

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

E.B. a minor, by and through his next
friend, William Boyer,

Plaintiff,

v.

WEST SHORE SCHOOL DISTRICT,

Defendant.

Case No.

VERIFIED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF

Now comes Plaintiff, E.B., by and through his next friend, William Boyer¹, pursuant to the Federal Rules of Civil Procedure, and for his causes of action against Defendant avers the following:

I. INTRODUCTION

1. This is a civil rights action under 42 U.S.C. § 1983, the First Amendment, and the Fourteenth Amendment brought to remedy a violation of the constitutional rights of E.B., a student at Crossroads Middle School in Lewisberry, Pennsylvania.
2. Plaintiff brings this action challenging Defendant's censorship of Plaintiff's t-shirt stating that "Abortion is not Healthcare" worn on the day President

¹Pursuant to Local Rule 5.2, E.B. is identified by his initials, rather than his full name.

Obama addressed students in schools across the country.

3. Defendant's censorship of Plaintiff's t-shirt pursuant to its several unconstitutional policies is both content and viewpoint-based.
4. First, "Policy 220: Student Expression," prohibits speech which "seek[s] to establish the supremacy of a particular religious denomination, sect, or point of view" and that which "contain[s] material otherwise deemed harmful to impressionable students."
5. Second, "Policy 221: Dress and Grooming" prohibits "clothing which creates a hostile educational environment or evidences discriminatory bias or animus" or displays "inappropriate words."
6. Plaintiff challenges these Policies both on their face and as-applied to his t-shirt.
7. Defendant's draconian censorship of Plaintiff's religious and political speech, and the Policies on which that censorship was based, violate the First and Fourteenth Amendments to the United States Constitution.

II. JURISDICTION AND VENUE

8. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; and under federal law, particularly 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§ 1983 and 1988.
9. This Court possesses original jurisdiction over Plaintiff's claims by operation

of 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over Plaintiff's state claim pursuant to §1367.

10. This Court is vested with authority to issue the requested declaratory relief under 28 U.S.C. § 2201 and 2202, and pursuant to Rule 57 of the Federal Rules of Civil Procedure.
11. This Court has authority to award the requested injunctive relief under Rule 65 of the Federal Rules of Civil Procedure and under 28 U.S.C. § 1343(3).
12. This Court is authorized to award nominal damages under 28 U.S.C. § 1343(4).
13. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.
14. Venue is proper under 28 U.S.C. § 1391 in the Middle District because this claim arose there, and because upon information and belief all Defendants reside within the District.

III. IDENTIFICATION OF THE PLAINTIFF

15. Plaintiff E.B., a minor, is a student at Crossroads Middle School, at all times relevant to this Complaint, a resident of New Cumberland, Pennsylvania.
16. Plaintiff desires to wear his t-shirt stating "Abortion is not Healthcare" to school without facing censorship or punishment.
17. Plaintiff also desires to wear other t-shirts with similar religious and political messages to school.
18. Plaintiff is an adherent of the Christian faith and desires to share his religious

and political views with his classmates.

19. Plaintiff believes in the sanctity of human life and that unborn children should be protected.
20. Plaintiff desires to reach out to his peers and to offer them advice, assistance, and education, based on his religious and political beliefs and opinions.
21. Plaintiff also seeks to discuss relevant issues facing students at school, including faith and religion, personal responsibility, sexual abstinence, keeping children in the event of pregnancy, just to name a few.
22. William Boyer, as next friend, is E.B.'s parent and guardian.

IV. IDENTIFICATION OF THE DEFENDANTS

23. Defendant West Shore School District ("District") is organized under the laws of the State of Pennsylvania and may sue and be sued.
24. The District is charged, inter alia, with the administration, operation, and supervision of Crossroads Middle School, a public secondary school.
25. The District is charged with the formulation, adoption, implementation, and enforcement of District policies, including those challenged herein.
26. The District is responsible for the enforcement of its Policies by its employees.
27. Pursuant to its Policies, the District has granted enforcement authority to faculty and staff.

