



[View U.S. District Court Opinion](#)

[View Original Source Image of This Document](#)

BRADLEY JOHNSON, Plaintiff, v. POWAY UNIFIED SCHOOL DISTRICT; JEFF MANGUM, LINDA VANDERVEEN, ANDREW PATAPOW, TODD GUTSCHOW, and PENNY RANFTLE, all individually and in his or her official capacity as a Member of the Board of Education for the Poway Unified School District; DR. DONALD A. PHILLIPS, individually and in his official capacity as Superintendent of the Poway Unified School District; WILLIAM R. CHIMENT, individually and in his official capacity as Assistant Superintendent of the Poway Unified School District; and DAWN KASTNER, individually and in her official capacity as Principal, Westview High School, Poway Unified School District, Defendants.

CASE NO. 07cv783 BEN (NLS)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

2007 U.S. Dist. Ct. Pleadings 212047; 2007 U.S. Dist. Ct. Pleadings LEXIS 25029

September 21, 2007

Complaint

VIEW OTHER AVAILABLE CONTENT RELATED TO THIS DOCUMENT: U.S. District Court: Motion(s)

COUNSEL: [*1] Charles S. LiMandri, Esq. (California State Bar No. 110841), LAW OFFICES OF CHARLES S. LiMANDRI, Rancho Santa Fe, California, Robert J. Muise, Esq. * (Michigan State Bar No. P62849), THOMAS MORE LAW CENTER, Ann Arbor, Michigan, * Admitted pro hac vice, Counsel for Plaintiff, Bradley Johnson.

JUDGES: Hon. Roger T. Benitez

TITLE: First Amended Complaint

TEXT: Plaintiff Bradley Johnson, by and through his undersigned attorneys, brings this First Amended Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof alleges the following upon information and belief:

INTRODUCTION

1. This case seeks to vindicate fundamental constitutional rights. It is a civil rights action brought pursuant to the First and Fourteenth Amendments to the United States Constitution, the California Constitution, and 42 U.S.C. § 1983, challenging the unconstitutional acts, policies, practices, and/or customs of Defendants as set forth in this First

Amended Complaint.

2. Plaintiff seeks a declaration that Defendants have deprived him of his constitutional rights, a permanent injunction enjoining the enforcement of Defendants' [*2] viewpoint-based policy of banning certain messages as applied to Plaintiff's speech, and an award of nominal damages for the past loss of Plaintiff's constitutional rights. Plaintiff also seeks an award of reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988, California Code of Civil Procedure § 1021.5, and other applicable law.

JURISDICTION AND VENUE

3. This action arises under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, and the California Constitution. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over the state law claims in this case pursuant to 28 U.S.C. § 1367(a).

4. Plaintiff's 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. Plaintiff's claim for nominal damages is made pursuant [*3] to 42 U.S.C. § 1983 and other applicable law.

5. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

PLAINTIFF

6. Plaintiff Bradley Johnson is a public school math teacher at Westview High School in the Poway Unified School District. He is a Christian and has taught math in the school district for 30 years.

DEFENDANTS

7. Defendant Poway Unified School District (hereinafter "School District") is a public entity established and organized under, and pursuant to, the laws of California with the authority to sue and be sued in its own name.

8. Defendant Jeff Mangum, at all times relevant herein, was a member of the Board of Education for the School District acting under color of state law. The Board of Education is the governing body of the School District and is responsible for creating, adopting, and implementing its policies, practices, and/or customs, including the challenged policy, practice, and/or custom set forth in this First Amended Complaint. Defendant Mangum is sued both individually and in his official capacity. [*4]

9. Defendant Linda Vanderveen, at all times relevant herein, was a member of the Board of Education for the School District acting under color of state law. Defendant Vanderveen is sued both individually and in her official capacity.

10. Defendant Andrew Patapow, at all times relevant herein, was a member of the Board of Education for the School District acting under color of state law. Defendant Patapow is sued both individually and in his official capacity.

11. Defendant Todd Gutschow, at all times relevant herein, was a member of the Board of Education for the School District acting under color of state law. Defendant Gutschow is sued both individually and in his official capacity.

12. Defendant Penny Ranftle, at all times relevant herein, was a member of the Board of Education for the School District acting under color of state law. Defendant Ranftle is sued both individually and in her official capacity.

13. Defendant Donald A. Phillips, at all times relevant herein, was the Superintendent of the School District acting under color of state law. Defendant Phillips is responsible for creating, adopting, and implementing School District policies, practices, and/or customs, including [*5] the challenged policy, practice, and/or custom set forth in this First

Amended Complaint. Defendant Phillips is sued both individually and in his official capacity.

