

the Pledge of Allegiance (the Pledge) hundreds of times between starting high school in 2014 and the date of the filing of this complaint. She intends to continue doing so despite repeated harassment by students and Klein Oak teachers, and despite the failure of Klein Oak administrators to take adequate measures to protect her rights. During the 2014-15 academic year, the harassment came at the hands of teacher Stephen Naetzker. Jennifer Walton, M.O.'s journalism teacher, harassed her for the practice during the 2015-16 school year. Her 2016-17 and 2017-18 school years have been marred by harassment from sociology teacher Benjie Arnold; harassment which at one point caused her mother, LaShan Arceneaux (LaShan), to withdraw M.O. from Klein Oak in favor of homeschooling. Throughout this period, her class principal, Kimberly Walters, and guidance counsellor, Margaret Bollato, repeatedly failed to take actions sufficient to prevent the violations. Between 2014 and the summer of 2017, Klein Oak Principal Brian Greeney also failed to take action to protect M.O.'s rights. Since the summer of 2017, Principal Greeney's successor, Thomas Hensley, has similarly failed to deter such violations. M.O. has faced much bullying from other students which has not been addressed by school officials. Even after filing if the lawsuit. Defendants' Unconstitutional acts have caused M.O. to suffer panic attacks and greatly interfered with her education.

2. The right of a student not to be forced to stand for the Pledge is an old one. *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943) (We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.) The plaintiff seeks appropriate declaratory and injunctive relief, as well as damages.

II. JURISDICTION AND VENUE

3. This is an action arising under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation, under color of state law, of rights secured by the First, Fourth, and Fourteenth Amendments to the United States Constitution.

4. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 and 2202.

5. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction) and § 1343 (civil rights jurisdiction).

6. Venue in this district is proper under 28 U.S.C. § 1391(b)(1), because each of the defendants resides in this district, and under § 1391(b)(2), because a substantial part of the events giving rise to the Plaintiffs' claims occurred in this district.

III. PARTIES

7. Plaintiff LaShan Arceneaux is a resident of Harris County, Texas and is the mother of M.O., 17.

8. Defendant Klein Independent School District (Klein ISD), a governmental entity existing under the laws of the state of Texas, is located in Harris County, Texas and can be served with process by serving Superintendent Bret Champion at 7200 Spring Cypress Road, Klein, Texas 77379 or wherever he is found.

9. Defendant Bret Champion is an individual and resident of Harris County, Texas and can be served with process at 7200 Spring Cypress Road, Klein, Texas 77379 or wherever he is found.

10. Defendant Brian Greeney is an individual and resident of Harris County, Texas and can be served with process at 22603 Northcrest Drive, Klein, Texas 77389 or wherever he is found.

11. Defendant Thomas Hensley is an individual and resident of Harris County, Texas and can be served with process at 22603 Northcrest Drive, Klein, Texas 77389 or wherever he is found.

12. Defendant Kimberly Walters is an individual and resident of Harris County, Texas and can be served with process at 22603 Northcrest Drive, Klein, Texas 77389 or wherever she is found.

13. Defendant Lance Alexander is an individual and resident of Harris County, Texas and can be served with process at 22603 Northcrest Drive, Klein, Texas 77389 or wherever he is found

14. Defendant Benjie Arnold is an individual and resident of Harris County, Texas and can be served with process at 22603 Northcrest Drive, Klein, Texas 77389 or wherever he is found.

15. Defendant Stephen Naetzker is an individual and resident of Harris County and has been served with process.

16. Defendant Angie Richard is an individual and resident of Harris County, Texas and can be served with process at 22603 Northcrest Drive, Klein, Texas 77389 or wherever she is found.

17. Defendant Jennifer Walton is an individual and resident of Harris County, Texas and can be served with process at 22603 Northcrest Drive, Klein, Texas 77389 or wherever she is found.

IV. FACTS

Klein ISD Policies

18. Texas law directs each school district to “require students, once during each

school day at each campus, to recite (1) the pledge of allegiance to the United States flag . . . and (2) the pledge of allegiance to the state flag . . .” (collectively, the Pledge). Tex. Educ. Code § 25.082(a).

