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FILED

JUN 1 4 30 PM '05

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

U.S. DISTRICT COURT
EASTERN DIST. TENN.
BY _____ DEP. CLERK

LUKE WHITSON, a minor, by and through)
his parents SAMUEL and TINA)
WHITSON,)

Plaintiff,)

v.)

KNOX COUNTY BOARD OF EDUCATION,)
CHARLES LINDSEY, in his official capacity)
as Superintendent of Knox County Public School)
System, and CATHY SUMMA, individually and)
in her official capacity as Principal of Karns)
Elementary School,)

Defendants,)

NO. 3:05-CV-274
varian/Guyton

VERIFIED COMPLAINT

COMES NOW Plaintiff, Luke Whitson, by and through his parents, Samuel Whitson and Tina Whitson, and through their undersigned counsel, and avers the following:

INTRODUCTION

1. This is a civil rights action concerning Defendants' policies and practice that serve to ban students in an elementary school from reading and discussing the Bible on a school playground during non-instructional time. Specifically, this action challenges Defendants' efforts in prohibiting student Luke Whitson from reading and discussing the Bible with a friend in the corner of a playground area during recess time at Karns Elementary School in Knox County, Tennessee.

2. This action is brought by Plaintiff Luke Whitson, a minor, by and through his parents, Samuel and Tina Whitson, seeking injunctive relief, declaratory relief, and

damages, pursuant to 42 U.S.C. §§ 1983 and 1988, against Defendants Knox County Board of Education, Charles Lindsey, in his official capacity as Superintendent of Knox County Public School System, and Cathy Summa, individually, and in her official capacity as Principal of Karns Elementary School.

3. This action is premised on the United States Constitution concerning the denial of Plaintiff's fundamental guarantees, namely, his right to free speech, right to freely exercise his religion, guarantee against hostility toward his religion, due process, and equal protection, by the Defendants named herein. This action is further premised on the violation of his rights as provided in the Declaration of Rights set forth in Article I of the Tennessee State Constitution.

4. Defendants' actions have deprived and will continue to deprive Plaintiff Luke Whitson of his paramount rights and guarantees provided under the United States Constitution and Tennessee State Constitution.

5. Each and every act of Defendants alleged herein was committed by Defendants, each and every one of them, under the color of state law and authority.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331 and 1343. Supplemental jurisdiction is supplied via 28 U.S.C. § 1367, for claims arising under state constitution. And jurisdiction for the request of declaratory relief is provided by 28 U.S.C. §§ 2201 and 2202.

7. Venue is proper in the Eastern District of Tennessee under 28 U.S.C. § 1391(b) because the claims arise in this district and Defendants reside in this district.

PARTIES

8. Plaintiff Luke Whitson (“Luke”), a minor, is currently ten (10) years old and is and was at all times relevant herein a resident of Knox County, Tennessee. He has just recently completed the fourth grade successfully at Karns Elementary School, a school under the jurisdiction of the Knox County Board of Education. He intends to attend the fifth grade at Karns Elementary School for the upcoming school year of 2005/2006.

9. Samuel and Tina Whitson are and were at all times relevant herein the parents and legal guardians of Luke. They both live in the same household with Luke and are likewise residents of Knox County, Tennessee.

10. Defendant Knox County Board of Education (“Board”) is a public entity established, organized, and authorized under and pursuant to the laws of Tennessee, with the authority to sue and be sued in its own name. They act as the governing body for Knox County Public School System, and set policy for the school system.

11. Defendant Charles Lindsey (“Superintendent Lindsey”) is Superintendent of Knox County Public School System, being appointed as such by the Board. In his official capacity, Superintendent Lindsey is responsible for carrying out the policies and procedures of the Board.

12. Defendant Cathy Summa (“Principal Summa”) is and was at all times relevant herein the Principal at Karns Elementary School, an elementary school located in Knox County and part of the Knox County Public School System. In her official capacity, Principal Summa, among other duties, oversees and implements Knox County Public School System policies, as set out by the Board and as they apply to her school.

She is responsible for administering any policies pertaining to expressive activities on school grounds. This Defendant is sued in her official and individual capacities.

STATEMENT OF FACTS

13. Karns Elementary School ("KES") is an elementary school under the jurisdiction, supervision, and control of the Board, and enrolls children from kindergarten to the fifth grade.

