IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID J. STOUT II, by and through his Next Friends, DAVID J. STOUT and COLLEEN R. STOUT,

Plaintiff,

-vs-

PLAINWELL COMMUNITY SCHOOLS; JEREMY WRIGHT, individually and in his Official capacity as Principal of Plainwell High School; DEB BEALS, individually and in her official capacity as Assistant-Principal of Plainwell High School; DAVID HEPINSTALL, individually and in his official capacity as Band Director of Plainwell High School; and AUSTIN HUNT, individually and in his Official capacity as Band Director of Plainwell High School, Jointly and Severally,

Defendants.
_____/

VERIFIED COMPLAINT

CASE NO.:

HON.:

David A. Kallman (P34200)
Stephen P. Kallman (P75622)
Jack C. Jordan (P46551)
GREAT LAKES JUSTICE CENTER
Attorneys for Plaintiffs
5600 W. Mount Hope Hwy.
Lansing, MI 48917
(517) 993-9123
Dave@GreatLakesJC.org

NOW COMES the above-named Plaintiff, by and through his undersigned counsel, and brings this Verified 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. "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397 (1989). "Speech may not be banned on the ground that it expresses ideas that offend." *Metal v. Tam*, 137 S.Ct. 1744, 1751 (2017). "Students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years." *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969); *Mahanoy Area School District v. B.L.*, 141 U.S. 2038 (2021).

2. A foundational core of our Constitutional Republic is that the State cannot punish its citizens for engaging in speech that is protected by the First Amendment. Just as citizens cannot be criminally punished for protected speech, a public school cannot discipline its students for speech that falls within the ambit of the First Amendment.

3. This case arises because Plaintiff, a minor, and student at Plainwell High School, was wrongly subjected to a three-day suspension for the following:

A. expressing his sincerely held Christian beliefs and opinions in a private conversation with another like-minded student on school property;

B. laughing, allegedly, at inappropriate racial and homophobic "jokes" as told by two other band members during the school's summer band camp on school grounds and not immediately stopping them from telling inappropriate "jokes;"

C. sharing his Christian beliefs about heterosexual/homosexual conduct in a series of private text messages, with another child, which did not occur on the school grounds or campus, with school property, at a school sponsored event or field trip, nor was it

connected to any functions of the school in any way; and

D. failing to self-report to Defendants conduct and speech that Plaintiff did not believe were wrong.

4. Defendants acted outside the scope of their authority and violated Plaintiff's well established First Amendment rights by suspending him for three days, preventing him from attending class or participating or practicing in any after school activities, and filing in his school record a disciplinary action.

5. Such a suspension by Defendants is a recognized constitutional injury.

6. Plaintiff's private text/chat messages and conversations voicing his personal and religious opinions on homosexual conduct were rooted in historic religious doctrine.

7. Defendants had no authority to discipline Plaintiff for his speech in this case.

8. This case seeks to protect and vindicate statutory and fundamental constitutional rights. Plaintiff brings a civil rights action under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, and for other statutory and constitutional violations, challenging Defendants' acts, policies, practices, customs, and procedures, which deprived Plaintiff of his rights.

9. As set forth in this Complaint, the actions, policies, practices, customs, and procedures of Defendants were the cause of, and the moving force behind, the constitutional and statutory violations in this case.

10. Plaintiff brings this action not only for nominal damages, but also for these express purposes:

A. declare that Defendants' actions were unconstitutional and violated clearly established laws;

B. order Defendants to expunge any reference to a suspension and any events related to those actions from Plaintiff's transcript and complete student records and file;

C. enjoin Defendants from violating Plaintiffs' 1st Amendment free speech and free exercise rights in the future;

D. order Defendants to not subject Plaintiff to any further retribution or discrimination by the High School and its officials for exercising his 1st Amendment free speech and free exercise rights; and

E. order Defendants to pay Plaintiff's reasonable costs of litigation, including attorneys' fees and costs, pursuant to 42 U.S.C. §1988 and other applicable law.

JURISDICTION AND VENUE

11. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred to this Honorable Court, pursuant to 28 U.S.C. § 1331 and 1343, and 42 U.S.C. § 1983, 1985, 1986, and 1988, and other Federal and State laws and regulations, to redress violations of federal statutes and state law.

12. This Honorable Court has jurisdiction pursuant to Article III of the United States Constitution, 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

13. This Honorable Court has supplemental jurisdiction regarding state claims pursuant to 28 U.S.C. § 1367 because the state claims arise out of the same nexus of facts and events.

14. 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 Honorable Court.

15. Plaintiffs' claims for damages are authorized under 42 U.S.C. § 1983, and by the general legal and equitable powers of this Honorable Court.

16. Venue is proper under 28 U.S.C. § 1391(b) because all events giving rise to Plaintiffs' claims occurred in Allegan County, Michigan, which is in the Western District of Michigan.

