

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

MICHAEL LUCAS,

*Plaintiff,*

v.

PAUL C. JOHNSON, in his official and individual capacities as President of the Colorado School of Mines;  
MYLES W. SCOGGINS, in his individual capacity as former President of the Colorado School of Mines;  
MARVIN L. KAY, in his official and individual capacities at Colorado School of Mines;  
JAMES SPAANSTRA, in his official capacity as a Trustee of the Colorado School of Mines;  
RICHARD TRULY, in his official capacity as a Trustee of the Colorado School of Mines;  
VICKI COWART, in her official capacity as a Trustee of the Colorado School of Mines;  
STEWART BLISS, in his official capacity as a Trustee of the Colorado School of Mines;  
TIMOTHY HADDON, in his official capacity as a Trustee of the Colorado School of Mines;  
FRANCES M. VALLEJO, in her official capacity as a Trustee of the Colorado School of Mines; and  
THOMAS JORDEN, in his official capacity as a Trustee of the Colorado School of Mines;

*Defendants.*

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**VERIFIED COMPLAINT**

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Plaintiff Michael Lucas, by and through counsel, and for his Verified Complaint against the named Defendants, hereby states as follows:

## **INTRODUCTION**

1. This is a civil rights action under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution, brought to remedy a violation of the constitutional rights of Plaintiff Michael Lucas, an alumnus of the Colorado School of Mines (“CSM”), located in Golden, Colorado.

2. Defendants are soliciting donations for CSM’s new Clear Creek Athletic Complex (“CCAC”). As a part of this fundraising campaign, Defendants opened a forum for speech whereby members of the public could purchase a personalized nameplate to be placed in the CCAC’s new football locker room. The nameplate included space for a person’s name, jersey number, player year, position, city, state, high school, three lines for a quote, and lines to honor, memorialize, or recognize someone.

3. Mr. Lucas purchased a personalized nameplate, but Defendants rejected his requested quote because it referred to two Bible verses (Colossians 3:23 and Micah 5:9).

4. Defendants claimed that Mr. Lucas’s nameplate violated the “separation of church and state” because it included two scripture references, one of which mentioned “Lord.”

5. Defendants also claimed Mr. Lucas’s nameplate violated CSM’s Unlawful Discrimination Policy, which prohibits the university from discriminating on the basis of religion, among other things.

6. Finally, Defendants claimed Mr. Lucas’s nameplate was government speech, even though Defendants invited the public to purchase and personalize the nameplates.

7. The personalized locker room nameplates are a designated public forum for private speech.

8. Defendants allow the public to inscribe nameplates with a wide variety of other messages, but discriminated against Mr. Lucas based on the religious content and viewpoint of his message.

9. Mr. Lucas eventually purchased a locker room nameplate with a different quote than what he desired.

10. Mr. Lucas brings this complaint because Defendants are denying his right to engage in Christian religious expression in a speech forum established by the government, when other persons are not censored in the same way.

11. Defendants, by policy and practice, are denying Mr. Lucas's right to engage in religious expression based on the religious content and viewpoint of the speech he desires to engage in.

12. Indeed, if Mr. Lucas desired to engage in non-religious expression on his personalized nameplate, Defendants would have permitted him to do so.

13. By permitting people to choose a wide variety of personalized inscriptions for their nameplates, but denying Mr. Lucas the same right based on the religious nature of his speech, Defendants, pursuant to their policies and practices, are violating Mr. Lucas's constitutional rights.

### **JURISDICTION AND VENUE**

14. This civil rights action arises under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

15. This Court has original jurisdiction over these federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

16. This Court is authorized to grant the requested declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

17. This Court is authorized to issue the requested injunctive relief pursuant to 28 U.S.C. § 1343, 42 U.S.C. § 1983, and Federal Rule of Civil Procedure 65.

18. This Court is authorized to award the requested damages pursuant to 28 U.S.C. § 1343.

19. This Court is authorized to award costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and Federal Rule of Civil Procedure 54.

20. Venue is proper in the United States District Court for the District of Colorado under 28 U.S.C. § 1391(b), because the Defendants reside in the district and all of the events giving rise to the claim occurred within the district.

#### **PLAINTIFF**

21. Plaintiff Michael Lucas is a resident of Windsor, Colorado.

22. Mr. Lucas is a professing Christian.

23. Mr. Lucas graduated from CSM in 2003 with a Bachelor of Science degree in chemical engineering.

24. Mr. Lucas played defensive nose tackle for the CSM Orediggers for five years and made second team all conference during that time.

25. Pursuant to his sincerely held religious beliefs, Mr. Lucas desires to share his religious beliefs and engage in religious expression with current and future students at CSM, and especially with current and future football players at the university.

