

UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

**K.R., by and through her next friend,  
TIFFANY HENDERSON,**

Plaintiff,

v.

**UNIFIED SCHOOL DISTRICT NO. 204,**

Defendant.

**Case No. 2:13-cv-2604**

**VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Now comes Plaintiff, K.R.,<sup>1</sup> by and through her next friend, Tiffany Henderson, pursuant to the Federal Rules of Civil Procedure, and for her 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, the Fourteenth Amendment, and the Kansas Preservation of Religious Freedom Act brought to remedy a violation of the constitutional rights of Plaintiff K.R., a student at Robert E. Clark Middle School in Bonner Springs, Kansas.
2. Plaintiff brings this action challenging Defendant Unified School District No. 204's (the "District") censorship of Plaintiff's religious flyers inviting students to participate in the annual See You at the Pole, and other similar events.
3. The District prohibited Plaintiff's religious flyers pursuant to its policies.
4. The District, by policy and practice, permits students to distribute materials at school during non-instructional time as long as a student is not "forced to participate in the

---

<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 5.2(a), K.R. is identified by her initials, rather than her full name.

distribution of any non-school materials in the schools.” *See* District Regulation KI-R.

5. Like students at any school in America, students at Clark Middle School routinely distribute a variety of written materials to their classmates, including, notes, invitations to birthday parties and other non-school events, and share copies of interesting magazine, articles, pamphlets, or books with their friends.
6. The District, by policy and practice, also permits students, student groups, and community organizations to post flyers in schools, including school hallways.
7. The District has previously allowed the posting of materials, including a decorative, hand-made poster of a tombstone with the words “RIP” and “Here Lies K-STATE ... I AM GLAD YOU ARE GONE FOREVER BECAUSE YOU TRY TO BE AS GOOD AS KU BUT YOUR ARE NOT.”
8. The District has also permitted a decorative, hand-made poster of rap artist Lil Wayne with the words “Good Kush and Alcohol,” posters and banners promoting school dances and other events, and posters advertising “Got Milk” and the products of the local dairy council.
9. The District has, by policy and practice, prohibited the Plaintiff from distributing or posting her religious flyers inviting students to participate in the annual See You at the Pole Event at Clark Middle School.
10. District Policy KI, entitled “Free Materials Distribution in Schools” states:

Distribution of Religious Materials  
The distribution of any religious materials is prohibited on school grounds or in any attendance facility before, during or after the school day or a school activity.
11. Plaintiff challenges District Policy KI facially and as-applied to her religious literature.
12. The District’s censorship of Plaintiff’s religious speech, and the Policy on which that

ensorship was based, violate the First and Fourteenth Amendments to the United States Constitution, and the Kansas Preservation of Religious Freedom Act.

**II. JURISDICTION AND VENUE**

13. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, under federal law, particularly 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. §§ 1983 and 1988, and under state law, K.S.A. § 60-5303 *et seq.*

14. 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.

15. This Court is vested with authority to issue the requested declaratory relief under 28 U.S.C. § 2201 and 2202, K.S.A. § 60-5303(b)(4), and pursuant to Rule 57 of the Federal Rules of Civil Procedure.

16. This Court has authority to award the requested injunctive relief under Rule 65 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1343(a)(3) and K.S.A. § 60-5303(b)(1).

17. This Court is authorized to award nominal damages under 28 U.S.C. § 1343(a)(4) and K.S.A. § 60-5303(b)(5).

18. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988 and K.S.A. § 60-5303(b)(6).

19. Venue is proper under 28 U.S.C. § 1391 in the District of Kansas because this claim arose there and because the Defendant is located within the District of Kansas.

**III. IDENTIFICATION OF THE PLAINTIFF**

20. Plaintiff K.R., a minor, is a 7th grade student at Clark Middle School, and at all times relevant to this Complaint, a resident of Kansas City, Kansas.

21. K.R. is an adherent of the Christian faith and desires to share her religious views with her classmates.
22. K.R., pursuant to her sincerely held religious beliefs, desires to distribute and post religious flyers, including flyers inviting students to participate in the See You at the Pole event, at Defendant's schools without facing censorship or punishment.
23. K.R. desires to distribute and post religious flyers for the same reason other students desire to distribute and post flyers and written materials—to inform their classmates about activities and events in which the students may desire to participate.