PLAINTIFF

17. Plaintiff is a student at Plainwell High School, a United States citizen, and a resident of Allegan County, Michigan.

18. Plaintiff is represented by his next friends, his parents David J. Stout and Colleen R. Stout, for all purposes relating to this action and all are United States citizens and residents of Allegan County, Michigan.

19. Plaintiff is a minor and respectfully requests this Honorable Court appoint his parents, Parent A and Parent B, as next friends for the proposes of this action.

20. Plaintiff is a Christian, who adheres to the teachings of the Bible and is morally bound to follow the universal, consistent moral teaching of the Christian faith. Further, Plaintiff finds his dignity, personal identity, and autonomy in the exercise of his sincerely held Christian religious beliefs.

DEFENDANTS

21. Defendant Plainwell Community Schools is a public school district, operating a public-school system in Allegan County, Michigan and is the governmental body responsible for operating Plainwell High School. Plainwell Community Schools operates under the laws of the State of Michigan, and its office is located at 600 School Drive, Plainwell, Michigan.

22. Defendant Plainwell Community Schools is the body responsible for managing, adopting, implementing, and enforcing all school policies and the student code of conduct.

23. Defendant Jeremy Wright is the Principal of Plainwell High School, is a resident

of Michigan, and is a Defendant in his individual and official capacities.

24. Defendant Deb Beals is the Assistant-Principal of Plainwell High School, is a resident of Michigan, and is a Defendant in her individual and official capacities.

25. Defendant David Hepinstall is Band Director of Plainwell High School, is a resident of Michigan, and is a Defendant in his individual and official capacities.

26. Defendant Austin Hunt is Band Director of Plainwell High School, is a resident of Michigan, and is a Defendant in his individual and official capacities.

GENERAL ALLEGATIONS

27. Plaintiff is a Christian, who adheres to the historic and traditional Christian doctrine contained in the Bible regarding all life issues, including homosexual conduct.

28. Plaintiff is a successful student at the Plainwell High School and has never been disciplined, suspended, or expelled by the school prior to the incident leading to this Complaint.

29. Plaintiff is actively involved in various extra-curriculum activities at Plainwell High School, such as:

a) an outstanding member of the varsity football team, having already received considerable attention from various Division I colleges and universities; and

b) a school band member, selected to serve as a section leader.

30. Plaintiff and four of his school friends, all minors, have engaged in conversations and played video games in private group chats/texts online for many years. These group chat/text sessions did not occur on school grounds or campus, use any school property, did not occur during any school sponsored event or field trip, nor were they connected to any functions of the school in any way.

31. On or about April 28, 2021, Plaintiff, using his own smartphone, participated in a series of private group chat/text sessions with these friends from school.

32. At one point during this group session, one of these children asked to speak with Plaintiff in a private text.

33. Once Plaintiff began texting with this other child, Plaintiff was surprised that this friend, who was not homosexual, asked Plaintiff's opinions and beliefs about this other child's friends "being gay."

34. Plaintiff stated that the Bible teaches that homosexual conduct is a sin and in the Christian context that God created only two biological genders – man and woman.

35. Plaintiff stated that while homosexual conduct is a sin, however, everyone is a sinner due to freewill choices, and he would pray for them "to repent and follow Jesus." He also shared that he would extend love toward them because "God commands" it, as "Jesus died on the cross for them and extends His love toward them, and all they have to do is accept it."

36. Plaintiff continued that "the Bible says at the end of days all will know the truth, every knee will bow, and every tongue confess that Jesus is Lord."

37. Although Plaintiff believed that the other child was a like-minded Christian, he began berating Plaintiff and calling him many offensive names for his sincerely held Christian beliefs.

38. Plaintiff stated that if his friend could not have a "grown up conversation without swearing and unkindness," then he did not want to continue the conversation. At this point, the chat/text session was discontinued.

39. Although Plaintiff felt his friend was "discriminatory, selfish, and unkind", Plaintiff did not want to lose his friendship. Thus, on April 29, 2021, Plaintiff contacted this child for another private chat/text session.

40. Plaintiff began by expressing that he still held his Christian opinions, but he

respected his friend's opinions as well.

41. Further, Plaintiff did not want to end his friendship with this other student because of a disagreement, and he wanted to respect everyone's opinions even if they disagreed so they could remain friends.

42. Throughout this private chat/text session, Plaintiff's friend continued to deride and discriminate against Plaintiff for sharing his faith and Christian beliefs.

43. Upon information and belief, Defendants never disciplined Plaintiff's friend in any manner for his speech against Plaintiff.

44. Plaintiff never posted or otherwise distributed any of the content of this private chat/text to any public social media site, to the school, to other band members, to the student body, or to any other person.