14. For the 2004/2005 school year, Luke was a fourth grade student at KES. He has just recently and successfully completed the fourth grade. Luke is now eligible to attend the fifth grade at KES and plans to attend KES this fall as a fifth grade student.

15. Luke is a Christian who adheres generally to orthodox Christian beliefs. Pursuant to which, he sincerely believes that his faith is inseparable from his very being, and that he is not at liberty to be a Christian some times and ignore his faith at other times.

16. Pursuant to his Christian faith, Luke views the Bible as being the very word of God, the final arbiter of truth, and the document that contains the essential tenets of his faith. He, therefore, seeks opportunities during his free time to read the Bible and discuss it with others. Luke considers Bible reading and discussion a vital component of his Christian faith.

17. For virtually every school day during the calendar year at KES, there is a time period set aside for recess for each grade.

18. Recess at KES, for the third, fourth, and fifth graders, is scheduled for a thirty-minute time period and takes place on the children's playground area of the school.

19. The children's playground area at KES, where the recess period takes place, is a large space with various playground structures found on it, including a multiple slide configuration, a swing set, and a mini basketball court.

20. Also, on the playground, there are wide open spaces within its boundaries, where children can run and play games. In this same area, there are also shade trees, benches, and tables, where school children gather to rest, sit and talk about various matters.

21. Recess at KES is a non-instructional time period at the school. It is designed to be and functions as a break and a free time for the students.

22. During this recess time, students at KES have at all times relevant herein been free to engage in a variety of activities, that include playing on the playground structures, playing games, working on school assignments, reading and discussing books and other materials, resting, talking, as well as any other conceivable activity of interest to students that does not disrupt the function of the school.

23. During recess time at KES, third, fourth, and fifth grade students, within the context of recess, are free to gather together on the playground and discuss written materials, such as school assignments, baseball cards, American Girl doll magazines, comic books, elementary-age books, such as Harry Potter, and any other materials that are not banned by the school.

24. During recess at KES, this practice of gathering and discussing written materials under a shade tree, or in a corner, or in some other open space in the playground, is a common and frequent occurrence.

25. During the 2004/2005 school year, while in the fourth grade at KES, Luke and a classmate decided that for this designated free time of recess, on some occasions,

they would meet in a corner of the playground, read some passages from the Bible, and talk about it.

26. Luke initiated the idea of reading and discussing the Bible during recess on his own. He was not encouraged by any one associated with KES, nor his parents, to take up this activity.

27. After discussing this prospect with his friend and classmate, Luke brought his Bible to school, and met this friend at recess in the corner of their assigned playground, where they proceeded to read the Bible and engage in private discussion on various topics.

28. Luke never attempted to engage in Bible reading or discussion during instructional time. Luke only sought to conduct this activity during recess time.

29. Over the course of one week in which Luke and his friend would occasionally read and chat about the Bible in the corner of the playground during recess, a few students in Luke's class began to take notice of the activity and voluntarily sought to take part in it. This small group was made up of both boys and girls in Luke's fourth grade class.

30. At no point did Luke's Bible reading and discussion involve any individual affiliated with KES or the Knox County Public School System. No parent or adult ever participated in these discussions. These informal get-togethers in the corner of the playground during recess were student initiated and maintained, comprising solely of interested fourth grade students.

31. At or about this time, a parent of another student at KES learned of the Bible-related activity and immediately voiced a complaint to Principal Summa about Bible reading during recess.

32. This complaint prompted action on the part of Principal Summa.

33. Principal Summa abruptly interrupted certain fourth grade students while they were in the midst of a Bible discussion during recess, demanded that they stop their activity at once, put their Bibles away, and from that point forward cease from bringing their Bibles to school.

34. Principal Summa, then, in the presence of the children on the playground, escorted one of the participating students into a room by himself to warn him about the Bible activity.

35. Luke and other children understood that Bible reading and/or discussion would not be permitted on the playground or anywhere else during recess, and any student at KES who participated in Bible reading and/or discussion during recess would be subject to reprimand.

36. As a direct result of Principal Summa's actions, the involved children became upset, which, in turn, caused more than one parent to go the school and express displeasure about Principal Summa's conduct.