19. Texas law allows a parent to exempt her child from the Pledge requirement by submitting a written request without specifying the form or proper recipient of such a request and provides no procedure for a student to exempt herself from the policy should she wish to do so. Tex. Educ. Code § 25.082(c).

20. The Klein ISD Board Policy Manual (the Policy Manual) “contains policies governing the operation of this District.” *See* Policy A18(LEGAL), Introduction, attached hereto as Exhibit “A.” The Policy Manual explains that the designation “(LEGAL)” denotes “the working core of legal provisions, critical to day-to-day, month-to-month decision making, regarding District governance and management,” and that “(LOCAL)” denotes policies that “generally expand on, or qualify, the legally referenced provisions” or that “stand alone, reflecting the Board’s intentions in areas not otherwise addressed by law.” *Id.*

21. Under Policy EC(LEGAL) of the Policy Manual:

A board shall require students, once during each school day, to recite the pledges of allegiance to the United States and Texas flags.

On written request from a student’s parent or guardian, a district shall excuse the student from reciting a pledge of allegiance.

(the Pledge Policy). *See* Policy EC(LEGAL), School Day, attached hereto as Exhibit “B.”

22. Policy EC(LOCAL) does not expand on or qualify Policy EC(LEGAL) with regard to the Pledge Policy. *See* Policy EC(LOCAL), School Day, attached hereto as Exhibit “C.”

23. In accordance with Klein ISD policy, Klein Oak High School (Klein Oak) provides a daily opportunity for students to participate in the recitation of the Pledge. During the

2014-15, 2015-16, and 2016-17 academic years, the Pledge was recited in a different period each day. In the 2017-18 academic year, the Pledge recitation occurs every day during second period.

24. Such notices are a student record under Tex. Gov't Code § 552.114 and therefore exempt from disclosure under the Texas Public Information Act. Whether Klein ISD has received notices described in Policy EC(LEGAL) from other parents, and how Klein ISD responded to such notices, is therefore in the exclusive control of Klein ISD.

25. Policy DH(LOCAL) states, "Each District employee shall perform his or her duties in accordance with state and federal law, District policy, and ethical standards. [See DH(EXHIBIT)]" *See* Policy DH(LOCAL), Employee Standards of Conduct, attached hereto as Exhibit "D" (bracketed text in original). The policy then states:

Each employee shall comply with the standards of conduct set out in this policy and with any other policies, regulations, and guidelines that impose duties, requirements, or standards attendant to his or her status as a District employee. Violation of any policies, regulations, or guidelines may result in disciplinary action, including termination of employment. [See DCD and DF series]

Id (bracketed text in original).

26. The Klein ISD Educators' Code of Ethics states, in relevant part:

Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other state and federal laws.

...

Standard 3.1. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.

Standard 3.2. The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.

...

Standard 3.4. The educator shall not exclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, gender, disability, national origin, religion, family status, or

sexual orientation.

See Policy DH(EXHIBIT), Employee Standards of Conduct, attached hereto as Exhibit “E.”

27. The Klein ISD Board of Trustees has the authority to suspend or discharge an educator (employed under either a probationary, term, or continuing contract) for good cause, pursuant to Texas law. *See* Policy DFAA(LEGAL), Probationary Contracts - Suspension/Termination During Contract, attached hereto as Exhibit “F;” Policy DFBA(LEGAL), Term Contracts - Suspension/Termination During Contract, attached hereto as Exhibit “G;” Policy DFCA(LEGAL), Continuing Contracts - Suspension/Termination, attached hereto as Exhibit “H.”

28. The Klein ISD Board of Trustees delegated to the superintendent its statutory authority to suspend an educator, particularly during investigations into misconduct, and made dismissal of an educator for good cause contingent on the recommendation of the superintendent and approval of the Board of Trustees. *See* Policy DFAA(LOCAL), Probationary Contracts - Suspension/Termination During Contract, attached hereto as Exhibit “I;” Policy DFBA(LOCAL), Term Contracts - Suspension/Termination During Contract, attached hereto as Exhibit “J;” Policy DFCA(LOCAL), Continuing Contracts - Suspension/Termination, attached hereto as Exhibit “K;” Policy BJA(LOCAL), Superintendent - Qualifications and Duties, attached hereto as Exhibit “L.”

