

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

A.P., a minor by and through his next friend,)	
D.B.)	CASE NO. 08-cv-176
)	
Plaintiff,)	
)	
v.)	
)	
TOMAH AREA SCHOOL DISTRICT;)	VERIFIED COMPLAINT
ROBERT FASBENDER, in his official)	FOR DECLARATORY AND
capacity as District Administrator of the)	INJUNCTIVE RELIEF
Tomah Area School District; CALE)	
JACKSON, in his official capacity as Assistant)	
Principal of Tomah High School; and JULIE)	
MILLIN and MARGI GENRICH, in their)	
official capacities as Tomah High School)	
faculty members,)	
)	
Defendants.)	

COMES NOW the Plaintiff, A.P., by and through his next friend, D.B.¹, pursuant to the Federal Rules of Civil Procedure, and for his causes of action against the Defendants shows the Court the following:

I.

INTRODUCTION

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution seeking to enjoin Defendants’ Policies and practice of discrimination against students who use religious content in response to class assignments.

2. Rather than educating its students in the meaning of the Constitution, including the

¹Pursuant to Section IV.B.2 of the Court’s administrative procedures manual, A.P. is identified by his initials, rather than his full name, in order to maintain the privacy of his identity. For this reason also, A.P.’s guardian’s name is herein indicated only by her initials.

distinction between private student speech and school speech, Defendants opt instead to censor pupils and stifle student religious expression that otherwise fulfills classroom assignments, but falls outside the orthodoxy of the School District.

3. Pursuant to a Policy that prohibits students from creating artwork that depicts any kind of “violence, blood, sexual connotations, [or] religious beliefs,” Defendants gave A.P. a zero for his Drawing I landscape assignment after he included a small cross and the words “JOHN 3:16. A sign of love” in the background of his drawing, while permitting other students to create demonic-themed projects in response to class assignments.

4. When Defendants produced a written copy of the above Policy, showed it to A.P., and informed A.P. that he had “signed away his First Amendment rights” at the beginning of the semester by affixing his signature to the bottom of the Policy, A.P. proceeded to tear the illegal Policy in half to protest this unconstitutional censorship.

5. A superb student with no history of disciplinary problems, A.P. was then retaliated against by Defendants: they punished him with two detentions for tearing the illicit Policy in protest of Defendants’ unconstitutional censorship.

6. In addition, pursuant to Policies that prohibit students from creating artwork that portrays “drug, gang, or religious symbols,” Defendants prevented A.P., in his Jewelry/Art Metals class, from creating projects in the form of a small chain mail cross and a metal pin containing the words “pray” and “praise.”

7. Despite Defendants’ stated aim of “provid[ing] a variety of visual experiences for the student to relate art to his/her own experiences and culture,” Defendants’ Policies and practice of censoring students who express their religious beliefs in response to classroom assignments

promotes a learning environment that is openly hostile toward student religious expression, and permits Defendants to make judgments about which student expression is and is not religious, thereby creating constitutional problems of entanglement.

8. A.P. accordingly brings this action for the Court to (i) preliminarily and permanently enjoin Defendants from violating his constitutional rights; (ii) declare that Defendants' Policies and practice of banning religious expression that otherwise satisfies classroom assignments violate the First and Fourteenth Amendments to the United States Constitution, both facially and as-applied; and (iii) order Defendants to provide to A.P. full academic credit for his landscape drawing in Defendant Millin's class and to cleanse A.P.'s academic record of any and all disciplinary action taken against him arising out of the application and enforcement of Defendants' unconstitutional Policies and practice.

II.

JURISDICTION AND VENUE

9. This action arises under the United States Constitution, specifically the First and Fourteenth Amendments, and under federal law, particularly 28 U.S.C. § 2201 and 42 U.S.C. §§ 1983 and 1988.

10. This Court possesses jurisdiction over Plaintiff's claims by operation of 28 U.S.C. §§ 1331 and 1343.

11. This Court is vested with authority to grant Plaintiff's 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.

12. This Court is authorized to grant Plaintiff's requested injunctive relief pursuant to 42

U.S.C. § 1983 and Rule 65 of the Federal Rules of Civil Procedure.

13. This Court is authorized to award the requested nominal damages of one (1) dollar under 28 U.S.C. § 1343(3).

14. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.

15. Venue is proper under 28 U.S.C. § 1391 in the United States District Court for the Western District of Wisconsin because the events giving rise to Plaintiff's claims occurred within the District and because all parties are residents of the District.

III.

IDENTIFICATION OF THE PLAINTIFF

16. Plaintiff A.P., a minor, is a resident of Camp Douglas, Wisconsin and is currently in the twelfth grade at Tomah High School.

17. A.P. is a professing Christian.

18. Pursuant to his religious tenets, and based on Biblical teachings of the Great Commission, A.P. desires to express his religious beliefs and to share his faith with others.

