

II.

JURISDICTION AND VENUE

2. This action raises federal questions under the First and Fourteenth Amendments to the United States Constitution.

3. This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983.

4. Venue is proper in the Eastern District of Michigan under 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to this action occurred within the District.

5. This Court is authorized to grant the relief requested under 28 U.S.C. §§ 2201-02.

6. This Court is authorized to grant Plaintiff's prayer for relief regarding costs, including reasonable attorney's fees, under 42 U.S.C. § 1988.

III.

PARTIES

7. Plaintiff Joel Curry, a minor, is and was at all times relevant herein, a resident of Saginaw, Michigan and is currently in the fifth grade at Handley School Program for the Creative and Academically Talented, a charter school under the jurisdiction of the School District of the City of Saginaw.

8. Paul and Melanie Curry are, and were at all times relevant herein, the parents of Joel Curry and residents of Saginaw, Michigan.

9. Defendant School District of the City of Saginaw is a public entity established, organized, and authorized under and pursuant to the laws of Michigan, with the authority to sue and be sued in its own name.

10. Defendant, Irene Hensinger, is and was at all times relevant herein, the Principal of Handley School. This Defendant is sued in her official and individual capacities.

IV.

STATEMENT OF FACTS

11. Handley School (“School”) is a charter school under the supervision and control of Defendant School District of the City of Saginaw (“School District”).

12. The School enrolls students from kindergarten to fifth grade.

13. Defendant Irene Hensinger (“Principal”) is the Principal of the School.

14. Joel Curry is currently a fifth grade student at the School.

Classroom City

15. As part of its curriculum, the School holds an annual event called “Classroom City.”

16. Classroom City is an economic simulation that has been a part of the fifth grade curriculum at the School for many years.

17. In this simulation, the fifth grade students develop a product to “sell” out of their “store.”

18. The students choose their own product, as long as the product is not food-related, or dangerous.

19. Typically, students fashion storefronts from large, cardboard boxes to mimic a small commercial district.

20. The product chosen is to be based on a “market survey,” described in writing, and a prototype provided.

21. This process takes several weeks of preparation by the students.

22. The market aspect is only a part of a larger establishment of a government system, currency, election of officials, banking, and security; something similar to what every city would need to operate.

23. The products are produced at home.

24. For a three-day period, shopping times are held during the school day, during which parents, guests, and other kindergarten through fifth grade students in the School are encouraged to shop and purchase.

25. School-created “money” is used for the purchases.

26. In 2003, Classroom City occurred on December 11th, 12th, and 16th.

Joel Curry’s Product

27. To fulfill the Classroom City assignment, Joel Curry produced a Christmas ornament made from beads shaped and colored to resemble a candy cane.

28. The ornament included a card that told the story of the candy cane.

29. The card read:

“The meaning of the Candy Cane”

Hard Candy:

Reminds us that Jesus is like a “rock,” strong and dependable.

The Color Red:

Is for God's love that sent Jesus to give his life for us on the cross.

The Stripes:

Remind us of Jesus' suffering – His crown of thorns, the wounds in His hands and feet, and the cross on which He died.

White Candy:

Stands for Jesus as the holy, sinless, Son of God.

Cane:

Is like a staff used by shepherds in caring for sheep. Jesus leads us and watches over us when we trust in Him.

The Letter "J":

Is for the Name of Jesus, our Lord and Savior, born on Christmas Day.

30. Though the attached card referenced "hard candy" and "white candy," Joel's ornaments were not actual candy.

31. Joel's ornament prototype was approved by his teacher.

32. At the time the ornaments were approved, the explanatory cards were not yet attached because they took more time to prepare than the ornaments and were not ready until the week of Classroom City.

33. Joel brought his ornaments to school on the first day of Classroom City, with the cards attached.

34. The attachment was considered an "add-on" to his product.

35. Other students also included last minute "add-ons" to their products.

36. "Add-ons" were specifically provided for in the parameters of the Classroom City assignment.

Ornament Censorship

37. On the first day of Classroom City, Joel's teacher saw Joel's ornament and

required him to clip off the attached card before he could sell his product.

38. The teacher stated that the reason was because the card contained a religious message, and she wasn't sure such a message was legal.

39. Later that day, Melanie Curry, Joel's mother, provided the teacher with readily-available information on the First Amendment – specifically its protection of private religious speech.

40. Mrs. Curry informed the teacher that she believed Joel's ornaments were private speech and that there was nothing impermissible about them.

41. On the second day of Classroom City, Joel was allowed to sell his ornaments with the card attached as he had prepared them.

42. On the third day of Classroom City, the Principal called Mrs. Curry into her office and said that, because the attached card was “religious literature,” it was not permitted.