29. Texas state law gives school principals the responsibility to “[a]ssume administrative responsibility and instructional leadership, under the supervision of the superintendent, for discipline at the campus” and the Klein ISD Board of Trustees has not expanded on or qualified that provision. *See* Policy DP(LEGAL), Personnel Positions, attached hereto as Exhibit “M;” Policy DP(LOCAL), Personnel Positions, attached hereto as Exhibit “N.”

30. Klein ISD expressly prohibits the bullying of any student on school property,

including a school bus and at any school-related or school-sponsored activity on or off campus. See Policy FFI(LEGAL), Student Welfare - Freedom From Bullying, attached hereto as Exhibit “O;” Policy FFI(LOCAL), Student Welfare - Freedom From Bullying, attached hereto as Exhibit “P.”

Stephen Naetzker repeatedly takes disciplinary action against M.O. for refraining from the Pledge.

31. In approximately September of 2014, M.O. was seated in Defendant Stephen Naetzker’s classroom when the pledge recitation took place. M.O. neglected to stand up for the recitation.

32. As a result of M.O.’s failure to join her classmates in reciting the Pledge, Mr. Naetzker issued a “write up” for M.O., a form of discipline at Klein Oak.

33. In response to the “write up,” M.O. was sent to the office of Defendant Kimberly Walters, the principal for M.O.’s class. During her meeting with Principal Walters, she told Principal Walters that Mr. Naetzker wrote her up for sitting out the pledge. Principal Walters informed her that Mr. Naetzker had the right to write her up for not standing because of his military service.

34. Principal Walters took no action against Stephen Naetzker for his discipline of M.O.

35. On the final day of classes before the 2014 Thanksgiving break, on or around November 26, 2014, Stephen Naetzker confiscated M.O.’s phone because of what he described as her “lack of respect” she demonstrated by sitting out the Pledge. He told her she would get her phone back at the end of the day.

36. After classes ended for the day, M.O. returned to Mr. Naetzker to retrieve her

phone. Rather than return her property, however, Naetzker walked her to her school bus.

Principal Walters was on “bus duty” that afternoon. Naetzker handed M.O.’s phone to Principal Walters, who returned it to M.O.

37. Principal Walters told M.O. at the time that they would discuss her issue with Mr. Naetzker after the break. No such conversation took place.

38. During the spring semester of the 2014-15 school year, Mr. Naetzker read passages from the Holy Bible¹ to his class on several occasions.

Jennifer Walton repeatedly singles out M.O. for refraining from participation in the Pledge

39. Late in the fall semester of the 2015-16 school year, M.O. was sitting in the classroom of Defendant Jennifer Walton, her journalism teacher, when the Pledge recital took place. When Jennifer Walton saw that M.O. had remained seated, she instructed M.O. to stand. M.O. refused.

40. After journalism class ended that day, M.O. had a lengthy discussion with Jennifer Walton concerning her decision not to stand for the Pledge.

41. Following their discussion, when the Pledge again occurred in Jennifer Walton’s class, she singled M.O. out for remaining seated and again instructed her to stand. M.O. refused.

42. Approximately one week later, M.O. discussed Jennifer Walton’s actions with her guidance counsellor, Margaret Bollato. Bollato recommended that M.O. either stand for the Pledge in Walton’s class or switch out of Walton’s class at the winter break in order to avoid the conflict.

43. For the remainder of the fall 2015 semester, M.O. continued to sit for the Pledge, including in Jennifer Walton’s class. Jennifer Walton continued to single M.O. out for her decision and occasionally directed M.O. to stand for the Pledge.

¹ The Holy Bible is the main religious text of the Christian religion.

44. During the break between the fall 2015 and spring 2016 semesters, M.O. decided to switch out of Jennifer Walton's journalism class and instead enroll in the Klein Oak Debate Team in the spring semester of 2016.

45. No disciplinary action was taken against Jennifer Walton for singling M.O. out in class for peacefully and non-disruptively engaging in free speech.

Encounter with Principal Lance Alexander

46. In the spring semester of the 2015-16 school year, M.O. had left her classroom to run a teacher-approved errand. While M.O. was walking down the hall, the Pledge began over the school's public address system. As the Pledge continued, M.O. encountered Defendant Principal Lance Alexander in the hallway, who instructed her to stop walking during the Pledge. M.O. stopped momentarily, but then continued walking, to which Principal Alexander rolled his eyes and made a disapproving noise.