### **DEFENDANTS**

26. Defendant Myles W. Scoggins was at all times relevant to this Complaint and until June 30, 2015 the President of Colorado School of Mines (“CSM”), a public university organized and existing under the laws of the State of Colorado.

27. Defendant Scoggins was the chief educational and administrative officer of CSM.

28. The CSM Board of Trustees delegated to Defendant Scoggins the responsibility for final policymaking authority concerning free speech activities at CSM.

29. The CSM Board of Trustees delegated to Defendant Scoggins the responsibility to develop, administer and maintain the appropriate administrative policies, procedures, and guidelines to implement the Unlawful Discrimination Policy (“Policy”) challenged herein.

30. Defendant Scoggins possessed the authority to delegate authority among subordinates.

31. Defendant Scoggins was responsible for enforcement of the Policy denying Mr. Lucas his right to engage in religious expression on a personalized locker room nameplate, as well as for the denial itself.

32. Defendant Scoggins possessed the authority and responsibility for regulation of expression by third parties, including alumni, on campus.

33. All changes in campus policy concerning public expression were made only with the prior knowledge and approval of Defendant Scoggins.

34. Defendant Scoggins did not instruct the Defendants to change the Policy as currently written, to comply with constitutional mandates.

35. Defendant Scoggins is sued in his individual capacity for damages.

36. Defendant Paul C. Johnson is the current President of CSM and assumed that office on July 1, 2015.

37. Defendant Johnson is the chief educational and administrative officer of CSM.

38. The CSM Board of Trustees delegates to Defendant Johnson the responsibility for final policymaking authority concerning free speech activities at CSM.

39. The CSM Board of Trustees delegates to Defendant Johnson the responsibility to develop, administer, and maintain the appropriate administrative policies, procedures, and guidelines to implement the Policy challenged herein.

40. Defendant Johnson possesses the authority to delegate authority among subordinates.

41. Defendant Johnson is responsible for the enforcement of the Policy denying Mr. Lucas his right to engage in religious expression on a personalized locker room nameplate, as well as for the denial itself.

42. Defendant Johnson possesses the authority and responsibility for regulation of expression by third parties, including alumni, on campus.

43. All changes in campus policy concerning public expression are made only with the prior knowledge and approval of Defendant Johnson.

44. Defendant Johnson has not instructed the Defendants to change the Policy as currently written, to comply with constitutional mandates.

45. Defendant Johnson is sued in his official capacity for equitable relief and his individual capacity for damages.

46. Defendant Marvin L. Kay is, and was at all times relevant to this Complaint, a faculty member at CSM.

47. Defendant Kay is the former athletic director at CSM.

48. Defendant Kay is part of the faculty at CSM.

49. Defendant Kay is helping to raise money for the CCAC and is soliciting people like Mr. Lucas to purchase personalized locker room nameplates.

50. Defendant Kay enforced the Policy to deny Mr. Lucas his right to engage in religious expression on a personalized locker room nameplate.

51. Defendant Kay is sued in his official capacity for equitable relief and his individual capacity for damages.

52. Defendants James Spaanstra, Richard Truly, Vicki Cowart, Stewart Bliss, Timothy Haddon, Frances M. Vallejo, and Thomas Jorden are, and were at all times relevant to this Complaint, members of the CSM Board of Trustees (herein collectively, "Trustees" or "Trustee Defendants").

53. The Trustees are charged with overseeing the operation of CSM and the enactment and enforcement of CSM policies, both formal and unwritten, including those related to the freedom of people to share their beliefs and ideas on campus.

54. The Trustees are responsible for, among other things, the adoption and authorization of policies that govern CSM, including the policies and procedures challenged herein, and their application to Mr. Lucas.

55. The Trustees are responsible for enactment, amendment, and repeal of Board of Trustees' policies that govern expression on CSM property.

56. The Trustees promulgated the Unlawful Discrimination Policy, which prohibits CSM from discriminating on the basis of religion, among other things.

57. The Trustee Defendants direct the CSM President, formerly Defendant Scoggins and now Defendants Johnson, or a delegate of the President to develop, administer and maintain the appropriate administrative policies, procedures, and guidelines to implement the Unlawful Discrimination Policy.

58. The Trustees acquiesced in, sanctioned, and supported the actions of Defendant Scoggins in the enforcement of CSM's Policy against Mr. Lucas.

59. The Trustees acquiesced in, sanctioned, and supported the actions of Defendant Johnson in the enforcement of CSM's Policy against Mr. Lucas.