45. These private chat/text conversations never caused any disruption at school.

46. At the end of July of 2021, Plaintiff attended the school's summer band camp, held on the High School's campus. Plaintiff had been selected to serve as section leader in the spring, and he had approximately 12 students of various grades in his section.

47. Plaintiff was instructed by Defendant band directors that his major responsibility as section leader was to keep students in his section in-line without being stern.

48. On the first day of band camp, Plaintiff was eating lunch with approximately eight to 10 other students on the floor near the band room. While eating and without any prompting by Plaintiff, two freshmen band members begin telling inappropriate and immature racial and homophobic "jokes" loud enough for all to hear.

49. When the first "joke" was told, Plaintiff "chuckled", as did other students sitting nearby. Then the two students told another "joke", but this time Plaintiff politely but firmly stated

that they needed to stop, hoping that would be the end of it. However, they continued with their barrage of "jokes", until Plaintiff sternly told them, "Enough! You need to stop!"

50. At this point, some of the other students left the area. One of these students, a African-American female, upon leaving approached Plaintiff and stated that "you're going to have trouble with these two this band season." She expressed that she was not offended with Plaintiff or his actions.

51. On October 15, 2021, the High School celebrated homecoming.

52. Although Plaintiff was a band member, he played football that evening for the high school and only participated briefly with the band during halftime.

53. As soon as the first half of the football game was over, Plaintiff immediately joined the marching band to prepare and perform its halftime musical numbers, and once the band had finished, he went directly to the locker room to rejoin the football team.

54. Before the marching band played at halftime, the school's homecoming King and Queen were introduced.

55. Upon information and belief, both the King and Queen identified as homosexual and some individuals in the crowd, including other parents, students, and fans, booed and directed derogatory terms toward the pair.

56. Although Plaintiff was on the field, he was busy transitioning from playing football to preparing to perform with the marching band. He was completely unaware of, and did not participate in, any activities occurring with the homecoming introductions.

57. Plaintiff was completely unaware of these activities occurring on the field and did not participate since he was in the locker room with the football team.

58. October 18, 2021, Defendants directed the entire band to meet in the auditorium

instead of the band room for 4th hour because of what had occurred during the halftime show.

59. Defendants stated that the things that band members had said during the homecoming halftime show made others feel "unsafe."

60. While not sharing who these band members were, Defendants stated that they had a list of names and offensive things stated that evening, as well as those things students overheard and took offense from private conversations. They demanded that such private conversations stop.

61. Defendants stated that if any student told a racist or homophobic joke, laughed at such a joke, or did not do anything to stop the joking, then they were to "self-report" to school officials. If they did this, then the disciplinary consequences would be less severe.

62. On Tuesday morning, October 19, 2021, Defendant Hunt pulled Plaintiff into the band office for a private meeting regarding the October 18, 2021, meeting in the auditorium.

63. Since Plaintiff was a band section leader, Defendant Hunt asked why Plaintiff had not self-reported sharing his political and religious beliefs at school or that he laughed at some inappropriate jokes.

64. Defendant Hunt claimed that the students in his section were the most problematic of the entire band.

65. Plaintiff responded that the section did share private political and religious conversations, and he also reported on the "jokes" he overheard from the summer.

66. Defendant Hunt stated that Plaintiff must stop all further conversations regarding his religious beliefs with other students because if any student overheard them, they might feel offended and unsafe.

67. Defendant Hunt also told Plaintiff that students were no longer allowed to talk about their religious or political beliefs anywhere on campus at any time, because it may result in students

who overhear such conversations feeling unsafe or having hurt feelings.

68. Further, Defendant Hunt stated that Plaintiff, as a band section leader, is responsible for what other band section members say and do. Defendant Hunt stated that even though Plaintiff told those other students to stop, Plaintiff had not preemptively prevented his section members from saying things that were considered offensive, thus, somehow making Plaintiff responsible for what these other students had said.

69. Essentially, Plaintiff was the scapegoat for the entire band section simply because he was the section leader and did not preemptively prevent other students from saying inappropriate things.

70. Defendant Hunt further instructed Plaintiff not to share his Christian faith with students inside or outside of band.

71. Defendant Hunt related to Plaintiff how things had changed since he was in school, and not all students today can handle religious and political comments; thus, Plaintiff needed to change and remain silent.

72. Defendant Hunt characterized what Plaintiff and the band section were doing to other students as "stealing others' happiness."

73. Defendant Hunt required that Plaintiff stop posting his political and religious comments on all social media platforms.

74. Defendants Hunt also instructed Plaintiff that if he saw other students' political or religious comments on social media that he disagreed with, then he should scroll past their posts and never respond.

75. Defendant Hunt told Plaintiff that if he had shared his political and religious beliefs and laughed at offensive jokes in the workplace, he would have been fired. He also stated that

while Plaintiff was young and made mistakes, he needed to "do better."

76. Defendant Hunt indicated that he would report in an email everything that Plaintiff had said to Defendants Wright and Beals.

