

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

DAVID NIELSEN, parent and next
friend, on behalf of his minor child, **S.N.**,
and the **SKYLINE REPUBLICAN
CLUB**,

Plaintiffs,

v.

ANN ARBOR PUBLIC SCHOOLS,
CORY McELMEEL, individually and
in his official capacity as the principal
of Skyline High School, and
JEFFERSON BILSBORROW,
individually and in his official capacity
as a secretary at Skyline High School,

Defendants.

Case No. _____

Hon. _____

[Civil Rights Action under
42 U.S.C. § 1983]

**JURY DEMAND,
DECLARATORY &
INJUNCTIVE RELIEF
SOUGHT**

VERIFIED COMPLAINT

David Nielsen, on behalf of his minor child, Plaintiff S.N., and the Skyline Republican Club by and through their undersigned counsel, together bring this civil rights Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

INTRODUCTION

1. This case seeks to protect and vindicate fundamental

constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging Defendants' acts, policies, practices, customs, and/or procedures, which deprived Plaintiffs S.N. and Skyline Republican Club of their right to freedom of speech and the equal protection of the law.

2. Furthermore, Defendants' actions and policies violate Plaintiffs' rights under the Equal Access Act, 20 U.S.C. §§ 4071-74, which grants all non-curriculum related student groups equal access rights if a public secondary school, as here, creates a limited forum to be used by at least one non-curriculum related student group.

3. Defendants denied Plaintiffs S.N. and the Skyline Republican Club, a non-curriculum related student group, the same access benefits, privileges, and treatment that Defendants have granted to other non-curriculum related student groups at Skyline High School. And Defendants have denied this equal access and treatment based on Plaintiffs' political purpose and viewpoint and on the content of their speech.

4. Defendants allow other non-curriculum related student

groups to use the public address system to make all-school announcements that voice political viewpoints to which they agree. Defendants have approved political announcements from the National Organization of Women (NOW) student club voicing support for *Roe v. Wade*, from Planned Parenthood recruiting students to work on their LGBTQ+ initiatives in the school, *inter alia*. When Plaintiffs, however, tried to use the same forum to recruit students interested in opposing Proposal 3, Defendants rejected Plaintiffs' request, claiming Plaintiffs' announcement could not be shared because it was "political."

5. Defendants are guilty of blatant viewpoint discrimination.

6. Our United States Supreme Court famously stated, "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *West Virginia State Bd. Of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Defendants, unfortunately, run their public address system by prescribing orthodoxy and tamping down the political viewpoints to which they disagree. To be sure, this is not how public schools are supposed to be run.

7. Defendants have discriminated against Plaintiffs based on

their political purpose, viewpoint, and based on the content of their speech by not allowing them, to the same extent permitted by other non-curriculum related student groups, use of the public address system.

8. Plaintiffs seek a declaration that Defendants violated Plaintiffs' rights under the First and Fourteenth Amendments and the Equal Access Act, an injunction permitting Plaintiffs to share their announcement over the school's public address system and requiring that Plaintiffs receive equal treatment as other students and other non-curriculum student clubs, and a judgment awarding nominal damages. Plaintiffs also seek an award of the reasonable costs of litigation, including attorneys' fees and costs, pursuant to 42 U.S.C. § 1988 and other applicable law.

JURISDICTION AND VENUE

9. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this court pursuant to 28 U.S.C. §§ 1331 and 1343.

10. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and

equitable powers of this court.

11. Plaintiffs' claims for damages are authorized under 42 U.S.C. § 1983 and by the general legal and equitable powers of this court. Plaintiffs' claim for costs, including reasonable attorneys' fees is authorized by 42 U.S.C. § 1988.

12. Venue is proper under 28 U.S.C. § 1391(b) and E.D. Mich. L. R. 83.10 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Ann Arbor, Washtenaw County, Michigan, which is within this judicial district.

PLAINTIFFS

13. Plaintiff S.N. is a senior student at Skyline High School, which is located in the Ann Arbor, Michigan. S.N. is the president of the Skyline Republican Club. S.N. is a minor who sues by and through his next friend, his father David Nielsen.

14. Plaintiff Skyline Republican Club is an unincorporated voluntary association of students who attend Skyline High School.

15. Students formed the Skyline Republican Club to promote sound public policy, engage students in the political process, uphold constitutional principles, including the freedom of speech and freedom of

religion, and promote public discourse.

16. Skyline Republican Club's activities, meetings, and announcements are voluntary and student-led and initiated and do not materially and substantially interfere with the orderly conduct of educational activities in Skyline High School.

17. Skyline Republican Club brings this action on behalf of itself and its members since its members would otherwise have standing to sue in their own right, the interests at stake in this action are germane to the group's purpose, and neither the claims asserted, nor the relief requested require the participation of individual members in the action. Skyline Republican Club has the capacity to sue as an unincorporated voluntary association pursuant to Fed. R. Civ. P. 17(b).

DEFENDANTS

18. Defendant Ann Arbor Public Schools is a duly constituted school district established and organized under, and pursuant to, the laws of the State of Michigan with the authority to sue and be sued in its own name. It is governed by a Board of Education and is located in Ann Arbor, Michigan.

