

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

Civil Action No. _____

CHASE WINDEBANK,

Plaintiff,

vs.

ACADEMY SCHOOL DISTRICT #20, Colorado Springs, Colorado;
KOLETTE BACK, in her official capacity as Principal of Pine
Creek High School; and
JAMES LUCAS, in his official capacity as Assistant Principal of Pine
Creek High School,

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This is a civil rights action under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution, brought to remedy a violation of the constitutional rights of CHASE WINDEBANK, a student at Pine Creek High School, located in Colorado Springs, Colorado.

2. Defendant Academy School District No. 20 (the “District”) has implemented a policy (the “Open Time Policy”) which permits all students to be excused from the homeroom period of the school day, called “Seminar,” on Mondays and Wednesdays, and students who meet certain academic qualifications to be excused from Seminar on Fridays, to engage in a virtually unlimited variety of activities of the students’ own choosing, including hanging out in the cafeteria and other open areas with friends, playing on their phones, meeting together for

expressive activities (including both formally recognized clubs and unofficial groups), and going outside to hang out together.

3. This Open Time is akin to recess or lunch period where students have long been recognized to have the right to engage in expressive activities.

4. Plaintiff brings this suit because Defendants are denying his right to engage in Christian religious expression, including religious discussion and prayer, with other students in an empty room—an activity that Plaintiff and his friends have peacefully engaged in for the previous three years during Seminar time without disruption.

5. At the same time, pursuant to the Open Time Policy, Defendants permit other students to meet together in informal groups (among the multitude of other permissible activities) during Seminar time and discuss from a nonreligious perspective the same or similar matters Chase seeks to discuss and pray about from a religious perspective with his friends.

6. Defendants, by policy and practice, are denying Plaintiff's right to engage in religious expression with his fellow students based on the religious content and viewpoint of the speech he and his friends desire to engage in.

7. Indeed, if Chase and his friends had desired to engage in non-religious expression while meeting together during Seminar time, they would have been permitted by Defendants to do so.

8. By permitting students to have free time during the school day to engage in a variety of activities of the students' own choosing, but denying Plaintiff the right to engage in religious expression with his friends based on the religious nature of his speech, Defendants, pursuant to their Open Time Policy and practice, are violating Plaintiff's constitutional rights.

II. JURISDICTION AND VENUE

9. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; and under federal law, particularly 28 U.S.C. § 2201, 42 U.S.C. §§ 1983 and 1988.

10. This Court is vested with original jurisdiction over these federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

11. This Court is vested with authority to grant the requested declaratory judgment by operation of 28 U.S.C. §§ 2201 and 2202, and pursuant to Federal Rule of Civil Procedure 57.

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

13. This Court is authorized to award the requested nominal damages of one (1) dollar pursuant to 28 U.S.C. § 1343.

14. This Court is authorized to award attorneys' fees pursuant to 42 U.S.C. § 1988.

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

III. IDENTIFICATION OF PLAINTIFF

16. Plaintiff Chase Windebank is a resident of Colorado Springs, Colorado, and is a senior at Pine Creek High School ("PCHS").

17. Chase is a professing Christian.

18. Pursuant to his sincerely held religious beliefs, Chase desires to continue, as he has for three years, to engage in religious expression during the Seminar time of the school day by

meeting together with his friends and classmates in an unused room to sing, pray, and discuss matters that are important to them, all from a Christian religious perspective.

19. Chase has been meeting with his fellow students to engage in religious speech during the Seminar time for three years, since he was a freshman.

IV. IDENTIFICATION OF DEFENDANTS

20. Defendant Academy School District No. 20, Colorado Springs, Colorado (the “District”) is a body politic and corporate that may sue and be sued.

21. The District is organized under the laws of the State of Colorado.

22. The District is charged with the administration and operation of PCHS.

23. The District is charged with overseeing the operation of PCHS and the enactment and enforcement of District policies, both formal and unwritten, including those related to the freedom of students to assemble during school hours to meet and discuss matters of concern to them.

