration, operation, and supervision of Hillcrest Elementary School, a public primary school.
27. The District is charged with the formulation, adoption, implementation, and enforcement of District policies, including the Distribution Policy challenged herein.
28. The District is responsible for the enforcement of its Distribution Policy by its employees.
29. The District is responsible for the enactment, enforcement, and existence of policies and practices related to student expression and student distribution of nonschool literature.

30. The District prohibited N.M. from distributing religious handwritten invitations to his friends and classmates at school during non-instructional time pursuant to its Distribution Policy and practice.
31. The District is responsible for the implementation and application by the Superintendent, District officials, and local principals of its Distribution Policy and practices pertaining to distribution of written materials by students.
32. The District has delegated to the Superintendent, District officials, and local principals final authority as to the approval and denial of the distribution of written materials by students, and for the denial of Plaintiff's religious handwritten invitations.
33. District Policy FNAA (Local) specifically delegates authority to "the building principal or designee for prior review" of any written materials by students.
34. The District is also aware of the Superintendent's and Principal's denial of N.M.'s religious handwritten invitations because Plaintiff's Counsel sent a letter to the District informing it of the violation of N.M.'s constitutional rights and requested that the District immediately remedy the violation.
35. But the District has made no effort to correct or disavow the actions of the Superintendent and Principal in denying N.M.'s request to distribute his religious handwritten invitations to his classmates at school.

V. ALLEGATIONS OF FACT

**THE DISTRICT'S POLICY AND PRACTICE
REGARDING STUDENT EXPRESSION ON CAMPUS**

36. Hillcrest Elementary School ("Hillcrest") is a public elementary school located in Nederland, Texas.
37. Hillcrest is under the direction of the District and includes pre-kindergarten through

fourth grade.

38. The District is the official policy maker and as such has enacted the Distribution Policy challenged herein.
39. District Policy FNAA (Legal) states that “[a]ctivities such as distributing literature, displaying signs, petition for change, and disseminating information concerning issues of public concern are protected by the First Amendment.”
40. The District’s Distribution Policy defines “distribution” as “the circulation of more than ten printed copies of material from a source other than a school District.”
41. The Distribution Policy prohibits the distribution of certain materials:
 - Nonschool materials shall not be distributed if:
 1. The materials are obscene, vulgar, or otherwise inappropriate for the age and maturity of the audience.
 2. The materials endorse actions endangering the health or safety of students.
 3. The distribution of such materials would violate the intellectual property rights, privacy rights, or other rights of another person.
 4. The materials contain defamatory statements about public figures or others.
 5. The materials criticize Board members or school officials or advocate violation of school rules and fall within the standard described at LIMITATIONS ON EXPRESSION at FNAA (LEGAL).
 6. The materials advocate imminent lawless or disruptive action and are likely to incite or produce such action.
 7. The materials include hate literature that scurrilously attacks ethnic, religious, or racial groups, and similar publications aimed at creating hostility and violence if they fall within the standard described at LIMITATIONS ON EXPRESSION at FNAA(LEGAL).

42. The Distribution Policy requires each school to “designate an area where materials that

have been approved for distribution by students in accordance with this policy may be made available or distributed.”

43. Pursuant to the Distribution Policy, school officials at Hillcrest permit students to distribute literature and materials in the classrooms during non-instructional time.
44. The Distribution Policy also states that “[s]tudents who fail to follow these procedures may be disciplined in accordance with the FO series and the Student Code of Conduct.”
45. Pursuant to the District’s Distribution Policy and practice, students distribute literature and materials with various types of messages including personal notes, birthday party invitations, etc, during noninstructional times.

THE DENIAL OF N.M.’S RELIGIOUS HANDWRITTEN INVITATION BY THE DISTRICT

46. N.M. is a member of the AWANAs Club, a program for children at his church that meets on Sunday evenings.
47. At each week’s meeting, children participate in a variety of activities including singing, crafts, games, hearing a Bible story, etc., all from a religious perspective.
48. N.M. decided he wanted to invite a couple of his friends at school.
49. In December 2011, N.M.’s parents contacted N.M.’s 3rd Grade Teacher, Donna Jackson, to request permission for N.M. to bring the two invitations to the AWANAs Club activity to give to his friends at school.
50. Ms. Jackson granted permission for N.M. to distribute the AWANAs invitations.
51. But Ms. Jackson informed N.M.’s parents that there is a school policy regarding invitations to non-school activities.
52. According to Ms. Jackson, under the policy students must invite everyone in the class so that no student feels excluded or left out.
53. N.M.’s parents then asked Ms. Jackson to provide the first names only of each of the

students in N.M.'s class so that he could prepare a personalized AWANAs invitation for each of his classmates.

