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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Nampa Classical Academy; Isaac Moffett;)
M.K., a minor, by and through her next friend;)
Maria Kosmann, individually and as next friend)
of M.K, a minor,)
)
Plaintiffs)
)

Case No. _____

Plaintiffs' Verified Complaint

vs.)
)
 William Goesling, individually and in his official)
 capacity as Chairman of the Idaho Public Charter)
 School Commission (“Commission”); Brad)
 Corkill, Gayann DeMordaunt, Gayle O’Donahue,)
 Alan Reed, and Esther Van Wart, all individually)
 and in their official capacities as members of the)
 Commission; Dr. Michael Rush, individually and)
 in his official capacity as Executive Director of the)
 State Board of Education (“Board”); Paul Agidius,)
 Board President; Richard Westerberg, Board Vice)
 President; Kenneth Edmunds, Board Secretary;)
 Emma Atchley, Rod Lewis, Don Soltman, Milford)
 Terrell, all individually and in their official)
 capacities as members of the Board; Tom Luna,)
 individually and in his official capacities as)
 Superintendent of Public Instruction, as Executive)
 Secretary of the Board, and as Chief Executive)
 Officer of the State Department of Education;)
 Lawrence Wasden, in his official capacity as the)
 Attorney General of the State of Idaho; and C.L.)
 “Butch” Otter, in his official capacity as the)
 Governor of the State of Idaho,)
)
 Defendants)
 _____)

I. INTRODUCTION

1. The Bible is arguably the most influential book that has ever been written. Along with being the best-selling book of all time, its influence in music, art, and literature is unparalleled. References to its stories, lessons and history can be found in innumerable books, movies, plays, artwork, and even in our every day language. It was one of the first resources ever used in this country’s public schools to teach students to read.
2. Defendants have decided that the Bible is now a banned book in every public school throughout the State of Idaho.

3. Nampa Classical Academy (the “Academy”) has spent the last six years developing a charter school that employs a classical teaching curriculum. Defendants have known of the school’s intended use of primary texts, both secular and religious.
4. Approximately one week before the Academy was originally scheduled to open its doors to over 500 students, and nearly one year after approving its charter, the Idaho Public Charter School Commission (“Commission”) ruled that it was illegal to use any “religious documents or text in a public school curriculum” or to “use religious text in class or in the classroom.” (“Order”). *See* Exhibit (“Ex.”) 1.
5. Defendants initially targeted the Bible, but later broadened their prohibition to include all religious texts. Defendant Commission issued the final Order on August 14th, based largely on an opinion issued by the Attorney General’s office, holding that if the Academy were to utilize any religious text, even objectively as a resource to teach history, literature, art, music, or other subject, the Commission would issue a notice of defect for the purpose of revoking its charter. *See* Ex. 2 (Attorney General’s opinion letter).
6. This Order was issued despite the fact that the Defendant State Board of Education has approved the use of the Bible as literature in public education curricula, and despite the fact that public schools across the State utilize the Bible and other religious texts routinely in their curriculum.
7. Out of the hundreds of public schools throughout the State of Idaho, Defendants have thus far singled out only the Academy for this censorship.
8. Defendants’ newly crafted Policy violates Plaintiffs’ rights.

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 has jurisdiction over Plaintiffs' federal claims by operation of 28 U.S.C. §§ 1331 and 1343, and over the supplemental state law claim under §1367.
11. This Court is vested with authority to grant Plaintiffs' requested declaratory relief by operation of 28 U.S.C. §§ 2201 and 2202 and under Federal Rule of Civil Procedure 57.
12. This Court is authorized to grant Plaintiffs' requested injunctive relief under 42 U.S.C. § 1983 and Rule 65 of the Federal Rules of Civil Procedure.
13. This Court can award Plaintiffs' damages under 28 U.S.C. § 1343.
14. This Court can award Plaintiffs' attorneys' fees and costs under 42 U.S.C. § 1988.
15. Venue is proper under 28 U.S.C. § 1391 in the District of Idaho because the claims arose there, the parties reside there, and the cause has the greatest nexus there.

III. IDENTIFICATION OF PLAINTIFFS

16. Plaintiff Nampa Classical Academy is incorporated as a not-for-profit organization under the laws of the State of Idaho and may sue and be sued.
17. Plaintiff Academy (through its founders and board members) has structured its entire curriculum in a classical, liberal arts format, and focuses its study on primary texts as a method of educating its students.
18. Such primary texts are both secular and religious, the majority being secular.
19. The Academy believes that many students are receiving an inadequate education and

therefore, the Academy is striving to utilize a historical, classical teaching model.