47. Later that day, M.O. spoke to Principal Walters about the incident and the prior instances of teachers treating her negatively for her decision not to participate in the Pledge. M.O. asked if Principal Alexander could be informed that she had the right to not stop walking during the Pledge, at which point Principal Walters asked M.O. to leave the office.

48. During the summer of 2016, LaShan and M.O. met with Defendant Dr. Brian Greeney, Klein Oak's principal at the time, to discuss what steps could be taken to avoid conflicts over the Pledge in the future. Principal Greeney assured them that nothing would happen in the coming year and that he would talk to the teachers and staff during the training taking place before the new school year began.

Veterans Day, 2016

49. Between the start of the 2016-17 academic year and November 11, 2016, M.O.

consistently refrained from participating in the daily recitation of the Pledge.

50. On November 11, 2016, Veterans Day, M.O. again sat out the Pledge.

51. The recitation took place while M.O. was in her algebra classroom, though her teacher, Juddy Burks, was not in the classroom at the time.

52. In response to M.O.'s decision to sit during the Pledge that day, another classmate, H.R., stood on a desk and called M.O. a "bitch."

53. Immediately after the incident in Mr. Burks's classroom and while still on school grounds, H.R. harassed M.O. by posting at least four pictures on the social media platform Snapchat, one of which included the message: "Like if you don't respect [our] country then get the fuck out of it[.]"

54. Upon hearing about this incident, LaShan sent an email to Principal Walters in which she stated:

[H.R.] took it upon herself to call [M.O.] out for not saying the pledge and got the other student to join in. This occurred in Coach Burks's class. He was out of the room. [M.O.] has [H.R.] in her next class as well.

[H.R.'s] behavior was uncalled for and abusive. I am beyond tired today and will no longer tolerate this type of behavior. Students do it because it's allowed and they know they can get away with it because there are no repercussions for their actions.

Can you please address this issue. I will stand behind my daughter's right to not say the pledge (in a silent, respectful manner).

55. In response to this incident, H.R. was told that if she apologized for her actions, she would not face punishment.

56. Later on November 11, 2016, H.R. apologized to M.O. in Principal Walters' office, stating that she did it because members of her family are in the military.

57. On November 14, 2016, LaShan sent an email to Principal Greeney and Superintendent Champion informing them that the school was failing to address the ongoing

issue and that school officials had repeatedly placed the onus for dealing with the issue on M.O.

58. On or about December 9, 2016, M.O. encountered H.R. at school while waiting at the elevators. H.R. said to a classmate, “There’s the bitch that sits for the Pledge.”

59. Later that day, upon hearing about this second incident with H.R., LaShan called Principal Walters, who then asked that M.O. come to her office so the three of them could discuss the incident.

60. During the call, LaShan again stated that she was considering taking legal action, at which point Principal Walters used a two-way radio to request assistance.

61. When M.O. left Principal Walters’ office, Principals Schwebach and Crowson, as well as several school police officers equipped with Tasers and firearms, were waiting outside the office.

62. M.O. informed them that she was going to go back to her classroom to collect her things and then wait outside the building for LaShan to pick her up.

63. Principals Schwebach and Crowson and the officers escorted M.O. back to her classroom to collect her belongings.

64. While escorting M.O., Principal Crowson accused M.O. of acting like a criminal.

65. While collecting her belongings, M.O. asked a classmate, M.G., to accompany her as a witness. That student and the teacher in the classroom, Defendant Angie Richard, accompanied M.O. back into the hall.

66. Upon encountering school security officers and principals outside the classroom, Defendant Richard took M.G. by the arm and returned with her to the classroom.

67. M.O. was then escorted to the door of the school, at which point she went out of the building alone to the parking lot where she waited by the flag pole for her mother to arrive.

68. When LaShan arrived at the school, she and M.O. went back inside and waited outside Principal Greeney's office.

69. Principal Greeney and Principal Walters were speaking inside Principal Greeney's office.

70. When Principal Walters left Principal Greeney's office, she directed M.O. and LaShan inside.

71. During the ensuing conversation, LaShan reiterated that she would be pursuing legal action, and Principal Greeney acknowledged that the harassment M.O. faced had been an ongoing problem.