77. On Wednesday morning, October 20, 2021, Defendant Hunt again pulled Plaintiff out of band class, as a follow up to their conversation from the day before.

78. Defendant Hunt basically repeated everything that he had told Plaintiff during that meeting, and then asked Plaintiff his thoughts.

79. Plaintiff responded that he did not think people who overheard conversations about political opinions or religious beliefs should be offended or feel unsafe in band.

80. Defendant Hunt stated that because the school is a public place, Plaintiff could not express his Christian beliefs or political opinions in private conversations, for the very reason that someone overhearing such beliefs and opinions could be hurt or offended.

81. Defendant Hunt again stated that if such private conversations were overheard in the workplace, Plaintiff would be fired.

82. Plaintiff responded that he felt all of this was very one-sided and a method to shame, intimidate, and silence conservatives and Christians.

83. Defendant Hunt admitted that Plaintiff's observation was correct.

84. Defendant Hunt told Plaintiff that he was important to him and the band, and it would be sad to lose him as section leader or a band member.

85. Defendant Hunt stated to Plaintiff that he was not in trouble and that he hoped that he would join the jazz band.

86. At the end of their conversation, Defendant Hunt stated that he was required to report everything discussed to Defendants Wright and Beals.

87. Soon after Plaintiff's conversation with Defendant Hunt on October 20, 2021, during 5th hour, Plaintiff was summoned to Defendant Wright's office and met with Defendants Wright and Beals alone.

88. Defendants informed Plaintiff that they already knew what the "situation" was, having spoken to 15 students before Plaintiff, as well as receiving Defendant Hunt's report.

89. Defendants stated that Plaintiff's name was on their "list" of students that had used certain phrases or words and that Plaintiff had not self-reported.

90. Defendants asked Plaintiff if he had spoken these phrases and words, and Plaintiff admitted to using certain phrases in the private April text messages and denied using any inappropriate phrases and words at school or at any school function.

91. Defendant Wright implied Plaintiff was a racist since he had not preemptively stopped others from making racist comments, and this allegation was supported by Defendant Beals' opinion that "whatever you allow is what you support."

92. Defendant Wright repeated the theme that Defendant Hunt had stated earlier that what Plaintiff had "done" could have gotten him in trouble in the workplace.

93. To emphasize this point, Defendant Wright presented a story of a former student who applied to be a police officer, and because this student had been involved in a similar situation while in high school, Defendant Wright wrote in his background check statement that this student was a racist, thus, directly threatening Plaintiff with similar action if he did not stop sharing his Christian and political beliefs.

94. Defendants continued to tell Plaintiff that he could not have religious or political conversations in school since it is a public place, and someone could be offended by his religious beliefs or political opinions.

95. Defendants further threatened Plaintiff by stating that anything Plaintiff did or said in school, outside of the school, or on social media platforms, could get him into trouble and negatively affect his future employment.

96. Plaintiff believed that Defendants would disciple him for anything he did or said on or off campus if it offended anyone connected with the school.

97. Plaintiff stated that as a Christian he is called to evangelize and share his faith, but Defendant Beals contended that one of the requirements for being selected a band section leader was he had to agree to "lay down your beliefs for others."

98. Plaintiff stated that he did not remember such a requirement, and if there had been, he would not have agreed to become a section leader.

99. Further, Plaintiff felt that Defendant Beals was implying that he had to sacrifice his Christian beliefs for the feelings of others, or that Plaintiff had to surrender and silence his Christian beliefs in order to participate in school activities.

100. In addition, Defendants stated that Plaintiff's Christian beliefs made others feel unsafe, and they asked him how he would "fix" this situation.

101. Plaintiff stated that he did not know how he would "fix" anything since he had not done anything wrong, and he thought that other kids needed to grow up and learn to cope with others' beliefs and opinions that are different than theirs.

102. Defendant Wright responded that as a football player, band leader, student with good grades who had never been in trouble, and a very talented musician, Plaintiff was expected to behave differently, change how he expressed himself, and take responsibility for the actions of others in his band section.

103. After Defendants attempted to explain themselves one last time, they said that

Plaintiff was not getting their point and that he was not the leader that they wanted in the band; thus, they would call his parents and the school would decide what would happen to him.

104. Based on these meetings with Plaintiff, Defendants determined that Plaintiff had violated Plainwell High School's Bullying/Cyberbullying/Harassment policy, resulting in Plaintiff receiving three (3) days (October 25th – 27th) suspension from all school activities, including football practices.

105. On October 22, 2021, Plaintiff's parents received Defendant Wright's letter notifying them of their son's suspension and an offer to meet with them to discuss these concerns further.

106. On October 25, 2021, Plaintiff's parents met with Defendants Wright and Beals at the school's office to determine exactly what their son had done to warrant a three-day suspension.