19. Skyline High School is a public secondary school within the

Ann Arbor Public Schools.

20. Ann Arbor Public Schools and its officials are responsible for creating, adopting, approving, ratifying, overseeing and enforcing the policies, practices, customs and/or final decisions, including the policies, decisions, practices, customs, and/or procedures set forth in this Complaint.

21. Ann Arbor Public Schools and its officials are under the duty to adequately supervise, control, and/or train its employees in the areas of the Federal Equal Access Act and the First and Fourteenth Amendments, and it failed to adequately train and supervise its employees, including Defendants Cory McElmeel and Jefferson Bilsborrow, in these areas. This failure was closely related to or a moving force behind the constitutional violations set forth in this Complaint and reflects a deliberate indifference to the constitutional rights of students with certain political viewpoints, including S.N. and the members of the Skyline Republican Club.

22. Ann Arbor Public Schools was aware of their policy and decision to discriminate against Plaintiffs based on their political purpose, viewpoint, and the content of their speech, and it ratified,

approved, and condoned the decision.

23. At all relevant times, Defendant Ann Arbor Public Schools was acting within the course and scope of its duties and under color of state law and is a person within the meaning of 42 U.S.C. § 1983.

24. Defendant Cory McElmeel is the Principal of Skyline High School. He is responsible for adopting, implementing, and/or enforcing the policies, practices, customs, and/or final decisions that govern the operation of Skyline High School, including the policy and decision to discriminate against Plaintiffs because of their political purpose, viewpoint, and content of their speech. Defendant McElmeel is sued individually and in his official capacity.

25. Defendant Cory McElmeel had the final decision-making authority regarding the approval of non-curriculum related student groups at Skyline High School. He had the authority to delegate the enforcement of policy and the approval of non-curriculum related student groups to others, and he delegated those matters to his secretary, Defendant Jefferson Bilsborrow.

26. Defendant Cory McElmeel was aware of the policy and decision to discriminate against plaintiffs because of their political

purpose, viewpoint, and content of their speech. He approved, ratified, and condoned that policy and decision.

27. At all relevant times herein, Defendant Cory McElmeel was acting within the course and scope of his official duties and under the color of state law and is a person within the meaning of 42 U.S.C. § 1983. His actions and failure to act have caused, and been a moving force behind, the violations of Plaintiffs' rights as set forth herein. He is being sued in his individual and official capacity.

28. Defendant Jefferson Bilsborrow is a secretary at Skyline High School. He was delegated authority, and had the authority, to enforce the policies, practices, customs, and/or final decisions of the Ann Arbor Public Schools and/or make the final determination whether to approve non-curriculum related student groups' announcements at Skyline High School over the public address system. With that authority, he denied approval of, and equal treatment and benefits to, Plaintiff S.N. and Plaintiff Skyline Republican Club, a non-curriculum related student group at Skyline High School, based on Plaintiffs' political purpose, viewpoint, and content of their speech. His decision was made pursuant to the policy, practice, and/or custom of the Ann

Arbor Public Schools. Defendant Bilborrow is sued individually and in his official capacity.

29. At all relevant times herein, Defendant Bilborrow was acting within the course and scope of his official duties and under the color of state law and is a person within the meaning of 42 U.S.C. § 1983. His actions and failure to act have caused, and been a moving force behind, the violations of Plaintiffs' rights as set forth herein. He is being sued in his individual and official capacity.

STATEMENT OF FACTS

30. Skyline High School provides public secondary education for students in grades nine through twelve. It receives federal financial assistance. It has created a limited open forum for non-curriculum related student groups to use its public address system for morning announcements during non-instructional time.

31. Skyline High School has several different non-curriculum student groups, including Plaintiff Skyline Republican Club, the National Organization of Women (NOW), the Gender, Sexuality, and Romanticality Alliance (GSRA), the Black Student Union (led BLM protest), and the Student Action Senate (SAS) and more. Skyline High

School's List of Student Clubs, available at <https://www.a2schools.org/domain/3092>.

32. Defendants generally allow non-curriculum related student groups to share announcements over Skyline High School's public address system.

33. For example, Defendants approved and allowed the NOW student group to announce the following,

The National Organization For Women's Club would like to invite you to stand in solidarity by wearing pink in support of the 1973 Roe Vs. Wave court decision which allows women to keep abortioan rights. On Tuesday December 14th join us and show your support. Thank you!

Skyline Announcement on Dec. 13, 2021, available at <https://www.a2schools.org/domain/2249> (misspellings and typos in the original).

34. Defendants also allowed an announcement promoting Planned Parenthood and their employees as "trained, trusted sources of information" on matters such as "LGBTQ+ identities" and "contraceptive methods" and allowed their announcements to be used to recruit Skyline High School students to work for Planned Parenthood:

Are you interested in possibly becoming involved with Planned Parenthood of Washtenaw County's Peer Education program? The program needs area youth that want to make a difference in their community and are interested in public

health, advocacy and leadership. Planned Parenthood of Michigan Peer Educators are trained, trusted sources of information and support for their peers about their health: including topics like relationships, LGBTQ+ identities, contraceptive methods, abstinence, consent and reducing STIs and more! The group meets weekly and presents in local high school health classrooms. Peer Educators will go through a 40-hour training in the fall. All applicants must be attending high school in 9th, 10th, or 11th grade during the 2021-22 academic year. Applications will be due September 20. Please email Mrs Bezeau if you would like the electronic application forwarded to you.