60. The Trustees named herein are sued in their official capacities for equitable relief.

#### **STATEMENT OF FACTS**

61. CSM is a public university existing and operating under the laws of the State of Colorado.

62. CSM just built a new athletic facility—the Clear Creek Athletics Complex (“CCAC”).

63. CSM and the CSM Foundation, which is the gift-receiving agency for the university, are fundraising for the new CCAC.

64. Alumni and the public may choose to donate by purchasing a “naming opportunity.”

65. The naming opportunities allow a person to donate and receive recognition for the gift through, among other things, an inscription of his or her name and a quote or message, in the relevant CCAC facility.

66. For example, the Football Naming Opportunities include \$50,000 opportunities for the offensive coordinator's office, a \$35,000 opportunity for the football office lobby, \$25,000 opportunities for the football offices and meeting/work rooms, and \$5,000 opportunities for the football lockers. A copy of the CCAC naming opportunities flyer is attached as Exhibit 1 to this Complaint.

67. There are one hundred and thirty (130) personalized football locker nameplates available.

68. Defendants intended to open a forum for speech through the CCAC fundraiser and personalized locker room nameplates.

69. On September 12, 2014, Mr. Lucas participated in a CSM football alumni golf tournament.

70. Mr. Lucas was in a foursome with Terrence "TJ" Rapoport, who works for the CSM Foundation.

71. Mr. Rapoport asked Mr. Lucas if he, as an alumnus of the university and the football program, would consider giving back to the university by purchasing a personalized nameplate that would be placed on one of the ninety lockers in the new CCAC football locker room.

72. Mr. Rapoport also told Mr. Lucas that although the nameplates typically required a \$5,000 donation, if he responded with a \$2,500 gift, the remaining \$2,500 balance would be paid as part of a matching donation.

73. Mr. Lucas said he was interested and asked Mr. Rapoport to send him more information.

74. Mr. Rapoport sent Mr. Lucas a donation response card to complete, which included space where Mr. Lucas could personalize the nameplate.

75. The response card did not contain any written restrictions on the content or viewpoint of the quote section of the nameplate.

76. Mr. Rapoport did not tell Mr. Lucas there were any restrictions on the content or viewpoint of the quote section of the nameplate.

77. Mr. Lucas completed the response card and agreed to donate \$2,500 to CSM for a locker room nameplate.

78. On the nameplate response card, Mr. Lucas requested the following inscription:

- a. Jersey #: 73
- b. Name: Michael N. Lucas, Jr.
- c. Player Years: 1998-2002
- d. Position: Defensive Nose Tackle
- e. City, State: Deer Park, Texas
- f. High School: Deer Park High School
- g. Quote/Other Line 1: Colossians 3:23 & Micah 5:9
- h. Quote/Other Line 2 (optional): [blank]

- i. Quote/Other Line 3 (optional): [blank]
- j. In Honor Of (optional): [blank]
- k. In Memorial To (optional): [blank]
- l. In Recognition From (optional): [blank].

A copy of Mr. Lucas's response card is attached as Exhibit 2 to this Complaint.

79. Colossians 3:23 in the Bible (New International Version) says: "Whatever you do, work at it with all your heart, as working for the Lord, not for human masters."

80. Micah 5:9 in the Bible (New International Version) says: "Your hand will be lifted up in triumph over your enemies, and all your foes will be destroyed."

81. In addition to the information provided by Mr. Lucas, nameplates could also include two more lines of quotes, and lines to honor, memorialize, or recognize someone.

82. The quotation text on the nameplates is provided by the private person donating the money, not CSM.

83. The only stated limitation by CSM on the quote section of the nameplate was that it could not exceed 50 characters per line, including spaces.

84. Mr. Lucas purchased a personalized locker room nameplate because he wanted to encourage current and future players of the football team he loves.

85. In February 2015, Marvin "Marv" Kay, CSM emeritus professor of physical education and athletics, called Mr. Lucas and told him that CSM rejected the quote on his personalized nameplate because the quote was a scripture reference and the scripture itself included the word "Lord" in it.

86. Defendants Scoggins and Johnson made the decision to reject the quote on Mr. Lucas's nameplate.

87. Defendant Kay stated that Mr. Lucas's requested quote violated the Constitution and school policy because it was a reference to two Bible scriptures and one of those scriptures contained the word "Lord."

88. The text of Colossians 3:23 contains the word "Lord."

89. Defendant Kay and Mr. Lucas discussed the nameplate quote a few times by phone between February and April 2015, and during those conversations Defendant Kay described what the quote could and could not contain.

90. Defendant Kay said that Mr. Lucas could not use a quote that contained the words God, Lord, or Jesus, but could choose another Bible verse that did not contain those words.