19. One manner in which A.P. expresses his religious beliefs is through his artwork, including his responses to assigned projects in his Drawing I and Jewelry/Art Metals classes, among others, at Tomah High School.

20. A.P. has accumulated a 3.58 grade point average and is ranked in the top 20% in his senior class.

21. D.B., next friend, is A.P.'s mother and legal guardian, and at all times relevant to this Complaint, is a resident of Camp Douglas, Wisconsin.

IV.

IDENTIFICATION OF THE DEFENDANTS

22. Defendant Tomah Area School District (the “District”) is established, organized, and authorized under and pursuant to the laws of Wisconsin, with the authority to sue and be sued.

23. The District is charged with the administration and operation of Tomah High School (“THS”).

24. The District is charged with overseeing the operation of THS and the enactment and enforcement of District policies, including those related to THS students who use religious content in response to class assignments.

25. The District is responsible for the Policies and practice challenged herein, and for denying A.P., pursuant to its policies and practice, through implementation by Legal Counsel and its officials, on its behalf, his right to religious expression in otherwise fulfilling classroom assignments.

26. The District is likewise responsible for the implementation and application of its Policies by the District Administrator, the Assistant Principal of THS, and THS faculty.

27. The District is similarly responsible for delegating to the District Administrator, the Assistant Principal of THS, and THS faculty final authority as to THS students who use religious expression in response to class assignments.

28. Defendant Robert Fasbender is the District Administrator of the Tomah Area School District, which includes THS.

29. Defendant Fasbender possesses District-delegated responsibility, final authority, and discretion, as delegated by the District, as to the administration of District policies pertaining to

students who use religious content in response to class assignments.

30. Additionally, in this capacity, Defendant Fasbender has final supervisory responsibility over the Assistant Principals of THS and THS faculty members.

31. Defendant Fasbender is responsible for the Policies and practice leading to the denial of A.P.'s right to religious expression in otherwise fulfilling class assignments.

32. Defendant Fasbender is also responsible for the denial of A.P.'s right to religious expression in otherwise fulfilling class assignments.

33. Defendant Fasbender is sued in his official capacity as District Administrator.

34. Defendant Cale Jackson is the Assistant Principal of THS.

35. Defendant Jackson is charged with the administration of THS, including District-delegated responsibility, authority, and discretion as to enforcement of District Policies relating to students who use religious content in response to class assignments.

36. Defendant Jackson is responsible for the Policies and practice leading to the denial of A.P.'s right to religious expression in otherwise fulfilling class assignments.

37. Defendant Jackson is also responsible for the denial of A.P.'s right to religious expression in otherwise fulfilling class assignments.

38. Defendant Jackson made the decision to deny A.P.'s right to religious expression in class assignments pursuant to the Policy and practice implementation and direction of the District, and through Legal Counsel on its behalf.

39. Defendant Jackson is sued in his official capacity as Assistant Principal of THS.

40. Defendant Julie Millin is employed by the District as a faculty member of THS.

41. Defendant Millin is an instructor of art at THS, teaching among other courses,

Drawing I, in which Plaintiff is currently enrolled.

42. Defendant Millin is charged with District-delegated responsibility, authority, and discretion as to enforcement of District policies relating to students who use religious content in response to class assignments

43. Defendant Millin is responsible for the Policies and practice leading to the denial of A.P.'s right to religious expression in otherwise fulfilling classroom assignments.

44. Defendant Millin is also responsible for the denial of A.P.'s right to religious expression in otherwise fulfilling class assignments.

45. Defendant Millin made the decision to deny A.P.'s right to religious expression in class assignments pursuant to the Policy and practice implementation and direction of the District, and through Legal Counsel on its behalf.

46. Defendant Millin is sued in her official capacity as a faculty member of THS.

47. Defendant Margi Genrich is employed by the District as a faculty member of THS.

48. Defendant Genrich is an instructor of art at THS, teaching among other courses, Jewelry/Art Metals, in which Plaintiff is currently enrolled.

49. Defendant Genrich is charged with District-delegated responsibility, authority, and discretion as to enforcement of District policies relating to students who use religious content in response to class assignments.

50. Defendant Genrich is responsible for the Policies and practice leading to the denial of A.P.'s right to religious expression in otherwise fulfilling classroom assignments.

51. Defendant Genrich is also responsible for the denial of A.P.'s right to religious expression in otherwise fulfilling class assignments.

52. Defendant Genrich made the decision to deny A.P.'s right to religious expression in class assignments pursuant to the Policy and practice implementation and direction of the District, and through Legal Counsel on its behalf.