72. The day after the conversation with Principal Greeney, H.R. was removed from the classes M.O. shared with her for the remainder of the fall semester.

LaShan withdraws M.O. from Klein Oak in favor of homeschooling

73. When classes resumed after the winter break, M.O. was enrolled in the Sociology class taught by Defendant Benjie Arnold (Benjie Arnold). Principal Greeney removed M.O. from Benjie Arnold's sociology class on the first day of the semester.

74. Despite M.O.'s interest in the course material, Principal Greeney removed M.O. from Benjie Arnold's class because H.R. was also in the class and because he believed M.O.'s practice of sitting during the recitation of the Pledge would create conflict with Benjie Arnold.

75. Shortly after M.O. was withdrawn from Benjie Arnold's sociology class, LaShan withdrew her from Klein Oak and chose to homeschool M.O. instead, at her own expense, a decision which was substantially motivated by the treatment M.O. had been subjected to at Klein Oak.

76. While homeschooled, M.O. continued to participate in debate competitions

though she was advised by the school that she could not represent Klein Oak at the competitions and that any costs associated with the competitions would be incurred by LaShan.

77. Between January 26, 2017 and August 21, 2017, LaShan incurred expenses in excess of \$10,000 as a consequence of M.O.'s homeschooling.

78. During the summer of 2017, Principal Greeney left Klein Oak.

79. Defendant Thomas Hensley replaced Brian Greeney as Principal of Klein Oak.

80. On August 15, 2017, the American Atheists Legal Center, on behalf of LaShan and M.O., sent a letter to Principal Hensley informing him that M.O. would be returning to Klein Oak for the 2017-18 academic year and asking that Hensley "ensure that [M.O.]'s constitutional rights are respected during her final year at Klein Oak."

81. In a letter dated August 22, 2017, Ellen H. Spalding, Esq., the attorney representing Klein ISD, responded that "KISD Policy allows a student to be excused from participation in the Pledge of Allegiance" and that Klein Oak administrators were "aware [M.O. would be] returning to Klein Oak High School, and they are pleased that she is."

Benjie Arnold repeatedly calls attention to, and disparages, M.O.'s decision to exercise her free speech right.

82. By the start of the 2017-2018 school year on August 21, 2017, it was widely known among the student body that M.O. regularly refrained from reciting the Pledge.

83. On August 21, 2017, M.O. resumed attending classes at Klein Oak.

84. On August 24, 2017, Benjie Arnold told the students in his sociology class, including M.O., that sitting for the Pledge was a privilege, not a right, and that people who sit for the Pledge are unappreciative and disrespectful, stating that all they do is take from society.

85. On September 20, 2017, Benjie Arnold played "Born in the U.S.A.," by Bruce Springsteen, instructing the class to write down how the song made them feel. He then gave the

students a timed assignment to write down the words to the Pledge of Allegiance, indicating that, because it was written, the students were not actually pledging allegiance to the country.

86. M.O. did not write the words of the Pledge.

87. On September 21, 2017, Benjie Arnold told the class that anyone who did not complete the Pledge assignment would receive a zero and compared people who refuse to say the Pledge to Soviet communists, members of the Islamic faith seeking to impose Sharia law, and those who condone pedophilia. He then distributed all the Pledge assignments to the wrong students and had them redistribute the assignments to the correct classmate, as is his practice.

88. Between September 21, 2017 and the end of the fall 2017 semester, Benjie Arnold subjected M.O. to significantly harsher treatment than any other student by, among other behavior, berating her in class for wrong answers, calling her out because he could not “see her eyes,” and instructing her to move her desk into the middle of the aisle.

Angie Richard’s retaliatory conduct toward M.O. after the filing of the initial complaint.

89. On October 25, 2017, the day after LaShan filed the initial complaint in the above-captioned matter, Angie Richard intervened to prevent students from talking to M.O. about the lawsuit in her classroom outside of class time. She then told M.O. she was doing this for M.O.’s protection.