14. Defendant William R. Chiment, at all times relevant herein, was the Assistant Superintendent of the School District acting under color of state law. Defendant Chiment is responsible for creating, adopting, and implementing School District policies, practices, and/or customs, including the challenged policy, practice, and/or custom set forth in this First Amended Complaint. Defendant Chiment is sued both individually and in his official capacity.

15. Defendant Dawn Kastner, at all times relevant herein, was the Principal of Westview High School in the School District acting under color of state law. Defendant Kastner is responsible for creating, adopting, and implementing School District policies, practices, and/or customs, including the challenged policy, practice, and/or custom set forth in this First Amended Complaint. Defendant Kastner is sued both individually and in her official capacity.

STATEMENT OF FACTS

16. It has been "the unmistakable holding" of the United States Supreme Court for more than 50 [*6] years that neither "students [nor] teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Defendants' viewpoint-based restriction on Plaintiff's speech violates this well-established principle of law.

17. Plaintiff is a respected public school teacher who has been teaching in the School District for 30 years. Plaintiff was and continues to be a math teacher in the School District. He presently teaches math at Westview High School. During his 30 years of teaching, Plaintiff has taught math at 3 different high schools in the School District.

18. For approximately 25 years, Plaintiff had continuously displayed, without objection, on his classroom walls various banners that reflect the religious heritage and history of our Nation. Plaintiff had the banners made to order by a private company and purchased them with his personal funds.

19. The classroom in which the banners were displayed is assigned to Plaintiff; it is his classroom for "homeroom" and academic classes. It is also the classroom he uses for non-curricular and extra-curricular activities. [*7]

20. As a matter of School District policy, practice, and/or custom, Plaintiff has discretion and control over the messages displayed on his classroom walls; no other teacher is permitted to display materials on these walls without Plaintiff's permission. This has been the policy, practice, and custom in the School District for at least the past 30 years.

21. Pursuant to School District policy, practice, and/or custom, teachers are permitted to display in their classrooms various messages and other items that reflect the individual teacher's personality, opinions, and values, as well as messages relating to matters of political, social, or other similar concerns so long as these displayed items do not materially disrupt school work or cause substantial disorder or interference in the classroom. As a result of this School District policy, practice, and/or custom, the classroom walls serve as an expressive vehicle for teachers to convey non-curriculum related messages.

22. Pursuant to this long-standing policy, practice, and/or custom, teachers have displayed and continue to display in their classrooms such non-educational and non-curricular materials as posters of rock bands, such [*8] as *Nirvana* and *The Clash*, posters of professional athletes, travel posters, family photographs, various non-student artwork, including posters of such artwork, and even a collection of stuffed animals. Teachers have been permitted to display posters with Buddhist and Islamic messages and Tibetan prayer flags. And teachers have displayed nature pictures and other matters promoting the environment. The displayed items contain messages that express the personal views, interests, or opinions of the teachers and/or relate to matters of political, social, or other similar concerns. The teachers control the messages conveyed by their displays. The teachers' displays do not constitute government speech nor the speech of the School District.

23. Defendants' policy, practice, and/or custom of permitting teachers to display messages, including non-curricula

messages, on their classroom walls creates a forum for the teachers to engage in expressive activity. Plaintiff's banners were displayed pursuant to this policy, practice, and/or custom. Plaintiff's banners were not displayed pursuant to any of his official duties as a teacher. Plaintiff did not use the banners during any classroom [*9] session or period of instruction. Plaintiff's banners were not expressing a message on behalf of the School District.

24. Plaintiff's banners contain the following historical phrases: "In God We Trust," the official motto of the United States; "One Nation Under God," the 1954 amendment to the Pledge of Allegiance; "God Bless America," a patriotic song considered to be the unofficial national anthem of the United States; "God Shed His Grace On Thee," a line from "America the Beautiful," a popular patriotic song; and "All Men Are Created Equal, They Are Endowed By Their Creator," an excerpt from the preamble to the Declaration of Independence.

25. Plaintiff displayed two such banners in his classroom, along with other items, including photographs of nature scenes and national parks and pictures of his family.