53. Defendant Genrich is sued in her official capacity as a faculty member of THS.

54. The District is aware of, acquiesces in, sanctions, supports, and is deliberately indifferent to the actions of Defendants Jackson, Millin, and Genrich in the enforcement of District Policies against A.P.

V.

FACTUAL ALLEGATIONS

TOMAH HIGH SCHOOL

55. THS is a public high school located in Tomah, Wisconsin and is part of the Defendant District.

56. THS enrolls students from ninth through twelfth grade.

57. THS offers a variety of art courses to its students.

58. In its 2008-2009 Course Description Booklet, the School describes its art curriculum as follows: "The main goal of the Art Department is to provide a variety of visual experiences for the student to relate art to his/her own experiences and culture." (emphasis added.)

59. Plaintiff, A.P., is currently enrolled in two of the Schools offered art courses – Drawing I and Jewelry/Art Metals.

60. Drawing I is taught by Defendant Millin.

61. Jewelry/Art Metals is taught by Defendant Genrich.

62. A.P. signed up for Drawing I and Jewelry/Art Metals pursuant to his desire to express

himself, including his religious beliefs, through his artwork while otherwise responding to assigned class projects.

63. Last semester, A.P. completed the course Introduction to Art, taught by both Defendant Genrich and Defendant Millin.

CENSORSHIP IN A.P.'S DRAWING I COURSE

64. In February of this year, Defendant Millin assigned to students in her Drawing I class a project which required them to draw a landscape scene.

65. Students were given the following list of written requirements for the assignment (a true and correct copy of which is attached as Exhibit A):

Requirements:

1. Pencil/Charcoal or combination
 2. Size: 18x18 up to 18x24 (One inch border)
 3. Minimum of 80% landscape, 20% objects
 4. Realistic or Fantasy
 5. Photos, books can be used as reference
 6. Original work must be sketched out first
 7. Use three techniques
- 7 [sic]. Graded on: Proportion (Depth), Techniques, Difficulty, Shading (Contrasts & Values), Composition, Creativity/original [sic], Dedication, Presentation

(emphasis added.)

66. In response, A.P. decided to draw a landscape featuring a road leading into the

distance; open fields on each side of the road; clouds in the sky; mountains in the distance and to the right of the road; and a narrow path winding along the right side of the road through a field.

67. Defendant Millin observed the progress of A.P.'s drawing and commented approvingly as to the above landscape elements.

68. Typically, from the moment that Defendant Millin assigns a project until the time that completed drawings are submitted, students in the class, including A.P., will alter, erase, and otherwise implement additional elements to their drawings to supplement their initial, more general, project ideas.

69. This flexibility promotes creativity in response to class assignments by allowing students to develop their creative instincts, use their imagination, and shape their initial ideas into a more fully developed final drawing.

70. Defendant Millin informally observes these various stages of students' drawings and offers comments, suggestions, and words of approval.

71. After Defendant Millin commented approvingly as to A.P.'s landscape elements, but before he finished his landscape drawing, A.P. decided – as an extension of himself and his beliefs, and as a result of developing his initial idea further – to include the words “JOHN 3:16. A sign of love” written in the sky, as well as a small cross in the background. (A true and correct copy of A.P.'s final landscape drawing is attached as Exhibit B.)

72. When A.P. then went to create the border for his landscape drawing, Defendant Millin approached A.P. and informed him that due to comments from other students related to the religious expression in his drawing, A.P. would need to either remove the John 3:16 scripture reference or place his border on the drawing such that it obscured the reference.

73. Defendant Millin informed A.P. that the John 3:16 scripture reference infringed on the rights of others in the class and was offensive.

74. Defendant Millin did not say anything about the small cross A.P. had included in the drawing and did not instruct A.P. to remove or cover up the cross at that time.

75. At no time did Defendant Millin state or otherwise indicate that A.P. had failed to comply with the specific directions related to the landscape assignment.

76. Opting not to self-censor his landscape drawing, A.P. proceeded to place the border around the drawing and left visible the John 3:16 reference and the cross.

77. A.P. then placed his drawing on a wall in the classroom beside other students' drawings so as to let Defendant Millin know (per standard classroom procedure) that he had completed his assignment.

78. Student projects are typically displayed on the wall for several days before they are taken down, allowing students to critique each others' work.

79. However, when A.P. happened to walk past Defendant Millin's room approximately one hour after hanging his drawing, A.P. saw that Defendant Millin had removed his drawing from the wall.

80. In class the next morning, A.P. questioned Defendant Millin as to why she had removed his drawing from the wall.

81. In response, Defendant Millin produced a written Policy for the class which she handed to A.P. The Policy stated, in relevant part, that "Art work that has any violence, blood, sexual connotations, [or] religious beliefs will not be accepted." (A true and correct copy of the Policy is attached as Exhibit E.)