91. Defendant Kay said that Mr. Lucas could not use a scripture reference, like "Micah 5:9," for the quote.

92. Defendant Kay told Mr. Lucas that he could write out the text of Micah 5:9 for his quote on the nameplate, but he could not use "Micah 5:9" as the quote.

93. Mr. Lucas asked if his quote could say, "Do not throw your pearls to pigs. If you do, they may trample them under their feet, and turn and tear you to pieces," which is Matthew 7:6 in the Bible (New International Version). Defendant Kay said that this quote would be fine because it did not contain the words Lord, God, or Jesus and was not a scripture reference.

94. Defendant Kay suggested Mr. Lucas to change the quote on the nameplate to something that does not contain a reference to the Bible.

95. During a later conversation, Mr. Lucas asked for more information about CSM's policy and why it rejected his nameplate.

96. Defendant Kay emailed Mr. Lucas on April 6, 2015 and provided him with an explanation from CSM's in-house counsel.

97. Defendant Kay's email said: "In short, the U.S. Constitution and our university policy prohibiting unlawful discrimination are the bases for our not permitting Biblical inscriptions on the lockers. As a state university, we must be very attentive to the separation of church and state, and avoid even the appearance of promoting or supporting one particular religion or set of religious beliefs over others. This also constrains us from accepting and awarding scholarship funds conditioned on particular church/faith membership or participation." A copy of Mr. Kay's April 6, 2015 email to Mr. Lucas is attached as Exhibit 3 to this Complaint.

98. Defendants Scoggins, Johnson, and Kay's excuse for censoring Mr. Lucas's speech was to avoid a conflict with the separation of church and state and with Defendants' Unlawful Discrimination Policy.

99. When Mr. Lucas asked for further clarification, Defendant Kay emailed him on April 8, 2015, and said that "[i]t seems clear that the school is not able to accommodate your inscription request, consistent with university policy and in a manner that honors your intent." A copy of Defendant Kay's April 8, 2015 email to Mr. Lucas is attached as Exhibit 4 to this Complaint.

100. Defendants Scoggins, Johnson, and Kay refused to allow Mr. Lucas's inscription on the personalized locker room nameplate due to the religious content and viewpoint of Mr. Lucas's speech.

101. Defendant Kay said that CSM would process a refund of Mr. Lucas's donation.

102. On April 8 and 14, 2015, Mr. Lucas asked Defendant Kay for a copy of CSM's policy prohibiting his requested inscription.

103. On April 14, 2015, Defendant Kay responded to Mr. Lucas by forwarding an email from Anne Stark Walker, CSM's General Counsel. A copy of Defendant Kay's April 14, 2015 email to Mr. Lucas is attached as Exhibit 5 to this Complaint.

104. In the email from Ms. Walker, she provided a link to CSM's Policy and wrote: "Note Section 2 of the policy provides: '...Discrimination on the basis of age, gender, race, ethnicity, religion, national origin, disability, sexual orientation, or military veteran status is prohibited....'" Ex. 5.

105. The Policy states, in relevant part: "Attendance and employment at Mines are based solely on merit and fairness. Discrimination on the basis of age, gender, race, ethnicity, religion, national origin, disability, sexual orientation, or military veteran status is prohibited. No discrimination in admission, application of academic standards, financial aid, scholastic awards, or any terms or conditions of employment shall be permitted." A copy of the Policy is attached as Exhibit 6 to this Complaint.

106. Defendants Scoggins, Johnson, and Kay applied the Policy to deny Mr. Lucas his desired religious expression on the personalized locker room nameplate.

107. The Trustee Defendants promulgated the Policy and have amended it throughout the years, most recently on August 29, 2014.

108. The Trustee Defendants direct the CSM President, formerly Defendant Scoggins, and now Defendant Johnson, or a delegate of the President to develop, administer and maintain

the appropriate administrative policies, procedures, and guidelines to implement the Unlawful Discrimination Policy.

109. On May 20, 2015, Mr. Lucas received a new locker room nameplate solicitation in the mail. It included a response card for the personalized locker room nameplates. A copy of the response card Mr. Lucas received is attached as Exhibit 7 to the Complaint.

110. The response card now contains the statement that “Quotes should refrain from obscenities, discriminatory language or religiously-affiliated language.”

111. Pursuant to the Policy and practice, Defendants permit religious quotations on the locker room nameplates, but not religious quotations that contain God, Lord, Jesus, or a scripture reference.

112. The original response card Mr. Lucas received, which is attached as Exhibit 2 to this Complaint, did not contain this statement.