Skyline Announcement on Sept. 14-17, 2021, available at <https://www.a2schools.org/domain/2249>.

35. Some other announcements of non-curriculum related student clubs include:

a. Student Action Senate (SAS):

Women's Rights

This announcement speaks to all students who feel passionate about women's rights. This Friday from 2:45-3:30 pm in room A40, the club students in government will be doing a presentation on the feminist movement and women's history in America to precede upcoming protests and projects in favor of women's rights. These events will be facilitated by student's in government. Please join us for cookies, soda, and feminism.

Skyline Announcement on March 3, 2022, available at <https://www.a2schools.org/domain/2249>.

b. NOW:

The National Organization for Women Club will be holding our first meeting after school on Wednesday, September 14th, in room A306. The NOW Club focuses on a mixture of activism and education to promote feminist ideals and lead social change. Come join us if you're interested, we would love to have you!

Skyline Announcement on Sept. 9, 2022, available at <https://www.a2schools.org/domain/2249>.

“Get Registered to Vote, Skyline!”

The elections coming up on November 8th are very important, and we encourage everyone 18 and older to vote! You can still register online at Michigan.gov. For more information, including who Skyline’s National Organization of Women are supporting in the upcoming elections, you can visit our instagram @skylinenowclub”

Skyline Announcement on Oct. 28, 2022, available at <https://www.a2schools.org/domain/2249> (emphasis in original). And,

The NOW club will be holding a fundraiser for Ukraine through Friday. We will be selling bracelets at the front doors before school and in the cafeteria during both lunches. The money will be going to the International Rescue Committee to help Ukrainian families on the borders. If you can, please help and buy a bracelet!

Skyline Announcement on May 26, 2022, available at <https://www.a2schools.org/domain/2249>.

c. The Black Student Union (BSU):

Happy Black History Month!

BSU is hosting a Black History Month Spirit Week for our Skyline Community next week Tuesday- Friday:

Tuesday is Your Favorite Black Character Day- example- Black Panther, Franklin, or Riley and Huey from the Boondocks

Wednesday is African- American Humanities/ your favorite Black Artist or Band T-Shirt Day- example- Tupac, Prince, Jimi Hendrix, Tyler the creator, SZA

Thursday is Hoodies for Trayvon Day- wear your fav hoodie to support Trayvon Martin

Friday is Black & Red Solidarity Day- wear black and red in support of community and solidarity.

Please remember: Cultural appreciation is healthy and welcome. Cultural appropriation is harmful and not welcome. Honoring and celebrating these days respectfully means careful consideration of how you choose to represent another individual. This does not include face painting, mimicking ethnic hairstyles, and/or wearing costumes.

Skyline Announcement on Feb. 17, 2022, available at <https://www.a2schools.org/domain/2249> (emphasis in original). And,

On the night of Feb. 26, 2012, 17-year-old Trayvon Martin was walking home from a party store in the rain. He bought Skittles and an iced tea for his little brother. **Trayvon was followed, shot and killed by neighborhood watchman George Zimmerman in Sanford, Florida.** More than six weeks later, Zimmerman was arrested and, eventually, tried for second-degree murder. **In July 2013, Zimmerman was acquitted of the murder charge, igniting protests. The image of Trayvon wearing a hoodie became iconic.** Professional athletes donned hoodies, and protestors repeated the mantra: “I am Trayvon Martin” to express solidarity and

outrage. After Zimmerman was acquitted, three activists – Alicia Garza, Opal Tometi and Patrisse Cullors – created the hashtag, BlackLivesMatter in protest. The hashtag eventually became a social movement, still going today. In addition, Trayvon’s parents, Sabrina Fulton and Tracy Martin created the Trayvon Martin Foundation; both acts focus on keeping alive the national conversation about the deaths of Black Americans, police conduct, and inequalities in the justice system. Check out trayvonmartin.org for more information.

Skyline Announcement on Feb. 24, 2022, available at <https://www.a2schools.org/domain/2249> (emphasis added). And,

Happy Black History Month!

Today’s theme for Black History Month Spirit Week: Black and Red Solidarity Day.

Humans have survived by living in communities since the beginning of time. We are born into families, and into the groups that our families choose to be a part of. We deliberately seek out and create community based on proximity (neighborhood or workplace), shared values and beliefs (religion, activism or politics), and individual interests (book clubs, sports or hobbies). When we intentionally create a community for the purpose of a shared goal, it can deepen relationships, create feelings of belonging, and provide support for the health and wellbeing of all members. Community is a gateway to better understand our own lives and the lives of others and creates an essential foundation for people working toward common goals. **The Black American experience has been one of absolute hardship and strife.** However, the ability to rise above and deeply influence a nation, to continually rebuild, love, fight, and resist, is nothing less than perseverance- and so much more. By considering each other’s lives, experiences, and perspectives,

we allow a community to not only be about what we have in common- but what makes us different.