107. When asked what Plaintiff had done, Defendants could not provide them with any specifics except that he was accused of "laughing" at some racial and homophobic "jokes" that other kids had told during the summer band camp months ago; that he had participated in an off campus, private group chat/text session during which he texted that God would not accept homosexual conduct because it is a sin; and that he had private, on campus conversations regarding religious beliefs with friends in the band that, while not directed towards any particular person, was overheard by another student.

108. Defendants also stated that as a band section leader, he had not self-reported sharing his Christian beliefs with other students and, thus, failed to take personal responsibility for sharing his Christian beliefs, an offense worthy of disciplinary action according to Defendants.

109. Defendant Wright continued that while these conversations were in isolation and intended to be private, they made some members of the band feel uncomfortable and created

problems.

110. Defendant Wright indicated that while Plaintiff is a "great kid" and is entitled to believe what he wants, he should speak with "good purpose," meaning not to offend anyone and stop sharing his Christian beliefs with anyone.

111. When Plaintiff's parents asked what their son and like-minded children are allowed to say, Defendant Wright repeated that students are entitled to their beliefs and opinions, but when others overhear their private conversations about religion, a line is crossed, and the school can impose discipline.

112. Defendant Wright continued that Plaintiff and other like-minded students cannot have a private conversation on campus about religious or political topics, as there is no right to privacy on school property.

113. Plaintiff's parents then asked if their son as a Christian could share his Biblical beliefs anywhere on campus, and Defendant Wright responded that he could only talk about these life issues in a classroom setting with a teacher present to regulate and guide the conversation.

114. Defendant Wright explained that these problems first came to light at the homecoming game when the King and Queen were introduced, and they were booed.

115. Plaintiff's parents pointed out that their son, as a member of both the football team and the marching band, was busy preparing to play in the halftime band program and was not aware when the homecoming court was introduced, and immediately went to the locker room after performing; thus, it was impossible for their son to have booed anyone.

116. Defendant Wright stated that Plaintiff's earlier comments, both off and on campus, in texts on social media, private conversations, and "jokes" by other students became an "accepted form of communication" in the band and were a form of harassment that created an unsafe

environment for other students.

117. Defendant Wright admitted that Plaintiff was punished for his statements even though they were not directed towards anyone specifically and are his religious beliefs.

118. Defendant Wright stated "context is the key;" thus, religious beliefs can only be discussed in a classroom with a teacher present but not in private or online.

119. While other children participated in the private, on and off campus, and online conversations, Plaintiff is unaware of any other students being disciplined by Defendants for their religious or political speech.

120. Nothing Plaintiff did or said at any time caused any disruption at the school.

COUNT I – FIRST AMENDMENT VIOLATIONS
42 U.S.C § 1983

121. Plaintiff hereby incorporate and repeat herein paragraphs 1 through 120 above as if fully restated herein.

122. Plaintiff's speech, both on and off campus, is protected by the First Amendment to the United States Constitution, and it is protected by Article I, Section 5 of the Michigan Constitution.

123. The U.S. Supreme Court has long reiterated that public school students possess the freedom of speech rights that adults have. Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

124. In cases such as the one before this Honorable Court, it is the school's burden to show that a material and substantial disruption actually occurred from the speech.

125. A mere assertion by Defendants that they were attempting to prevent a disruption is not sufficient.

126. Plaintiff's speech was his sincerely-held Christian belief and, while not popular, none of Plaintiff's speech, off campus or on campus, amounted to a threat; his off campus speech was not reasonably calculated to reach the school environment; his on campus speech or behavior was never directed to a particular person; none of his speech, off or on campus, posed a serious safety risk to a particular individual, group of people or the school itself; and none of his speech, off or on campus, posed a serious, material and substantial disruption to a particular individual or the school itself.

127. What this case is truly about is Defendants punishing Plaintiff for his speech, including the conduct of others that occurred during band and at halftime of the homecoming game, when Plaintiff was not even present.

128. Defendants did not have legal authority to discipline Plaintiff because of his private, non-school related speech, his failure in preventing other students from speaking inappropriately and immaturely on campus, or his failure to self-report when he did nothing wrong.

129. The First Amendment's Free Exercise Clause of the U.S. Constitution prohibits religious discrimination and requires government officials to exercise neutrality towards individuals when they are expressing their religious beliefs.

130. Plaintiff is a Christian, and his belief that God created human beings – male and female – is a deeply rooted and fundamental article of the Christian faith, permeating throughout the Bible from Genesis to Revelation.

131. Defendants sent mixed messages to Plaintiff: on one hand telling him that he has a right to his opinions and beliefs but on the other hand, placing prohibitions on expressing those opinions and beliefs in public or even in private settings except when an adult is present because these beliefs or opinions could offend or hurt someone's feelings.