V. ALLEGATIONS OF FACT

28. Crossroads Middle School (“Crossroads”) is a public middle school located in Lewisberry, Pennsylvania.
29. Crossroads is under the direction of the District and includes grades 6 through 8.
30. The District is the official policy maker and as such has enacted the Policies challenged herein.
31. The District permits students to wear t-shirts with messages on them pursuant to Policies 220 and 221.
32. Students in fact regularly wear t-shirts with all types of messages.
33. On September 8th of this year, President Obama addressed students in schools across the country via a video message.
34. The President’s decision to give the speech created a national controversy, and created many concerns within the Boyer home, for several reasons. First, the national healthcare debate was in full force with many Americans, including the Boyers, opposing the President’s proposed healthcare overhaul, especially any funding of abortion. Second, the Boyers, like many others, felt that President Obama was bypassing them and speaking directly to their children without their permission. Third, parents like the Boyers were also concerned with the original content of the President’s speech and the assignments that

went along with the video, which asked students questions such as “What is the President asking me to do?”; “Why is it important that we listen to the President...? Why is what [he says] important?” The assignments included having students “[w]rite letters to themselves about what they can do to help the president. These would be collected and redistributed at an appropriate later date by the teacher to make students accountable to their goals.”

35. Like many others, the Boyers struggled with whether they should send their children to school on that day.
36. E.B. attended school and decided to voice his religious viewpoint as it relates to the issue of abortion.
37. E.B. wore his t-shirt to school with no disruption and with no problems until he was sent by his 5th period teacher to the Principal’s office to see whether his t-shirt was “appropriate.”
38. Upon arriving at the Principal’s office and relaying what his teacher told him to say, he was immediately ordered to remove his shirt because it might insult somebody.
39. He was then sent to the nurse’s office to change his shirt, but turned it inside out instead because he did not have another shirt to change into.
40. E.B. was ordered to remove his t-shirt pursuant to the Policies challenged herein, which give enforcement authority to the “faculty and administration”

to change the clothing found to be “inappropriate.”

41. He was later asked by a few students why he was made to turn his shirt inside out.
42. At no time did his t-shirt cause a disruption at school.
43. Plaintiff is a Bible-believing Christian who desires to share his faith and beliefs with other students and to discuss how the Bible addresses issues, such as abortion.
44. Plaintiff’s sincerely held religious beliefs compel him to share his faith and beliefs and to address relevant subjects from a Biblical point of view with his friends and classmates at school.
45. Plaintiff accomplishes this goal at school through speaking and through wearing religious and political t-shirts.
46. In the future, Plaintiff desires to engage in religious speech through the wearing of religious and pro-life t-shirts, including the t-shirt that was censored here, absent fear of reprisal and without facing punishment or being made to remove the message.

VI. ALLEGATIONS OF LAW

47. Students do not shed their constitutional rights at the schoolhouse gate.
48. Non-disruptive, private student expression is protected by the First Amendment.

49. Religious speech is fully protected by the First Amendment.
50. All of the acts of Defendant, its officers, agents, employees, and servants were executed and are continuing to be executed by the Defendant under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of Pennsylvania.
51. Plaintiff is suffering irreparable harm from the conduct of Defendant.
52. Plaintiff has no adequate or speedy remedy at law to correct or redress the deprivation of his rights by Defendant.
53. Unless Defendant's Policies are enjoined, Plaintiff will continue to suffer irreparable injury.
54. The message on Plaintiff's shirt is timely to the present debate on healthcare and Plaintiff desires to wear such t-shirt, and similar t-shirts, immediately but is chilled and prevented from doing so by Defendant's Policies.

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

55. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 54 of this Complaint.
56. The First Amendment's Freedom of Speech Clause prohibits censorship of religious expression.
57. Defendant's Policies and practice create an open forum by permitting students to wear messages on t-shirts.