#### **IV. IDENTIFICATION OF THE DEFENDANT**

24. Defendant Unified School District No. 204 (“District”) is organized under the laws of the State of Kansas and may sue and be sued. K.S.A. § 72-8201; *Unified Sch. Dist. No. 480 v. Epperson*, 583 F.2d 1118, 1123 (10th Cir. 1978) (Kansas school districts “are not the alter ego of the state ... and hence, do not enjoy Eleventh Amendment immunity”).
25. The District is charged, inter alia, with the administration, operation, and supervision of Clark Middle School, a public school.
26. The District is charged with the formulation, adoption, implementation, and enforcement of District policies, including Policy KI challenged herein.
27. The District is responsible for the enforcement of Policy KI by its employees.
28. The District is responsible for the enactment, enforcement, and existence of policies and practices related to student speech and student publications.
29. The District is responsible for the enactment, enforcement, and existence of policies and practices related to literature distribution and flyer posting by students.
30. The District prohibited K.R. from distributing or posting flyers at Clark Middle School

promoting the See You at the Pole event pursuant to its Policy KI and practice.

31. The District is responsible for the implementation and application by District officials of its Policy KI and practices pertaining to the distribution and posting of written materials by students.
32. The District is similarly responsible for delegating to District officials final authority as to the approval and denial of the distribution and posting of flyers by students, and for the denial of Plaintiff's religious flyers.

**V. ALLEGATIONS OF FACT**

**THE DISTRICT'S POLICY AND PRACTICE  
REGARDING STUDENT EXPRESSION ON CAMPUS**

33. Clark Middle School is a public school located in Bonner Springs, Kansas.
34. Clark Middle School is under the direction of the District and includes sixth through eighth grade.
35. The District is the official policy maker and as such has enacted the Policy KI challenged herein.
36. Pursuant to its Policy KI and practice, the District permits students to distribute literature and post materials, including along the hallways, at Clark Middle School.
37. However, District Policy KI prohibits "the distribution of any religious materials ... on school grounds or in any attendance facility before, during or after the school day or a school activity."
38. Policy KI, and its accompanying regulation KI-R, apply to all forms of literature distribution, including distribution by students.
39. KI-R specifically states that "[n]o student shall be forced to participate in the distribution of any non-school materials in the school," thus leaving the decision of whether to

- distribute a given piece of literature entirely to the discretion of the individual student.
40. Pursuant to the Clark Middle School's Discipline Policy, K.R. or any other student found to have engaged in "insubordination"—which would ostensibly include not complying with District Policy KI's ban on "religious materials"—can be subject to disciplinary action that begins with 1-3 days of in-school suspension.
  41. The District has permitted the distribution and posting of flyers and literature with various types of messages and promoting a multitude of events at Clark Middle School.
  42. For example, students routinely give their fellow classmates a variety of written materials, such as personal notes, invitations to birthday parties and other non-school events, a page from an interesting magazine article, a copy of a favorite book, and more.
  43. During November 2013, a hand-made poster of a tombstone with the words "RIP" and "Here Lies K-STATE ... I AM GLAD YOU ARE GONE FOREVER BECAUSE YOU TRY TO BE AS GOOD AS KU BUT YOUR ARE NOT" was hung on the wall at the school.
  44. Likewise, for the majority of the 2012-2013 school year, a student-created poster promoting popular rap artist Lil' Wayne that said "Good Kush and Alcohol" was posted on the school hallways near the student lockers.
  45. Even school staff promote their private enterprises by posting flyers in the school hallways. One such flyer involved an advertisement from the art teacher advertising the sale of pottery she had made.
  46. Additionally, over the past few months, student groups have regularly been permitted to promote activities for students, such as school dances.
  47. Posters promoting "Got Milk," an advertising campaign used by local dairy councils