82. Defendant Millin informed A.P. that he had “signed away his First Amendment rights” when he had affixed his signature to the bottom of the Policy at the beginning of the semester.

83. A.P. respectfully responded that he was not aware of the language contained in this written Policy related to heightened restrictions on student religious expression.

84. As an expression of his opposition as to this illegal censorship, A.P. proceeded to tear in half the copy of the illegal Policy that Defendant Millin had handed to him.

85. A.P. was calm and respectful the entire time.

86. Defendant Millin irately responded: “Get out of my face. Get out of my damn classroom.”

87. Taken aback by Defendant Millin’s response, and not knowing exactly where to go or what to do, A.P. walked to the school office. Once there, he seated himself and waited for the current class period to end and for second period to begin.

88. Later that same day, Assistant Principal Jackson removed A.P. from his seventh period classroom to speak with him in his office.

89. Defendant Jackson told A.P. that he seconded Defendant Millin’s determination that A.P.’s religious expression infringed upon the rights of other students and reprimanded A.P. for failing to remove or cover up the scripture reference as Defendant Millin had demanded.

90. The next day, A.P. and his stepfather, B.B., arrived to school early to meet with Defendant Jackson about what had occurred the previous day. At this meeting, Defendant Jackson told B.B. that A.P. had been reprimanded for refusing to remove the John 3:16 scripture reference from his landscape drawing.

91. A second meeting was held approximately one week later at the school, attended by Defendant Millin, Defendant Jackson, A.P., B.B., and A.P.'s youth pastor.

92. At this meeting, Defendant Jackson reiterated that A.P.'s religious expression in response to the Drawing I landscape project infringed upon the rights of other students and that A.P. should have removed or covered up the John 3:16 scripture reference as Defendant Millin had demanded.

93. Defendant Jackson also stated that pursuant to the District's legal counsel, whom he had recently spoken with regarding A.P.'s landscape drawing, private student religious expression in response to class assignments could lawfully be censored.

94. At this meeting, B.B. specifically asked Defendants Jackson and Millin if A.P. would face any further punishment beyond the reprimand he had already received.

95. Defendant Millin replied that A.P. would not face any further punishment.

96. However, Defendants subsequently punished A.P. further by assigning him to two detentions for his act of tearing the illegal Policy in protest of Defendants' censorship of his religious expression.

97. Defendant Millin also assigned A.P. a zero for his landscape drawing project.

98. At a parent-teacher conference on March 6, 2008, in which Defendant Millin, Defendant Jackson, and Defendant Genrich were present, Defendant Millin reiterated to A.P., B.B., and D.B. that the reason that she demanded A.P. alter his landscape drawing was because the John 3:16 scripture reference infringed upon the rights of others.

99. Also at this conference, Defendant Millin stated, for the first time, that the cross contained in A.P.'s landscape drawing also infringed upon the rights of others.

100. Defendant Millin stated, however, that after A.P. tore the Policy prohibiting religious expression, she consequently decided that all of A.P.'s religious expression in the drawing infringed upon the rights of others and thus warranted a zero for the assignment.

CENSORSHIP IN A.P.'S JEWELRY/ART METALS CLASS

101. Soon following Defendants' censorship of A.P.'s projects in his Drawing I class, but before the parent-teacher conference mentioned above on March 6, 2008, A.P. was afforded an extra credit opportunity in his Jewelry/Art Metals course, taught by Defendant Genrich.

102. Defendant Genrich's instructions for the extra credit project were open-ended, permitting interested students to create a metal object of their choosing.

103. In response, A.P. approached Defendant Genrich with his idea of creating a chain mail cross, only several inches long, which would consist of small pieces of metal linked together in a pattern to form a mesh.

104. A.P. believed that his proposed design would be approved by Defendant Genrich, as she had approved a cross necklace that A.P. had crafted in the "Introduction to Art" course taught by her the previous semester.

105. However, citing Defendants' recent censorship of A.P.'s landscape drawing, Defendant Genrich told A.P. that he would not be permitted to create the small chain mail cross because it was religious and could offend someone.

106. Soon after Defendant Genrich told A.P. that he could not create the chain mail cross, A.P. noticed that a necklace he had made in Defendant's Jewelry/Art Metals class – an abstract symbol consisting of a looped metal piece in the middle of two metal pieces forming an "x" – had

been removed from a display case at the school containing other art projects created by students in the Jewelry/Art Metals class. (A true and correct picture of A.P.'s symbol is attached as Exhibit F.)

107. The symbol is a religious symbol.

108. The symbol necklace had been displayed in the case, along with other student projects, for approximately two days.

109. When A.P. questioned Defendant Genrich as to the reason that this necklace had been removed from the display case, Defendant stated that it had been removed by her after a another student commented about the religious nature of the symbol.