26. Plaintiff's first banner, which is red, white, and blue, depicting the colors of our national flag, includes the phrases "In God We Trust," "One Nation Under God," "God Bless America," and "God Shed His Grace On Thee." Each phrase appears on a separate line and could be displayed individually. Plaintiff continuously displayed a paper version of this banner for approximately [*10] 8 years, and he continuously displayed the present version, which is made of more durable material, for approximately 17 years. The present version is an exact replica of the paper version. Therefore, the message of this banner was displayed continuously for approximately 25 years.

27. Plaintiff's second banner includes the phrase "All Men Are Created Equal, They Are Endowed By Their Creator." This banner was continuously displayed for approximately 17 years.

28. Each banner measures approximately 7 feet long by 2 feet wide and was continuously displayed in a non-obstructive manner. Plaintiff's banners do not contain any pictures or symbols.

29. "In God We Trust" is the official motto of the United States. A law passed by Congress and signed by the President on July 30, 1956 approved a joint resolution of Congress that declared "In God we trust" the national motto of the United States.

30. Our national motto was taken from the poem "The Star-Spangled Banner," written by Francis Scott Key in 1814, a verse of which reads:

"Then conquer we must, when our cause it is just, And this be our motto-'In God is our Trust.'"

Key's poem was later adapted as our national anthem. [*11]

31. The government's use of the phrase "In God We Trust" has a long history in this country. In 1865, Congress first authorized the National Mint to include the phrase on certain coins, and in 1908, Congress made its inclusion mandatory. In 1955, the phrase was placed on all of our currency, and one year later it became our national motto. "In God We Trust" appears above the Speaker's Chair in the United States House of Representatives and above the main door of the United States Senate chamber.

32. On July 27, 2006, President George W. Bush issued a proclamation officially recognizing the 50th anniversary of our national motto, stating, in part, "On the 50th anniversary of our national motto, 'In God We Trust,' we reflect on these words that guide millions of Americans, recognize the blessings of the Creator, and offer our thanks for His great gift of liberty. . . . As we commemorate the 50th anniversary of our national motto and remember with thanksgiving God's mercies throughout our history, we recognize a divine plan that stands above all human plans and continue to seek His will."

33. In 1863, at Gettysburg, President Abraham Lincoln stated, "[T]hat we here highly resolve [*12] that these dead

shall not have died in vain-that this nation, under God, shall have a new birth of freedom-and that government of the people, by the people, for the people shall not perish from the earth."

34. In 1942, Congress enacted the Pledge of Allegiance, which was amended in 1954 to officially include the phrase "under God." Then President Dwight David Eisenhower said this about adding "under God" to the Pledge: "In this way we are reaffirming the transcendence of religious faith in America's heritage and future; in this way we shall constantly strengthen those spiritual weapons which forever will be our country's most powerful resources in peace and war." Students in the School District recite the Pledge of Allegiance on a daily basis.

35. In 2002, Congress passed legislation that made extensive findings about the historic role of religion in the political development of our Nation and reaffirmed the reference to "one Nation under God" in the text of the Pledge, as well as reaffirming that "God" remains in our National motto.

36. The preamble to the Declaration of Independence states as follows: "We hold these truths to be self-evident, that all men are created equal, that [*13] they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The Declaration of Independence is our Nation's founding document.

37. "God Bless America" is an American patriotic song written by Irving Berlin in 1918 and later revised by him in 1938. It is often considered the unofficial national anthem of the United States and frequently played at public events.

38. "God Shed His Grace on Thee" is a well-known verse from "America the Beautiful," an American patriotic song that rivals "The Star-Spangled Banner," the national anthem, in popularity. "America the Beautiful" is often played at public events.

39. During his 30 years of teaching in the School District, Plaintiff has had 7 different school principals, numerous school board members, superintendents, assistant superintendents, over 4,000 students and several thousand parents in his classroom where the banners were displayed. Prior to this year, Plaintiff had not received one complaint about the banners. Students, parents, faculty, board members, and teachers in the School District knew that Plaintiff posted the banners and that the message conveyed by [*14] the banners reflected Plaintiff's speech and not the speech of the School District.

40. Plaintiff's banners caused no disruption or interference in his classroom or anywhere else in the school.

41. Plaintiff's display of his banners has not interfered with the basic education mission of the School District.

42. Plaintiff's long-standing practice of displaying his banners came to an abrupt end when on or about January 23, 2007, Defendants ordered him to remove the banners based solely on the viewpoint of Plaintiff's message. Specifically, Defendant Kastner told Plaintiff that his banners were impermissible because they conveyed a "Judeo-Christian" viewpoint.