- across the nation, are currently displayed throughout the school hallways.
48. Members of the Boy Scouts, Girl Scouts, and the school cheerleaders are permitted to promote and sell candy for fundraising purposes at Clark Middle School.
  49. Clark Middle School and other schools in the District also occasionally send home flyers with students promoting a variety of community activities and events.
  50. Among the flyers sent home with students was the flyer from the art teacher promoting the private sale of pottery she created at her home.
  51. The District also distributes advertisements for non-school sponsored events and activities to parents via e-mail.
  52. For example, during the fall of 2013, the District sent flyers promoting (1) the Kerry 2013/2014 Roberts Winter Basketball League, (2) a charity drive sponsored by Walmart, (3) a calendar of events sponsored by the local library, and (4) the Father Daughter Snowflake Dance sponsored by the parent teacher organization.
  53. In addition, the Clark Middle School newspaper, entitled “The Panther Press,” promotes video games that are replete with graphic violence, profanity, drug use, and nudity.
  54. For example, one November issue of “The Panther Press” had a glowing review of *Call of Duty: Ghosts*, an M-rated “first person shooter” that the student article describes as “the best call of duty game I’ve played so far.” According to information from the Entertainment Software Rating Board, that particular game allows players to “perform close-up attacks (e.g., neck stabbings, headshots) to eliminate enemies.” Players can select emblems “suggestive of marijuana” and profanity such as “f\*\*k,” “sh\*t,” and “a\*shole” can be heard in the game’s dialogue.
  55. Another Panther Press student video game review promotes the game *Grand Theft Auto*

*Five.* As the student authors admit, “GTA V is an M rated game which in hind sight [sic] is a violent game but it’s not your average shooter.” According to the ESRB, the game (1) directs players “to use various instruments and means (e.g., pipe wrench, tooth removal, electrocution) to extract information from a character,” (2) includes “depictions of sexual material/activity” including “a topless lap dance in a strip club,” (3) contains sequences where players “use narcotics (e.g., smoking from a bong, lighting a marijuana joint),” (4) allows the players to “consume alcohol and drive while under the influence,” and (5) contains extreme profanity.

56. Taken together, these activities illustrate that Clark Middle School, pursuant to the District’s Policy KI and practice, routinely permits students (and even community organizations) to promote events for students, advertise products (i.e., pottery, milk, and candy), and display student-created flyers. The District also permits students to discuss controversial subjects in school-sponsored newspapers, including the promotion of video games with lewd and obscene content.

#### **THE CENSORSHIP OF K.R.’S RELIGIOUS MATERIALS BY THE DISTRICT**

57. During the fall of 2013, K.R. became interested in participating in the national See You at the Pole Event.
58. See You at the Pole is a day when students across the nation gather around the flagpole at their local school before the beginning of the school day to pray for the school, students, staff, and the nation as a whole.
59. The national event was scheduled for September 25, 2013.
60. Having seen other students hanging posters in the school hallways, K.R. prepared approximately 15-20 hand drawn flyers that quoted well-known verses of hope and

inspiration from the Bible.

61. The flyers were drawn on standard 8½ x 11 white paper using colored markers.

62. The first flyer read:

For God so loved the world that he gave his only begotten Son, that whoever believes in Him should not perish but have everlasting life.  
John 3:16

63. The second flyer read:

But God demonstrated His own love toward us in that while we were yet sinners, Christ died for us.  
Romans 5:8

64. On Friday, September 20, 2013, K.R. posted a few of the flyers on the school hallways.

65. The posters stayed up throughout the school day and did not result in any disruption to the operation of the school.

66. That evening, K.R. attended a dance at school—one of the many dances that is regularly advertised in the hallways of Clark Middle School.

67. While standing around talking with several of her friends, K.R. was confronted by Ms. Chellie Bonebrake, a counselor at Clark Middle School.

68. Ms. Bonebrake forcefully told K.R. that the flyers K.R. had posted at the school were “illegal” because they were a violation of the separation of church and state.

69. Ms. Bonebrake told K.R. that because the flyers were illegal, they could not be posted at the school.

70. Ms. Bonebrake also stated that such flyers could not be distributed by K.R. to her friends and classmates while at school

71. District Policy KI makes the posting and distribution of such religious materials “illegal” by specifically prohibiting their distribution “on school grounds or in any attendance

facility before, during or after the school day or a school activity.”