58. Defendant's Policies and practice prohibit E.B. from incorporating his private religious expression into his clothing based solely on the religious and political nature of his expression.
59. This unequal treatment of E.B. based solely on the religious expression that he seeks to engage in is a content-based restriction in an otherwise open forum.
60. This denial of E.B.'s speech – while permitting similar speech – also constitutes viewpoint discrimination, which is unconstitutional in any type of forum.
61. E.B.'s religious expression on campus does not materially and substantially interfere with the orderly conduct of educational activity within the School.
62. Defendant's Policies and practice additionally impose an unconstitutional prior restraint because they vest District officials with unbridled discretion to permit or refuse protected religious speech.
63. Defendant's Policies and practice also allow District officials to act with unbridled discretion when deciding if a student's speech "seeks to establish the supremacy of a particular religious denomination, sect, or point of view," "contains material otherwise deemed harmful to impressionable students," "creates a hostile educational environment or evidences discriminatory bias or animus," or is "inappropriate."
64. Defendant's Policies and practice also allow District officials to act with

unbridled discretion in deciding if a student's speech may "insult" or be "offensive" to someone and thus subject to censorship.

65. Defendant's Policies and practice are additionally overbroad because they sweep within their ambit protected First Amendment expression.
66. The overbreadth of Defendant's Policies and practice chill the speech of third parties who might seek to incorporate private religious expression as part of their clothing or other speech.
67. Defendant's Policies and practice chill, deter, and restrict Plaintiff from freely expressing his religious and political beliefs.
68. Defendant is interpreting and applying its Policies prohibiting student religious expression as an unconstitutional heckler's veto.
69. Defendant enforced its prohibition against E.B.'s religious expression based on the possibility of someone's negative response.
70. Protected speech, like E.B.'s, cannot be squelched simply based on a viewer's possible reaction to the speech.
71. Restricting speech based on a viewer's possible reaction to it, as Defendant has done to E.B., is an impermissible content-and viewpoint-based regulation of speech.
72. Defendant's Policies, as interpreted and applied by it to prohibit religious and political student speech are not the least restrictive means necessary to serve

any compelling interest which Defendant seeks thereby to secure.

73. Defendant's Policies and practice are not reasonably related to any legitimate pedagogical concerns.
74. Censoring students' religious speech per se is not and cannot be a legitimate pedagogical concern.
75. Defendant's 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 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

76. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 54 of this Complaint.
77. Defendant's Policies and practice, by expressly targeting private religious expression for special disabilities, violates E.B.'s constitutional right to the free exercise of religion.
78. E.B. desires to engage in expressive activities described above on the basis of his sincerely held religious beliefs.
79. Defendant's Policies explicitly exclude – and thus discriminate against –

religious expression.

80. Defendant's Policies and practice substantially burden E.B.'s free exercise of religion by conditioning his ability to speak on foregoing his free exercise rights.
81. Defendant's Policies and practice force E.B. to choose between engaging in religious speech and being punished, or foregoing the free exercise of religion to be able to speak without punishment.
82. Defendants Policies and practice substantially burden E.B.'s free exercise of religion by denying him the right to include private religious speech on his clothing.
83. Defendant's Policies and practice constitutes the imposition of special disabilities on E.B. due to his religion and his intent to include private religious expression on his clothing.
84. These special disabilities placed on Plaintiff are neither neutral nor of general applicability.
85. Defendant's Policies and practice of banning E.B.'s clothing selectively impose a burden on expression based on the religious nature of the expression by singling out his expression for discriminatory treatment.
86. Defendant's Policies and practice cannot be justified by a compelling governmental interest and are not narrowly tailored to advance any such

interest.

87. Defendant's interpretation and application of their Policies chill E.B.'s freedom of religious expression and exercise, both of which are fundamental rights guaranteed Plaintiff by the First Amendment.
88. Defendant's Policies and practice, both facially and as applied, constitute an excessive burden on E.B.'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 relief set forth hereinafter in the Prayer for Relief.