Skyline Announcement on Feb. 25, 2022, available at <https://www.a2schools.org/domain/2249> (emphasis added).

d. The Latine X Student Union:

¡Buenos días estudiantes de Skyline high school! Este es el last day of Hispanic heritage month. This quote is from a Pitbull song que se llama Times of our Lives, Dice: "This is for everybody going through tough times, believe me, been there, done that, but everyday above ground is a good day, remember that."

Also, I would like to kindly remind everyone that the term Latinx is for a person of Latin American origin or descent. It is used as a gender-neutral or non-binary alternative to Latino or Latina. Please reach out to Latinx Student Union if you would like to discuss this topic further, feel offended by its usage, or have any new suggestions.

Skyline Announcement on Oct. 14, 2022, available at <https://www.a2schools.org/domain/2249> (emphasis added). And,

¡Buenos Días estudiantes de Skyline!

Tomorrow, April 22nd, is the National Day of Silence. The Day of Silence is a student-led demonstration. Across the US, LGBTQ+ students and their allies take a vow of silence to protest the harmful effects of discrimination, harassment, and erasure of LGBTQ+ people in schools. . . .

Hispanic Heritage month continues with some uplifting facts and wise words.

¿Tú sabías que...“Ellen Ochoa was the first Latina astronaut to be in space, in 1993. She brought her flute to play on the nine-day mission aboard the Space Shuttle Discovery.” That is amazing!

Recuerda...“We must be impatient for change. Let us remember that our voice is a precious gift and we must use it.” Claudia Flores

Skyline Announcement on April 21, 2022, available at <https://www.a2schools.org/domain/2249> (emphasis added).

e. Gender, Sexuality, and Romanticality Alliance (GSRA):

Skyline’s GSRA will be passing out info cards before class tomorrow morning, and we also have flyers posted around the school. If you would like to participate, please be sure to communicate with your teachers ahead of time. And, if your classwork requires speaking, make an alternate plan for the day. Those participating in the Day of Silence can still communicate by writing. If you aren’t taking a vow of silence and see someone who is, please be respectful of their decision. After school, we will have a “breaking the silence” event where we break our silence, hang out, talk about our experiences, and have some snacks! Please contact Sammy Kay for more info about this event. Together, our silence can be loud.

Skyline Announcement on April 21, 2022, available at <https://www.a2schools.org/domain/2249>.

f. Student Club Not Identified:

Are you interested in our Democracy and helping others to become involved with the voting registration process? The League of Women’s Voters of Washtenaw County comes to Skyline High School a few times a year to help students to register to vote. Their organization would like to start training high school students to become building reps for their

own high school building to educate and inform their peers on how to register to vote. You can contact Mrs. Bezeau if interested and she can share the training date and a zoom link for the next training event for high school students in Washtenaw County. We would love to have 3 to 5 of our own peers helping and educating each other!

Skyline Announcement on Feb. 22, 2022, available at <https://www.a2schools.org/domain/2249>.

g. Environmental Stability Club

Today is Earth Day! Earth Day is dedicated to being grateful for our planet and spreading awareness about environmental issues. **The first Earth Day was held on April 22nd, 1970, and every year since the world has come together to think about our shared planet and engage in actions that help nature in ways either big or small. This year, the theme for Earth Day is about investing in our planet, promoting large-scale change against climate change.** More information about activities and events can be found at earthday.com. The Environmental Sustainability Club wishes you all a great Earth Day!

Skyline Announcements April 22, 2022, available at <https://www.a2schools.org/domain/2249> (emphasis added).

h. Skyline High School Democrats for America:

The Skyline High School Democrats of America are holding a poster-making session after school in Ms. Ducker's room today to spread awareness regarding the contributions Planned Parenthood makes to the health and well being of our society. Stop by to make a difference!

Skyline Announcement, Feb. 21, 2017, available at <https://www.a2schools.org/domain/2249>.

i. National Honor Society (NHS):

Debbie Dingell Visiting Skyline

Are you interested in getting better leadership skills? Want to learn how to take action for something you believe in? Congresswoman Debbie Dingell is visiting Skyline next Wednesday, October 19th, in the auditorium, from 3pm - 4pm to speak about these topics and more. The NHS board welcomes everyone to attend.

Skyline Announcements Oct. 14, 2022, available at <https://www.a2schools.org/domain/2249> (promoting Candidate for Congress, Debbie Dingle who is up for re-election on November 8, 2022) (bold in original).

36. While these announcements only represent a cross section of some of the announcements allowed by Defendants, it shows that Defendants allow some viewpoints to be represented, but not others.

37. For example, the non-curriculum student group NOW is allowed to promote events “in support of the 1973 Roe Vs. Wave court decision which allows women to keep abortioan rights.” (misspellings and typos in original).

38. Planned Parenthood is allowed to be promoted by non-curriculum student groups, promoting contraceptive methods and treatment of LGBTQ+ identities.

39. The non-curriculum student group the Black Student Union is allowed to promote the Black Lives Matters movement and views on the George Zimmerman/Trayvon Martin trial.

40. The non-curriculum student group, the Environmental Stability Club, is allowed to promote the idea climate change.

41. Numerous non-curriculum student groups are able to advocate for voting rights.

42. And, NHS is even allowed to promote a political candidate, Congresswoman Debbie Dingell, and her visit to the school to discuss leadership and how to make changes in society, weeks before the November 8, 2022 election.