43. The Principal stated that “religious literature” cannot be distributed during instructional time.

44. Mrs. Curry asked for clarification of the Principal's position.

45. The Principal said that she meant that religious literature could not be distributed from “bell ring to bell ring” – the entire school day.

46. The Principal informed Mrs. Curry that Joel could not sell his product in Classroom City with the card attached.

47. Joel again clipped off the attached cards and sold his product for the remainder of the third day.

48. Joel intended to distribute his ornament with its attachment solely within the confines of Classroom City.

49. Persons touring Classroom City had the free choice to buy or not to buy the products on display.

50. No person was required to purchase any particular product at Classroom City.

51. To obtain the card attached to Joel's ornaments, a person would have had to purchase the ornament from Joel's "store" in Classroom City.

52. Another student made candy cane shaped ornaments similar to Joel's – without the card – and was allowed to sell them all three days of Classroom City.

53. On February 3, 2004, counsel for plaintiffs sent a letter to Principal Hensinger notifying her of a potential violation of Joel's constitutional rights.

54. On February 10, 2004, Mr. B.J. Humphreys, attorney for the School District, sent a letter to counsel for plaintiffs stating that "[i]n our opinion, the distribution of religious oriented materials as a part of this regular classroom curriculum does not fall under the freedom of speech covered under the First Amendment."

55. On April 20, 2004, Mrs. Curry met again with Principal Hensinger to discuss the issue of Joel's Classroom City project.

56. Mr. B.J. Humphreys, attorney for the School District, was present at the meeting.

57. Mrs. Curry reminded the Principal and Mr. Humphreys that her daughter, also a student at the School, had written an essay about Jesus and had been permitted to display that essay on the wall of the School with the other students' essays.

58. Mrs. Curry was informed that the display of her daughter's essay was permissible, but her son's candy cane ornament with the attachment was not.

59. Mrs. Curry was again informed that the reason that Joel's attachment was not allowed was because it consisted of printed religious material.

60. At no time were Paul and Melanie Curry informed that Joel's ornament failed to meet the curriculum requirements.

61. Joel received an "A" for his Classroom City product.

62. Joel's grade was not affected by the add-on of the explanatory card to his ornament.

63. No reasonable teacher would have had a difficult time evaluating Joel's compliance with the assignment because his ornament included an explanatory card.

64. No reasonable teacher would have had a difficult time grading Joel's performance as part of Classroom City because his ornament included an explanatory card.

65. No reasonable teacher would have had to become involved in a discussion of Joel's personal religious beliefs because his ornament included an explanatory card.

66. The educational purpose of Classroom City, as specifically relating to Joel, was not impeded because his ornament included an explanatory card.

67. During the 2002 Classroom City event, another student sold globe-shaped ornaments depicting Mary, Joseph, and Jesus.

68. Mary, Joseph, and Jesus are prominent religious figures in the Christian faith.

69. This student was not prevented from selling these globe-shaped ornaments containing religious expression as part of Classroom City.

V.

STATEMENTS OF LAW

70. Students do not shed their constitutional rights at the schoolhouse gate.
71. Non-disruptive, private, student expression is protected by the First Amendment.
72. Religious speech is fully protected by the First Amendment.
73. A student may fulfill an open-ended class assignment by including religious expression so long as the religious expression fulfills the class assignment requirements.
74. Joel Curry's ornament was private expression that did not bear the imprimatur of the school.
75. Given the purpose of Classroom City, the net effect of the Principal's actions was to communicate that a) products with religious expression are unwelcome in a city; and b) unwelcome religious expression may be censored.
76. All alleged acts of the Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color and pretense of state law, including the statutes, regulations, customs, policies and usages of the State of Michigan.
77. Unless and until the enforcement of the Defendants' current policy and practice is enjoined, plaintiffs will suffer and continue to suffer irreparable harm to their federal constitutional rights.

VI.

FIRST CAUSE OF ACTION

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

78. Plaintiffs hereby incorporate and reallege all preceding paragraphs.
79. The First Amendment's Freedom of Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits censorship of religious expression.
80. Defendants violated Joel's First Amendment right to freedom of speech by censoring his candy cane ornament with the attached religious message.
81. Defendants' policies and practice are a prior restraint of Joel's expression.
82. Defendants' policies and practice allow school officials to exercise unbridled discretion to discriminate against student expression on the basis of content or viewpoint.
83. The very existence of unbridled discretion is a form of viewpoint discrimination.
84. Defendant Hensinger exercised her unbridled discretion to ban Joel's expression.
85. Defendants' policies and practice chill the speech of third parties who might seek to incorporate private religious expression as part of classroom assignments.
86. Defendants' policies are vague and overbroad.
87. Defendants' policies and practice are content-based restrictions on Joel's expression.
88. Defendants have denied Joel his right to freedom of speech by discriminating against him on the basis of the content of his expression.
89. Defendants' policies and practice are viewpoint-based restrictions on Joel's expression.
90. Defendants have denied Joel's right to freedom of speech by discriminating against him on the basis of the religious viewpoint of his expression.