20. For example, unlike the Academy, many schools do not even require reading the actual document (e.g., the Constitution of the United States or of Idaho) when studying that document.
21. By contrast, the Academy's historical model features a traditional, value-centered curriculum stressing subject mastery and critical analysis. Rather than reading from secondary or even tertiary texts, as do many public schools, the Academy utilizes primary sources, including both secular and religious texts.
22. Plaintiff Isaac Moffett is a founder of the Academy, is an ad hoc board member, and is currently a teacher.
23. Mr. Moffett teaches several classes, including 7th and 8th grade geography, which incorporate references to the region's various cultures and includes the religions of the cultures being studied.
24. It is impossible to adequately educate the students about such cultures if he is required to censor the religious documents, texts and beliefs of these cultures.
25. These beliefs inform and affect each culture in many ways, including their choice of food, shelter, architecture, customs, habits, laws, etc.
26. Plaintiff Mrs. Kosmann is the mother and legal guardian of Plaintiff M. K. and brings this action both individually as a school employee and parent, and as next friend of M.K..
27. Mrs. Kosmann has chosen to work at and send her children to the Academy precisely because it has chosen to use the time-tested classical curriculum.
28. Mrs. Kosmann, as both a parent and school employee, believes that the quality of the

curriculum will suffer without the religious texts.

29. If the Academy is issued a notice of defect or has its charter revoked, Mrs. Kosmann will face the uncertainty of whether the school will remain viable, will lose her job, will have her six children who attend the Academy displaced, and will have lost the tremendous investment of time and money that she has already expended in assisting the Academy and her children in preparation for the beginning of the school year.
30. Plaintiff M.K. is a 9th grade student currently scheduled to begin school on September 8th.
31. M.K. desires to learn about U.S. history, geography, civics, art, music and other courses and study the appropriate secular and religious influences in such courses.
32. M.K. desires to learn about the various religions historically found in western civilization, to read primary religious and secular sources, and to include such information in her school work.
33. M.K. also desires to better understand the many religious and Biblical allusions and teachings found in many secular texts that she will be reading, such as Of Mice and Men, The Hunchback of Notre Dame, and The Adventures of Huckleberry Finn, to name a few.
34. One of the main reasons M.K. and her parents decided that she would attend the Academy was so that she would be able receive such classical instruction, which has been proven to exceed typical educational standards.
35. If the Academy is forced to censor the use of all religious documents and text, M.K. will forfeit her right to receive information that has legitimate educational value.
36. If all religious documents and text are prohibited from the Academy, M.K. will also be prohibited from utilizing religious text such as the Bible when she is completing course

work, homework, research papers or projects.

IV. IDENTIFICATION OF DEFENDANTS

37. The Public Charter School Commission (“Commission”), acting through its members, is tasked with oversight of public charter schools, including the Academy.
38. The Commission and its members are under the authority of the State Board of Education.
39. The Commission’s, and therefore its members’, authority is limited to that which is expressly enumerated in Idaho statutes and administrative code. *See* I.C. 33-5201, et seq and IDAPA 08.02.04.
40. The Commission is comprised of seven members, all appointed by the Governor.
41. The Commission, acting through its members, has ruled that Plaintiffs cannot utilize any religious documents or text in their curriculum or in the classroom.
42. William Goesling is the Chairman of the Commission and is sued in both his individual capacity and in his official capacity as Chairman of the Commission.
43. Brad Corkill, Gayann DeMordaunt, Gayle O’Donahue, Alan Reed and Esther Van Wart are all sued individually and in their official capacities as members of the Commission.
44. The members have voted to issue the challenged Order that prohibits the Academy from utilizing any and all religious documents or text in the classroom or as part of their curriculum under sanction of a notice of defect, followed by revocation of the Academy’s charter if the Academy fails to cure the alleged defect.
45. Revocation of the Academy’s charter would, among other things, close the school, leave over 500 students without a school to attend, eliminate the jobs of dozens of teachers and employees, and require that all the Academy’s assets be transferred to the Commission.