132. Defendants are not neutral towards Plaintiff's Christian and political beliefs, as they want him to forfeit his freedom to share his faith, as well as deny and sacrifice the historic tenets of his faith, so that others might not be offended.

133. Defendants' policies and actions disfavor the free expression of beliefs held by tens of millions of Bible-believing Christians in the United States, as well as by countless other traditional people of the Orthodox Judaism and Muslim faiths.

134. Defendants have engaged and continue to engage in religious discrimination in their attempt to shame, intimidate, and silence Plaintiff from expressing his religious views with others.

135. Defendants are "persons" under 42 U.S.C § 1983.

136. Defendants acted intentionally and under the color of state law, which violated Plaintiff's clearly established constitutional rights by illegally punishing him for his protected speech. This constitutes a violation pursuant to 42 U.S.C § 1983.

137. Defendants acted with reckless, wanton, or callous indifference to Plaintiff's protected constitutional rights.

138. Defendants violated Plaintiff's rights by suspending him from school because of his speech and religious and political beliefs.

139. Defendants utilized allegations of laughing at inappropriate jokes and events at halftime of the homecoming game as a pretext to justify silencing Plaintiff's 1st Amendment rights of free speech and free exercise of religion.

140. Defendants' policies and/or procedures described above are in direct conflict with Plaintiff's First Amendment rights and are a custom, pattern, and practice of Defendants in violation of 42 U.S.C § 1983.

141. Defendants' policies, practices, and procedures operate to force all students to curtail their speech and expression in a manner prohibited by the First Amendment.

142. Defendants failed to properly train, hire, and/or supervise its school officials regarding the proper policies, procedures, and limitations on student discipline, including the need to protect a student's First Amendment rights.

143. Defendants' failure to properly hire, train, and/or supervise its school officials was a moving force behind the constitutional violations alleged herein and was a direct and proximate cause of Plaintiff's injuries.

144. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff has suffered mental anguish, damage to his reputation, and suffered adverse consequences socially, educationally, and vocationally in an amount to be proven at trial.

145. Defendants' actions violated Plaintiff's clearly-established rights and were objectively unreasonable.

146. Plaintiff is entitled to recovery of their costs and expenses, including reasonable attorney fees pursuant to 42 U.S.C. § 1988.

147. Plaintiff is entitled to a permanent injunction prohibiting further violations of his First Amendment rights.

COUNT II -
DEFENDANTS VIOLATED THE MATT EPLING SAFE SCHOOL LAW
(MCL 380.1310b)

148. Plaintiff hereby incorporate and repeat herein paragraphs 1 through 147 above as if fully restated herein.

149. Defendants are responsible for creating, adopting, approving, ratifying, and enforcing the bullying and harassing policies, practices, customs and procedures as set forth in this Complaint.

150. Defendants derive their authority to adopt and enforce school policies and a student code of conduct pursuant to MCL 380.11a.

151. MCL 380.11a(3)(b) states that Defendants only have the authority to adopt and enforce policies and a student code of conduct that provides "for the safety and welfare of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity."

152. Nothing in MCL 380.11a(3)(b) grants any authority to Defendants to police or punish speech or expression that does not occur "at school or a school sponsored activity or while en route to or from school or a school sponsored activity." Therefore, Defendants' improper expansion of their policy to include speech that does not occur "at school" is unlawful.

153. Defendants' Student Code of Conduct Guiding Principles (hereinafter referred to as "Principles") states in the very first paragraph: "These rules apply to any student who is on school premises, in a school-related vehicle, at a school-sponsored activity, or whose conduct at any time or place directly interferes with the education, operations, discipline, or general welfare of the school."

154. Defendants' Bullying/Cyberbullying/Harassment policy contained within its Principles states the following: "This policy applies to all "at school" activities in the District, including activities on school property, in a school vehicle, and those occurring off school property if the student or employee is at any school-sponsored, school-approved or school-related activity or function, such as field trips or athletic events where students are under the school's control, or where an employee is engaged in school business. Misconduct occurring outside of school may also be disciplined if it interferes with the school environment."

155. As none of Plaintiff's private, online text/chat sessions occurred on school property,

used any school equipment, was not at a school related or sponsored activity, or substantially interfered with the "education, operations, discipline, or general welfare of the school," neither Defendants' Principles nor its policy provides Defendants with any authority to disciple Plaintiff in this case.

156. Plaintiff did not violate Defendants' policy that prohibits: "Assault on another student (fighting), willful disobedience, theft or extortion, use and/or possession of tobacco/vapes/vape juice and other illegal substances, vandalism – including graffiti, threats and racism/intimidation, repeated suspension, bullying, verbal assault, harassment, related to, but not limited to (race, gender, age, handicap), and/or hazing. Students who repeat these offenses will be subject to progressive discipline, which may lead to a recommendation for expulsion while ensuring due process rights."

