



Amendments, U.S. Const. amends. I, XIV § 1, and Texas' Religious Freedom Restoration Act ("TRFRA"), Texas Civil Practice & Remedy Code Chapter 110; along with C.G.'s and D.G.'s right to free expression under the First and Fourteenth Amendments. This action seeks declaratory and injunctive relief against MISD pursuant to Texas Civil Practice & Remedy Code § 110.005, for the above violations.

4. Plaintiffs have no plain, speedy, or adequate remedy at law other than the relief requested in this complaint. Unless enjoined by this Court, MISD's failure to grant an exception to MISD school policy will continue to impermissibly burden Plaintiffs' constitutional and statutory rights. While the event giving rise to this suit initiated in August 2017, MISD has expanded upon its denial to C.G. and D.G. of full access by barring them from some class-required attendance participation events (band concert performance for band students) and all extracurricular school activities.

#### JURISDICTION AND VENUE

5. This Court has original jurisdiction pursuant to 28 U.S.C §§ 1331 and 1343 over Plaintiffs' causes of action under the Constitution of the United States and 42 U.S.C. § 1983, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiff's cause of action under TRFRA. Declaratory and injunctive relief is authorized by 28 U.S.C. § 2201 and § 2202, Texas Civ. Prac. & Rem. Code § 110.005(a), and Fed. R. Civ. P. 57 and 65.

6. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. § 1391(b) because all of the events giving rise to the claims made in this complaint occurred and will occur in this judicial district and because MISD is located in this judicial district.

#### PARTIES

7. Plaintiff C.G. is a minor, aged 13 years old, who resides in Mathis, Texas, within the boundaries of MISD, and is a seventh grade student at Mathis Middle School.

8. Plaintiff D.G. is a minor, aged 12 years old, who resides in Mathis, Texas, within the boundaries of MISD, and is a seventh grade student at Mathis Middle School.

9. Plaintiff Pedro Gonzales is over the age of eighteen and resides in Mathis, Texas, within the boundaries of MISD. He brings this lawsuit individually, and on behalf of his sons C.G. and D.G.

10. Plaintiff Belen Gonzales is over the age of eighteen and resides in Mathis, Texas, within the boundaries of MISD. She brings this lawsuit individually, and on behalf of her sons C.G. and D.G.

11. Defendant MISD is a political subdivision of the State of Texas and is responsible for providing public education to the children within its jurisdiction and for administering the laws and policies that govern schools within its jurisdiction, including Mathis Middle

School. MISD and its Board of Trustees, officials, and employees acted under color of state law at all relevant times and for all relevant acts alleged herein.

### STATEMENT OF FACTS

12. C.G. and D.G. are Roman Catholic and of Hispanic decent, and have exercised their freedom of religion and have practiced part of their religious belief by keeping a long strand of hair in the back of their head that neither has cut since birth as part of a religious promise. This religious promise is a direct practice of their faith, was made at their birth by their parents, and has since been made individually by each child, based upon their own discernment. Prior to August 2017, MISD inquired about this long strand of hair on three (3) separate occasions, August 2010 when C.G. was enrolling in kindergarten, August 2014 when enrolling in fourth grade, and August 2016 when enrolling in middle school. On each occasion, C.G. and D.G. provided verified proof of this practice being a part of his religious belief and practice, and MISD allowed him to enroll and participate in all school activities without any restriction. The long strand of hair is part of C.G.'s and D.G.'s religious exercise.

13. On August 10, 2017, MISD informed C.G. that he was being denied the opportunity to participate in athletics, particularly football, due to his hair length. C.G. requested a religious exemption to the MISD policy and was effectively denied a religious exemption in that he was barred from participating in athletics. By what was conveyed to the family, MISD mandated C.G. cut his strand of hair in order for him to participate in football, a clear violation of his freedom of religion, freedom to exercise his religion, freedom of speech, and discrimination.

14. Members of the MISD coaching staff flaunted their authority through ridicule and shaming of C.G. telling the child that "all it takes is a quick snip of the scissors for you to get your football equipment".