110. On May 5, 2008, the day before the parent-teacher conference mentioned above, Defendant Genrich assigned a metal soldering project to students in her Jewelry/Art Metals class.

111. Students were to select a design for a metal pin by studying various slogans and advertisements and to develop a pin featuring a thought provoking word subject to multiple interpretations.

112. Defendant Genrich's written instructions for the assignment stated that students, in their responses, must be sure not to "offend[] any one or any group," and that students were not to use "drug, gang or religious symbols as stated in the rules of the classroom." (A true and correct copy of the written instructions, with relevant portions underlined for ease of reference, is attached as Exhibit G.)

113. The "rules of the classroom" referenced in the written instructions for the soldering assignment do not mention drug, gang, or religious symbols. (A true and correct copy of the rules of the classroom is attached as Exhibit H.)

114. In his response to the soldering assignment, A.P. came up with the idea of using the religious terms “pray” and “praise” for his pin.

115. At the parent-teacher conference on March 6, 2008 (again, attended by Defendants Millin, Jackson, and Genrich), A.P.’s mother, D.B., specifically asked Defendant Genrich if A.P. would be permitted to use the words “pray” or “praise” in response to the soldering assignment.

116. Defendant Genrich replied that she was unsure and would need to confer first with Defendants Millin and Jackson as to whether such religious words would be acceptable.

117. D.B. offered that since Defendants Millin and Jackson were both present at the meeting, it would be easy for them all to confer with one another and decide whether A.P.’s desired word choice for the soldering project would be permitted.

118. Defendant Genrich then curiously stated that she would need to take the weekend (March 8th and 9th) to consider whether the words “praise” or “pray” would be allowed – despite the fact that A.P.’s completed soldering assignment was due the very next day, Friday, March 7, 2008.

119. Without a definitive answer from Defendant Genrich, and not wanting to risk a zero for his assignment if he used the words “pray” or “praise,” A.P. was forced instead to chose other words.

120. Also at the parent-teacher conference on March 6th, D.B. questioned Defendant Genrich as to why, in A.P.’s Introduction to Art class last semester, she had allowed him to make a cross necklace, but had recently prohibited A.P. from making his proposed chain mail piece.

121. Defendant Genrich replied that it had been wrong of her to previously allow him to make the cross necklace in his Introduction to Art course, and even half-joked that she should go back and give him a “bad grade” for the cross necklace.

RELIGIOUS ITEMS ON DISPLAY DURING THE MARCH 6, 2008 PARENT-TEACHER CONFERENCE

122. On March 6, 2008, prior to attending the above-described parent-teacher conference, (conducted in the art classroom), A.P. and his stepfather, B.B., walked into the open classroom of a THS social studies teacher, Greg Dull, who was not present in the room on that evening.

123. While in Mr. Dull's room, B.B. and A.P. engaged in conversation with a student assistant of Mr. Dull's about various prominently displayed religious items in Mr. Dull's classroom.

124. These figures included a seated and praying Hindu figure, plugged into the wall as part of a fountain circulating water.

125. Another Hindu figurine – a woman, standing and playing a fluted instrument – was also displayed.

126. A Buddha figurine with outstretched arms (described by Mr. Dull's assistant as a "skinny" Buddha) stood alongside the standing Hindu figure.

127. In addition, affixed to the history teacher's classroom window was a circular, multicolored picture depicting a seated figure engaged in what appears to be a meditation exercise used by practitioners of eastern religions.

128. Mr. Dull's assistant showed A.P. and B.B. around the room, describing the various religious items, and even commented that Mr. Dull was a practitioner of the Hindu religion and "teaches Hinduism to his students with a passion."

ARTWORK DISPLAYED THROUGHOUT THE SCHOOL

129. Defendants permit many pieces of artwork, both student-created and otherwise, to be displayed throughout THS.

130. A partial replica of Michelangelo's "The Creation of Man" is also displayed in the School's main entrance.

131. A large painting of a six-limbed Hindu woman riding a swan figure is featured in the School's hallway.

132. Elsewhere, on a bulletin board in a School hallway, there hangs a drawing of a robed sorcerer figure.

133. A student drawing of the Grim Reaper, holding a scythe, is displayed in Defendant Millin's classroom.

134. A drawing of a demonic being, with horns on its head and a large tongue protruding from its mouth, hangs in Defendant Millin's classroom. (A true and correct copy of this drawing is attached as Exhibit C.)

135. Also in Defendant Millin's classroom, a picture of the Greek goddess Medusa is displayed.

136. Another student drawing of a demonic-looking figure titled "Master of the Moon," is prominently featured in a hallway display case. (A true and correct copy of this drawing is attached as Exhibit D.)

137. In Defendant Genrich's classroom, demonic-themed masks are currently displayed on the walls. On March 20, 2008, Defendant Genrich approached A.P. and, in reference to these masks hanging in her classroom, mockingly asked: "The masks aren't too demonic for you, are they [A.P.]?"