24. The District is responsible for the unwritten Open Time Policy challenged herein, and for denying Chase, pursuant to this unwritten Open Time Policy, his right to assemble and meet with other students to pray about and discuss matters of importance to them from a religious perspective.

25. The District is likewise responsible for the implementation and application of the Open Time Policy by the Principal and the Assistant Principal.

26. Defendant Kolette Back is the Principal of PCHS, and is responsible for its administration, including the enforcement of the District’s Open Time Policy and practice related to the freedom of students to engage in a multitude of activities during Seminar time. Defendant

Back is also responsible for the policy denying Chase his right to engage in religious expression by meeting with other students to pray about and discuss matters important to them from a religious perspective, as well as for the denial itself.

27. Defendant Back is sued in her official capacity as Principal of PCHS.

28. Defendant James Lucas is the Assistant Principal of PCHS, and is also responsible for its administration, including the enforcement of the District's Open Time Policy related to the freedom of students to engage in a multitude of activities during Seminar time. Defendant Lucas is responsible for the Open Time Policy denying Chase his right to engage in religious expression by meeting with other students to pray about and discuss matters important to them from a religious perspective, as well as for the denial itself.

29. Pursuant to the Open Time Policy and practice, Defendant Lucas told Chase that he had to stop meeting with other students for Christian religious expression because of the "separation of church and state."

30. Defendant Lucas is sued in his official capacity as Assistant Principal of PCHS.

31. Pursuant to the District's Open Time Policy and practice, Defendants Back and Lucas are denying Chase his right to engage in religious expression by meeting with like-minded students during the Seminar time to pray about and discuss matters that are important to them.

32. The District acquiesces in, sanctions, and supports the actions of Defendants Back and Lucas in the enforcement of the District's Open Time Policy against Chase.

V. STATEMENT OF FACTS

The District's Free Time Policy and Practice

33. PCHS has established a period each day called "Seminar."

34. Seminar occurs after the first regularly scheduled period and lasts approximately forty minutes. For example, during the 2014-2015 school year, Seminar is scheduled between 9:19 – 9:59 a.m.

35. According to the PCHS Student Handbook:

Seminar is an opportunity to develop a sense of community; to build lines of communication; to provide community and school services; and to have focused academic time. In addition, students will often have time to access the resources available to them at Pine Creek. These include peer tutors, teachers, counselors, administrators and the library. Club meetings may be scheduled during this time.

Available at <http://www.asd20.org/Schools/pchs/Documents/Important%20Documents/PCHS%20Student%20Handbook%2014-15.pdf>.

36. Pursuant to the District's Open Time Policy and practice, students who do not have a grade of "D" or "F" are allowed to leave their assigned Seminar room after approximately the first 15 minutes of Seminar on Fridays; on Mondays and Wednesdays all students are permitted to leave.

37. Students that are excused from Seminar are permitted to engage in a virtually unlimited variety of activities. For example, students are allowed to:

- a. hang out with other students in the halls, lunchroom and other areas of the high school building;
- b. find a quiet place to read a book, send text messages to their friends, or play on their phone;
- c. visit the bathrooms or get a snack;
- d. visit a teacher to obtain make-up work or to receive extra help on a difficult assignment;
- e. schedule official meetings of school clubs; and

f. go outside to hang out.

38. Thus, during this free time, students are afforded the same type of freedom that is often found during recess or lunch, when students have long been recognized to have the right to engage in nondisruptive expressive activities.

39. Indeed, the District itself describes both Seminar and lunch as “open time.”

40. In the Student Handbook, when discussing the “School Safety Plans,” the District explains that “if the fire alarm goes off during an ‘open’ time (Seminar or lunch), students should go out the nearest available exit....” It likewise explains that “if the code [for a Lockdown Drill] is announced during an ‘open’ time (Seminar or lunch), students should move to the closest classroom, locker room or gym.”