15. Since August 2017, C.G. has repeatedly requested the legal basis that MISD relies on in their decision to deny a religious exemption and the legal basis for having and relying on a school district policy that denies students their freedom of religion and ability to practice their religion. As of the filing of this lawsuit, no legal basis has been provided.

16. Throughout September, October, and November, Plaintiffs have had multiple conferences with MISD at both the campus level and school district level requesting the religious exemption or, alternatively, the legal basis in support of their decision to discriminate and deny full access to a student exercising his religious belief. MISD continually denied the requested relief, and has further failed to provide any authority in support of its decision.

17. In an undated letter in December 2017, MISD informed C.G., D.G., and their parents that C.G. and D.G. were being barred from participating in UIL extracurricular activities again due to their exercise of religion related to their hair. The letter was sent by the "Mathis Middle School Administration" and specifically had the signature line for Claire

Reeves - UIL Academic Coordinator, Randy Tiemann - Mathis Middle School Principal, and Melanie Arias - Mathis Middle School Assistant Principal.

18. In order to have full access to all educational opportunities MISD offers, MISD seeks to force C.G. and D.G. to cut their hair, something that would intrude on their ability to exercise their religion freely, and that infringes upon their freedom of speech and expression. MISD says that they are not denying them their right to an education, but extracurricular participation is part of the educational development of students so much so that school districts embrace and encourage said extracurricular participation. Because C.G. and D.G. are continuing to exercise their religious beliefs and faith, and their freedom of speech, MISD is denying C.G. and D.G. equal access to all school activities.

Plaintiffs' Extensive Efforts to Persuade MISD to Respect their Religion and Constitutional Rights

19. On or about August 8, 2017, MISD Athletic Director Rod Blount informed Pedro Gonzales, father of C.G., via telephone call, that C.G. was being denied the opportunity to participate in football because C.G. had the long strand of hair. C.G. and his parents informed Blount, along with MISD Superintendent Benny Hernandez, of C.G.'s religious practice, requested a religious exemption but were denied and C.G. was barred from athletic participation.

20. The Gonzales family provided written documentation to the school and have discussed with Mr. Blount the basis for their request for a religious exemption. Additionally, requests to meet with administration were made, directly and through this legal counsel, and no one extended an offer to discuss this matter in further detail. Requests were made for a written response to the decision and basis of the decision, but no response was provided.

21. On August 9, 2017, a formal protest letter to MISD's superintendent Benny Hernandez was submitted on behalf of Gonzales Family regarding Mr. Rod Blount's decision to deny C.G. athletic participation. No response was provided by MISD.

22. On August 18, 2017, a Level One grievance was filed with Mathis Middle School Principal Randy Tiemann grieving against Rod Blount and his decision to deny C.G. athletic participation despite being made aware that C.G. maintained his hair as part of a religious belief and exercise.

22. On September 7, 2017, a Level One parent conference was held with Mathis Middle School Principal Randy Tiemann and Mathis Middle School Assistant Principal Melanie Arias. At that time, Plaintiffs informed MISD that their policy substantially burdens C.G.'s religious exercise in violation of TRFRA. Specific request was made for a religious exemption to the school district policy being used to deny C.G. full access to all school activities. Alternatively, specific request was made for MISD to provide the legal basis and authority upon which MISD was basing its decision.

23. On September 19, 2017, a Level One grievance response was provided by MISD informing C.G. that he was being denied a religious exemption and was further denied access to athletic participation. No legal authority was cited nor provided. *See Exhibit A, attached hereto.*

24. C.G. appealed the Level One decision and on October 11, 2017, a Level Two grievance was filed with MISD Superintendent Benny Hernandez grieving against Randy Tiemann on the basis that the primary issue of allowing a religious exception to MISD school policy was not addressed in the Level One grievance, C.G.'s right to equal access to all school related activities was being denied due to child exercising and practicing his religion thus violating his constitutionally protected right of freedom of religion, and for the failure to provide any legal authority in support of MISD's decision.