46. Plaintiffs are challenging this Order both on its face and as applied to the Academy.
47. The Idaho State Board of Education (“Board”), acting through its members, is the designated policy-making body for all of Idaho’s educational institutions, agencies and schools, including the Charter School Commission and the Academy.
48. The Board’s power is prescribed by law. *See* Idaho Const. Art. IX, § 2.
49. The Board, acting through its members, is responsible for all acts of the Commission and for ensuring that its policies and procedures are followed.
50. The Board, through all of its members, has adopted a new Policy and procedure of prohibiting all religious documents and text from being utilized as educational resources in all public schools in the state, including at the Academy.¹
51. Dr. Michael Rush is the Executive Director of the Board and is sued individually and in his official capacity as Executive Director of the Board.
52. In this capacity, Dr. Rush is responsible for adopting rules and regulations that govern all Idaho public schools, including the Idaho Charter School system, and for ensuring its rules and regulations are followed, including the Policy challenged herein prohibiting the Academy from utilizing any religious text in its curriculum. He is sued in his official and individual capacities.
53. Idaho State Board of Education members include Paul Agidius, Board President, Richard Westerberg, Board Vice President, Kenneth Edmunds, Board Secretary, Emma Atchley, Board member, Rod Lewis, Board member, Don Soltman, Board member, and Milford

¹ Since Plaintiffs are challenging both the Order and the Policy, and the Commission is under the authority of the Board, each reference to the Order or Policy applies to both whether or not individually mentioned.

Terrell, Board member. The members are all sued individually and in their official capacities as members of the Board. All members are responsible for adopting rules and regulations that govern the all Idaho public schools, including the Idaho Charter School system, and for ensuring its rules and regulations are followed, including the Policy challenged herein prohibiting the Academy from utilizing any religious text in its curriculum.

54. Tom Luna is the Superintendent of Public Instruction, the Chief Executive Officer of the State Department of Education, and the Executive Secretary of the Board.
55. Mr. Luna is sued individually and in his official capacities as Superintendent, Chief Executive Officer, and as Executive Secretary.
56. In these positions, Mr. Luna is responsible for adopting rules and regulations that govern all Idaho public schools, including the Idaho Charter School system. He is responsible for executing and enforcing the policies, procedures, and duties authorized by applicable state and federal statutes and the policies and procedures of the Board for all the elementary and secondary schools in Idaho. He is responsible for carrying out and enforcing the policies, procedures and duties authorized by law, including the Policy challenged herein.
57. Defendant Lawrence Wasden is the Attorney General of the State of Idaho. In this capacity, Mr. Wasden is responsible for advising all state agencies, including the Board and the Commission, regarding matters of law. His office provided the legal opinion upon which the Commission relied in Ordering the Academy to discontinue use of all religious documents and text. Mr. Wasden is also charged under the Idaho Constitution with representing the Board and Commission in enforcing their rules, regulations, and policies, along with generally enforcing state law. Mr. Wasden is responsible for enforcing the Policy

prohibiting Plaintiffs from utilizing any religious documents and texts. He is sued in his official capacity.

58. Defendant C.L. “Butch” Otter is Governor of the State of Idaho. He is responsible for appointing all of the members of the State Board of Education, with the exception of the Superintendent, and appointing all of the members of the Public Charter School Commission. He is also bound by statute to supervise the conduct of state executive officers, including the Board and the Commission officers, to ensure they perform their duties, and to remedy their actions if they fail to do so. He is responsible for ensuring that all Defendants appointed by him enforce the Policy prohibiting Plaintiffs from utilizing any religious documents or texts. He is sued in his official capacity.

V. STATEMENT OF FACTS

59. Plaintiffs originally began the process for developing a charter school in 2003.
60. After years of researching, drafting and planning, Plaintiffs presented their original Charter Petition—which was over sixty pages long—to the Commission and the State Board of Education in October of 2007.
61. Plaintiffs presented their Final Petition in July of 2008.
62. The State Board of Education officially approved the Charter in September of 2008.
63. Plaintiffs met several additional times with the Commission, or associated bodies, throughout 2007, 2008 and 2009.
64. Each time, Plaintiffs received positive responses from the Commission.
65. The Commission was aware that Plaintiffs’ curriculum focused on utilizing primary sources and not on traditional textbooks.

66. In a meeting that occurred in late July, 2009, however, the Commission, for the first time, raised the question whether it was permissible to use the Bible in any manner as part of the Academy's curriculum.
67. The Commission requested a legal opinion letter from the Academy, which was to be submitted to the Commission by August 11th, three days prior to a specially called meeting to decide the issue.
68. The Academy retained counsel and submitted the letter. Attached as Ex. 3
69. At the August 14th meeting, the Commission voted to prohibit the Academy from using any "religious documents and text" in its curriculum or in the classroom, *see* Ex. 1, based on an opinion letter that the Commission had requested and received from the Office of the Attorney General of Idaho, *see* Ex. 2.
70. The Order warned the Academy that if it proceeded to use any such religious documents or text it would be issued a notice of defect for the purpose of revoking its charter.
71. This Order was issued despite the fact that officials from the State Department of Education and the Commission routinely made public statements that the Academy's use of the Bible and other religious texts were permissible and in accordance with the law.
72. Moreover, the Idaho Constitution, article IX, section 6, upon which the denial was based, does not prohibit "religious documents or text." Rather it prohibits "books, papers, tracts or documents of a political, sectarian or denominational character" and prohibits "sectarian or religious tenets or doctrines."
73. Defendants conveniently ignore the Constitution's prohibition on political documents, which exists in precisely the same Constitutional provision, and which has not been enforced at all

against any public school. According to Defendants hyper-strict construction of this provision, it would be unconstitutional for public schools to study the Declaration of Independence or the Mayflower Compact; two obviously political (and arguably religious) documents.