43. All of these announcements were approved by Defendants and aired over the public address system at Skyline High School.

44. Defendants do not prohibit the announcements of these non-curriculum student groups when the announcements express viewpoints to which they agree.

45. Defendants, however, do prohibit the announcements of Plaintiff Skyline Republican Club due to its political viewpoint and content.

46. Defendants do not afford Plaintiffs S.N. and Skyline Republican Club the same treatment as they do other students and student clubs due to Plaintiffs' political speech and viewpoints.

47. Defendants limit Plaintiffs S.N. and Skyline Republican Club's access to its public address system due to their political speech, viewpoints, and content.

48. On Friday, October 21, 2022, Plaintiff S.N. submitted an announcement to be read over the public address system during morning announcements on behalf of the Skyline Republican Club, a non-curriculum student club.

49. Defendants open the forum of their public address system for announcements by students and school groups during the non-instructional time of the morning announcements.

50. Plaintiffs' proposed announcement stated:

Attention Students

Are you interested in joining our efforts to protect the health of women and children by joining us in our fight to defeat Proposal 3?

If proposal 3 is passed it would eliminate health and safety regulations, legalize late term and partial birth abortion, no longer require physicians to perform abortions, and eliminate informed consent laws.

If so email us at skylinerepublicanclub@gmail.com

51. At 9:11am, Plaintiffs S.N. and Skyline Republican Club were notified that their proposed announcement would not be read due to its “political nature.”

52. Laurie Adams who works for Ann Arbor Public Schools at Skyline High School sent the following email to Plaintiff S.N.

----- Forwarded message -----

From: **Adams, Laurie** <[REDACTED]>
Date: Fri, Oct 21, 2022, 9:11 AM
Subject: Re: Club
To: S [REDACTED] N [REDACTED] <[REDACTED]>

S [REDACTED],

The club is back on the list but your announcement is not going to be read or posted due to its political nature. We are not allowed to advertise political activities per AAPS School Board Policy as stated below.

5.5 The Superintendent shall notify any political parties, organizations, and/or candidates that they are expressly prohibited from promoting political activities and/or individuals on school property during school hours.

53. Defendants stated that Plaintiffs’ announcement was rejected

on the sole basis that it was “political.”

54. Defendants also stated that Defendant Ann Arbor Public Schools had an official policy that disallowed any advertisement of political speech, viewpoints, or content to be shared in the limited open forum it created through allowing students and non-curriculum student clubs to submit and air announcements over its public address system.

55. Defendants informed Plaintiffs that Ann Arbor Public Schools’ School Board Policy 5.5 prohibited “political parties, organizations, and/or candidates,” which included non-curriculum political student clubs, “from promoting political activities and/or individuals on school property during school hours.”

56. Plaintiff S.N. and his sister M.N. went to the Skyline High School office and met with Defendant Bilsborrow.

57. Plaintiff S.N. inquired why the ad he submitted was rejected.

58. Defendant Bilsborrow stated that the announcement was rejected due to being “political.”

59. Plaintiff S.N. pointed out that NOW has been able to advertise its support of *Roe v. Wade* and promote a protest at school and that Planned Parenthood is allowed to actively recruit members in the

school.

60. Plaintiff S.N. also brought up that the school allowed an announcement for an event with Democratic Congresswoman Debbie Dingle, who is presently running for office and on the November 8, 2022 ballot.

61. Plaintiff S.N. explained that it was confusing why these non-curriculum student groups would be allowed to air their announcements on the public address system, while his was stricken.

62. Defendant Bilsborrow stated that he did not agree with Plaintiff S.N.'s confusion.

63. Defendant Bilsborrow told Plaintiffs S.N. and M.N. "I'm the one who controls the announcements" and "I am not running any political announcements."

64. It became apparent during the exchange that Defendant Bilsborrow disagreed with Plaintiffs' political viewpoint.

65. Plaintiffs' speech was censored because it expressed criticism of pro-abortion public policy.

66. It also became apparent that Defendant Bilsborrow only had a shallow and misguided understanding of Proposal 3 and was

unfamiliar with the text and legal ramifications of the proposal. At one point Defendant Bilsborrow stated that he had not read Proposal 3 and would not be reading it, remarking “I don’t want to read the proposal.”

67. Defendant Bilsborrow, however, claimed that the brief informational reference provided in Plaintiffs’ announcement was “subjective.”

68. Plaintiff S.N. explained that it was not subjective but factual and informative with the purpose of recruiting students to join in the efforts of the non-curriculum student club.

69. Defendant Bilsborrow re-stated that he would not run any political announcements.

70. Plaintiff S.N. believed that he and Plaintiff Skyline Republican Club should be able to advertise and recruit students to get involved with their club’s activities, as Defendants allow NOW and other non-curriculum student clubs to do in the past, and expressed his concern with the unfairness of Defendants’ decisions and policies.

71. At this point, Defendant Bilsborrow started to become angry, cutting Plaintiff S.N. off whenever he tried to continue the conversation. Defendant Bilsborrow said “we’re never going to arrive at a common

viewpoint because you can't even understand that your announcement is subjective."