91. No compelling state interest exists to justify the ban of Joel's expression.

92. Defendants' policies and practice are not the least restrictive means to accomplish any permissible government purpose sought to be served by the actions.

93. Defendants' policies and practice do not leave open ample alternative channels of communication for Joel Curry.

94. Defendants' policies and practice unconstitutionally chill and abridge Joel's right to freely express himself within the parameters of the Classroom City assignment.

95. Defendants' violation of Joel's right of free speech have caused him to suffer irreparable injury.

96. Joel has no adequate remedy at law to correct the continuing deprivations of his most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully request that the Court grant the relief set forth hereinafter in the prayer for relief.

VII

SECOND CAUSE OF ACTION

VIOLATION OF THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

97. Plaintiffs hereby incorporate and reallege all preceding paragraphs.

98. Defendants' policies and practice of banning Joel's ornament with its attached religious message are neither facially neutral nor generally applicable in respect to religion.

99. Defendants' policies and practice of banning Joel's ornament with its attached religious message selectively impose a burden on expression based upon the religious or non-religious nature of the expression.

100. Defendants have no compelling reason that would justify banning Joel's ornament with its attached religious message.

101. Defendants' policies and practice therefore violate the Free Exercise Clause of the First Amendment to the United States Constitution as incorporated and applied to the states under the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully request that the Court grant the relief set forth hereinafter in the prayer for relief.

VIII.

THIRD CAUSE OF ACTION

VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

102. Plaintiffs hereby incorporate and reallege all preceding paragraphs.

103. The First Amendment's Establishment Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits hostility to religion.

104. Defendants' policies and practice of banning Joel's ornament with its attached religious message are not neutral, but are invidious and hostile toward religion.

105. No compelling state interest exists to justify the censorship of Joel's religious expression.

106. Defendants' policies and practice therefore violate the Establishment Clause of the First Amendment to the United States Constitution as incorporated and applied to the states under the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully request that the Court grant the relief set forth hereinafter in the prayer for relief.

IX.

FOURTH CAUSE OF ACTION

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

107. Plaintiffs hereby incorporate and reallege all preceding paragraphs.

108. Defendants' policies and practice preventing religious expression as part of the Classroom City assignment fail to adequately advise, notify, or inform students that religious expression is prohibited.

109. Because Defendants' policies and practice preventing religious expression as part of the Classroom City assignment fail to adequately advise, notify, or inform students, they are unconstitutionally vague, on their face and as applied and threatened to be applied, in violation of the due process guarantee of the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully request that the Court grant the relief set forth hereinafter in the prayer for relief.

X.

FIFTH CAUSE OF ACTION

VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

110. Plaintiffs hereby incorporate and reallege all preceding paragraphs.

111. Under their policies and practice, Defendants have allowed other similarly-situated students to sell ornaments containing religious expression during Classroom City.

112. Defendants allow other students to distribute literature during the school day that does not have religious content or express a religious viewpoint.

113. The Defendants have treated Joel disparately when compared to similarly-situated students by banning only Joel's religious expression.

114. Defendants have no compelling reason that would justify their banning Joel's ornament with its attached religious message.

115. Defendants' policies and practice therefore violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully request that the Court grant the relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. That this Court issue Preliminary and Permanent Injunctions enjoining Defendants, Defendants' agents, employees, and all persons in active concert or participation with them from violating Joel's constitutional rights by banning religious expression that otherwise fulfills classroom assignments;

B. That this Court render a Declaratory Judgment declaring that Defendants' policies and practice of banning religious expression that otherwise fulfills classroom assignments violates the First and Fourteenth Amendments to the United States Constitution;

C. Grant to Plaintiffs an award of nominal damages in an amount deemed appropriate by this Court;

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

E. Retain jurisdiction of this matter for the purpose of enforcing this Court's order;

F. Grant to the Plaintiffs the reasonable costs and expenses of this action, including attorney's fees, in accordance with 42 U.S.C. § 1988; and

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

Respectfully submitted this ___ day of June, 2004.

By: _____

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* Admission application submitted concurrently with this Complaint.

VERIFICATION

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

Dated this _____ day of June, 2004

Paul Curry

Melanie Curry