74. In its letter, the Academy's counsel pointed out that use of the Bible, for example, is not prohibited by this section for several reasons: first, based on the history of the constitutional convention, the Commission was engaging in an incorrect and overly-strict reading of this provision because the Bible was not and is not a "sectarian or denominational" book (there are many different denominations and sects that follow the Bible's teachings); second, the founders' primary focus was to prohibit doctrinal disputes but not to attack religion generally, hence the narrow prohibition of sectarian or religious tenets or doctrines being taught; third, the votes of the delegates to the convention made clear that the Bible could be taught in public schools. *See* Ex. 3.
75. The Academy has no intent, nor has it ever, to use any religious text in devotional manner, nor will any sectarian or religious tenets or doctrines be taught.
76. Religious materials, like all other documents and text, will be utilized in an appropriate study of western civilization in classes such as history, literature, art or music.
77. The Academy intends to use many different religious and political documents and texts, similar to many other public schools in the State.
78. Some examples of "religious documents or text" that the Academy intends to use include those from or about the Bible, the Koran, the Book of Mormon, Confucianism, Hinduism, the Epic of Gilgamesh, ancient Egyptian religions, Hesiod Theogony Works and Days (Greek

gods), the Code of Hammurabi (Babylonian), Assyrian religion, Roman gods, Eastern religions, Mesopotamian religion, etc.

Other Public Schools and the Use of Religious Documents and Text

79. The State Board of Education has issued curriculum content standards that contain religious and political studies.
80. The Board has approved a Bible as Literature class for all public schools in the state.
81. For example, state geography objectives include describing the historical origins, central beliefs, and spread of major religions, including Judaism, Christianity, Islam, Hinduism, Buddhism, and Confucianism.
82. Geography standards also include the requirement to compare and contrast cultural and religious patterns in the eastern hemisphere, including a discussion of how religion influences behavior in different societies.
83. Likewise, state language arts standards require an evaluation of political and religious influences of the relevant historical period.
84. Similarly, state world history and civilization standards include the objectives of explaining how religion affected people's understanding of the natural world, how it shaped the development of western civilization, and how it influenced social behavior.
85. Despite the indisputable educational value of studying primary religious (and political) sources, the Commission's remarkable position forces the Academy to shut these sources out of the classroom.
86. Prior to the recent ruling, the spokesperson for the Board publicly stated that it is permissible to use the Bible in literature or history courses.

87. The Commission itself has stated publicly its position that it is permissible to use the Bible as a text in history or literature courses.
88. So too has Defendant Luna stated his position that it is permissible to objectively teach utilizing religious texts, such as the Bible, in public schools.
89. Just by way of example of the many schools across the state that utilize religious documents as part of their curriculum in accordance with the state curriculum content standards, the Independent School District of Boise City incorporates into its curriculum or studies: “sacred texts: the Book of the Dead, Hebrew: Genesis [the Bible], Rig Veda [Hinduism], and the Koran [Islam];” native American spiritual world, Puritan theological studies, Theism, and Transcendentalism.
90. The Boise City School District also incorporates into their curriculum as literature: “Praise Songs, Proverbs, The Parable of the Prodigal Son [Bible], Zen Teaching and Zen Parables [Buddhism].”
91. This does not even take into account the plethora of documents utilized in the Academy, and many other public schools in the State, that themselves reference the Bible or Biblical teachings, such as Shakespeare, The Grapes of Wrath, Of Mice and Men, The Old Man and The Sea, and To Kill a Mockingbird.

Other Charter Schools and the Use of Religious and Political Documents and Text

92. Other charter schools also routinely incorporate religious and political documents and text into their curriculum.
93. Idaho Virtual Academy (“IDVA”) is one such school.