72. K.R. was humiliated by this unexpected confrontation over a few innocuous flyers, especially since it took place after the school day and in front of her friends at the dance.
73. That same day, all of K.R.’s flyers were taken down by school officials and destroyed.
74. The following week, K.R. had desired to hand out materials inviting students to participate in See You at the Pole and informing them of the date, time and location of the event.
75. The flyer K.R. created contained a picture of a large American flag along with the words “Please join us for See You at the Pole!” and the date and time for the event.
76. K.R. intended to distribute as many flyers as she could over the course of several days inviting her friends, classmates, and any students willing to receive them to participate in See You at the Pole.
77. But her intentions to widely promote See You at the Pole to her classmates through hand-to-hand distribute of informational flyers promoting the event were thwarted by Ms. Bonebrake’s enforcement of District Policy KI against K.R.’s religious materials.
78. After Ms. Bonebrake told K.R. that the distribution of religious materials was prohibited, K.R. was afraid to hand the See You at the Pole flyers out to her friends at school because of the likely consequences if she was caught.
79. While K.R. desired to widely distribute See You at the Pole flyers to many students during non-instructional time, on September 24, 2013, the day before See You at the Pole, K.R. took only a few of the flyers that she had printed from the national See You at the Pole website to school with her.
80. Because of the intimidation she experienced at the hands of Ms. Bonebrake, K.R. was

unable to promote the See You at the Pole event by widely distributing the flyers to her classmates during non-instructional time at school.

81. Instead, K.R.'s speech was chilled, and she was limited to secretly giving a couple of the flyers to her close friends out of the sight of teachers or other school staff.

82. As a result of the censorship of K.R.'s religious speech, only a few students showed up to pray with K.R. around the flagpole on the morning of September 25, 2013.

83. K.R. is a Bible-believing Christian who desires to share her faith and beliefs with other students and to invite them to participate in religious activities.

84. K.R.'s sincerely held religious beliefs compel her to share her faith and beliefs with her friends and classmates at school.

85. One way K.R. accomplishes this goal at school is through inviting her classmates to participate in religious events, including the See You at the Pole event.

86. K.R. immediately desires to engage in religious speech through the distribution and posting of religious materials, including inviting her classmates to participate in events like See You at the Pole, the National Day of Prayer, and even upcoming religious events for teenagers sponsored by K.R.'s church absent fear of reprisal and without facing punishment or being prohibited from doing so.

87. Plaintiff and other like-minded students continue to desire to post and distribute flyers at school regarding religious events and activities.

## **VI. ALLEGATIONS OF LAW**

88. Students do not shed their constitutional rights at the schoolhouse gate.

89. Non-disruptive, private student expression is protected by the First Amendment.

90. Private speakers are entitled to equal, viewpoint neutral access to public fora.

91. Religious speech is fully protected by the First Amendment.
92. Regulations constituting a prior restraint on speech may not delegate overly broad discretion to government decision-makers, may not allow for content based restrictions, and must be narrowly tailored to serve a compelling governmental interest.
93. The government may not discriminate against speech based on its viewpoint, regardless of the forum.
94. Content-based restrictions on speech in a public forum are presumptively unconstitutional and are subject to strict scrutiny.
95. Time, place, and manner restrictions on speech must be content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.
96. All of the acts of the District, its officers, agents, employees, and servants were executed and are continuing to be executed by the District under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of Kansas.
97. Plaintiff is suffering irreparable harm from the conduct of the District.
98. Plaintiff has no adequate or speedy remedy at law to correct or redress the deprivation of her rights by the District.
99. Unless the District's Policy KI is enjoined, Plaintiff will continue to suffer irreparable injury.

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

100. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 99 of this Complaint.
101. 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.
102. The District's literature distribution Policies KI and KI-R and practice permit students to distribute literature so long as no student is "forced to participate in the distribution of any non-school materials in the schools."
  103. The District permits the distribution of written materials by students covering a wide range of topics including invitations and other non-school events.
  104. The District also permits the posting of written materials throughout the school, including a hand-made poster of a tombstone with the words "RIP" and "Here Lies K-STATE ... I AM GLAD YOU ARE GONE FOREVER BECAUSE YOU TRY TO BE AS GOOD AS KU BUT YOUR ARE NOT," a hand-made poster of rap artist Lil' Wayne that read: "Good Kush and Alcohol," posters promoting dances and other school events, posters with the catchphrase "Got Milk" advertising the products of local dairy producers, and others.
  105. In contrast, the District's Policy KI and practice prohibit K.R. from distributing and posting "religious materials ... on school grounds or in any attendance facility before, during or after the school day or a school activity."
  106. Policy KI prohibits K.R. from giving an invitation to See You at the Pole to a classmate in the hallways between classes, in the cafeteria, at the school dance in the evening after school, at a school football game, or even on the sidewalk in front of the school after students have been dismissed for the day.
  107. Policy KI is a complete and absolute ban on all "religious materials" on school grounds and even off-school grounds at a school event.