37. One such parent is Tina Whitson, the mother of Luke. Luke shared with his mother what happened at school, during which time, he was visibly upset that the school forced him to stop reading and discussing the Bible throughout his free time at school. He did not understand why the school would say there is something wrong with him getting together with friends and talking about the Bible during recess. The incident signified to him that KES thought there was something wrong with his Christian faith.

38. Tina Whitson was appalled by this action, and wanted to find out why it happened, as did other parents. Principal Summa was approached by a group of parents about her effort in stopping Luke's Bible reading and discussion during recess. In

addressing this concern, Principal Summa referred to the recess Bible reading and discussion as a "Bible study," and maintained that students cannot conduct such activity during recess time because, in her opinion, such would be a violation of the so-called separation of church and state.

39. Being aggrieved by Principal Summa's stance on the matter, on or about May 9, 2005, the Whitson family, by and through counsel, sent a letter to Superintendent Lindsey, in his capacity as Superintendent for the Knox County Public School System, and the Board, regarding their concerns about the ban on Bible reading and discussion imposed during recess time at KES. In the body of that letter, it was explained that the ban on Bible reading and discussion during recess adversely impacts the fundamental constitutional rights of Luke to engage in free expression during non-instructional time, and requested that the school system cease the unconstitutional practice.

40. To date, no one affiliated with the Knox County Public School System has responded to the Whitson family's earnest plea. There has been no response whatsoever to this letter.

41. Despite the refusal to provide any formal response to the concerns brought to the fore by the Whitson family, representatives of the Knox County School System have issued a series of statements to the media and school parents, setting out their position on the matter. These representatives and representations uniformly confirm that students at KES are banned from reading and discussing their Bibles during recess, or even just reading their Bibles during recess.

42. On or about May 12, 2005, Principal Summa distributed a letter, bearing her name, to the children at KES to take home to their parents. With this letter, Principal Summa confirms that no Bible discussion will be permitted on school grounds at KES

during recess. In explaining this policy, Principal Summa says children can bring their Bibles to school, but the letter, and policy expounded upon therein, allows for no student to use a Bible for reading or discussion at any time during the course of the school day.

43. Luke received the letter, and on this same day of May 12, 2005, delivered the same to his mother, Tina Whitson.

44. Tina Whitson actively participates as a parent volunteer at KES.

45. On or about May 12, 2005, the same day as Principal Summa's letter to the parents, Tina Whitson participated in a volunteer brunch at KES.

46. At this volunteer brunch, on or about May 12, 2005, Tina Whitson once again expressed her displeasure about KES banning Bible reading and discussion during recess. In direct response to Tina Whitson's comments, Principal Summa gave insight on the way of thinking behind the ban. She responded that "children cannot have a Bible study at recess because then we would have to let the Muslims do their thing."

47. During this same conversation, on this same day of May 12, 2005, Principal Summa voiced an objection to Ms. Whitson's pursuit of relief in this matter. In so doing, Principal Summa grabbed Tina Whitson by the arm, and threatened her, and Luke, saying: "I would say something to someone before they put Luke's name out there."

48. On or about May 13, 2005, Principal Summa and other representatives of the Knox County Public School System provided other statements regarding their position on Bible reading and discussion during recess through media outlets.

49. On or about May 13, 2005, Principal Summa was quoted by the Knoxville News Sentinel, and within that article, she enunciated a firm policy of KES banning students from reading the Bible and/or discussing the Bible during recess. Principal

Summa was specifically asked whether KES bans students from reading the Bible during recess and forbids Bibles at school. In response to this question, Principal Summa stated: "That's not exactly true." Elaborating on this statement, Principal Summa remarked that students can bring their Bibles to school. According to the Principal Summa, students can bring a Bible to school, but they cannot attempt to use a Bible for reading and discussion purposes during recess.

50. In this same article, of May 13, 2005, the newspaper reporter also posed an inquiry to Knox County Public School System attorney Marty McCampbell about Bible reading, specifically asking when students could read their Bibles at school. According to Ms. McCampbell, who was speaking on behalf of the Knox County Public School System, students can only read the Bible during time periods she referred to as "free time." Upon delving into this further, the article revealed that the only "free time" for students to read their Bibles is time before or after school. Ms. McCampbell proffers: "I think recess is part of the school day. I wouldn't call it "free time."