94. IDVA teaches about the major religions and belief systems throughout history utilizing the Hebrew scriptures (the Torah), the Bible, the Koran, and Greek mythology.
95. IDVA's literature courses also incorporate religious documents such as the Bible as part of the lessons.
96. Xavier Charter School also utilizes a classical education curriculum and relies on primary sources.
97. Classes such as History, Civic Responsibility and Political Novel Discourse emphasize Judeo-Christian and Greco-Roman thought and establish the religious and political contexts crucial to understanding western civilization. These courses utilize religious and political documents and text as primary sources.
98. K12 Virtual Charter School likewise utilizes religious and political documents and text as primary sources in, for example, history, government, and politics classes where students investigate major religions and belief systems throughout history and examine the roles of political parties and culture.
99. Unsurprisingly, the inclusion of religious and political writings in state-approved curricula that are used in public schools statewide, including original documents and text, is pervasive and undeniable.

The State Department of Education

100. The State Board of Education has authority over charter schools and over the Commission and has promulgated rules for its governance. *See* Idaho Administrative Code "ADAPA" 08.02.04, "Rules Governing Public Charter Schools."
101. The Board is also the entity that grants or withholds charter approvals.

102. The Board has approved the Academy's charter.
103. The Board has the authority to overrule the Commission's decision regarding their overly restrictive and incorrect reading of the applicable constitutional provision as it pertains to prohibiting any "religious documents or text."
104. The Board refuses to exercise such authority and has therefore approved of and acquiesced in the Commission's decision.
105. The Board has approved the Order and it therefore has created a Policy and procedure of the Board.
106. Ironically, the State Board of Education has an approved Bible as Literature course that may be taught in the state's public schools.
107. Such a course violates the Order as issued by the Commission and as adopted by the Board.
108. Further, the Order of the Commission and the Board is outside their statutory authority.
109. Charter schools are statutorily exempt from all rules governing school districts, except for a short enumerated list that has no application here. *See* I.C. 33-5210(4).
110. As such, charter schools are exempt from any state curriculum requirements issued by the Board. *Id.*
111. Thus, Defendants are violating state law by trying to do indirectly (control the Academy's curriculum) that which they cannot legally do directly.

The Authority of the Commission

112. The Commission only holds as much authority as is provided in the law.
113. The laws relating to the formation of charter schools and the Commission's authority is clearly delineated in the Idaho Code, sections 33-5201, *et seq*; *see also* ADAPA 08.02.04.

114. For instance, as discussed above, the Commission does not have any authority over the curriculum of charter schools. *See* I.C. 33-5210(4).
115. Also, the Commission's authority to issue a notice of defect is limited to certain grounds. *See* I.C. 33-5209.
116. Plaintiffs have not violated any of the enumerated grounds for issuance of a notice of defect or revocation of its charter.
117. Defendants are apparently relying on the catch-all provision that if a charter school has "violated any provision of law," they may issue a notice of defect. *See* I.C.33-5209 (2)(f).
118. But the only "violation" of any law has been concocted by Defendants themselves.
119. It is Defendants' incorrect reading of the Idaho constitution that created the alleged violation.
120. Defendants base their prohibition of "religious documents or text" on the language found in article IX, section 6 of Idaho's Constitution.
121. This section, however does not prohibit "religious documents or text," but rather prohibits "sectarian or religious tenets or doctrines" and "books, papers, tracts or documents of a political, sectarian, or denominational character" from being introduced in public schools.
122. There exists a tremendous difference between what Defendants have prohibited and what the constitution actually prohibits: the Idaho founders intended on prohibiting doctrinal disputes (the truth or accuracy of denominational tenets), not the objective study of the Bible or other religious texts.
123. As stated above, Defendants ignore the Constitution's prohibition on political documents, which exists in the same Constitutional provision, and which has not been enforced at all against any public school. According to Defendants strict construction of this provision, it

would be unconstitutional for public schools to study any “political” documents or text (whatever that may include).

124. Since Plaintiffs have not violated any provision of law, the Commission is without any authority to issue the notice of defect.

VI. ALLEGATIONS OF LAW

125. All of the acts of Defendants, their officers, agents, employees, and servants were executed and are continuing to be executed under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of Idaho.
126. The decision to deny Plaintiffs’ right to incorporate religious documents into their curriculum is a direct result of Laws, policies, practices, customs, and usages officially adopted and promulgated by the Defendants.
127. Unless the Defendants’ censorship of Plaintiffs’ curriculum materials is enjoined, along with the Policy upon which it is based, Plaintiffs will continue to suffer irreparable harm to their constitutional and statutory rights.
128. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivation of their rights.
129. Plaintiffs desire to utilize religious and political texts and documents in their curriculum without a determination of illegality, a notice of defect for violating the law, and without revocation of the Academy’s charter.
130. Unless Defendants’ unconstitutional Policy is enjoined, Plaintiffs will be unable to open the Academy’s school doors as scheduled on September 8th without being in violation of the Policy.