43. Defendants did not claim that Plaintiff's banners caused a material disruption or substantial disorder in the school or that they interfered with the curriculum. Defendants had no evidence that Plaintiff's banners caused any disruption or disorder. Defendants singled out Plaintiff for discriminatory treatment because of the viewpoint of his message.

44. In 1952, the United States Supreme Court acknowledged the following historical reality: "We are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). [*15] From at least 1789, there has been an unbroken history of official acknowledgment by all three branches of government of religion's role in American life. Examples of this historical acknowledgment include Executive Orders recognizing religiously grounded National Holidays, such as Christmas and Thanksgiving, Congress directing the President to proclaim a National Day of Prayer each year, and the printing on our currency of the national motto, "In God We

Trust."

45. As the United States Supreme Court acknowledged in *Lynch v. Donnelly*, 465 U.S. 668, 677-78 (1984):

One cannot look at even this brief resume [of historical examples of public religious expression] without finding that our history is pervaded by expressions of religious beliefs. . . . Equally pervasive is the evidence of accommodation of all faiths and all forms of religious expression, and hostility toward none. Through this accommodation, as Justice Douglas observed, governmental action has "follow[ed] the best of our traditions" and "respect[ed] the religious nature of our people." (quoting *Zorach*, 343 U.S. at 314).

46. Recognition of the role of God in our Nation's [*16] history and heritage is consistently reflected in United State Supreme Court decisions. The Court has acknowledged, for example, that religion has been closely identified with our history and government, and that the history of man is inseparable from the history of religion. Examples of patriotic invocations of God and official acknowledgments of religion's role in our Nation's history abound. As Justice O'Connor observed, "It is unsurprising that a Nation founded by religious refugees and dedicated to religious freedom should find references to divinity in its symbols, songs, mottoes, and oaths." *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 35-36 (2004) (O'Connor, J., concurring in the judgment).

47. Efforts to suppress this recognition and historical acknowledgment, as demonstrated by Defendants' action here, are the antithesis of the value of religious tolerance that underlies the United States and California Constitutions. Cleansing our Nation's classrooms of our religious heritage and history and imposing viewpoint restrictions on speech to silence such expressions advance no legitimate educational purpose nor are they reasonably related to any legitimate [*17] pedagogical concerns.

48. Plaintiff's banners showed aspects of the history and heritage of our Nation. Accordingly, Plaintiff's banners touched on a matter of public concern and interest.

49. The classroom is peculiarly the "marketplace of ideas." As a result, the First Amendment does not tolerate governmental policies, practices, and or customs that cast a pall of orthodoxy over the classroom, such as Defendants' policy, practice, and/or custom at issue here, which prohibits Plaintiff from displaying his banners based on the viewpoint conveyed by the message.

50. It is a fact that religious people founded this Nation. As a result, references to God are common in our songs, mottoes, and slogans. To ban such references from public schools serves no valid educational purpose.

51. Plaintiff wants to display his banners. However, Defendants have prohibited him from doing so by applying School District policy so as to silence Plaintiff's speech based on its viewpoint.

52. Defendants claimed that Plaintiff's banners were impermissible because they convey a "Judeo-Christian" viewpoint. Additionally, Defendants acknowledged that Plaintiff's banners were not displayed as part of his official [*18] duties as a teacher nor were they part of the curriculum.

53. Defendants admit that it is entirely proper for Plaintiff to display materials, including posters and banners, "about the foundation of our nation" in this forum. Thus, the subject matter of Plaintiff's banners was permitted, and this subject matter was consistent with the purpose served by the forum. Defendants, however, intended by the removal of Plaintiff's banners to suppress ideas with which they disagreed, thereby imposing a viewpoint-based restriction on speech otherwise permitted in the forum.

54. In fact, Defendants' prohibition of Plaintiff's banners is contrary to the prescriptions of California Education Code § 51511, which specifically permits "references to religion" or "other things having a religious significance" in the public schools.

55. As evidenced by Defendants' words and actions, Defendants are prohibiting Plaintiff from displaying his banners in his classroom by applying School District policy so as to impose a viewpoint restriction on Plaintiff's speech.

56. Defendants' policy, practice, and/or custom of banning messages with a "Judeo-Christian" viewpoint as applied to Plaintiff's banners serves [*19] no valid educational purpose, is not reasonably related to any legitimate pedagogical concern, and conveys a government-sponsored message of disapproval of and hostility toward religion, in particular, the Christian religion and our Nation's Judeo-Christian heritage. Moreover, Defendants' order to remove the banners was not curriculum related; Plaintiff was teaching and continues to teach his assigned mathematics curriculum.