51. Also, in this same article of May 13, 2005, Principal Summa adds: "[C]hildren cannot have a Bible study during the school day."

52. In this same article, of May 13, 2005, Russ Oakes, another representative of the Knox County Public School System, and designated spokesperson, declares that children can only meet to read and discuss Bible passages before or after school hours.

53. In the conclusion of this news article, of May 13, 2005, Principal Summa incredulously proclaims that her prohibition on Bible reading and discussion during recess is part of her job in keeping the children safe.

54. Additionally, on May 13, 2005, in a WATE and AP article found on the website of a local television station in Knoxville, Tennessee, WATE (channel 6),

Principal Summa reiterates that children cannot have a Bible discussion during the school day at KES.

55. In supplying a basis for the reasoning of KES in this regard, Principal Summa asserts: "The Knox County Law Department sees recess time as part of instructional time." As instructional time, Principal Summa determines that she can prohibit Bible reading and Bible discussion during recess.

56. During a television interview on WATE, channel 6, also taking place on May 13, 2005, and following up on this same theme, Russ Oakes, spokesperson for Knox County Public School System, specifies that any activity involving the Bible can only take place before or after school.

57. As noted above, student-initiated Bible discussion for students only on the playground at KES during recess has been flatly denied by Principal Summa, a position that is supported by Superintendent Lindsey and the Board. Also, as a result of Defendants' steadfast position that recess time is instructional time, Bible reading is effectively banned on the playground at KES during recess time.

58. Subsequent to these actions taken by Principal Summa, and the representations made by Principal Summa, as well as other individuals affiliated with the Knox County Public School System, multiple students, including schoolmates and family members of Luke, have been informed by teachers and educators at KES that they are not permitted to take their Bibles out on the playground during recess.

59. Other than the one week period of Bible reading and discussion during recess that Luke enjoyed prior to the activity being quashed by Principal Summa, Luke has been utterly deprived of any opportunity to read and discuss Bible passages at recess during his time as a fourth grader at KES.

60. For his last and final year at KES, as a fifth grader, Luke yearns for the opportunity to acknowledge and express his faith during his free time at school during the school day. He strongly desires the chance to read and discuss the Bible with fellow students during his free time at recess. However, Luke is presently chilled and deterred from conducting or even contemplating such activity, for fear of reprimand from Principal Summa and other school officials.

61. The policies and practice of Defendants, as described herein, precludes Luke from exercising his fundamental constitutional rights and causes him irreparable injury.

62. There is no adequate remedy at law that can correct the continued deprivations of Luke's cherished constitutional liberties.

FIRST CAUSE OF ACTION

VIOLATION OF FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

63. Plaintiff hereby incorporates and re-alleges all preceding paragraphs contained herein.

64. The Free Speech Clause, as set out in the First Amendment to the United States Constitution, incorporated and made applicable to the states by the Fourteenth Amendment, provides for protection of speech and prohibits censorship of expression.

65. Defendants' policies and practice adversely impact speech by censoring and threatening to censor Bible reading and Bible discussion during recess time at KES.

66. Defendants' policies and practice further act as a prior restraint of Luke's expression because his speech is stopped in advance of him participating in his desired expression.

67. Defendants' policies and practice allow school officials and educators to exercise unbridled discretion to discriminate against student expression on the basis of religious content or religious viewpoint.

68. Defendant Principal Summa exercised her unbridled discretion in banning Plaintiff's expression, and in threatening to reprimand for failure to comply.

69. Defendants' policies and practice that inhibit religious expression imposes an objective burden on individuals, like Luke, who possess religious views.

70. Defendants' policies and practice are content-based restrictions premised on the religious nature of the expression.

71. No legitimate state interest exists to justify the ban on Plaintiff's expression.

72. Defendants' policies and practice are not narrowly drawn to accomplish any permissible governmental purpose sought to be served by their actions.

73. Defendants' policies and practice act to violate Plaintiff's fundamental right to engage in free speech.

SECOND CAUSE OF ACTION

VIOLATION OF FREE EXERCISE OF RELIGION UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

74. Plaintiff hereby incorporates and re-alleges all preceding paragraphs contained herein.

75. The Free Exercise Clause, as set out in the First Amendment to the United States Constitution, incorporated and made applicable to the states through the Fourteenth Amendment, provides for protection of free exercise of religion and prohibits infringement thereof.