41. By describing Seminar as “open time” and recognizing that many students are not in classrooms (thus, the instruction to find the nearest exit or classroom), the District acknowledges the freedom afforded students during Seminar under the District’s Open Time Policy.

42. The Student Handbook states: “Students are expected to remain in class during the seven instructional periods scheduled. Trips to the office, the phones, the bathrooms, etc. should be planned for passing periods, Seminar, and/or lunchtime.”

43. Thus, Seminar time is recognized as an “open time” or “free time” during which students have the liberty to go anywhere on campus and engage in activities that are not permitted during the regular “instructional periods.”

44. The Student Handbook also lists several consequences for students who have excess tardies. Among the consequences are “Seminar detention, lunch detention, and after school detention.”

45. Again, the District equates the freedom given students in Seminar with other traditionally recognized free time given to students during lunch and even after school. If Seminar time was not free time, then detention would not serve as a deterrent.

46. During the open time given to students during Seminar, students are free to meet in informal groups to discuss any topic: their plans for the weekend, a new movie or television show, or even the usual school gossip that circulates among teenagers.

47. The District does not limit the students’ speech and expression during this open time, unless they engage in religious expression.

Plaintiff’s Small Group

48. Beginning three years ago during his freshman year at PCHS, Chase was allowed to leave Seminar to participate in open time on Fridays because he consistently maintained the requisite GPA.

49. Rather than simply hanging out with his friends in the cafeteria or other open spaces where many of the other students freely congregate during open time, Chase and several of his friends decided to use this free time to meet together in a quiet area to sing Christian religious songs, pray, and to discuss issues of the day from a religious perspective.

50. Chase and his friends regularly met to engage in this private religious expression on Fridays, and Mondays as well, during the open time of Seminar in an unoccupied choir room with the permission of the choir teacher.

51. The informal religious gatherings Chase and the other students conducted in the choir room were not sponsored by the District, but were initiated and conducted solely by the students.

52. Throughout his freshman, sophomore, and junior years at PCHS, Chase and many of his classmates consistently met together, week after week, to sing, pray, and discuss issues of the day from a religious perspective.

53. At no time during the three years that these student-initiated, student-led religious activities took place did school officials try to stop the students or express any concerns that they were incompatible with Seminar time.

54. In fact, the religious expression of Chase and his classmates helped “to develop a sense of community” among the students, one of the express goals of Seminar time.

55. Furthermore, at no time during these three years did this religious speech and activity create a disruption with school programs. Indeed, there has never been even an allegation that Chase’s activities disrupted or interfered with instructional activities.

Defendants’ Enforcement of the Open Time Policy Against Plaintiff’s Religious Expression

56. The 2014-2015 school year began on August 18, 2014.

57. Once again, Chase has maintained a GPA that meets the qualification for being entitled to leave Seminar on Fridays to enjoy the freedom of open time.

58. As Chase and other students have done for the past three years, they resumed meeting together to sing, pray, and discuss issues of the day from a religious perspective during the open time of the Seminar period.

59. On Monday, September 29, 2014, Assistant Principal James Lucas called Chase to a meeting.

60. Assistant Principal Lucas told Chase that his religious speech during the open time of Seminar period would have to stop because of “separation of church and state.”

61. He told Chase that because of the religious content of students’ speech, they would have to meet before school or after the school day ended.

62. But no other students were subjected to such limitations on their private expression during the open time of Seminar period. They remain free to engage in a nearly unlimited assortment of activities, and to discuss an unlimited number of topics, during open time.

63. In response to this decision by Defendants and hoping for an amicable resolution to the imminent and ongoing threat to his constitutional rights, Chase asked his counsel to send a letter to Defendants.

64. On October 7, 2014, Plaintiff’s counsel sent a letter to Defendants explaining that their decision to ban Chase’s religious expression “violates the First Amendment to the United States Constitution, which requires schools to permit student speech so long as it is not materially and substantially disruptive.”

65. The following day, Principal Back and Assistant Lucas called Chase into a meeting and reaffirmed that his religious speech could not take place during the open time of Seminar period.