54. Ms. Jackson provided the list of names of the students.
55. As a result of the invitation policy, N.M. invited all eighteen of his classmates to the January 8, 2012 event rather than two classmates as he originally intended.
56. This policy further required N.M. to comply with the District's Distribution Policy—which only applies to the distribution of more than ten copies of a piece of literature—since N.M. was now distributing eighteen invitations rather than the two invitations he had originally intended to distribute.
57. During the Christmas break, N.M. prepared an individually addressed handwritten invitation for each of his classmates.
58. Each invitation, written in N.M.'s own handwriting, stated:

Dear [Name]
Please join me for AWANAS
Aware Workers are Not Ashamed
on
January 8th, 2012
5:00 – 7:00 PM
at
Hillcrest Baptist Church, 3324 Park Dr in Nederland
Thank you;
[N.M.]

59. On January 3, 2012, N.M. brought the handwritten invitations to school to distribute to his classmates.
60. N.M. attempted to distribute the invitations to his classmates before class during non-instructional time
61. Other students in his class are routinely permitted to distribute birthday invitations and other non-school events to their classmates before class.

62. But before N.M. could hand out a single invitation, he was stopped by Ms. Jackson.
63. Ms. Jackson told N.M. that he was not allowed to hand out the handwritten invitations to his classmates.
64. Ms. Jackson did not give any explanation for her decision.
65. That evening, N.M.'s father, Michael Metcalf, wrote an e-mail to Ms. Jackson inquiring why N.M.'s invitations were denied:

Ms Jackson

[N.M.] said that you told him he could not pass out the AWANAs invitations. Is there an issue with them? He wrote one for every student in the class. If for some reason he is not able to pass them out please send them back so that he can take them to his AWANAs group leader and get credit for the work he did.

Thank you
Mike Metcalf

66. On January 4, 2012, Ms. Jackson responded to Mr. Metcalf's e-mail:

I wanted to do some more checking before I told him a final answer. Mrs. Noble [the school principal] is required to review any notes being passed out to the children. She checked with the superintendent's office, and his response was not to send them. The administration building usually approves any distributions that are passed out. I am sorry for any confusion this may have caused. I am proud of [N.M] and his hard work on all of the invitations.

Donna Jackson

67. In an effort to resolve this matter, on February 6, 2012, Plaintiff's counsel sent a letter to the District informing it that "the denial of this literature distribution is a violation of the First Amendment rights of [N.M.]"
68. The letter further cited to recent Fifth Circuit case law upholding the constitutional right of students to distribute religious written materials at school.
69. Plaintiff's counsel requested that the District respond by February 20, 2012 as to whether

the District would immediately remedy the violation of N.M.'s constitutional rights.

70. The letter further requested documents pursuant the Texas Public Information Act, including (1) district policies that relate to student speech, (2) district policies that relate to school and/or community literature distribution, (3) copies of all written materials that have been distributed by students in the past two years, (4) copies of all written materials sent home with students in the past two years, and (5) any written communication regarding the denial of N.M.'s request to distribute invitations.
71. On February 10, 2012, Plaintiff's counsel received a response letter from counsel for the District.
72. Rather than responding to the substance of the Plaintiff's letter and pursuing an amicable resolution, the District's counsel did not respond to the constitutional violations of N.M.'s rights raised in Plaintiff's February 6, 2012 letter.
73. Nor did the District's counsel provide the requested public records, instead demanding to see copies of the representation agreement between Plaintiff and his counsel and the Bar License numbers for Plaintiff's counsel.
74. The District's counsel further required prepayment of \$147.42 for "the labor and personnel costs of responding to your request."
75. Plaintiff's counsel has yet to receive any substantive response to his February 6, 2012 letter or any responsive documents from the District or its counsel.
76. N.M. is a Bible-believing Christian who desires to share his faith and beliefs with other students and to invite them to church events.
77. N.M.'s sincerely held religious beliefs compel him to share his faith and beliefs with his friends and classmates at school.
78. One way N.M. accomplishes this goal at school is through inviting his friends to events at

his church and to other similar religious activities for children.

79. In the future, N.M. desires to engage in religious speech through the distribution of other similar religious literature, including flyers inviting his friends and classmates to AWANAS meetings and other religious events, absent fear of reprisal and without facing punishment or being prohibited from doing so.
80. Plaintiff's church continues to hold events and activities for children, and Plaintiff desires to share this information through invitations and literature distribution immediately.

VI. ALLEGATIONS OF LAW

81. Students do not shed their constitutional rights at the schoolhouse gate.
82. Non-disruptive, private student expression is protected by the First Amendment.
83. Private speakers are entitled to equal, viewpoint neutral access to public fora.
84. Religious speech is fully protected by the First Amendment.
85. 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.
86. The government may not discriminate against speech based on its viewpoint, regardless of the forum.
87. Content-based restrictions on speech in a public forum are presumptively unconstitutional and are subject to strict scrutiny.
88. 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.
89. All of the acts of the District, its officers, agents, employees, and servants were executed

and are continuing to be executed by the District under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of Texas.