113. On June 17, 2015, Mr. Lucas, through counsel, sent a letter to the Trustee Defendants, Defendants Scoggins and Johnson, and Ms. Walker describing this matter and asking them to reverse the decision to reject the religious content and viewpoint expression on Mr. Lucas’s personalized locker room nameplate. A copy of counsel’s June 17, 2015 letter is attached as Exhibit 8 to this Complaint.

114. On June 25, 2015, Ms. Walker responded on behalf of the Trustee Defendants, Defendants Scoggins and Johnson, and CSM. Defendants again rejected Mr. Lucas’s nameplate, asserting that CSM has made a “permissible decision” not to accept it.

115. The Trustee Defendants and Defendants Scoggins, Johnson, and Kay rejected the quote on Mr. Lucas's personalized nameplate because they said it violated the Unlawful Discrimination Policy.

116. The Trustee Defendants and Defendants Scoggins, Johnson, and Kay rejected the quote on Mr. Lucas's personalized nameplate because they said it violated CSM's obligations under the Establishment Clause of the First Amendment.

117. The Trustee Defendants and Defendants Scoggins, Johnson, and Kay rejected the quote on Mr. Lucas's nameplate because it had the "principle or primary effect of advancing a particular religion and/or cause, which CSM deems to be inconsistent with and violative of its Unlawful Discrimination Policy." A copy of Ms. Walker's June 25, 2015 letter is attached as Exhibit 9 to this Complaint.

118. On June 26, 2015, Ms. Walker sent a second letter clarifying that Mr. Lucas may amend his nameplate inscription or receive a refund of his donation. A copy of Ms. Walker's June 26, 2015 letter is attached as Exhibit 10 to this Complaint.

119. The Trustee Defendants promulgated and adopted the Policy which led to the rejection of Mr. Lucas's personalized locker room nameplate.

120. The Trustee Defendants and Defendants Scoggins, Johnson, and Kay intended to create a forum for private speech through the CCAC fundraiser and the personalized locker room nameplates.

121. Defendants Scoggins and Johnson made the decision to reject Mr. Lucas's personalized locker room nameplate because of the religious content and viewpoint of his quote.

122. Defendant Kay enforced the decision to reject Mr. Lucas's personalized locker room nameplate because of the religious content and viewpoint of his quote.

123. Mr. Lucas eventually purchased a locker room nameplate, which contains the text of Micah 5:9: "Your hand will be lifted up in triumph over your enemies, and all your foes will be destroyed."

124. A copy of the Gift and Naming Agreement between Mr. Lucas and CSM is attached as Exhibit 11 to this Complaint.

125. Despite Defendants' rejection of Mr. Lucas's inscription, CSM approved personalized football locker room nameplates of other donors that discuss a wide variety of topics, ideas, and messages.

126. Defendants' Policy and practice does not allow a personalized locker room nameplate with the quote, "Colossians 3:23."

127. Defendants' Policy and practice does not allow a personalized locker room nameplate with a quotation of Colossians 3:23, "Whatever you do, work at it with all your heart, as working for the Lord, not for human masters."

128. Defendants' Policy and practice does not allow a personalized locker room nameplate with the quote, "Micah 5:9."

129. Defendants' Policy and practice allows a personalized locker room nameplate with a quotation of Micah 5:9, "Your hand will be lifted up in triumph over your enemies, and all your foes will be destroyed," as long as the source of the quote is not identified. A photograph of Mr. Lucas's nameplate as it was prepared by CSM is attached as Exhibit 12.

130. Defendants Policy does not allow “religiously-affiliated language,” but the text of Micah 5:9, which Defendants allowed, is religiously-affiliated language because it comes from the Bible.

131. By prohibiting “religiously-affiliated language,” but allowing scripture text from the Bible, the Defendants discriminated against Mr. Lucas’s speech based on its viewpoint.

132. Defendants’ Policy and practice would allow a personalized locker room nameplate with a Vince Lombardi quote, “Football is like life - it requires perseverance, self-denial, hard work, sacrifice, dedication and respect for authority.”

133. Defendants’ Policy and practice would allow a personalized locker room nameplate with a Vince Lombardi quote, “Winning isn’t everything, it’s the only thing.”

134. Defendants’ Policy and practice would allow a personalized locker room nameplate with a Julius Caesar quote, “Cowards die many times before their deaths; The valiant never taste of death but once.”

135. Defendants’ Policy and practice would allow a personalized locker room nameplate with a Tom Brady quote, “Football is so much about mental toughness, it’s digging deep, it’s doing whatever you need to do to help a team win.”

136. Defendants’ Policy and practice allowed a personalized locker room nameplate that includes the quote, “A Hell of an Engineer, A Hell of a Father, A Hell of a Man.” A photograph of such nameplate is attached hereto as Exhibit 13.