72. On October 28, 2022, Principal of Skyline High School, Defendant Cory McElmeel, emailed Plaintiff S.N. and ratified Defendant Bilsborrow's decision not to allow Plaintiffs' announcement.

73. Defendants told Plaintiff S.N. by email on October 21, 2022 and told Plaintiff S.N. and M.N. during their meeting on October 21, 2022 that the announcement was not allowed to be shared over the announcements because it was "political." Defendant McElmeel, however, tried to claim on October 28, 2022 in his email that "on the advice of legal counsel" that he was to supposed to express that Plaintiffs' ad was not allowed due to campaign finance law—which is a blatant pretense offered seven days after the fact by his legal counsel, after Defendants twice stated for themselves the actual basis of rejecting the announcement, which was its political viewpoint, speech, and content.

74. Plaintiffs' student speech involves no payment of finances, no payment of funds, no expenditures, and no use of volunteer services.

75. This asserted pretense did stop Defendants from allowing the non-curriculum student club, NHS, to share its announcement over the

public address system that Congresswoman Debbie Dingell could teach students about better leadership skills and how to become more active in politics, just a few weeks before her re-election, or from allowing NOW and Planned Parenthood's pro-abortion viewpoint.

76. Furthermore, it is clear from Defendants' initial email and the statements of Defendants Bilborrow, that Plaintiffs' announcement was rejected because it was "political" and was a political viewpoint that Defendants did not agree with and found disagreeable and "subjective."

77. Plaintiffs' announcement did not expressly state to "vote for" or "against" Proposal 3.

78. Plaintiffs' announcement sought to recruit members to involve themselves in community outreach and "to protect the health of women and children" by promoting sound public policies.

79. Plaintiffs do not believe that Proposal 3 is sound public policy.

80. Two Michigan courts have already found a right to abortion in the existing Michigan Constitution. *Planned Parenthood of Michigan, et al. v. Att'y Gen. of Michigan*, Case No. 22-cv-000044, Permanent Inj. Op. and Order (Mich. Ct. of Claims Sept. 7, 2022); *Whitmer v. Linderman, et al.*, Case No. 22-193498-CZ, Prelim. Inj. Order (Oakland

Cnty. Mich. Cir. Ct. Aug. 19, 2022). In response to Judge Gleicher's issuance of a permanent injunction in *Planned Parenthood of Michigan, et al. v. Att'y Gen. of Michigan*, proponents of Proposal 3 hailed the decision as "a historic victory for patients and providers in Michigan who have been forced to live under the threat of an archaic criminal abortion ban since the U.S. Supreme Court overturned *Roe v. Wade*. By permanently blocking the 1931 law criminalizing abortion, Michigan's Court of Claims has protected the continuity of care that Michiganders have enjoyed for nearly half a century and ensured that no overzealous prosecutor can come between a patient, their provider, and their health care." <https://www.plannedparenthood.org/about-us/newsroom/pressreleases/michigan-court-of-claims-permanently-blocks-unconstitutional-1931-criminal-abortion-ban>.

81. The majority of justices on the Michigan Supreme Court are pro-choice on the issue of abortion and funded by a political party that posits itself on the legalization of abortion. *See, e.g., Reprod. Freedom for All v. Bd. of State Canvassers*, 978 N.W.2d 854, 854 (Mich. 2022) (ruling 5-2 in favor of allowing Proposal 3 on the ballot); <https://gandernewsroom.com/2022/09/14/heres-why-the-michigan->

supreme-court-race-is-important/.

82. It is largely acknowledged among political and legal scholars that given the composition of the court, the Michigan Supreme Court is expected to uphold the injunctions granted in *Planned Parenthood* and *Whitmer*. Proposal 3's campaign fails to acknowledge this reality.

83. Proposal 3's campaign spreads a spirit of division and fear. It also spreads the fallacy that Proposal 3 "Restores *Roe*"—it does not.

84. If Proposal 3 actually restored *Roe v. Wade*, the ballot proposal would be one sentence long stating the State's return to that holding.

85. Proposal 3 is eight paragraphs long and attaches sixteen "provisions of existing constitution altered or abrogated by the proposal if adopted." (Ex. 1, Proposal 3).

86. The text of Proposal 3 and case law, along with the statements of an attorney representing the ACLU, one of the primary backers of the proposal, evidence that Proposal 3 eliminates the parental consent requirement presently required under state law and legalize abortion through all nine months of pregnancy. (Ex. 2, Article) (reporting that it is undisputed that Proposal 3 eliminates parental

consent and allows abortion through all nine months of pregnancy).

87. Further, the text of Proposal 3 substitutes the qualification under Michigan law, that abortion must be performed by a physician, with the qualification that it need only be performed by an “attending health care professional.” (Ex. 1 at § 1). It removes requirement in Michigan law, and a requirement followed for all other known medical procedures, that “informed” consent be given to patients. Instead, Proposal 3 substitutes that standard with only “voluntary consent.” (Ex. 1 at § 3).