157. The Michigan Legislature enacted the Matt Epling Safe School Law (MCL 380.1310b), which is an anti-bullying law that codified the authority for schools to handle bullying situations and the statute required that all school districts adopt anti-bullying policies. The law clearly limits the authority of schools to regulate bullying as it only prohibits bullying "at school." MCL 380.1310b(1).

158. The statute defines "at school" to mean "in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school-sponsored activity or event whether or not it is held on school premises. 'At school' includes conduct using a telecommunications access device or telecommunications service provider that occurs off school premises if the telecommunications access device or the telecommunications service provider is owned by or under the control of the school district or public-school academy." MCL 380.1310b(10)(a).

159. Defendants adopted an Anti-Bullying policy (po5517.01) as required by the statute and the school affirms at the end of its policy that its authority to adopt such a policy comes from the Matt Epling Safe School Law.

160. Despite the clear statutory limitation that the Matt Epling Safe School Law only applies to conduct "at school," the School District acted outside its authority and violated state law by unlawfully expanding its policy to include "[m]isconduct occurring outside of school" that did not "interfere with the school environment." (po5517.01).

161. Nothing in the Matt Epling Safe School Law grants any authority to Defendants to police or punish speech or expression that does not occur "at school."

162. It is undisputed that the text messages in April occurred in the privacy of Plaintiff's home and did not happen while Plaintiff was traveling to and from school, at school, on school property, using school property, at school sponsored events, or at any school off campus events.

163. Therefore, Defendants' Principles and policies cannot apply to Plaintiff's private, at home, text messages.

164. Defendants' policy prohibits "written, physical, verbal, and psychological abuse, including hazing, gestures, comments, threats, or actions to a student, which cause or threaten to cause bodily harm, reasonable fear for personal safety or personal degradation."

165. Plaintiff "chuckling" at a joke as told by another student or his private conversations in which he shared his sincerely held Christian beliefs at school did not in any way bully or harass another student or "cause or threaten to cause bodily harm, reasonable fear for personal safety or personal degradation."

166. Defendants state under its Principles that it uses a progressive form of discipline: "We want our students to have the opportunity to learn from their mistakes and improve behavior.

It is important that students and parents see that disciplinary measures are progressive. In other words, the penalties are more severe with *each additional offense* of a given behavior. We also commit to work at educating our students regarding the proper way to behave and will appreciate the chance to work cooperatively with both students and their parents. We believe that this is the best way to assure that all of our students have every chance to learn and enjoy their education in a safe and orderly environment."

167. No progressive discipline was employed by Defendants in this case.

168. Defendants' actions violated Plaintiff's clearly-established rights and were objectively unreasonable.

169. Because Defendants' policy exceeds their statutory and constitutional authority, it is facially unlawful and unenforceable and was unconstitutionally applied to Plaintiff in this case.

170. As a direct and proximate result of the School's statutory violations, Plaintiff has suffered, is suffering, and will continue to suffer, irreparable harm, entitling him to declaratory and injunctive relief.

171. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff has suffered mental anguish, damage to his reputation, and suffered adverse consequences socially, educationally, and vocationally in an amount to be proven at trial.

COUNT III - MICHIGAN CONSTITUTIONAL VIOLATIONS

172. Plaintiffs hereby incorporate by reference paragraphs 1 through 171 as if fully restated herein.

173. By reason of the aforementioned acts, policies, practices, customs and procedures created, adopted, and enforced under color of state law, Defendants deprived Plaintiff of his rights under Michigan's Constitution of 1963 as follows:

A. **Article I, § 4 and 5 - Freedom of Speech and Religion**. Defendants' enforcement

of the above-mentioned policies for all the reasons as stated above denied Plaintiff and other students at the School the right to "freely speak, write, express and publish his views on all subjects" and restrain or abridge their liberty of speech or practice of religion. In particular, Defendants' actions violated Plaintiff's free speech and religious rights, as they disciplined the student for incidents which did not occur at school, or at any school related function or activity, as well as for speech on campus done in private conversations.

B. **Article VIII, § 2 - Free public elementary and secondary schools; discrimination**. Defendants, for all the reasons as stated above, deprived Plaintiff of his right to participate in Michigan's "system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin."

174. The Defendant School's training, supervision, policies, practices, customs, and procedures, punished and imposed discipline on Plaintiff for expression Defendants found to be offensive. Defendants' actions injured Plaintiff by infringing on his free speech, freedom of religion, and due process rights through their discipline and suspension of Plaintiff and for failure to comply with their own policies by discriminating against Plaintiff for sincerely held religious beliefs and further violated MCL 380.11a(3)(b).

175. Defendants violated Plaintiff's freedom of speech and free exercise of religion rights, as stated in Article I, § 4 and § 5 of the Michigan constitution, for all of the reasons stated in Count I.