76. Defendants have a constitutional duty to accommodate religious beliefs and the free exercise of religion.

77. Plaintiff, as an essential component of his Christian faith, desires to read the Bible and discuss passages contained therein during his free time, which includes recess at school.

78. Defendants' policies and practice of banning Bible reading and discussion during recess are neither facially neutral nor generally applicable in respect to religion. The policy specifically targets a religious activity in an attempt to curb it.

79. Defendants' policies and practice of banning Bible reading and discussion during recess selectively imposes a burden on the religious nature of the activity.

80. Defendants have no legitimate reason that would justify banning or threatening to ban Plaintiff's religious activity.

81. Defendants' policies and practice act to violate Plaintiff's fundamental right to freely exercise his religion.

THIRD CAUSE OF ACTION

VIOLATION OF ESTABLISHMENT OF RELIGION UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

82. Plaintiff hereby incorporates and re-alleges all preceding paragraphs contained herein.

83. The Establishment Clause, as set out in the First Amendment to the United States Constitution, incorporated and made applicable to the states by the Fourteenth Amendment, prohibits hostility toward religion.

84. Defendants' policies and practice of banning Bible reading and discussion during recess are not neutral toward religion, but are invidious and hostile toward religion, specifically demonstrating hostility toward Plaintiff's faith of Christianity.

85. No legitimate state interest exists to justify the hostility toward Plaintiff's religion.

86. Defendants' policies and practice, and enforcement thereof, excessively entangles Defendants and government with religion by requiring school officials to investigate and monitor student speech and religious activity on a frequent basis.

87. Defendants' policies and practice act to violate Plaintiff's fundamental right to avoid governmental hostility toward his religion.

FOURTH CAUSE OF ACTION

VIOLATION OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

88. Plaintiff hereby incorporates and re-alleges all preceding paragraphs contained herein.

89. The Due Process Clause, as set out in the Fourteenth Amendment, and applicable to the states, provides for a fundamental right to due process under the law.

90. Defendants' policies and practice of preventing religious expression in the form of Bible reading and discussion during recess fail to adequately advise, notify, or inform students that their Bible-related activity is prohibited behavior at school.

91. Because Defendants' policies and practice of preventing religious expression in the form of Bible reading and discussion during recess fail to adequately advise, notify, or inform students, they are unconstitutionally vague on their face and as applied to Plaintiff's Bible-related activities.

92. Defendants' policies and practice of providing school officials unbridled discretion to halt student expression during students' free time at school allows these officials undue opportunity to prevent religious expression and activities involving the Bible on the basis of viewpoint.

93. Defendants' articulated policies preventing religious expression in the form of Bible reading and discussion are vaguely worded and lack sufficient objective standards to limit the discretion of school administrators, which allows the policies to be enforced in an *ad hoc* and discriminatory manner.

94. Defendants' policies and practice act to violate Plaintiff's fundamental right to due process.

FIFTH CAUSE OF ACTION

**VIOLATION OF EQUAL PROTECTION UNDER THE FOURTEENTH
AMENDMENT TO THE UNITED STATES CONSTITUTION**

95. Plaintiff hereby incorporates and re-alleges all preceding paragraphs.

96. The Equal Protection Clause, as set out in the Fourteenth Amendment to the United States Constitution, provides for a right to be treated equally under the law.

97. Under their policies and practice, Defendants have allowed other similarly situated students at KES and other schools in the school system to express themselves in various ways during non-instructional time, such as recess.

98. Defendants allow other students to engage in free activity, including, but not limited to, reading books during recess that do not have religious content or express a religious viewpoint.

99. Defendants allow other students to engage in free activity, including, but not limited to, the discussion of written materials during recess that do not have religious content or express a religious viewpoint.

100. Defendants have treated Plaintiff disparately when compared to similarly-situated students by banning only Bible reading and discussion during recess at KES.

101. Defendants' policies and Defendants' enforcement thereof treat Plaintiff as a second-class citizen of the school community because of his religious faith.

102. Defendants have no legitimate reason that would justify their banning of students' Bible reading and discussion, while permitting similar activities, at KES during recess.