88. Proposal 3 also prohibits the state from “penaliz[ing], prosecut[ing], or otherwise tak[ing] adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom.” (Ex. 1 at § 3). Reproductive freedom is defined in Proposal 3 as including “prenatal care, childbirth, postpartum care, . . . miscarriage management.” (Ex. 1 at § 1). Therefore, per the words of Proposal 3, it removes criminal prosecution and state malpractice lawsuits for pregnant women when “someone” criminally or negligently harms them while aiding or assisting in “prenatal care” or “childbirth.” (Ex. 1 at § 1).

89. The actual words of Proposal 3 deserve recognition and discussion, not hostility like that displayed by Defendant Bilsborrow.

90. These concerns and discussions about Proposal 3 should not be silenced, especially when the school allows other non-curriculum student clubs to promote their viewpoints, opinions, and concerns on the other side of this very debate.

91. Defendants refuse to grant Plaintiffs the same treatment and benefits that they have granted to other non-curriculum student groups at Skyline High School.

92. Defendants failed to provide Plaintiffs with the same benefits and treatment that other non-curriculum students groups receive at Skyline High School after Defendants were placed on notice, through correspondence from Plaintiffs' counsel on October 26, 2022 regarding the clearly established law as it applies to Plaintiffs.

93. Plaintiffs would like to hold a meeting regarding Proposal 3 and their community involvement in addressing the serious public policy concerns raised by the proposal in time to make a difference, prior to November 8, 2022.

94. After the announcement was rejected by Defendants on

October 21, 2022, Plaintiff S.N. returned to class. A teacher, knowing that the situation disheartened Plaintiff S.N., allowed him to read the announcement out loud in the classroom.

95. The announcement did not cause any disruption and did not interfere with the operation of the school or classroom in any way.

96. Plaintiffs were not able to reach the audience that they would have if permitted to have had the announcement shared over Skyline High School's public address system.

97. Plaintiffs were only able to reach a small percentage of their intended audience.

98. Meanwhile, Defendants approved NOW, for a window of time, to pass out literature in support of Proposal 3 in Skyline High School. NOW's literature bore a QR code that students could use to access pro-Proposal 3 propaganda.

99. Plaintiffs have been, and continue to be, deprived of the same benefits and opportunities available to other non-curriculum student groups at Skyline High School, based on Defendants' policy and decision to discriminate against Plaintiffs on the basis of their political purpose, viewpoint, and content of their speech.

100. Defendants' policies, decisions, actions, practices, customs, and/or procedures encourage school officials, including Defendants McElmeel and Bilsborrow, to disfavor political opinions, ideas, and viewpoints, such as the viewpoint held by Plaintiffs.

101. Defendants train and supervise its employees, including Defendants McElmeel and Bilsborrow, to disfavor political opinions, ideas, and viewpoints critical of pro-abortion measures, such as the viewpoint Plaintiffs, while promoting abortion, *Roe v. Wade*, and Planned Parenthood.

102. Plaintiffs have no other adequate remedy at law.

FIRST CLAIM FOR RELIEF
(Freedom of Speech—First Amendment
Viewpoint Discrimination)

103. Plaintiff hereby incorporates by reference all stated paragraphs.

104. By reason of the aforementioned acts, decisions, policies, omissions, training, supervision, practices, customs and/or procedures created, adopted, and enforced under color of state law, Defendants have unconstitutionally deprived Plaintiffs of their right to freedom of speech guaranteed by the First Amendment to the United States Constitution

as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

105. Defendants through their acts, decisions, policies, practices, customs and/or procedures censored Plaintiffs political speech based on its content and its viewpoint on abortion policy and prevented Plaintiffs from expressing their speech and viewpoint on the issue.

106. As a direct and proximate result of Defendants' violation of Plaintiffs' rights, Defendants caused Plaintiffs to suffer irreparable harm, including the loss of their constitutional rights, and suffer damages. Therefore, Plaintiffs request the appropriate relief set forth in the prayer for relief below.

**SECOND CLAIM FOR RELIEF
(Freedom of Speech—First Amendment
Unconstitutional Discretion, Prior Restrain)**

107. Plaintiff hereby incorporates by reference all stated paragraphs.

108. By reason of the aforementioned acts, decisions, policies, omissions, training, supervision, practices, customs and/or procedures created, adopted, and enforced under color of state law, Defendants have

unconstitutionally deprived Plaintiffs of their right to freedom of speech guaranteed by the First Amendment to the United States Constitution as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

109. Defendants, through their decisions, policies, practices, customs and/or procedures leaves to the unfettered discretion of school officials, such as Defendants McElmeel and Bilsborrow, the subjective authority to allow or reject student and student club announcements on the basis of their viewpoint. Defendants impermissibly grant to school officials, such as Defendants McElmeel and Bilsborrow, the authority to exercise subjective and unfettered in their determination whether an announcement is political. Defendants have no clear set of guidelines to determine whether the speech of the student or student organization is political or not.

110. Defendants McElmeel and Bilsborrow violate Plaintiffs' rights by subjectively determining that Plaintiffs' speech to promote the Skyline Republican club must be rejected because it was subjectively determined to be political.

111. As a direct and proximate result of Defendants' violation of Plaintiffs' rights, Defendants caused Plaintiffs to suffer irreparable harm, including the loss of their constitutional rights, and suffer damages. Therefore, Plaintiffs request the appropriate relief set forth in the prayer for relief below.