176. Defendants violated Article VIII, § 2 of the Michigan Constitution by discriminating against Plaintiff because of his religious beliefs and unlawfully required Plaintiff to leave his religion "at the schoolhouse gate" in order to participate, engage, and enjoy his

constitutionally guaranteed right to a public education.

177. As a direct and proximate result of Defendants' violation of the state constitutional provisions specified above, Plaintiff has suffered, is suffering, and will continue to suffer, irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief.

178. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff has suffered mental anguish, damage to their reputation, prevented to share his faith on school property, and suffered adverse consequences socially, educationally, and vocationally in an amount to be proven at trial.

179. Plaintiff is entitled to preliminary and permanent injunctions prohibiting further violations of his state constitutional rights.

180. Defendants' actions violated Plaintiff's clearly-established rights and were objectively unreasonable.

COUNT IV - CONSTITUTIONAL VAGUENESS VIOLATIONS
(First and Fourteenth Amendments; 42 U.S.C. § 1983)

181. Plaintiff hereby incorporates by reference paragraphs 1 through 180 as if fully restated herein.

182. The Due Process clauses of the United States Constitution and the Michigan Constitution require that the law provide predictability for all citizens. U.S. Const., Am. 14; Mich. Const. 1963, Article 1, §17.

183. An unambiguously drafted school policy affords prior notice to the parents and students of conduct proscribed.

184. A fundamental principle of due process, embodied in the right to prior notice, is that a policy is void for vagueness where its prohibitions are not clearly defined.

185. Defendants' policies must give an ordinary parent and student notice of what is prohibited, so that a person may act within the confines of the policy.

186. If a parent or student has to guess at what a policy means, or if the policy is not clearly defined, then the policy is void for vagueness.

187. Defendants' Bullying/Cyberbullying/Harassment policy (po5517.01) is void for vagueness and invalid because of its overbreadth for the following reasons:

A. The policy states that "[m]isconduct occurring outside of school may also be disciplined if it interferes with the school environment."

B. The policy provides no explanation or definition for what type or form of "misconduct" would be required in order for Defendants to invoke the policy.

C. The policy provides no explanation or definition for the word "interferes" and gives no indication as to what type or what level of interference is necessary to invoke the policy.

D. Said policy is vague and overly broad because there is no limiting principle as it could be applied to any student, at any location, for anything, so long as Defendants (in their sole discretion) deem the misconduct to affect the school environment.

E. Said policy is unconstitutional because it is so vague and overbroad that it can be arbitrarily applied to silence speech Defendants find offensive, no matter the location, venue, or audience of the speech.

188. Defendants' suspension policy (po5610) is void for vagueness and invalid because of its overbreadth for the following reasons:

A. The policy states that a student may be suspended or expelled for engaging in "gross misconduct."

B. The policy provides no definition for "gross misconduct" and does not indicate any limiting

principle as to how it may be invoked. This leaves the students and parents to guess as to what may rise to the level of "gross misconduct."

C. Such a vague and amorphous policy leads to illegal and arbitrary enforcement beyond the authority of the school, just as occurred in this case.

189. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff has suffered mental anguish, damage to his reputation, and suffered adverse consequences socially, educationally, and vocationally in an amount to be proven at trial.

190. Defendants' actions violated Plaintiff's clearly-established rights and were objectively unreasonable.

191. Plaintiff is entitled to recovery of his costs and expenses, including reasonable attorney fees pursuant to 42 U.S.C. § 1988.

192. Plaintiff is entitled to a permanent injunction prohibiting further violations of his constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests this Honorable Court:

A. declare that Defendants' actions in this case are unconstitutional and that Defendants violated Plaintiff's fundamental constitutional rights;

B. declare and make a finding that Defendants acted outside the scope of their authority;

C. declare and make a finding that Defendants acted outside the scope of authority under the Matt Epling Safe School Law;

D. declare and make a finding that Defendants' disciplinary policies are unconstitutionally vague and overbroad;

record of this private incident and any disciplinary action taken by Defendants be rescinded and deleted.

G. award Plaintiff compensatory and/or nominal damages against all Defendants;

H. award Plaintiff his reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and

I. grant such other and further relief as is just and appropriate.

WE HEREBY STATE AND AFFIRM THAT WE HAVE READ THE FOREGOING VERIFIED COMPLAINT AND THAT IT IS TRUE AND ACCURATE TO THE BEST OF OUR INFORMATION, KNOWLEDGE, AND BELIEF.

Respectfully submitted,

DATED: January 27, 2022.

David J. Stout, Next Friend

DATED: January 27, 2022.

Colleen R. Stout, Next Friend

Prepared By:

GREAT LAKES JUSTICE CENTER
DATED: January 27, 2022.

/s/ *David A. Kallman*
David A. Kallman (P34200)
Attorney for Plaintiffs
5600 W. Mount Hope Hwy.
Lansing, MI 48917
517-993-9123
dave@greatlakesjc.org