66. Defendants Back and Lucas stated that because of the “separation of church and state” and because they regarded the Seminar period as “instructional time,” they were banning students’ discussion of issues of the day from a religious perspective during the open time of Seminar period.

67. The next day, October 9, 2014, Patricia P. Richardson, Defendants’ Director for Legal Relations, formally responded to the letter from Plaintiff’s counsel on behalf of Defendants.

68. The letter affirmed that Chase could only engage in religious expression with his fellow classmates “before 7:45 a.m. when classes begin, and after 2:45 p.m., when classes end for the day.”

69. As a result of this final decision from Defendants, Chase and his classmates are forever barred from engaging in singing, prayer, and discussion of issues of the day from a religious perspective during the open time of Seminar period.

70. The number of students joining together with Chase to engage in religious speech has dropped significantly due to the before-or-after-school requirement imposed by Defendants.

71. For example, on Monday, September 29, 2014 before the District’s ban on religious expression during open time of Seminar period was announced, approximately 90 students met to engage in religious expression.

72. On Friday, October 3, 2014 Chase and the other students met during the open time of Seminar period in the choir room, but they did not pray because of the District’s new Open Time Policy. Chase announced the District’s new Open Time Policy banning student religious expression during the open time of Seminar period, and told the students that they would not pray in order to honor the District’s new Open Time Policy, which school officials were reassessing in light of Plaintiff’s appeal to them to reinstate the former policy that allowed religious speech during seminar time.

73. In the subsequent weeks, and in compliance with the ban against religious expression during open time, Chase and the other students have met before school to pray. But because of the burden and difficulty of arriving to school early, the numbers have dwindled significantly from the approximately 90 students who normally met together for religious expression.

74. On Monday, October 13, 2014 only 20 students attended. The following week, on October 17, 2014 approximately 15-20 students joined Chase. At the meeting before school on Monday, October 20, 2014 only 12 students joined together in this form of religious speech.

75. Students find it significantly more difficult to meet before or after school than during the open time of the Seminar period. They must come earlier to school in order to meet, unlike all other students who are allowed to hang out, meet, and engage in non-religious speech and other activities during the open time of the Seminar period.

76. Because they are involved in other extracurricular activities, such as sports, or they work at jobs, it is even more difficult for many students to attend meetings after school.

77. Other students who choose to discuss non-religious topics or engage in other non-religious activities during the open time do not have these conflicts because the District allows them to engage in secular speech of interest to them during seminar time.

78. Indeed, Defendants even allowed Chase and the other students to meet the week following the imposition of the ban against religious speech in the same room and at the same time provided that they did not engage in religious expression.

79. But Defendants discriminate against Chase and other students who wish to, but are forbidden from, engaging in religious singing, prayer, and discussion of issues of the day from a religious perspective during the open time of the Seminar period because of the religious content of their expression and the religious viewpoints they express.

80. Chase desires to assemble with his friends to engage in the religious expression described above as soon as possible, without fear of suspension or other school discipline, and without fear that Defendants will continue to censor his religious speech.

VI. ALLEGATIONS OF LAW

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

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

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

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

VII. CAUSES OF ACTION

First Cause of Action: Violation of the Free Speech Clause of the First Amendment

85. Plaintiff realleges all matters set forth in paragraphs 1 through 84 and incorporates them herein.

86. The First Amendment's Freedom of Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits censorship of private religious expression.

87. Defendants' Open Time Policy and practice permit all students to have "open time" during the Seminar period on Mondays and Wednesdays, and those students who meet certain academic qualifications to have "open time" during the Seminar period on Fridays.

88. Pursuant to the Open Time Policy, students are permitted to engage in a multitude of activities during open time, including meeting together with other students to express themselves on any matter of interest to them.

89. Defendants' Open Time Policy and practice prohibit Chase and his friends from engaging in expression based on the religious content and viewpoint of the expression in which they desire to engage.