90. On November 4, 2017, a member of the Klein Oak debate team, J., told M.O. to “go fuck off” and to “go fuck [her]self” while both were at a debate event hosted by Klein Oak. M.O. reported this incident to Defendant Richard.

91. Upon learning of the incident, Defendant Richard spoke to J., who admitted to making the statements.

92. M.O. was counselled by Defendants Richard and Walters not to report the incident until the following Monday, so that the incident would not reflect poorly on the school.

93. No disciplinary action was taken against J.

94. On or around December 6, 2017, a student stole food from M.O.'s bookbag while in Defendant Richard's class. The student admitted the theft to Defendant Richard but was not disciplined.

95. During November and December 2017, Defendant Richard repeatedly asked M.O. for details about the current lawsuit and how students were responding. When M.O. refused to discuss the matter, Defendant Richard has, on separate dates, threatened to send M.O. to Defendant Walters' office, shouted, "Fine, just ignore me," at M.O. during class time,

96. On January 5, 2018, counsel for plaintiff informed Ellen H. Spalding, Esq., an attorney for Klein ISD, of the concerns raised by Defendant Richard's behavior and asked that Defendant Richard refrain from speaking with M.O. about the ongoing litigation.

97. Ellen Spalding responded that she would discuss the matter with Klein ISD administrators.

98. Although M.O. remained on the debate team, Defendant Richard began restricting information disclosed to M.O. concerning debate team events, including the taking of the debate team's yearbook photo, and has discussed M.O. with other students during class time, stating that M.O. is a liar and that her participation in debate team events and projects is meaningless.

99. On February 21, 2018, counsel for plaintiff informed Ellen Spalding of Defendant Richard's escalating behavior. She responded that she would look into the matter and respond the following week.

100. No further response was received.

101. At the time of filing, Defendant Richard has entirely ceased speaking to M.O., communicating only through student intermediaries or another faculty member, Mrs. Cook.

Furthermore, even as of the filing of the instant amended complaint Defendant Richard has relegated Mari to a less prestigious position in a national debate event where Mari had previously performed above the students now occupying the more prestigious position.

V. LEGAL CLAIMS

Count 1: Violation of M.O.'s First Amendment Right to Free Speech

102. Plaintiff reasserts all previous paragraphs.

103. The First Amendment to the United States Constitution, as incorporated and made applicable to the states by the Fourteenth Amendment, provides that “Congress shall make no law . . . abridging the freedom of speech. . . .”

104. This First Amendment right extends to public school students who do not wish to be forced to stand for the Pledge. *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943).

105. Defendants Lance Alexander, Benjie Arnold, Stephen Naetzker, Jennifer Walton, Angie Richard, and Kimberly Walters retaliated against M.O. for exercising her constitutional right to engage in protected speech.

106. Defendants Klein ISD, Bret Champion, Brian Greeney and Thomas Hensley were made aware of the retaliations against M.O. by Defendants Lance Alexander, Benjie Arnold, Stephen Naetzker, Jennifer Walton, Angie Richard, and Kimberly Walters but failed to take steps to remedy the violations and prevent future violations from occurring.

107. The actions of these defendants, governmental actors acting under color of state law and whose actions are attributable to the state, constitute violations of M.O.'s First Amendment right to freedom of speech.

Count 2: Violation of M.O.'s First Amendment Right to Be Free from Religious Establishment

108. Plaintiff reasserts all previous paragraphs.

109. The First Amendment to the United States Constitution, as incorporated and made applicable to the states by the Fourteenth Amendment, provides that “Congress shall make no law respecting the establishment of religion”

110. This First Amendment right extends to public school students, including those who do not wish to recite the Pledge due to its religious content. *Epperson v. Arkansas*, 393 U.S. 97, 106-07 (1968).

111. Defendants Lance Alexander, Benjie Arnold, Stephen Naetzker, Jennifer Walton, Angie Richard, and Kimberly Walters singled M.O. out, subjected her to derision and opprobrium, and otherwise discriminated against M.O. for her sincerely held beliefs, exhibited by her choice to refrain from participating in the daily recitation of the Pledge.