131. It is impossible for Plaintiffs to abide by Defendants' Policy for several reasons: first, it is unconstitutionally vague and Plaintiffs cannot know what "religious and/or political documents or texts" would violate the Order; second, it has taken years to prepare and draft Plaintiff Academy's curriculum, and it cannot be rewritten to satisfy Defendants' Policy within the time that remains for the Academy to open its doors.
132. If the Academy is forced to close its doors, over 600 students, teachers and administrators will be displaced for the current semester.
133. If Plaintiff Academy remains open but is issued a notice of defect, which in fact states that it is operating in violation of the law, Plaintiffs will be irreparably harmed in a myriad of ways: they will lose their good reputation, they will continue to lose students who do not want to attend a school with an uncertain future (they have already had several students withdraw over this issue), they would be forced to operate without a complete curriculum, which would significantly diminish the quality of the education they are offering, and their federal and state constitutional and statutory rights will be violated.
134. Plaintiffs therefore request that this Court maintain the status quo and enjoin Defendants from issuing any such notice of defect or finding of illegality or revocation until such time as this issue can be properly litigated.
135. There should be no rush on the part of Defendants to issue such defect as this issue carries much constitutional significance, particularly since it applies to all schools across the State, regardless of whether Defendants enforce it in that manner.
136. Many public schools across the state are utilizing both religious and political documents and text (which violates Defendants' Policy), as they have for decades.

137. There is no harm to Defendants to allow Plaintiffs to utilize the same resources as other schools across the state until this issue has been analyzed and litigated more thoroughly.
138. Defendants' entire premise is based on a misreading of the constitution. If they are permitted to enforce it against Plaintiffs and are proved wrong, the harm to Plaintiffs cannot be undone; if Defendants are proved correct, no harm would have come to them.

**FIRST CAUSE OF ACTION
VIOLATION OF PROCEDURAL DUE PROCESS UNDER THE FOURTEENTH
AMENDMENT TO THE U.S. CONSTITUTION**

139. Plaintiffs reallege the preceding paragraphs and incorporates them herein.
140. Defendants have violated the Academy's procedural due process rights by issuing the Policy that is contrary to the Constitution's written terms and that is overly restrictive of the use of religious texts in public schools.
141. The Policy is an unconstitutionally vague restriction on its face and as applied because it fails to adequately advise, notify, or inform persons subject to its requirements, including the requirement as to exactly what it prohibits.
142. The Policy is an unconstitutionally vague restriction on its face and as applied because it fails to provide fair notice and warning to individuals as to what constitutes religious documents or text.
143. The Policy is unconstitutionally vague because it lacks any standards or criteria to guide those charged with enforcing it and thus gives them unbridled discretion to determine what documents or texts are, and are not, permissible within public schools.
144. Defendants have admitted they do not even know what documents are considered religious texts.

145. Consequently, there are innumerable instances in which the Policy's intended application is unclear, causing a real and substantial deterrent effect on a broad range of constitutionally-protected expression
146. Plaintiffs and other school officials will be forced to steer far clear of using any prohibiting texts to avoid the substantial penalties for non-compliance, which will further chill constitutionally-protected expression.
147. The Policy's vagueness also creates a significant risk of arbitrary and discriminatory enforcement, because it fails to adequately define what it prohibits.
148. In fact, this arbitrary and discriminatory enforcement has already occurred. Defendants have arbitrarily and discriminatorily enforced the Order against the Academy, but has not imposed similar restrictions on any other public school within the state.
149. The Policy imposes irrational and unreasonable restrictions on the exercise of the Academy's constitutional and statutory rights.
150. Defendants have violated the Academy's due process rights by acting arbitrarily, capriciously, unreasonably, and with improper motives by selectively enforcing the Policy as to the Academy's curriculum, but not as to any other public school within the state.
151. Defendants are arbitrarily discriminatorily targeting the Academy in its choice of curriculum, including selective enforcement of the alleged "religious" prohibition in the Idaho constitution while ignoring the "political" prohibition that appears in the very same sentence of the same constitutional provision.
152. Defendants do not have a compelling, or even rational, reason to prevent the Academy from the objective utilization of religious texts as part of its curriculum.