90. Plaintiff is suffering irreparable harm from the conduct of the District.
91. Plaintiff has no adequate or speedy remedy at law to correct or redress the deprivation of his rights by the District.
92. Unless the District's Distribution Policy is enjoined, Plaintiff will continue to suffer irreparable injury.

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

93. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 92 of this Complaint.
94. 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.
95. The District's Distribution Policy and practice permit students to distribute literature to their classmates during non-instructional time.
96. The District permits the distribution of written materials by students covering a wide range of topics including birthday invitations and other non-school events.
97. In contrast, the District's Distribution Policy and practice prohibit N.M. from distributing a handwritten invitation for a religious event through student-to-student distribution.
98. N.M.'s distribution of his religious handwritten invitation does not materially and substantially interfere with the orderly conduct of educational activity within the school.
99. The District's Policy FNAA (Local) only identifies seven categories of student expression that may not be distributed on campus, and includes materials that

1. Are obscene, vulgar, or otherwise inappropriate for the age and maturity of the audience.
2. Endorse actions endangering the health or safety of students.
3. Violate the intellectual property rights, privacy rights, or other rights of another person.
4. Contain defamatory statements about public figures or others.
5. Criticize Board members or school officials or advocate violation of school rules.
6. Advocate imminent lawless or disruptive action and are likely to incite or produce such action.
7. Scurrilously attacks ethnic, religious, or racial groups, and similar publications aimed at creating hostility and violence.

100. N.M.'s religious handwritten invitations are not obscene or vulgar, do not endanger the health or safety of students, violate intellectual property rights, contain defamatory statements, criticize Board members, advocate or create disruptive action, or attack ethnic, religious, or racial groups.
101. Because N.M.'s religious handwritten invitations comply with the express terms of the District's Policy FNAA (Local) but were denied, it is apparent that the District has additional unwritten criteria that it relied upon to deny N.M.'s religious handwritten invitations.
102. This unequal treatment of N.M.'s religious expression pursuant to the Distribution Policy is a content-based restriction in an otherwise open forum.
103. The District permitted students to distribute invitations to off-campus birthday parties where students would play games, sing songs, participate in craft activities, and hear stories.
104. However, the District's Distribution Policy and practice discriminate against N.M.'s religious viewpoint by prohibiting him from distributing a religious handwritten invitation to his friends and classmates for an AWANAs event where the children would play games, sing songs, participate in craft activities, and hear a Bible story, all from a

religious perspective.

105. This denial of N.M.'s religious invitation while permitting secular invitations from other students constitutes viewpoint discrimination, which is unconstitutional in any type of forum.
106. The District's Distribution Policy and practice additionally impose an unconstitutional prior restraint because they vest District officials with unbridled discretion to permit or refuse protected religious speech by students.
107. The District's Distribution Policy and practice give unbridled discretion to District officials by allowing them to exclude student expression that does not fall with the seven categories of student expression that are banned on campus.
108. The District's Distribution Policy and practice are additionally overbroad because they sweep within their ambit protected First Amendment expression.
109. The overbreadth of the District's Distribution Policy and practice chill the speech of students who might seek to engage in private religious expression through the distribution of invitations and other written materials during non-instructional time.
110. The District's Distribution Policy and practice chill, deter, and restrict Plaintiff from freely expressing his religious beliefs.
111. The District's Distribution Policy and practice, as interpreted and applied by District officials to prohibit religious speech, are not the least restrictive means necessary to serve any compelling interest which the District seeks thereby to secure.
112. The District's Distribution Policy and practice are not reasonably related to any legitimate pedagogical concerns.
113. Censoring students' religious speech per se is not and cannot be a legitimate pedagogical concern.

114. The District's Distribution Policy and practice, as applied, accordingly violate Plaintiff's right to Free Speech as guaranteed by the First Amendment to the United States Constitution.

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

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

115. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 92 of this Complaint.

116. The District's Distribution Policy and practice, by expressly targeting N.M.'s private religious expression for special disabilities because it is religious, violate his constitutional right to the free exercise of religion.

117. N.M. desires to engage in expressive activities described above on the basis of his sincerely held religious beliefs.

118. The District's Distribution Policy and practice exclude – and thus discriminate against – religious expression.

119. The District's Distribution Policy and practice substantially burden N.M.'s free exercise of religion by conditioning his ability to speak on foregoing his free exercise rights.

120. The District's Distribution Policy and practice force N.M. 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.

121. The District's Distribution Policy and practice substantially burden N.M.'s free exercise of religion by denying him the right to include private religious speech in the fora.