108. Students, including K.R., do not shed their First Amendment rights at the schoolhouse gates.
109. Nor are K.R.'s First Amendment rights postponed until she enters high school.
110. Among these rights is the right to engage in expressive activity such as literature distribution on school property.
111. Absent evidence that a student's distribution of written materials would materially and substantially interfere with the orderly conduct of educational activity within the school, the District cannot prohibit literature distribution by students.
112. K.R.'s posting and distribution of religious materials did not and will not materially and substantially interfere with the orderly conduct of educational activity within the school.
113. Additionally, by permitting students, student groups, and non-school organizations to post written materials, flyers, and banners in the school hallways, the District has created a public forum.
114. But the district prohibited K.R. from participating in the forum by banning her religious flyers from being posted in the school hallways.
115. The unequal treatment of K.R.'s religious expression pursuant to the District's Policy KI and practice is a content-based restriction in an otherwise open forum.
116. The District's Policy KI and practice also discriminate against K.R.'s religious viewpoint by prohibiting her from posting religious materials at school.
117. This denial of K.R.'s religious materials, while permitting secular posters, flyers, and materials from other students, constitutes viewpoint discrimination, which is unconstitutional in any type of forum.
118. The District's Policy KI and practice additionally impose an unconstitutional prior

restraint because they vest District officials with unbridled discretion to permit or refuse protected religious speech by students.

119. The District's Policy KI and practice give unbridled discretion to District officials to decide whether certain materials are "religious" and therefore banned from distribution or posting at all District schools.
120. The District's Policy KI and practice are additionally overbroad because they sweep within their ambit protected First Amendment expression.
121. The overbreadth of the District's Policy KI and practice chill the speech of Plaintiff and other students who might seek to engage in private religious expression through the distribution or posting of written materials during non-instructional time.
122. The District's Policy KI and practice chill, deter, and restrict K.R. from freely expressing her religious beliefs.
123. The District's Policy KI and practice, as interpreted and applied by District officials to prohibit religious speech, are not the least restrictive means necessary to serve any compelling interest which the District seeks to secure.
124. The District's Policy KI and practice are not reasonably related to any legitimate pedagogical concerns.
125. Censoring students' religious speech *per se* is not and cannot be a legitimate pedagogical concern.
126. The District's Policy KI and practice, facially and as applied, accordingly violate K.R.'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**

127. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 99 of this Complaint.
128. The District's Policy KI and practice, by expressly targeting K.R.'s private religious expression for special disabilities, violate K.R.'s constitutional right to the free exercise of religion.
129. K.R. desires to post religious materials at school and to distribute religious materials to her classmates during non-instructional time on the basis of her sincerely held religious beliefs.
130. The District's Policy KI and practice explicitly exclude—and thus discriminate against—“religious materials.”
131. The District's Policy KI and practice substantially burden K.R.'s free exercise of religion by conditioning her ability to speak on the foregoing of her free exercise rights.
132. The District's Policy KI and practice force K.R. to choose between engaging in religious speech and being censored, or foregoing the free exercise of religion to speak without censorship or punishment.
133. The District's Policy KI and practice substantially burden K.R.'s free exercise of religion by denying her the right to engage in private religious speech.
134. The District's Policy KI and practice constitute the imposition of special disabilities on K.R. due to her religion and her intent to engage in private religious expression.
135. The District's Policy KI and practice of banning K.R.'s religious materials selectively imposes a burden on expression based on the religious nature of the expression by

singling out that expression for discriminatory treatment.

136. The District's interpretation and application of its Policy KI chill K.R.'s freedom of religious expression and exercise, both of which are fundamental rights guaranteed to K.R. by the First Amendment.
137. These special disabilities placed on K.R.'s religious expression and exercise are neither neutral nor generally applicable.
138. The District's Policy KI and practice are not neutral because they target religious speech and permit District officials to arbitrarily decide what speech is religious and thus not permitted under the District's Policy KI and practice and what speech is not religious and thus permitted under the District's Policy KI and practice.
139. The District's Policy KI and practice are likewise not generally applicable because they grant the District officials unbridled discretion, enforced via a policy of individualized assessment, to determine what materials are "religious" and censor them, as they did K.R.'s religious materials, while permitting other students to distribute "non-religious" written materials.
140. The District's Policy KI and practice cannot be justified by a compelling governmental interest and are not narrowly tailored to advance any such interest.
141. The District's Policy KI and practice, facially and as applied, constitute an excessive burden on K.R.'s right to the free exercise of her 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**

142. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 99 of this Complaint.
143. The Due Process Clause of the Fourteenth Amendment prohibits the government from censoring speech pursuant to vague standards that grant unbridled discretion.
144. The arbitrary determination by district officials of what is and is not forbidden speech violates this norm.
145. The District's Policy KI and practice are vague and allow for unbridled discretion in determining which student speech falls under the ban on "religious materials."
146. Students of common intelligence must therefore guess as to whether their expression will be the type of "religious materials" that District officials ban at all schools.
147. The District's Policy KI and practice allow District officials to act with completely unbridled discretion when deciding if written material a student desires to distribute or post is prohibited.
148. The District's Policy KI and practice thus leaves censorship of student speech to the whim of District officials.
149. The District's Policy KI and practice, facially and as applied, accordingly violate K.R.'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**

150. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 99 of this Complaint.
151. The District's Policy KI and practice embody hostility toward religious expression and require excessive entanglement with religion, both forbidden under the First Amendment's Establishment Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution.
152. The District's Policy KI and practice of banning K.R.'s religious expression evinces discriminatory suppression of private speech that is not neutral, but rather is hostile toward religion.
153. The District, pursuant to its Policy KI and practice of suppressing private religious expression, sends the message to students that religious speakers such as K.R. are second-class citizens, outsiders, and not full members of the academic community.
154. The District sends the message that Christians like K.R. are outsiders by excluding religious points of view and written materials while concurrently permitting non-religious points of view and written materials.
155. The District's Policy KI and practice compel District officials to classify private student speech according to its perceived religious-versus-nonreligious nature
156. Drawing this distinction necessarily requires District officials to inquire into the significance of words and practices to different religious faiths
157. Such inquiries by District officials entangle them with religion in a manner forbidden by the First Amendment.
158. Entanglement problems exist because District officials must attempt to discern which

private student expressions qualify as “religious materials” and are thus prohibited under Policy KI.

159. District officials must make theological interpretations in order to conclude that some student speech is “religious,” while other student speech is not.
160. District Policy KI prohibits K.R. from exercising her right to distribute religious materials, an action that represents the antithesis of neutrality.
161. No compelling state interest exists to justify the censorship of K.R.’s religious expression.
162. The District’s Policy KI and practice, facially and as applied, 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**

163. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 99 of this Complaint.
164. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated persons and groups equally.
165. Pursuant to its Policy KI and practice, the District has allowed other similarly situated students to distribute and post written materials containing secular expression during non-instructional time.
166. The District has treated K.R. disparately when compared to similarly-situated students, by banning only K.R.’s religious expression.
167. By discriminating against the content and viewpoint of K.R.’s speech, the District is

treating K.R.'s religious speech differently than other similarly-situated public school students.

168. The District's Policy KI and practice violate several fundamental rights of K.R., including the rights of free speech and free exercise of religion.
169. When government regulations, like the District's Policy KI and practice challenged herein, infringe on fundamental rights, discriminatory intent is presumed.
170. The District's Policy KI and practice have also been applied to intentionally discriminate against K.R.'s rights of free speech and free exercise of religion.
171. The District lacks a rational or compelling state interest for such disparate treatment of K.R.'s religious expression.
172. The District's Policy KI and practice are not narrowly tailored as applied to K.R. because her speech does not implicate any of the interests the District might have.
173. The District's Policy KI and practice, facially and as applied, thus violate K.R.'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 KANSAS PRESERVATION OF RELIGIOUS FREEDOM ACT, K.S.A. § 60-5301, *ET SEQ.***

174. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 99 of this Complaint.
175. The Kansas Preservation of Religious Freedom Act, K.S.A. § 60-5301 *et seq.*, prohibits a governmental authority from substantially burdening a person's free exercise of religion, even if the burden results from a rule of general applicability, unless: (1) the restriction is

in furtherance of a compelling governmental interest, and (2) the restriction is the least restrictive means of furthering that compelling governmental interest.