VI.

ALLEGATIONS OF LAW

138. Students do not shed their constitutional rights at the schoolhouse gate.

139. Non-disruptive, private student expression is protected by the First Amendment.

140. Religious speech is fully protected by the First Amendment.

141. A student may include religious expression in response to a class assignment so long as the response otherwise fulfills the class assignment requirements.

142. Per se censorship of religious speech in assignments does not represent a legitimate pedagogical interest.

143. Plaintiff's landscape drawing and proposed chain metal cross are merely private student expression in response to assigned class projects, and do not bear the imprimatur of the School.

144. Given the open ended purpose of A.P.'s Drawing I and Jewelry/Art Metals assignments, the net effect of Defendants' actions is to communicate that student artwork with religious expression is unwelcome and that religious expression may be censored at will.

145. 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 Wisconsin.

146. Plaintiff is suffering irreparable harm from the conduct of Defendants.

147. Plaintiff has no adequate or speedy remedy at law to correct or redress the deprivation of his rights by Defendants.

148. Unless the conduct of Defendants 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

149. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 148 of this Complaint.

150. 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.

151. Defendants' Policies and practice create an open forum by permitting students to respond to assigned classroom projects in any manner that they choose, so long as the response fits within the parameters of the assignment.

152. Defendants' Policies and practice prohibit the equal treatment of A.P. in incorporating his private religious expression as part of classroom assignments based solely on the religious nature of A.P.'s expression.

153. This unequal treatment of A.P. based solely on the religious expression that he seeks to engage in is a content-based restriction in an otherwise open forum.

154. This denial of A.P.'s speech – while permitting similar, but nonreligious, speech from other students regarding the same classroom assignments – also constitutes viewpoint discrimination, which is unconstitutional in any type of forum.

155. Defendants also engage in unconstitutional viewpoint discrimination by allowing some religious paintings, drawings, and figurines to be displayed and not others.

156. A.P.'s religious expression on campus does not materially and substantially interfere with the orderly conduct of educational activity within the School.

157. Defendants' Policies and practice additionally impose an unconstitutional prior restraint because they vest District officials with unbridled discretion to permit or refuse protected religious speech equal access to the forum.

158. Defendants' Policies and practice also allow District officials to act with unbridled discretion when deciding if a student's art work portrays religious beliefs or contains religious symbols.

159. Defendants' Policies and practice also allow District officials to act with unbridled discretion in deciding if a student's art work may be "offensive" to someone and thus subject to censorship.

160. Defendants' Policies and practice are additionally overbroad because they sweep within their ambit protected First Amendment expression.

161. The overbreadth of Defendants' Policies and practice chill the speech of third parties who might seek to incorporate private religious expression as part of classroom assignments.

162. Defendants' Policies and practice chill, deter, and restrict Plaintiff from freely expressing himself within the parameters of classroom assignments.

163. Defendants are interpreting and applying their Policies prohibiting student religious expression as an unconstitutional heckler's veto.

164. Defendants enforced their prohibition against student religious expression in art assignments against A.P., and removed A.P.'s previously permitted and displayed cross necklace project, solely based on a student's negative comments in regard to A.P.'s religious expression.

165. Protected speech, like A.P.'s, cannot be squelched simply based on a viewer's reaction to the speech.

166. Restricting speech based on a viewer's reaction to it, as Defendants have done to A.P., is an impermissible content-and viewpoint-based regulation of speech.

167. Defendants' Policies, as interpreted and applied by them to prohibit treatment of student responses to classroom assignments, are not the least restrictive means necessary to serve any compelling interest which Defendants seek thereby to secure.

168. By assigning A.P. two detentions for tearing the illegal Policy applied to censor his right to freedom of religious expression in otherwise fulfilling class assignments, Defendants, by Policy and practice, retaliated against A.P. for the constitutionally protected activity of expressing his religious beliefs and objections to the unconstitutional Policy.

169. Defendants' actions of assigning A.P. two detentions were motivated and substantially caused by A.P.'s exercise of expressing his religious beliefs and objections to the illegal Policy.

170. Defendants' reason for punishing A.P. with two detentions was A.P.'s act of tearing the Policy as an expression of his religious beliefs and his objection to the unconstitutional Policy.

171. Further, Defendants' retaliatory action of assigning two detentions to A.P. effectively chilled A.P.'s exercise of his First Amendment rights to express his religious beliefs and objections to the illegal Policy, and was sufficient to deter a person of ordinary firmness from exercising these same protected rights.

172. Since Defendants retaliated against him, A.P. has refrained from expressing his religious beliefs and objections to Defendants' illegal Policies that serve to squelch his religious

expression because he fears the enforcement of additional disciplinary action against him by Defendants.