153. The Policy violates the Academy's procedural due process rights on its face and as applied in violation of the Fourteenth Amendment to the United States Constitution.
154. Wherefore, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

**SECOND CAUSE OF ACTION: VIOLATION OF THE FREE SPEECH CLAUSE OF
THE FIRST AMENDMENT TO THE U.S. CONSTITUTION**

155. Plaintiffs reallege all matters set forth in the preceding paragraphs and incorporate them herein.
156. The Defendants' discretion to manage school affairs is limited by the imperatives of the First Amendment.
157. Defendants' Policy prohibits speech in advance if it taking place, discriminates against speech based on its content and viewpoint, violates academic freedom, violates the right to receive information, and is an overbroad restriction on speech.
158. Defendants' Policy inhibits a substantial amount of free expression in public schools, including a vast array of documents and texts that the Academy intends to use in its curriculum.
159. The curriculum at the Academy includes both secular and religious documents and text, but only those that are religious are singled out for prohibition.
160. The Policy prohibits any speech from a religious document or text, even if it is relevant, appropriate, and applicable to the particular study.
161. Defendants have complete and unbridled discretion, without any guidelines whatsoever, to determine what speech is from a religious document or text.

162. Is it only primary sources that are banned, and if so, who determines what constitutes a primary source? Does the Order's ban apply to secondary sources? And if a secondary source quotes religious text from a prohibited primary source, is that prohibited or allowed?
163. Defendants' Policy is an unconstitutional prior restraint because it prohibits speech in advance of it taking place and Defendants have no guidelines to govern their ad hoc decision making.
164. Defendants' Policy also discriminates against the content and viewpoint of speech.
165. While Defendants permit any curriculum work to include secular content and viewpoints, they simultaneously prohibit religious content and viewpoints discussing the same matters.
166. It is permissible to study literature, for example, from a secular point of view, but not from a religious point of view.
167. In American History, for example, it would be permissible to read from any book that was utilized in the drafting our country's laws (assuming, of course, such books were not deemed impermissibly political in nature and did not incorporate "too much" religious text or quotation), but it would be impermissible to read from the Bible, even though much of our legal code is derived from the Old Testament.
168. The same holds true for all subject matters.
169. Such content and viewpoint based discrimination is unconstitutional.
170. Defendants' Policy likewise violates educators' academic freedom protected by the First Amendment.
171. Schools and teachers have a constitutional right to teach and utilize materials that are in accordance with the established curriculum.

172. Defendants' Policy requires the Academy to censor its teachers and prohibit them from using any religious texts, even objectively as a resource to teach literature, history, art, music, or any other subject.
173. Defendants' Policy also violates students' fundamental right to receive information that is of educational value.
174. The right to receive information is an inherent corollary of the right of free speech and is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom.
175. Religious documents and text are invaluable educational resources for many subject matters, including history, literature, art, music, civics, and law.
176. Completely censoring any and all religious documents eliminates a large amount of appropriate educational materials.
177. The Policy is also extremely and substantially overbroad.
178. It covers an enormous amount of protected, non-disruptive speech for prohibition.
179. The Policy is not properly aimed at any specific government interest and is not reasonably related to any legitimate pedagogical concern.
180. Wherefore, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief

**THIRD CAUSE OF ACTION: VIOLATION OF THE ESTABLISHMENT CLAUSE OF
THE FIRST AMENDMENT TO THE U.S. CONSTITUTION**

181. Plaintiffs reallege all matters set forth in the preceding paragraphs and incorporate them herein.

182. The Establishment Clause of the First Amendment requires the government to act with a secular purpose, to neither promote nor inhibit religion, and forbids excessive entanglement with religion.
183. Defendants are inhibiting religion to such an extent that a public school cannot include any religious documents or text in its curriculum.
184. By specifically prohibiting religious documents from the classroom, any objective observer in the position of a student would understand that the Defendants disapprove of religion and believe that it has no place in our educational system.
185. Every court to consider the issue has acknowledged that it is constitutionally permissible to teach the Bible in an objective manner as part of history, literature, art or music.
186. Defendants' hostility is evinced by the fact that Plaintiffs can utilize poetry reading from every secular source, but not from a religious source, such as the Book of Lamentations.
187. Plaintiffs are permitted to study every great literary work, but none that are religious.
188. Even a secondary source that quotes the Bible or other religious documents includes religious text and therefore must be excluded from public school classrooms under the Policy.
189. Defendants' Policy also creates excessive entanglement with religion.
190. The Policy requires that government officials scrutinize and continually monitor every aspect of the curriculum and other classroom-related expression to determine whether it introduces religious text in the classroom.
191. Government officials are not qualified to determine what a religious document may be, what comprises religious text, or to distinguish between primary and secondary religious sources.