176. K.R., pursuant to her sincerely held religious beliefs, desires to distribute and post religious flyers, including flyers and announcements inviting students to participate in the See You at the Pole event, at the District's schools without facing censorship or punishment.
177. The District has substantially burdened and continues to substantially burden K.R.'s right to the free exercise of religion through its Policy KI and practice by preventing her from distributing or posting religious materials.
178. The District's Policy KI and practice discriminate against religion because they prohibit K.R.'s religious expression while permitting other non-religious expression by students, student groups, and community members.
179. The District's Policy KI and practice substantially burden K.R.'s free exercise of religion by conditioning her ability to speak on the foregoing of her free exercise rights.
180. The District's Policy KI and practice force K.R. to choose between engaging in religious speech and being censored, or foregoing the free exercise of religion to speak without censorship or punishment.
181. The District's Policy KI and practice substantially burden K.R.'s free exercise of religion by denying her the right to engage in private religious speech.
182. The District's Policy KI and practice constitute the imposition of special disabilities on K.R. due to her religion and her intent to engage in private religious expression.
183. The District's interpretation and application of its Policy KI chill K.R.'s freedom of religious expression and exercise, both of which are fundamental rights guaranteed to

K.R. by the First Amendment.

184. The District does not have a compelling, or even rational, governmental interest that could justify the restriction on K.R.'s religious speech and expressive activities.
185. The District's Policy KI and practice are overly restrictive in light of the relevant circumstances because the District permits students, student groups, and community members to distribute flyers and posters while prohibiting K.R.'s religious expression.
186. The District's Policy KI, both facially and as applied, violate the Kansas Preservation of Religious Freedom Act, K.S.A. § 60-5301 *et seq.*

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 judgment as follows:

- a. That this Court issue a Preliminary and Permanent Injunction, restraining the District, its officers, agents, employees, and all other persons acting in active concert with it, from enforcing Policy KI ban against "religious materials" in violation of K.R.'s constitutional and statutory rights;
- b. That this Court render a Declaratory Judgment, declaring Policy KI's prohibition against the distribution of "religious materials" unconstitutional both facially and as applied to ban K.R.'s religious expression in violation of the First and Fourteenth Amendments to the United States Constitution, and the Kansas Preservation of Religious Freedom Act;
- 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 K.R.'s costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. § 1988 and K.S.A. § 60-5303(b)(6);
- g. That this Court award nominal damages for the violation of K.R.'s constitutional rights;
- h. That this Court issue the requested injunctive relief without a condition of bond or other security being required of K.R.; and
- i. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.

Dated this 26th day of November, 2013.

David A. Cortman\*  
GA # 188810  
J. Matthew Sharp\*  
GA # 607842  
Alliance Defending Freedom  
1000 Hurricane Shoals Rd. NE, Suite D1100  
Lawrenceville, GA 30043  
Telephone: (770) 339-0774  
Fax: (770) 339-6744  
dcortman@alliancedefendingfreedom.org  
msharp@alliancedefendingfreedom.org

Jeremy D. Tedesco\*  
AZ # 023497  
Alliance Defending Freedom  
15100 N. 90th Street  
Scottsdale, AZ 85260  
Telephone: (480) 444-0020  
Fax: (480) 444-0028  
jtedesco@alliancedefendingfreedom.org  
*\*Application for Admission Pro Hac Vice  
Filed Concurrently*

s/ Kevin H. Theriot  
Kevin H. Theriot  
*Attorney for Plaintiff K.R.*  
KS # 21565  
Alliance Defending Freedom  
15192 Rosewood Street  
Leawood, KS 66224  
Telephone: (913) 685-8000  
Fax: (913) 685-8001  
ktheriot@alliancedefendingfreedom.org

*Attorneys for Plaintiff K.R.*

**VERIFICATION OF COMPLAINT**

I, Tiffany Henderson, a citizen of the United States and a resident of the State of Kansas, have read the foregoing Verified Complaint for Injunctive and Declaratory Relief and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 23rd day of November, 2013.

s/ Tiffany Henderson

Tiffany Henderson

**VERIFICATION OF COMPLAINT**

I, K.R., a citizen of the United States and a resident of the State of Kansas, have read the foregoing Verified Complaint for Injunctive and Declaratory Relief and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 23rd day of November, 2013.

s/ K.R. \_\_\_\_\_  
K.R., a minor