137. Defendants’ Policy and practice allowed a personalized locker room nameplate that includes the quote, “Give ‘Em Hell!” A photograph of such nameplate is attached hereto as Exhibit 14.

138. Defendants' Policy and practice allowed a personalized locker room nameplate that includes a quote from Coach Fritz Brenneke, "OK Gentlemen, it's time to gird your loins." A photograph of such nameplate is attached hereto as Exhibit 15.

139. Defendants' Policy and practice allowed a personalized locker room nameplate that includes the quote, "Take your whiskey clear." A photograph of such nameplate is attached hereto as Exhibit 16.

140. Defendants' Policy and practice allowed a personalized locker room nameplate that includes a quote from Abraham Lincoln, "I am a success today because I had a friend that believed in me, and I didn't have the heart to let him down." A photograph of such nameplate is attached hereto as Exhibit 17.

141. If a donor requested a religious quote from Abraham Lincoln, Defendants' Policy and practice may or may not permit such nameplate and there is no way for a reasonable person to ascertain in advance whether such expression would be the type banned by Defendants' Policy and practices.

142. Mr. Lucas desires to share his encouragement and quote with CSM football players by purchasing a personalized locker room nameplate, but is unable to do so due to Defendants' censorship of his message pursuant to the Policy.

#### **ALLEGATIONS OF LAW**

143. All of the acts of Defendants, their officers, agents, employees, and servants were executed and are continuing to be executed by Defendants under the color and pretense of the policy, statutes, ordinances, regulations, customs, and usages of the State of Colorado.

144. Plaintiff is suffering irreparable harm from the conduct of Defendants.

145. Plaintiff has no adequate or speedy remedy at law to correct or redress the deprivation of his rights by Defendants.

146. Unless the conduct of Defendants is enjoined, Plaintiff will continue to suffer irreparable injury.

**FIRST CAUSE OF ACTION**  
**Violation of the Free Speech Clause of the First Amendment**  
**42 U.S.C. § 1983**

147. Plaintiff realleges all matters set forth in paragraphs 1 through 142 and incorporates them herein.

148. 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 private religious expression.

149. The government may not engage in viewpoint discrimination in any type of public or nonpublic forum for speech.

150. Defendants intended to create a public forum for private expression with their personalized football locker room nameplate fundraiser.

151. Pursuant to the Policy and practice, Defendants permitted the public to engage in a wide variety of expression, including religious expression, on the personalized locker room nameplates.

152. Pursuant to the Policy and practice, Defendants prohibit "religiously-affiliated language," but permit scripture text from the Bible and other forms of religious expression, which is viewpoint discriminatory.

153. Pursuant to the Policy and practice, Defendants prohibited Mr. Lucas's expression based on the religious content and viewpoint of his desired expression.

154. Pursuant to the Policy and practice, Defendants committed viewpoint discrimination by prohibiting "religiously-affiliated language" like Mr. Lucas's proposed "Colossians 3:23 & Micah 5:9," but permitted Mr. Lucas to use the Biblical scripture text of Micah 5:9.

155. Mr. Lucas's religious expression on the nameplate is private speech.

156. The unequal treatment of Mr. Lucas based on the religious nature of his private expression is a content-based restriction in an otherwise open forum for public expression.

157. The censorship of Mr. Lucas's religious speech—while permitting similar, but nonreligious, private speech from other members of the public regarding the same and similar subject matters—also constitutes viewpoint discrimination, which is unconstitutional in any type of forum.

158. Defendants' Policy and practice additionally impose an unconstitutional prior restraint because they vest Defendants with unbridled discretion to permit or refuse protected religious expression by the public.

159. Defendants' Policy and practice give unbridled discretion to the Defendants to decide what forms of expression the public is permitted to engage in on the personalized locker room nameplates and to ban any other expression—including scripture, scripture references, or religious messages—at the whim of the officials.

160. Defendants' Policy and practice are also overbroad because they sweep within their ambit protected First Amendment expression.

161. The overbreadth of Defendants' Policy and practice chills the speech of Mr. Lucas and third parties who seek to engage in private religious expression on the personalized locker room nameplates.

162. Defendants' Policy and practice chill, deter, and restrict Mr. Lucas from freely expressing his religious views with current and future members of CSM's football team.

163. Defendants' Policy and practice, as interpreted and applied by Defendants to prohibit religious speech, are not the least restrictive means necessary to serve any compelling interest which Defendants seek thereby to secure.

164. Defendants' Policy and practice accordingly violate Mr. Lucas's right to Free Speech under the First Amendment to the United States Constitution, as incorporated and applied to Defendants under the Fourteenth Amendment.