57. Both the United States and California Constitutions prohibit government action that disfavors or is hostile toward religion, such as Defendants' actions as set forth in this First Amended Complaint.

58. Had Plaintiff not complied with Defendants' order to remove his banners, Plaintiff would have suffered adverse employment consequences, including a possible reprimand, suspension, or loss of employment.

FIRST CLAIM FOR RELIEF

Violation of Freedom of Speech under the First Amendment to the United States Constitution

59. Plaintiff hereby incorporates by reference all above-stated paragraphs.

60. By reason of the aforementioned policy, practice, custom, acts, and omissions, engaged in under color of state law, Defendants have imposed a viewpoint-based [*20] restriction on Plaintiff's speech in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

61. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

SECOND CLAIM FOR RELIEF

Violation of the Establishment Clause of the First Amendment to the United States Constitution

62. Plaintiff hereby incorporates by reference all above-stated paragraphs.

63. By reason of the aforementioned policy, practice, custom, acts, and omissions, engaged in under color of state law, Defendants have violated the Establishment Clause of 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.

64. Defendants' policy, practice, and/or custom of prohibiting [*21] Plaintiff's banners lacks a valid secular purpose, has the primary effect of inhibiting religion, and creates an excessive entanglement with religion in violation of the United States Constitution.

65. Defendants' policy, practice, and/or custom conveys an impermissible, government-sponsored message of disapproval of and hostility toward the Christian religion and our Nation's religious heritage. As a result, Defendants' policy, practice, and/or custom sends a clear message to Plaintiff that he is an outsider, not a full member of the political and school community and an accompanying message that those who disfavor the Christian religion and our Nation's Judeo-Christian heritage are insiders, favored members of the political and school community in violation of the United States Constitution.

66. As a direct and proximate result of Defendants' violation of the Establishment Clause of the First Amendment,

Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

THIRD CLAIM FOR RELIEF

Violation of the Equal Protection Clause of the Fourteenth Amendment to the United [*22] States Constitution

67. Plaintiff hereby incorporates by reference all above-stated paragraphs.

68. By reason of the aforementioned policy, practice, custom, acts, and omissions, engaged in under color of state law, Defendants have unconstitutionally deprived Plaintiff of the equal protection of the law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, in that Defendants, through their acts, policies, practices, and/or customs, prevented Plaintiff from expressing a message in a forum created by Defendants for such messages, thereby denying the use of this forum to those whose views Defendants find unacceptable.

69. As a direct and proximate result of Defendants' violation of the Equal Protection Clause of the Fourteenth Amendment, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

FOURTH CLAIM FOR RELIEF

Violation of Freedom of Speech under the California Constitution

70. Plaintiff hereby incorporates by reference all above-stated paragraphs.

71. By reason of the aforementioned policy, [*23] practice, custom, acts, and omissions, engaged in under color of state law, Defendants have imposed a viewpoint-based restriction on Plaintiff's speech in violation of Article I, § 2 of the California Constitution.

72. As a direct and proximate result of Defendants' violation of the Liberty of Speech Clause of the California Constitution, Plaintiff has suffered irreparable harm, including the loss of his constitutional right to freedom of expression, entitling him to declaratory and injunctive relief and nominal damages.

FIFTH CLAIM FOR RELIEF

Violation of the No Preference Clause of the California Constitution

73. Plaintiff hereby incorporates by reference all above-stated paragraphs.

74. By reason of the aforementioned policy, practice, custom, acts, and omissions, engaged in under color of state law, Defendants have violated Article I, Section 4 of the California Constitution ("No Preference Clause").

75. Defendants' policy, practice, and/or custom of prohibiting Plaintiff's banners lacks a valid secular purpose, has the primary effect of inhibiting religion, and creates an excessive entanglement with religion in violation of the California Constitution.

76. [*24] Defendants' policy, practice, and/or custom conveys an impermissible, government-sponsored message of disapproval of and hostility toward the Christian religion and our Nation's religious heritage. As a result, Defendants' policy, practice, and/or custom sends a clear message to Plaintiff that he is an outsider, not a full member of the political and school community and an accompanying message that those who disfavor the Christian religion and our Nation's Judeo-Christian heritage are insiders, favored members of the political and school community in violation of the California Constitution.

77. As a direct and proximate result of Defendants' violation of the No Preference Clause of the California Constitution, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and nominal damages.