25. On October 24, 2017, the Level Two conference was held between C.G.'s parents and MISD Superintendent Benny Hernandez. At that time, Plaintiffs again informed MISD that their policy substantially burdens C.G.'s religious exercise in violation of TRFRA. Specific request was made for a religious exemption to the school district policy being used to deny C.G. full access to all school activities. Alternatively, specific request was made for MSID to provide the legal basis and authority upon which MISD was basing its decision.

26. On November 7, 2017, Benny Hernandez informed C.G. that his requested relief for a religious exemption was being denied and that he was barred from athletic participation, citing only their school district policy on dress code. No legal authority was provided. *See Exhibit B, attached hereto.*

27. On or about December 1, in an undated letter, MISD informed C.G., D.G., and their parents, that their exclusion from other school activities was being expanded upon and that C.G. and D.G. was barred from participation in any UIL activities. Because MISD is clearly continuing their discriminatory practice in direct violation of C.G.'s and D.G.'s constitutional rights, and violating TRFRA, C.G. seeks immediate injunctive and compensatory relief. Added to these detrimental effects is the serious impact on C.G.'s, D.G.'s and the Gonzales' emotional and psychological health caused by MISD's efforts.

MISD's Lack of an Exemption is an Effective Punishment to C.G. and D.G.

28. At no time during or prior to the conferences between Plaintiffs and MISD did MISD propose or inquire into the adequacy of an exemption that would allow C.G. and D.G. full access to all of MISD activities. By not even proposing a potential exemption, MISD was effectively punishing C.G. and D.G. for exercising their religious beliefs.

29. MISD, by and through Superintendent Benny Hernandez, has already effectively allowed a limited exemption in that C.G. and D.G. have not been barred from enrolling or attending school at MISD, and from already having allowed participation in student council, band concerts, art club, and video game programming club. Said limited exemption has thrice been requested by Plaintiffs and thrice granted by MISD. For

reasons unknown to Plaintiffs, MISD have chosen to deny C.G. and D.G. a full exemption and have denied them full access. This action has been degrading and has caused extreme embarrassment and mental anguish, causing C.G. to doubt and in some ways resent religion, heritage, and identity. MISD actions substantially burden C.G.'s and D.G.'s religious exercise in violation of TRFRA, Tex. Civ. Prac. & Rem. Code § 110.006.

## CAUSES OF ACTION

### FIRST CAUSE OF ACTION

#### FREE EXERCISE CLAUSE OF THE 1<sup>ST</sup> AMENDMENT OF THE UNITED STATES CONSTITUTION

30. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

31. MISD's punitive policy is not a neutral rule of general applicability. It is a targeted policy specifically designed to inflict degradation, embarrassment and anxiety on C.G. and D.G. for expressing and practicing their heritage, identity and religious beliefs.

32. MISD's adoption and enforcement of this punitive policy substantially burdens C.G.'s AND D.G.'S free exercise of his religious beliefs.

33. MISD's punitive policy does not further any compelling governmental interest, nor is it the least restrictive means of, or rationally related to, achieving MISD's asserted interest that the privilege of representing MISD "carries with it a greater responsibility to conduct oneself with respect and dignity, and to serve as a role model for all students."

34. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

35. MISD's policy places a substantial burden on Plaintiff C.G.'s free exercise of his religious beliefs, as set forth above. Because it imposes this burden, MISD's policy is punitive in nature and effect, and is not a reasonable accommodation of C.G.'s sincerely held religious beliefs.

36. MISD's policy does not further any compelling governmental interest. MISD has not asserted any basis for having this policy.

### SECOND CAUSE OF ACTION

#### TEXAS RELIGIOUS FREEDOM RESTORATION ACT,

TEXAS CIVIL PRACTICE & REMEDIES CODE § 110.001, *ET SEQ.*

37. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

38. MISD's punitive policy places a substantial burden on Plaintiff C.G.'s and D.G.'s free exercise of their religious beliefs, as set forth above. Because it imposes this burden, MISD's punitive policy does not afford any accommodation of C.G.'s and D.G.'s sincerely held religious beliefs.