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

89. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 54 of this Complaint.
90. The Due Process Clause of the Fourteenth Amendment prohibits government from censoring speech pursuant to vague or overbroad standards that grant unbridled discretion.
91. The determination by Defendant of what is and is not forbidden religious speech violates this norm.
92. Defendant's Policies and practice are vague and allow for unbridled discretion

in determining which student speech satisfies their Policies.

93. Defendant's Policies lack any definitions or guidelines as to how to determine whether student speech "establishes the supremacy of a particular religious denomination, sect, or point of view," "contains material otherwise deemed harmful to impressionable students," "creates a hostile educational environment or evidences discriminatory bias or animus," or is "inappropriate."
94. Defendant's Policies and practice also permit Defendant's to exercise unbridled discretion in determining whether student speech meets these "standards."
95. These vague terms utilized in Defendant's Policies leave censorship of student speech to the whim of Defendant.
96. The Policies' language holds no discernible meaning and can be applied to prohibit any disfavored speech, which is exactly how it has been applied to Plaintiff.
97. Defendant's 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 relief set forth hereinafter in the Prayer for Relief.

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

98. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 54 of this Complaint.
99. Defendant's Policies and practice embody both hostility toward religious expression and require excessive entanglement with religion, both forbidden under the First Amendment's Establishment Clause.
100. Defendant's Policies and practice of banning E.B.'s religious expression evinces discriminatory suppression of private speech that is not neutral, but rather is hostile toward religion.
101. Defendant, pursuant to its Policies and practice of suppressing any private Christian religious expression that "seeks to establish the supremacy of a religious denomination, sect or point of view" – and by permitting the supremacy of any other point of view – sends the message to students that religious students such as E.B. are second-class citizens, outsiders, and not full members of the academic community.
102. Defendant sends the message through its Policies and practice that Christian students like E.B. are outsiders by excluding a religious points of view while concurrently permitting all other points of view.
103. In addition, Defendant's Policies and practice require District officials, as

- censors, to make judgments about which student religious expression is and is not “supreme,” thereby creating constitutional problems of entanglement.
104. Defendant’s Policies and practice compel District official to classify private student speech according to their perceived religious-versus-nonreligious nature.
 105. 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.
 106. Such inquiries by District officials entangle it with religion in a manner forbidden by the First Amendment.
 107. Entanglement problems exist because District officials must attempt to discern which private student expression is both religious and too supreme in nature to be permitted.
 108. District officials must make theological interpretations in order to conclude that some student speech is religious and supreme, while other student speech is not.
 109. Defendant’s Policies and practice deny E.B. the right to wear his t-shirt because it contained a “religious point of view,” actions that represent the antithesis of neutrality.
 110. No compelling state interest exists to justify the censorship of E.B.’s religious

expression.

111. Defendant's 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 relief set forth hereinafter in the Prayer for Relief.

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

112. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 54 of this Complaint.
113. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated persons equally.
114. Pursuant to its Policies and practice, Defendant has allowed other similarly situated students to include secular expression on their clothing.
115. Defendant has treated E.B. disparately when compared to similarly situated students by banning only E.B.'s religious expression.
116. By discriminating against the content and viewpoint of E.B.'s speech, Defendant is treating E.B. differently than other similar situated public school students on the basis of the content and viewpoint of his speech.
117. Defendant's Policies and practice violate various fundamental rights of E.B., such as rights of free speech and free exercise of religion.