112. Defendants Klein ISD, Bret Champion, Brian Greeney, and Thomas Hensley were made aware of the discrimination against M.O. by Defendants Lance Alexander, Benjie Arnold, Stephen Naetzker, Jennifer Walton, Angie Richard, and Kimberly Walters but failed to take steps to remedy the violations and prevent future violations from occurring.

113. The actions of these defendants, governmental actors acting under color of state law and whose actions are attributable to the state, constitute violations of M.O.’s First Amendment right to be free from religious establishment.

Count 3: Violation of M.O.’s First Amendment Right to the Free Exercise of Religion

114. Plaintiff reasserts all previous paragraphs.

115. The First Amendment to the United States Constitution, as incorporated and made applicable to the states by the Fourteenth Amendment, provides that “Congress shall make no law . . . prohibiting the free exercise [of religion]. . . .”

116. This First Amendment right extends to public school students. *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943).

117. Defendants Lance Alexander, Benjie Arnold, Stephen Naetzker, and Jennifer Walton coerced, or attempted to coerce, M.O. into reciting the Pledge, including its religious content, against her sincerely held beliefs.

118. Defendants Klein ISD, Bret Champion, Brian Greeney, Thomas Hensley, and Kimberly Walters were made aware of the attempts by Defendants Lance Alexander, Benjie Arnold, Stephen Naetzker, and Jennifer Walton to coerce M.O. to engage in religious observance counter to her sincerely held beliefs, but failed to take steps to remedy the violations and prevent future violations from occurring.

119. The actions of Defendants Klein ISD, Bret Champion, Brian Greeney, Lance Alexander, Benjie Arnold, Margaret Bollato, Thomas Hensley, Stephen Naetzker, Jennifer Walton, and Kimberly Walters, governmental actors acting under color of state law and whose actions are attributable to the state, constitute violations of M.O.'s First Amendment right to freely exercise her sincerely held beliefs.

120. The Klein ISD the Board of Trustees delegated its authority to investigate and punish teacher misconduct to the individually named defendants.

Count 4: Violation of M.O.'s 14th Amendment Right to the Equal Protection of the Laws

121. Plaintiff reasserts all previous paragraphs.

122. The Fourteenth Amendment to the Constitution provides that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

123. Defendants Lance Alexander, Benjie Arnold, Stephen Naetzker, Jennifer Walton, Angie Richard, and Kimberly Walters singled M.O. out, subjected her to derision and opprobrium, and otherwise discriminated against M.O. for her sincerely held beliefs, exhibited

by her choice to refrain from participating in the daily recitation of the Pledge.

124. Defendants Klein ISD, Bret Champion, Brian Greeney, and Thomas Hensley were made aware of the discrimination against M.O. by Defendants Lance Alexander, Benjie Arnold, Stephen Naetzker, Jennifer Walton, Angie Richard, and Kimberly Walters but failed to take steps to remedy the violations and prevent future violations from occurring.

125. Defendants Klein ISD, Bret Champion, Brian Greeney, Thomas Hensley, and Kimberly Walters selectively failed to enforce Klein ISD's anti-bullying policy, Policies FFI(LEGAL) and FFI(LOCAL), in instances in which M.O. was subjected to conduct by other students that fell within the scope of the policy, and did so out of animosity or ill will directed toward M.O. as a result of her decision to refrain from participating in the daily recitation of the Pledge.

126. Defendants Benjie Arnold, Stephen Naetzker, Jennifer Walton, and Angie Richard engaged in bullying behavior directed toward M.O. and fostered an educational environment which encouraged students to engage in bullying behavior directed toward M.O., in violation of Policies FFI(LEGAL) and FFI(LOCAL) and did so out of animosity or ill will directed toward M.O. as a result of her decision to refrain from participating in the daily recitation of the Pledge.

127. The actions of these defendants, governmental actors acting under color of state law and whose actions are attributable to the state, constitute violations of M.O.'s Fourteenth Amendment right to the equal protection of the laws.

128. Defendant Klein ISD the Board of Trustees delegated its authority to investigate and punish teacher misconduct to the individually named defendants.

Count 5: Violation of LaShan Arceneaux's Fourteenth Amendment Right to the Equal Protection of the Laws

129. Plaintiff reasserts all previous paragraphs.

130. Defendants Klein ISD, Bret Champion, Brian Greeney, and Thomas Hensley received both verbal and written notice that LaShan wished for M.O. to be excused from the daily pledge recitation, as permitted under Policy EC(LEGAL).