**SECOND CAUSE OF ACTION**  
**Violation of the Free Exercise Clause of the First Amendment**  
**42 U.S.C. § 1983**

165. Plaintiff realleges all matters set forth in paragraphs 1 through 142 and incorporates them herein.

166. The First Amendment's Freedom Exercise of Religion Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits the government from burdening religious exercise through non-neutral and non-generally applicable laws, unless it can demonstrate a compelling interest for doing so.

167. Mr. Lucas desires to engage in the expressive activities described above on the basis of his sincerely held religious beliefs.

168. Defendants' Policy and practice substantially burdens Mr. Lucas's free exercise of religion by conditioning his right to speak through a personalized locker room nameplate on the surrendering of his free exercise rights.

169. Such Policy substantially burdens Mr. Lucas's free exercise of religion by forcing him to choose between speaking in the forum and censoring his religious speech and exercise or having his access to the forum denied.

170. Defendants' Policy and practice are not neutral or generally applicable as they deny Mr. Lucas the ability to express a religious message, while at the same time providing other persons the ability to discuss matters from a nonreligious point of view.

171. Defendants' Policy and practice are not neutral because they target some religious speech but not other religious speech and permit Defendants to arbitrarily decide what speech is permitted under the policy and practice and what speech is not.

172. Defendants' Policy and practice are likewise not generally applicable because they grant Defendants unbridled discretion, enforced via a policy of individualized assessment, to censor Mr. Lucas's religious expression while permitting other persons to engage in religious and non-religious expression on the personalized locker room nameplates.

173. Defendants' Policy and practice constitute the imposition of special disabilities on Mr. Lucas due to his religion and his intent to engage in religious expression.

174. These special disabilities target religious speech and exercise and no other speech.

175. Defendants' Policy and practice cannot be justified by a compelling governmental interest and are not narrowly tailored to advance any such interest.

176. Defendants' Policy and practice chills Mr. Lucas's freedom of religious exercise, which is a fundamental right guaranteed to him by the First Amendment.

177. Defendants' Policy and practice of prohibiting Mr. Lucas and others from engaging in religious expression on personalized locker room nameplates violates the Free Exercise Clause of the First Amendment to the United States Constitution, as incorporated and applied to Defendants under the Fourteenth Amendment.

**THIRD CAUSE OF ACTION**  
**Violation of the Due Process Clause of the Fourteenth Amendment**  
**42 U.S.C. § 1983**

178. Plaintiff realleges all matters set forth in paragraphs 1 through 142 and incorporates them herein.

179. The Due Process Clause of the Fourteenth Amendment prohibits the government from censoring speech pursuant to vague standards that grant unbridled discretion.

180. The arbitrary determination by Defendants of what is and is not forbidden speech on the nameplates violates the Fourteenth Amendment.

181. Persons of common intelligence must therefore guess as to whether their expression will be the type that Defendants ban on the nameplates—including “religious” and “religiously-affiliated” expression.

182. Defendants' Policy and practice are vague and allow for unbridled discretion in determining which speech satisfies Defendants' ban against “God,” “Lord,” “Jesus,” “scripture references,” and “religiously-affiliated” expression.

183. Defendants' Policy and practice allow Defendants, like Defendants Johnson and Scoggins, to act with complete unbridled discretion when deciding if expression that a person desires to engage in on the personalized locker room nameplates is prohibited.

184. The discretion given to Defendants pursuant to the Policy and practice leaves censorship of speech to the whim of Defendants.

185. Indeed, this unbridle discretion is evidenced by the fact that Defendants told first Mr. Lucas he could not quote scripture that uses the words God, Lord, or Jesus, and later told him that he could not use any scripture reference, later said he could use a religious quote, so long as it did not use God, Lord, and Jesus, and now states that he may not use a "religiously-affiliated" quote.

186. Defendants' discretion pursuant to the Policy and practice is also evident from the text of the policy, which prohibits Defendants from discriminating against Mr. Lucas because of his religion.

187. Defendants' Policy and practice accordingly violate Mr. Lucas's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

**FOURTH CAUSE OF ACTION**  
**Violation of the Equal Protection Clause of the Fourteenth Amendment**  
**42 U.S.C. § 1983**

188. Plaintiff realleges all matters set forth in paragraphs 1 through 142 and incorporates them herein.

189. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated persons alike.

190. Pursuant to its Policy and practice, Defendants allow the public to purchase and personalize a locker room nameplate for the CCAC fundraising drive with text, quotes, and messages in honor, memorial, or recognition.

191. But Defendants have denied Mr. Lucas and others the ability to express a religious message simply because of the religious content and viewpoints of their speech.