173. Defendants Policies and practice are not reasonably related to any legitimate pedagogical concerns.

174. Censoring students' religious speech per se is not and cannot be a legitimate pedagogical concern.

175. Defendants' Policies and practice, both facially and 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 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

176. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 148 of this Complaint.

177. Defendants' Policies and practice, by expressly targeting A.P.'s private religious expression for special disabilities, violates the constitutional right to the free exercise of religion.

178. A.P. desires to engage in expressive activities described above on the basis of his sincerely held religious beliefs.

179. Defendants' Policies explicitly exclude – and thus discriminate against – religious expression.

180. Defendants' Policies and practice substantially burden A.P.'s free exercise of religion by conditioning receipt of government benefits on foregoing his free exercise rights.

181. Defendants' Policies and practice force A.P. to choose between engaging in religious speech and foregoing the governmental benefit of receiving academic credit for assigned classroom projects, or foregoing the free exercise of religion to receive the credit.

182. Defendants Policies and practice substantially burden A.P.'s free exercise of religion by denying him academic credit for including private religious speech in his response to classroom assignments.

183. Defendants' Policies and practice constitutes the imposition of special disabilities on A.P. due to his religion and his intent to include private religious expression in response to classroom assignments.

184. These special disabilities placed on Plaintiff are neither neutral nor of general applicability.

185. Defendants's Policies and practice of banning A.P.'s artwork with its religious message selectively impose a burden on expression based on the religious nature of the expression by singling out his expression for discriminatory treatment.

186. Defendants' Policies and practice cannot be justified by a compelling governmental interest and are not narrowly tailored to advance any such interest.

187. Defendants' interpretation and application of their Policies chill A.P.'s freedom of religious expression and exercise, both of which are fundamental rights guaranteed Plaintiff by the First Amendment.

188. Defendants' Policies and practice, both facially and as applied, constitute an excessive burden on A.P.'s rights to freedom in the exercise of religion and have violated the Free Exercise Clause of the First Amendment to the United States Constitution.

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

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

189. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 148 of this Complaint.

190. Defendants' Policies and practice embody both 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.

191. Defendants' Policies and practice of banning A.P.'s religious expression in his art projects, and removing A.P.'s previously displayed religious symbol, evinces discriminatory suppression of private speech that is not neutral, but rather is hostile toward religion.

192. Defendants, pursuant to their Policies and practice of suppressing private religious expression in the classroom – and by permitting the display of various Hindu and Buddhist-themed figurines and pictures in school hallways and teachers' rooms – send the message to A.P. and other students that Christians are second-class citizens, outsiders, and not full members of the academic community.

193. In addition, Defendants' Policies and practice require District officials, as censors, to make judgments about which student expression is and is not religious, thereby creating constitutional problems of entanglement.

194. Defendants' Policies and practice compel District official to classify private student speech responsive to classroom assignments according to their perceived religious-versus-nonreligious nature.

195. Drawing this distinction necessarily requires District officials to inquire into the significance of words and practices to different religious faiths, and in varying circumstances by the same faith.

196. Such inquiries by District officials entangle the State with religion in a manner forbidden by the First Amendment.

197. Entanglement problems exist because District officials must attempt to discern which private student expression is too religious in nature to be permitted.

198. District officials must illicitly make theological interpretations in order to conclude that some student artwork is religious, while other student artwork is not.

199. Defendants denied academic credit to A.P. for his otherwise permissible artwork because it contained religious language and graphics, actions that represent the antithesis of neutrality.

200. No compelling state interest exists to justify the censorship of A.P.'s religious expression.

201. Defendants' policies and practice therefore violate the Establishment Clause of the First Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the declaratory and injunctive 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**

202. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 148 of this Complaint.

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

204. Pursuant to their Policies and practice, Defendants have allowed other similarly situated students to include religious expression in response to classroom assignments.

205. For instance, Defendants have approved and displayed in the School students' artwork depicting Hindu figures, demonic beings, and Greek goddesses, among other things.

206. Defendants also permit many student responses to assignments that do not have religious content or express a religious viewpoint.

207. Defendants have treated A.P. disparately when compared to similarly situated students by banning only A.P.'s religious expression.

208. By discriminating against the content and viewpoint of A.P.'s speech, Defendants are treating A.P. differently than other similar situated public school students on the basis of the religious content and viewpoint of his speech.

209. Defendants' Policies and practice violate various fundamental rights of A.P., such as rights of free speech and free exercise of religion.

210. When government regulations, like Defendants' Policies and practice challenged herein, infringe on fundamental rights, discriminatory intent is presumed.

211. Defendants' Policies and practice have also in fact, and in practice, been applied to intentionally discriminate against A.P.'s rights of free speech and free exercise of religion.