131. Despite such notice, Defendants Klein ISD, Bret Champion, Brian Greeney, and Thomas Hensley failed to take adequate steps to ensure that Policy EC(LEGAL) was complied with and that M.O. would not be subjected to punishment for refraining from participating in the recitation of the Pledge.

132. The decisions by Defendants Klein ISD, Bret Champion, Brian Greeney, and Thomas Hensley to permit LaShan's daughter to be punished for refraining from reciting the Pledge, despite written notice from LaShan, was arbitrary and capricious and resulted in differential treatment of LaShan than any other similarly situated parent who may have submitted notice to Klein ISD that they wished their child to be exempt from Policy EC(LEGAL).

133. The actions by these defendants, governmental actors acting under color of state law and whose actions are attributable to the state, constitute violations of LaShan's Fourteenth Amendment right to the equal protection of the laws.

134. Defendant Klein ISD the Board of Trustees delegated its authority to investigate and punish teacher misconduct to the individually named defendants.

Count 5: Violation of M.O.'s Fourteenth Amendment Right to Due Process

135. Plaintiff reasserts all previous paragraphs.

136. The Fourteenth Amendment to the Constitution provides that "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

137. Defendant Stephen Naetzker deprived M.O. of her liberty and property without due process of law.

138. Defendant Kimberly Walters deprived M.O. of her liberty and property without due process of law. In addition, Defendant Kimberly Walters was aware of Stephen Naetzker's deprivation of M.O.'s liberty and property without due process but failed to take steps to remedy the violation.

139. Defendants Klein ISD, Bret Champion, and Brian Greeney were aware of the deprivations by Defendants Stephen Naetzker and Kimberly Walters but failed to take steps to remedy the violations and prevent future violations from occurring.

140. The actions of Klein ISD, Bret Champion, brian Greeney, Stephen Naetzker, and Kimberly Walters, governmental actors acting under color of state law and whose actions are attributable to the state, constitute violations of M.O.'s Fourteenth Amendment right not to be deprived of property or liberty without due process of law.

141. The Klein ISD the Board of Trustees delegated its authority to investigate and punish teacher misconduct to the individually named defendants.

VI. REQUEST FOR RELIEF

WHEREFORE, the plaintiff respectfully requests that this Court:

- a. Enter judgment awarding the plaintiff and M.O. compensatory damages against defendants jointly and severally in an amount to be determined;
- b. Declare that the defendants have violated the rights of the plaintiff and M.O. for the reasons described above;
- c. Enter judgment awarding the plaintiff exemplary and punitive damages against the individual defendants;

- d. Order that Klein ISD immediately instruct each and every employee that students have the right to choose not to stand for the Pledge; to appropriately discipline any Klein ISD employee that interferes with the exercise of that right; and to put procedures in place to ensure that all requests by parents that a student be exempt from Policy EC(LEGAL) are honored;
- e. Award the plaintiff reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;
- f. Award pre- and post-judgment interest;
- g. Award all other relief to which plaintiff shows herself entitled.

Respectfully Submitted,
KALLINEN LAW PLLC

/s/ Randall L. Kallinen

Randall L. Kallinen
State Bar of Texas No. 00790995
U.S. Southern District of Texas Bar No.: 19417
Admitted, U.S. Supreme Court, 5th U.S. Circuit
Court of Appeals, Eastern, Southern and Western
Districts of Texas
511 Broadway Street
Houston, Texas 77012
Telephone: 713.320.3785
FAX: 713.893.6737
E-mail: AttorneyKallinen@aol.com
Attorney for Plaintiff

/s/Geoffrey T. Blackwell

GEOFFREY T. BLACKWELL
American Atheists Legal Center
1220 L St. NW, Suite 100-313
Washington, D.C. 20005
Telephone: 908.276.7300, ext. 10
FAX: 908.344.3927
E-mail: legal@atheists.org
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been transmitted to the all counsel appearing in this cause and pro se parties on this 12th day of March

2018 by filing with the ECF System of the United States District Court for the Southern District of Texas.

/s/ Randall L. Kallinen
Randall L. Kallinen