192. This broad-reaching prohibition would exclude reading many of our founding documents which contain many Biblical quotations and text.
193. Defendants have violated the Federal Establishment Clause as applied to the states through the Fourteenth Amendment by inhibiting religion and by becoming excessively entangled with religion.
194. Wherefore, Plaintiffs respectfully pray 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 U.S. CONSTITUTION**

195. Plaintiffs reallege all matters set forth in the preceding paragraphs and incorporate them herein.
196. The Policy allows other public schools, teachers and students similarly situated to Plaintiffs to utilize religious and political documents in their curriculum.
197. The Policy also allows other charter schools, teachers and students similarly situated to Plaintiffs to utilize religious and political documents and text in their curriculum.
198. The Policy treats Plaintiffs differently by not permitting them to utilize similar resources.
199. Defendants have intentionally discriminated against Plaintiffs by issuing their illegal Policy, and through its discriminatory and selective enforcement.
200. Defendants have also issued their Policy in a manner that selectively ignores sections of the constitutional provision that they are allegedly enforcing.
201. Defendants are enforcing the alleged religious prohibition while they completely ignore the political prohibition found in the same provision.

202. Such selective enforcement shows that Defendants are indeed targeting Plaintiffs for discrimination in their use of religious and political texts as part of their curriculum because every school in the state utilizes political documents as part of their curriculum.
203. Defendants can offer no rational or compelling interest to justify their discriminatory treatment against Plaintiffs as compared to others who are similarly situated.
204. The Policy facially and as applied violates Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution
205. Wherefore, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

FIFTH CAUSE OF ACTION: ULTRA VIRES ACTIONS BY DEFENDANTS: VIOLATION OF IDAHO CODE SECTIONS 33-5209 AND 33-5210; DEFENDANTS' POLICY AND ORDER DO NOT COMPLY WITH THE ENUMERATED POWERS FOR ISSUING A NOTICE OF DEFECT OR REVOCATION, AND ARE IN VIOLATION OF STATE LAW EXEMPTING CHARTER SCHOOLS FROM STATE CURRICULUM REQUIREMENTS

206. Plaintiffs reallege all matters set forth in the preceding paragraphs and incorporate them herein.
207. The parameters of Defendants' authority are prescribed by state law.
208. Defendants are not empowered to exceed their statutorily-granted authority.
209. Defendants are prohibited from issuing any orders or enacting any policies that violate general laws, including provisions of the Idaho Constitution, acts of the state legislature, and the Constitution and laws of the United States.
210. Idaho Code section 33-5209 enumerates the conditions under which the Commission can issue a notice of defect, followed by revocation.

211. In order to bring such actions against a charter school, the school must have violated at least one or more of the listed provisions.
212. Plaintiffs have not violated any of the enumerated provisions.
213. Defendants have exceeded their authority under this statute by claiming that Plaintiffs have violated the catch-all provision, which requires a violation of any law by Plaintiffs.
214. But Plaintiffs have violated no law.
215. Defendants have concocted this violation by claiming that using the Bible or any other religious document or text—even in an objective manner—as part of Plaintiffs’ curriculum violates article IX, section 6 of the Idaho Constitution.
216. But this section does not prohibit any use of religious documents or text, it only prohibits political, sectarian or denominational documents.
217. An objective study of the Bible and the additional religious documents are not prohibited by this section.
218. Since Plaintiffs have not violated this section, or any other, Defendants are without authority to issue a notice of defect and revoke Plaintiffs’ charter.
219. Defendants have also acted outside the scope of their authority by controlling Plaintiffs’ curriculum.
220. Idaho Code section 33-5210 specifically exempts the curriculum of charter school from the reach of Defendants’ authority.
221. This section states that “each public charter school is otherwise exempt from rules governing school districts which have been promulgated by the state board of education...”
222. The section includes five exceptions to this rule that have no application here.

223. According to this statute, Defendants have no authority over Plaintiff's curriculum, or over the texts and resources that Plaintiffs utilize as part of their curriculum.
224. Defendants are trying to control Plaintiffs' curriculum indirectly under the threat of revoking their charter, when state law forbids them from doing the same directly.
225. Wherefore, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants as follows:

- A. Declare Defendants' Order and Policy, which prohibit Plaintiffs from utilizing any religious document or text in their curriculum, unconstitutional on their face because they violate Plaintiffs' statutory and constitutional rights;
- B. Declare Defendants' Order and Policy, which prohibit Plaintiffs from utilizing any religious document or text in their curriculum, unconstitutional as applied because they violate Plaintiffs' statutory and constitutional rights;
- C. Issue a preliminary and permanent injunction enjoining the Defendants, their agents, servants, employees, and officers from enforcing their Order and Policy against Plaintiffs;
- D. Issue a temporary restraining order prohibiting Defendants from issuing a notice of defect, and prohibiting Defendants from revoking Plaintiffs' charter, based on the use of religious documents or text in its curriculum.
- E. Grant Plaintiffs their damages in an amount to be determined;
- F. Grant Plaintiffs their costs of litigation, including reasonable attorneys' fees and costs; and
- G. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 1st day of September, 2009.

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