THIRD CLAIM FOR RELIEF
(Equal Protection—Fourteenth Amendment)

112. Plaintiffs hereby incorporate by reference all stated paragraphs.

113. By reason of the aforementioned acts, policies, decisions, training, supervision, practices, customs, and/or procedures created, adopted, and enforced under color of state law, Defendants have unconstitutionally deprived Plaintiffs of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

114. Defendants, through their acts, policies, decisions, practices, and/or customs, prevented Plaintiffs from expressing their political view on the issue of abortion in a limited public forum created by Defendants and Skyline High School, by denying Plaintiffs' use of this limited public forum because it found Plaintiffs' views unacceptable. Defendants,

however, allowed students and student groups who hold pro-abortion views and other viewpoints to use the limited public forum.

115. By favoring speech that approves of and promotes pro-abortion messages, Defendants deprived Plaintiffs of the equal protection guarantee of the Fourteenth Amendment.

116. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the equal protection of the laws, which prohibits Defendants from treating Plaintiffs differently than similarly situated students and student organizations.

117. Public schools may not treat someone disparately as compared to similarly situated persons when such disparate treatment burdens a fundamental right, targets a suspect class, or has no rational basis.

118. Plaintiffs are similarly situated to other students and student groups at Skyline High School, who wish to share their speech on the announcements over the school's public address system.

119. As a direct and proximate result of Defendants' violation of Plaintiffs' rights, Defendants have caused Plaintiffs to suffer irreparable harm, including the loss of their constitutional rights, and caused

Plaintiffs to suffer damages. Therefore, Plaintiffs request the appropriate relief set forth in the prayer for relief below.

**FOURTH CLAIM FOR RELIEF
(Violation of the Federal Equal Access Act)**

120. Plaintiff hereby incorporates by reference all stated paragraphs.

121. Defendants acting under the color of state law, have and continue to deprive Plaintiffs of the clearly established rights, privileges, and immunities secured by the Equal Access Act and are liable to Plaintiffs pursuant to 20 U.S.C. §§ 4071-74 and 42 U.S.C. § 1983.

122. Skyline High School is a secondary school that operates one or more grades nine through twelve, and it receives federal financial assistance.

123. Skyline High School has opened a limited open forum pursuant to the Equal Access Act because Skyline High School grants and offering and opportunity for one or more non-curriculum related student groups to create and air announcements over its public address system during non-instructional time.

124. Since Skyline High School maintains a limited open forum, Defendants may not deny equal access or fair opportunity to, or

discriminate against any students who wish to use Defendants' limited open forum on the basis of the religious, political, philosophical, or other content of the speech when determining whether an announcement may be shared over Skyline High School's public address system.

125. Defendants violated, and continue to violate, the Equal Access Act by refusing on the basis of Plaintiffs' political purpose, viewpoint, and content of their speech to allow Plaintiffs to share announcements over Skyline High School's public address system on the same terms as it allows recognized non-curriculum related student groups to.

126. Defendants have refused to allow Plaintiffs the same benefits and opportunities granted to other non-curriculum related student groups.

127. Defendant Ann Arbor Public Schools' School Board Policy 5.5 that prohibits "political parties, organizations, and/or candidates," which included non-curriculum political student clubs, "from promoting political activities and/or individuals on school property during school hours" violates the Equal Access Act both facially and as applied to Plaintiffs.

128. Defendants' violation of the Equal Access Act has and

continues to irreparably harm Plaintiffs.

129. Wherefore, as an actual and proximate result of Defendants' act, conduct, policies, practices, customs, and/or omissions, Defendants have injured Plaintiffs and caused Plaintiffs to suffer damages. Therefore, Plaintiffs request the appropriate relief set forth in the prayer for relief below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this court:

A) to enter judgment declaring that Defendants violated Plaintiffs' fundamental constitutional rights as set forth in this Complaint;

B) to enter judgment declaring that Defendants' policies, acts, decisions, training, supervision, practices, customs, and/or procedures violate Plaintiffs' fundamental constitutional rights to freedom of speech and the equal protection of the law as set forth in this Complaint;

C) to enter judgment that Defendants' policies, acts, decisions, training, supervision, practices, customs, and/or procedures violate the Equal Access Act as set forth in this Complaint;

D) to preliminary and permanently enjoin Defendants' policies, decision, and acts that violate Plaintiffs' rights under the First and Fourteenth Amendments and the Equal Access Act as set forth in this Complaint;

E) to enter an order directing Defendants to take such affirmative action necessary to eliminate their unlawful acts and to ensure Plaintiffs' rights will no longer be infringed;

F) to award Plaintiffs nominal damages against all Defendants;

G) to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;

H) to grant such other and further relief as this court should find just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury of all issues triable of right by a jury.

Date: November 1, 2022

Respectfully submitted,

THOMAS MORE LAW CENTER

/s/ Richard Thompson

Richard Thompson (P21410)

/s/ Erin Mersino

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VERIFICATION

I, S.N., a citizen of the United States and a resident of the State of Michigan, 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 1st Day of November 2022 in Ann Arbor, Michigan

S.N.

S.N.



**David Nielsen, parent and
next friend of S.N., a minor and
Plaintiff**