122. The District's Distribution Policy and practice constitute the imposition of special

disabilities on N.M. due to his religion and his intent to include private religious expression in the fora.

123. The District's Distribution Policy and practice of banning N.M.'s religious handwritten invitation selectively imposes a burden on expression based on the religious nature of the expression by singling out his expression for discriminatory treatment.
124. The District's Distribution Policy and practice cannot be justified by a compelling governmental interest and are not narrowly tailored to advance any such interest.
125. The District's interpretation and application of its Distribution Policy chills N.M.'s freedom of religious expression and exercise, both of which are fundamental rights guaranteed to Plaintiff by the First Amendment.
126. These special disabilities placed on N.M. are neither neutral nor of general applicability.
127. The District's Distribution Policy is not neutral because it permits District officials to arbitrarily decide what speech is permitted under the Policy and what speech is not.
128. The District's Distribution Policy and practice are likewise not generally applicable because they grant the District officials unbridled discretion, enforced via a policy of individualized assessment (since students must submit a copy of the materials they wish to distribute beforehand), to censor N.M.'s religious handwritten invitations while permitting other students to distribute written materials, such as birthday party invitations.
129. The District's Distribution Policy and practice, as applied, constitutes an excessive burden on N.M.'s rights to freedom of exercise of his religion and have violated the Free Exercise Clause of the First Amendment to the United States Constitution.

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

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

130. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 92 of this Complaint.
131. The Due Process Clause of the Fourteenth Amendment prohibits the government from censoring speech pursuant to vague or overbroad standards that grant unbridled discretion.
132. While the District's Distribution Policy identifies seven specific types of student expression that are prohibited at District schools, the Policy as applied also allows District officials to restrict religious expression by students.
133. As the District's restriction on N.M's religious handwritten invitations demonstrates, District officials may restrict a student's religious expression even when that expression does not fall within the seven specific types of student expression banned by the Distribution Policy.
134. Students of common intelligence must therefore guess as to whether their religious expression will be permitted under the District's Distribution Policy.
135. The District's Distribution Policy and practice are vague and allow for unbridled discretion in determining which student speech satisfies its Distribution Policy.
136. The discretion given to District officials in the District's Distribution Policy leaves censorship of student speech to the whim of District officials.
137. The District's Distribution Policy and practice, as applied, accordingly violate Plaintiff's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth

hereinafter in the Prayer for Relief.

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

138. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 92 of this Complaint.
139. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated persons and groups equally.
140. Pursuant to its Distribution Policy and practice, the District has allowed other similarly situated students to distribute invitations and other written materials containing secular expression in the classroom during non-instructional time.
141. The District has treated N.M. disparately when compared to similarly situated students, by banning only N.M.'s religious expression.
142. By discriminating against the content and viewpoint of N.M.'s speech, the District is treating N.M.'s religious speech differently than other similar situated public school students.
143. The District's Distribution Policy and practice violate various fundamental rights of N.M., such as rights of free speech and free exercise of religion.
144. When government regulations, like the District's Distribution Policy and practice challenged herein, infringe on fundamental rights, discriminatory intent is presumed.
145. The District's Distribution Policy and practice have also been applied to intentionally discriminate against N.M.'s rights of free speech and free exercise of religion.
146. The District lacks a rational or compelling state interest for such disparate treatment of N.M.
147. The District's Distribution Policy and practice are not narrowly tailored as applied to

N.M. because his speech does not implicate any of the interests the District might have.

148. The District's Distribution Policy and practice are overinclusive because they prohibit N.M.'s religious expression even though it is not disruptive.

149. The District's Distribution Policy and practice burden more of N.M.'s speech than necessary because he is foreclosed from using religious content and viewpoints in his speech even though it is not disruptive.

150. The Distribution Policy and practice of the District, as applied, thus violate N.M.'s right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment as follows:

a. That this Court issue a Preliminary and Permanent Injunction, restraining the District, its officers, agents, employees, and all other persons acting in active concert with it, from enforcing the Distribution Policy challenged herein that violates N.M.'s constitutional rights by banning religious expression;

b. That this Court render a Declaratory Judgment, declaring as unconstitutional as-applied the District's Distribution Policy and practice challenged herein that ban religious expression in violation of the First and Fourteenth Amendments to the United States Constitution;

d. 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;

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

Dated this 2nd day of April, 2012.

/s/ G. Scott Fiddler

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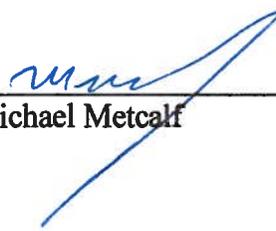
**Application for Admission Pending*

Attorneys for Plaintiff N.M.

VERIFICATION

I, Michael Metcalf, a citizen of the United States and a resident of the State of Texas, 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 28th day of March, 2012.



Michael Metcalf