118. When government regulations, like Defendant's Policies and practice challenged herein, infringe on fundamental rights, discriminatory intent is presumed.
119. Defendant's Policies and practice have also in fact, and in practice, been applied to intentionally discriminate against E.B.'s rights of free speech and free exercise of religion.
120. Defendant lacks a rational or compelling state interest for such disparate treatment of E.B.
121. Defendant's denial of access to E.B. is not narrowly tailored in that it restricts student's private religious expression unrelated to any asserted interest Defendant may have.
122. Defendant's Policies and practice are not narrowly tailored as applied to E.B. because E.B.'s speech does not implicate any of the interests Defendant might have.
123. Defendant's Policies and practice are overinclusive because they prohibit E.B.'s religious expression even though it is not disruptive.
124. Defendant's Policies and practice burden more of E.B.'s speech than necessary because he is foreclosed from using religious content and viewpoints in his speech even though it is not disruptive.
125. The Policies and practice of Defendant, both facially and as applied, thus

violate E.B.'s right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

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

SIXTH CAUSE OF ACTION: VIOLATION OF THE RELIGIOUS FREEDOM PROTECTION ACT 71 PA. STAT. ANN. §§ 2401-2407

126. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 54 of this Complaint.
127. Defendant has substantially burdened and continues to substantially burden Plaintiff's right to the free exercise of religion through its Policies and practice by preventing him from engaging in religious expression.
128. The Policies and practice substantially burden and conflict with Plaintiff's sincerely held religious beliefs.
129. The Policies and practice force Plaintiff to choose between following his religious beliefs under the threat of punishment and censorship, and following the Policies to the neglect of his religious beliefs.
130. The Policies and practice substantially burden and conflict with Plaintiff's sincerely held religious beliefs by significantly constraining and inhibiting conduct and expression mandated by Plaintiff's sincerely held religious beliefs.
131. The Policies and practice substantially burden and conflict with Plaintiff's

sincerely held religious beliefs by significantly curtailing Plaintiff's ability to express adherence to his religious faith.

132. The Policies and practice substantially burden and conflict with Plaintiff's sincerely held religious beliefs by denying Plaintiff a reasonable opportunity to engage in activities that are fundamental to his religion.
133. Defendant's imminent intent to continue to enforce the Policies threatens to substantially burden Plaintiff's right to the free exercise of religion.
134. Defendant does not have a compelling, or even rational, governmental interest that could justify the restriction on Plaintiff's religious speech and expressive activities.
135. The Policies and practice are not the least restrictive means of furthering any interest that Defendant seeks to secure.
136. The Policies and practice violate the Pennsylvania Religious Freedom Protection Act, 71 PA. STAT. ANN. §§ 2401-2407, on its face and as applied to Plaintiff.

Wherefore, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgement as follows:

- a. That this Court issue a Preliminary and Permanent Injunction, restraining

Defendant, its officers, agents, employees, and all other persons acting in active concert with it, from enforcing the Policies challenged herein that violate E.B.'s constitutional rights by banning religious expression;

- b. That this Court order Defendant to remove any and all references to disciplinary action taken against E.B. arising out of the incidents in this case.
- c. That this Court render a Declaratory Judgment, declaring as unconstitutional facially and as-applied the District's Policies and practice challenged herein that ban religious expression in violation of the First and Fourteenth Amendments to the United States Constitution;
- d. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment;
- e. That this Court retain jurisdiction of this matter for the purpose of enforcing any Orders;
- f. That the Court award E.B.'s costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. § 1988.
- g. That this Court award nominal damages for the violation of E.B.'s constitutional rights;
- h. That this Court issue the requested injunctive relief without a condition

of bond or other security being required of E.B; and

- i. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.

Dated this 5th day of October, 2009.

s/ Randall L. Wenger
RANDALL L. WENGER
Associate Counsel
PA 86537
INDEPENDENCE LAW CENTER
23 North Front Street
Harrisburg, PA 17101
Telephone (717) 657-4990
Facsimile (717) 545-8107
rwenger@indlawcenter.org

s/ David A. Cortman
DAVID A. CORTMAN*
GA 188810
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

Attorneys for Plaintiff E.B.

**Pro hac vice* submitted