SIXTH CLAIM FOR RELIEF

Violation of the Establishment Clause of the California Constitution

78. Plaintiff hereby incorporates by reference all above-stated paragraphs.

79. By reason of the aforementioned policy, practice, custom, acts, and omissions, engaged in under color of state law, Defendants [*25] have violated Article I, Section 4 of the California Constitution ("Establishment Clause").

80. Defendants' policy, practice, and/or custom of prohibiting Plaintiff's banners lacks a valid secular purpose, has the primary effect of inhibiting religion, and creates an excessive entanglement with religion in violation of the California Constitution.

81. Defendants' policy, practice, and/or custom conveys an impermissible, government-sponsored message of disapproval of and hostility toward the Christian religion and our Nation's religious heritage. As a result, Defendants' policy, practice, and/or custom sends a clear message to Plaintiff that he is an outsider, not a full member of the political and school community and an accompanying message that those who disfavor the Christian religion and our Nation's Judeo-Christian heritage are insiders, favored members of the political and school community in violation of the California Constitution.

82. As a direct and proximate result of Defendants' violation of the Establishment Clause of the California Constitution, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and [*26] injunctive relief and nominal damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Court:

A) to declare that Defendants have violated the First and Fourteenth Amendments to the United States Constitution, as set forth in this First Amended Complaint;

B) to declare that Defendants have violated the California Constitution, as set forth in this First Amended Complaint;

C) to permanently enjoin Defendants' policy, practice, and/or custom of banning messages with a Judeo-Christian viewpoint, as set forth in this First Amended Complaint;

D) to award Plaintiff nominal damages against Defendants in their individual capacities for the violation of his constitutional rights pursuant to 42 U.S.C. § 1983 and other applicable law;

E) to award Plaintiff his reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988, California Code of Civil Procedure § 1021.5, and other applicable law;

F) to grant such other and further relief as this Court should find just and proper.

Respectfully submitted,

THOMAS MORE LAW CENTER

By: /s/ Robert J. Muise
Robert J. Muise, Esq. *

* Admitted *pro hac vice*

[*27]
Charles S. LiMandri, Esq.

Counsel for Plaintiff Bradley Johnson

CERTIFICATE OF SERVICE

STATE OF MICHIGAN, COUNTY OF WASHTENAW

I am employed in the County of Washtenaw, State of Michigan. I am over the age of eighteen and not a party to the within action. My business address is Thomas More Law Center, 24 Frank Lloyd Wright Drive, P.O. Box 393, Ann Arbor, Michigan 48106.

On September 21, 2007, I served the following documents entitled: **Notice of Filing First Amended Complaint, First Amended Complaint**, and this certificate of service on the interested parties in this action as follows:

[see attached service list]

☒ (BY ELECTRONIC SERVICE) On the date executed below, I served the document(s) via CM/ECF described above on the designated recipients appearing on the service list through electronic transmission of said document(s). A certified receipt is issued to the filing party acknowledging receipt by CM/ECF's system. Once CM/ECF has served all designated recipients, proof of electronic service is returned to the filing party.

☐ (BY MAIL) I caused true copies of said document(s) to be enclosed in a sealed envelope(s) with postage thereon [*28] fully prepaid and the envelope(s) to be placed in the United States Mail at Ann Arbor, Michigan. I am readily familiar with the practice of the Thomas More Law Center for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

☐ (BY FACSIMILE) The above-referenced document(s) was transmitted by facsimile transmission to each recipient whose name and facsimile number appear on the service list. The transmission was reported as completed and without error. A true and correct copy of that transmission report is attached hereto and incorporated by reference and also in accordance with:

☐ (BY FEDERAL EXPRESS) I caused the above-described documents to be served on the interested parties noted on the service list by Federal Express.

☒ I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on September 21, 2007, at Ann Arbor, Michigan.

/s/ Robert J. Muise
Robert J. Muise
Counsel for Plaintiff Bradley Johnson

SERVICE LIST [*29]

Stutz Artiano Shinoff & Holtz

Daniel R. Shinoff, Esq.

Jack M. Sleeth, Jr., Esq.

Paul V. Carelli, IV, Esq.

2488 Historic Decatur Road, Suite 200

San Diego, CA 92106-6113

Counsel for Defendants Poway Unified School District, Jeff Mangum, Linda Vanderveen, Andrew Patapow, Todd Gutschow, Penny Ranfile, Dr. Donald A. Phillips, William R. Chiment, and Dawn Kastner