192. By discriminating against the religious content and viewpoint of Mr. Lucas's and other like-minded persons' speech, Defendants are treating Mr. Lucas and others differently than other similarly situated members of the public on the basis of their religion, a protected classification.

193. Defendants' Policy and practice violate various fundamental rights of Mr. Lucas, including his rights to freedom of speech and the free exercise of religion.

194. When government regulations, like Defendants' Policy and practice, infringe on such fundamental rights, discriminatory intent is presumed.

195. Defendants' Policy and practice have also been applied to intentionally discriminate against Mr. Lucas's rights of free speech and free exercise of religion.

196. Defendants lack a rational or compelling state interest for such disparate treatment of Mr. Lucas and other like-minded members of the public.

197. Defendants' discrimination against Mr. Lucas is not narrowly tailored to serve a compelling state interest.

198. Defendants' Policy and practice of prohibiting Mr. Lucas and others from engaging in religious expression on personalized locker room nameplates violates their right to

equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

**FIFTH CAUSE OF ACTION**  
**Violation of the Establishment Clause of the First Amendment**  
**42 U.S.C. § 1983**

199. Plaintiff realleges all matters set forth in paragraphs 1 through 142 and incorporates them herein.

200. The First Amendment's Establishment Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits the government from treating religion with hostility or from excessively entangling the government with religion.

201. Defendants' Policy and practice embody hostility toward religious expression and require excessive entanglement with religion.

202. Defendants' Policy and practice of banning Mr. Lucas's religious expression evinces discriminatory suppression of private speech that is not neutral, but is hostile toward religion.

203. Defendants, pursuant to their Policy and practice of suppressing private religious expression, send the message to the public that religious speakers such as Mr. Lucas are second-class citizens, outsiders, and not full members of the community.

204. Defendants' Policy and practice send the message that Christians like Mr. Lucas are outsiders by excluding religious points of view and expression from the personalized locker room nameplates while concurrently permitting all other points of view and expression by the public.

205. Defendants' Policy and practice compel CSM officials to classify private speech according to its perceived religious-versus-nonreligious nature.

206. Drawing this distinction necessarily requires Defendants and CSM officials to inquire into the significance of words and practices to different religious faiths.

207. Such inquiries by Defendants and CSM officials excessively entangle them with religion in a manner forbidden by the First Amendment.

208. Entanglement problems exist because Defendants and CSM officials must attempt to discern which private expression is too "religious" in nature to be permitted on the personalized locker room nameplates.

209. Defendants and CSM officials must make theological interpretations in order to conclude that some speech is "religious," while other speech is not.

210. Defendants denied Mr. Lucas and others the right to engage in private, religious expression on personalized locker room nameplates, an action that represents the antithesis of neutrality.

211. No compelling state interest exists to justify the censorship of Mr. Lucas's private religious expression.

212. Defendants' Policy and practice therefore violate the Establishment Clause of the First Amendment to the United States Constitution, as incorporated and applied to Defendants under the Fourteenth Amendment.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants and provide Plaintiff with the following relief:

- A. A preliminary and permanent injunction, restraining Defendants, their officers, agents, employees, and all other persons acting in concert with them, from enforcing the Policy and practice to prohibit Plaintiff from engaging in religious expression on the personalized locker room nameplate he purchased for the CCAC fundraiser, and ordering Defendants to immediately allow Plaintiff to engage in private religious expression on the same terms other persons are allowed to engage in secular expression on topics of their choice;
- B. A declaratory judgment finding Defendants' application of the Policy and practice to Plaintiff's speech is unconstitutional and declaring that Defendants may not apply the policy and practice to prohibit religious content or viewpoints on the personalized locker room nameplates for the CCAC fundraiser;
- C. 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;
- D. Retain jurisdiction of this matter for the purpose of enforcing any Orders;
- E. Plaintiff's costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. § 1988 and other applicable law;
- F. Nominal damages against those Defendants sued in their individual capacities in the amount of one (\$1.00) dollar for the violation of Plaintiff's constitutional rights;
- G. Issue the requested injunctive relief without a condition of bond or other security being required of Plaintiff; and

H. Grant such other and further relief as the Court deems equitable, just, and proper in the circumstances.

**JURY DEMAND**

Plaintiff demands a jury on all issues so triable.

Respectfully submitted this 29th day of September, 2015.

Attorneys for Plaintiff:

/s/ Natalie L. Decker

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**DECLARATION UNDER PENALTY OF PERJURY**

I, MICHAEL LUCAS, a citizen of the United States and a resident of the State of Colorado, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 29th day of September, 2015, at Windsor, Colorado.

/s/Michael Lucas  
MICHAEL LUCAS