39. MISD's punitive policy does not further any compelling governmental interest, nor is it the least restrictive means of, or rationally related to, achieving MISD's asserted interest that the privilege of representing MISD "carries with it a greater responsibility to conduct oneself with respect and dignity, and to serve as a role model for all students."

THIRD CAUSE OF ACTION

FREE EXPRESSION CLAUSE OF THE 1<sup>ST</sup> AMENDMENT

OF THE UNITED STATES CONSTITUTION

40. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

41. Plaintiffs C.G. and D.G. have a single long strand of hair on the back of their head kept in accordance with their practice of their religious beliefs, but also as an outward expression of their adherence to those beliefs, ethnic heritage, and very identity as a practicing Catholic.

42. There is a great likelihood that this particularized message will be understood by those observing C.G.'s and D.G.'s long braids.

43. MISD's punitive policy suppresses C.G.'s and D.G.'s expression by forcing him literally to stuff their Catholic religion, heritage and identity—represented by their hair—down their shirt and out of sight at all times.

44. MISD's punitive policy restricts C.G.'s and D.G.'s First Amendment activities far more than is necessary to facilitate their asserted interests that the privilege of representing MISD "carries with it a greater responsibility to conduct oneself with respect and dignity, and to serve as a role model for all students."

FOURTH CAUSE OF ACTION

DUE PROCESS CLAUSE OF THE 14<sup>TH</sup> AMENDMENT

OF THE UNITED STATES CONSTITUTION

45. Plaintiffs incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

46. Ms. Belen Gonzales and Mr. Pedro Gonzales have exercised the constitutional and human right that every parent has to raise their child according to the religious beliefs and cultural identity they espouse. They made this choice so that C.G. and D.G. would actively practice their religion and to identify closer with their religious beliefs, ethnicity and culture.

47. C.G. and D.G. have also opted to, through their own discernment, to embrace their parent's initial promise, and have made the promise their very own. They have done so as to actively practice their religion and to identify closer with their religious beliefs, ethnicity and culture.

48. Unchecked, MISD's enforcement of its punitive policy will likely cause C.G. and D.G. to be ashamed of, resent or even abandon the beliefs and identity that Ms. And Mr. Gonzales have worked so hard to teach them in the 12 and 13 years of their lives.

49. MISD's punitive policy does not bear more than a reasonable relation to their stated interests.

50. MISD's adoption and enforcement of its punitive policy deprives Plaintiffs Belen Gonzales and Pedro Gonzales of their liberty interest, secured by the Substantive Due Process Clause of the Fourteenth Amendment, in directing the upbringing of their sons.

**ATTORNEYS' FEES AND COSTS**

Plaintiffs are entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and Texas Civ. Prac. & Rem. Code § 110.005(a)(4).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the following relief:

- a. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that MISD's adoption and enforcement of its punitive policy for C.G.'s and D.G.'s hair violates the First and Fourteenth Amendment to the United States Constitution and Texas' RFRA as set forth herein;
- b. A temporary restraining order and a preliminary and permanent injunction pursuant to Fed. R. Civ. P. 65 prohibiting MISD and its officials, employees, agents, assigns and all those working in concert with them, from disciplining or restricting C.G. and D.G. in any way that violates their rights to free exercise of religion or free expression, including by excluding their participation, attendance, or involvement in any activities offered by

MISD, either at school or school events, either at home or away, including the bus, with their long hair worn outside of their clothing;

c. An order reversing the disciplinary and exclusionary action already taken against C.G. and DG. for attending school with their hair;

d. An order awarding Plaintiffs costs and attorneys' fees, pursuant to the statutes cited herein, 42 U.S.C. § 1988, Texas Civ. Prac. & Rem. Code § 110.005(a)(4), and any other applicable law;

e. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

By my signature below, I certify that on March 9, 2018, a true copy of the foregoing document was emailed to counsel of record Dennis Eichelbaum at [dje@edlaw.com](mailto:dje@edlaw.com), and was filed in the above-entitled action with the Clerk of the Court using the ECF system, which will send notification of this filing to the following counsel of record:

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