212. Defendants lack a rational or compelling state interest for such disparate treatment of A.P.

213. Defendants' denial of access to A.P. is not narrowly tailored in that it restricts student's private religious expression unrelated to any asserted interest Defendants' may have.

214. Defendants' Policies and practice are not narrowly tailored as applied to A.P. because A.P.'s responses to his Drawing I and Jewelry/Art Metals assignments do not implicate any of the interests Defendants might have in prohibiting student artwork that is disruptive to the educational environment.

215. Defendants' Policies and practice are overinclusive because they prohibit A.P.'s religious expression in otherwise fulfilling classroom assignments even though A.P.'s religious expression is not disruptive – an interest purportedly furthered by Defendants' Policies and practice.

216. Defendants' Policies and practice burden more of A.P.'s speech than necessary because he is completely foreclosed from using religious content in responding to classroom assignments even though his artwork is not disruptive.

217. The Policies and practice of Defendants, both facially and as applied, thus violate A.P.'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 declaratory and injunctive relief set forth hereinafter in the Prayer for Relief.

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

218. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 148 of this Complaint.

219. The Due Process Clause of the Fourteenth Amendment prohibits government attempts to limit access to a particular forum pursuant to vague or overbroad standards that grant unbridled discretion.

220. The determination by Defendants of what is and is not forbidden religious speech violates this norm.

221. A.P.'s responses to assignments in his Drawing I and Jewelry/Art Metals class satisfy the stated academic requirements related to each.

222. Despite A.P.'s satisfying the stated criteria for these assignments, Defendants' Policies and practice have been written and applied to prohibit A.P. from receiving academic credit for his landscape drawing, to punish him with detentions for refusing to self-censor his speech, and to prohibit him from creating a small chain mail cross due to the religious nature of his expression.

223. Defendants' Policies and practice are vague and allow for unbridled discretion in determining which student artwork does and does not satisfy project criteria and thus qualify for academic credit.

224. Defendants' Policies lack any definitions or guidelines as to how to determine whether student artwork satisfies project criteria and thereby qualifies for academic credit.

225. Defendants' Policies and practice also permit Defendants' to exercise unbridled discretion in determining what is a religious symbol or religious belief.

226. For example, pursuant to their unbridled discretion, Defendants are permitted to ban A.P.'s artwork with religious content while permitting artwork depicting Hindu, Buddhist, and demonic themes, among others.

227. Moreover, if "offensiveness" is the standard by which Defendants measure which student artwork is allowed and which is not, this standard is also unconstitutional in that it permits Defendants to act with unbridled discretion in deciding if a student's art work could offend others and should thus be censored.

228. Defendants' Policies and practice, both facially and 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 declaratory and injunctive relief set forth hereinafter in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays 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 violate A.P.'s constitutional rights by banning religious expression that otherwise fulfills classroom assignments;
- b. That this Court order Defendants to remove any and all references to disciplinary action taken against A.P., including assigned detentions, arising out of the incidents in this case.

- c. That this Court order Defendants to grade student responses to classroom assignments according to the criteria provided to students at the outset of each assignment.
- d. That this Court render a Declaratory Judgment declaring as unconstitutional facially and as-applied the District's Policies and practice of banning religious expression that otherwise fulfills classroom assignments violates the First and Fourteenth Amendments to the United States Constitution;
- e. 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;
- f. That this Court retain jurisdiction of this matter for the purpose of enforcing any Orders;
- g. That the Court award A.P.'s costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. § 1988.
- h. That this Court award nominal damages in the amount of one (1) dollar for the violation of A.P.'s constitutional rights;
- i. That this Court issue the requested injunctive relief without a condition of bond or other security being required of A.P; and
- j. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.

Dated this 28th day of March, 2008.

BENJAMIN W. BULL*
Arizona Bar No.009940
JEREMY D. TEDESCO*
Arizona Bar No. 0234847
ALLIANCE DEFENSE FUND
15100 N. 90th Street
Scottsdale, AZ 85260
Telephone: (480) 388-8051
Facsimile: (480) 444-0028
jtedesco@telladf.org

By: s/ David A. Cortman
DAVID A. CORTMAN
Lead Counsel
Georgia Bar No. 188810
JOSHUA B. BOLINGER*
Ohio Bar No. 0079594
ALLIANCE DEFENSE FUND
1000 Hurricane Shoals Road, NE
Building D, Suite 600
Lawrenceville, GA 30043
Telephone: (770) 339-0774
Facsimile: (770) 339-6744
dcortman@telladf.org
jbolinger@telladf.org

Attorneys for Plaintiff A.P.

*Motion for admission *pro hac vice* forthcoming after assignment of Judge.

VERIFICATION

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

Executed this 21st day of March, 2008 in Camp Douglas, Wisconsin.

A.P.

A.P.