103. Defendants' policies and practice act to violate Plaintiff's fundamental right to equal protection.

SIXTH CAUSE OF ACTION

VIOLATION OF RIGHT OF CITIZEN OF THE STATE OF TENNESSEE TO INDIVIDUAL LIBERTY AND FREEDOM FROM GOVERNMENTAL INTERFERENCE IN HIS PERSONAL LIFE

104. The Declaration of Rights in Article I of the Tennessee State Constitution sets forth a strong historical commitment of the citizens of this State for individual liberty and freedom from governmental interference in their personal lives.

105. The Declaration of Rights in Article I provides that "all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience . . ."

106. In accordance with Plaintiff's conscience, he desires to read and discuss the Bible during recess times at his elementary school. The deprivation of which, as maintained by the Defendants herein, violates his conscience.

107. Defendants' policies and practice of banning and threatening to ban the private religious speech of Plaintiff and other students violate the Tennessee State Constitution, which affords greater protection in this area than its federal counterpart.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Luke Whitson respectfully prays for relief, as follows:

A. That this Court assume jurisdiction over this action;

B. That this Court issue preliminary and permanent injunction enjoining Defendants, their agents, officials, employees, and all persons in active concert or participation with them, or any of them, from banning and/or threatening to ban religious expression in the form of Bible reading and discussion at KES during recess time;

C. That this Court render a declaratory judgment declaring that Defendants' policies and practice of banning religious expression in the form of Bible reading and discussion at KES during recess time are unconstitutional on their face, and as applied to Luke Whitson, because they violate the right to freedom of speech, free exercise of religion, freedom from hostility toward religion, due process, and guarantees of equal protection, as supplied by the First and Fourteenth Amendments to the United States Constitution;

D. That this Court render a judgment and decree declaring that Defendants' policies and practice of banning religious expression in the form of Bible reading and discussion at KES during recess time are unconstitutional on their face, and as applied to Luke Whitson, because they violate rights provided in the Declaration of Rights in set forth in Article I of the Tennessee State Constitution;

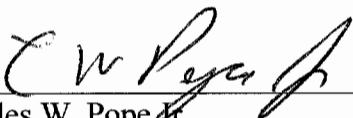
E. Grant to Plaintiff an award of compensatory and/or nominal damages in an amount deemed appropriate by this Court;

F. Adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;

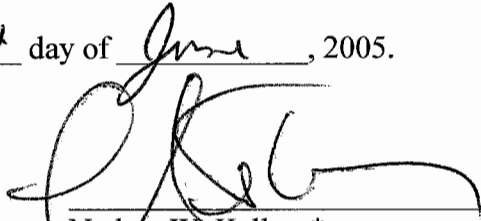
G. Grant to Plaintiff the reasonable costs and expenses of this action, including reasonable attorney's fees and expenses pursuant to 42 U.S.C. § 1988; and

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

Respectfully submitted, this 1st day of June, 2005.

By: 
Charles W. Pope Jr.
JMF Counsel
Tennessee Bar No. 19156
15 North Jackson St.
Athens, TN. 37303
(423) 746-8880 telephone
(423) 745-5670 *facsimile*

Attorney for Plaintiff


Nathan W. Kellum*
ALLIANCE DEFENSE FUND
2749 Lombardy Rd.
Memphis, TN. 38111
(901) 323-6672 telephone
(901) 323-6674 *facsimile*

Benjamin W. Bull
ALLIANCE DEFENSE FUND
Arizona Bar No. 009940
15333 N. Pima Road, Suite 165
Scottsdale, AZ 85260
(480) 444-0020 telephone
(480) 444-0028 *facsimile*

Attorneys for Plaintiff

* Motion for Admission *Pro Hac Vice* submitted concurrently with this Complaint.

VERIFICATION

We, SAMUEL WHITSON, and TINA WHITSON, the undersigned, citizens of the United States and residents of the State of Tennessee, have read the foregoing Verified Complaint and declare under penalty of perjury under the laws of the State of Tennessee that the foregoing is true and correct.

Dated this 1 day of June, 2005.

Samuel Whitson
Samuel Whitson

Tina Whitson
Tina Whitson

Sworn to and subscribed before me this the 1 day of June, 2005.

Tara L. Jackson
NOTARY PUBLIC

My Commission expires:
5/21/09