90. Chase's religious expression and that of his friends does not materially and substantially interfere with the orderly conduct of educational activity within PCHS.

91. This unequal treatment of Chase and his friends based on the religious nature of their private expression is a content-based restriction in an otherwise open forum for student expression.

92. This censorship of Chase's religious speech—while permitting similar, but nonreligious, private speech from other students regarding the same and similar subject matters—also constitutes viewpoint discrimination, which is unconstitutional in any type of forum.

93. Defendants' Open Time Policy and practice additionally impose an unconstitutional prior restraint because they vest District officials, including Defendants Back and Lucas, with unbridled discretion to permit or refuse protected religious expression by students.

94. Defendants' Open Time Policy and practice give unbridled discretion to District officials to decide what forms of expression students are permitted to engage in during open time of Seminar period and to ban any other expression—including the religious singing, prayer, and discussion of religious topics—at the whim of the officials.

95. Defendants' Open Time Policy and practice are additionally overbroad because they sweep within their ambit protected First Amendment expression.

96. The overbreadth of Defendants' Open Time Policy and practice chills the speech of Plaintiff and third party students who seek to engage in private religious expression during the open time of Seminar period.

97. Defendants' Open Time Policy and practice chill, deter, and restrict Chase from freely expressing his religious views through meeting together with likeminded students to sing, pray, and discuss issues of the day from a religious perspective during open time.

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

99. Defendants' Open Time Policy and practice are not reasonably related to any legitimate pedagogical concerns.

100. Censoring students' religious speech *per se* is not and cannot be a legitimate pedagogical concern.

101. Defendants' Open Time Policy and practice accordingly violate Chase's right to Free Speech under the First Amendment to the United States Constitution, as incorporated and applied to Defendants under the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the Prayer for Relief.

Second Cause of Action: Violation of Right to Free Association under the First Amendment

102. Plaintiff realleges all matters set forth in paragraphs 1 through 84 and incorporates them herein.

103. The First Amendment recognizes and protects the right to freedom of association.

104. Chase's group of like-minded Christian students is an expressive association that desires to engage in religious expression and activities at PCHS.

105. Defendants violate Chase's right to freedom of association by denying his group the right to use school rooms and facilities to assemble and engage in religious expression—a right the District extends to other groups of students so long as they meet to discuss matters from a nonreligious point of view, or express themselves using no religious content.

106. Defendants' Open Time Policy and practice chill, deter, and restrict Chase and his group of Christian friends from meeting together to discuss issues from a religious perspective.

107. Defendant's Open Time Policy and practice of completely banning religious speech during the open time of Seminar period is not the least restrictive means of serving any compelling interest which Defendants seek to secure.

108. Defendants' policy and practice of prohibiting Chase and his group of friends from joining together in religious expression based on the religious nature of their speech violates Chase's right to freedom of association as guaranteed by the First Amendment to the United States Constitution, as incorporated and applied to Defendants under the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the Prayer for Relief.

Third Cause of Action: Violation of the Free Exercise Clause of the First Amendment

109. Plaintiff realleges all matters set forth in paragraphs 1 through 84 and incorporates them herein.

110. Chase desires to engage in the expressive activities described above on the basis of his sincerely held religious beliefs.

111. Defendants' Open Time Policy and practice substantially burdens Chase's free exercise of religion by conditioning his right to speak and associate during the seminar period on the surrendering of his free exercise rights.

112. Defendants' Open Time Policy and practice are not neutral or generally applicable as they deny Chase and his friends the ability to join together in prayer and to discuss religious matters that are important to them, while at the same time providing other groups of students the ability to discuss matters from a nonreligious point of view.

113. Defendants' Open Time Policy and practice are not neutral because they target religious speech and permit District officials like Defendants Back and Lucas to arbitrarily decide what speech is permitted under the policy and practice and what speech is not.

114. Defendants' Open Time Policy and practice are likewise not generally applicable because they grant the District officials unbridled discretion, enforced via a policy of individualized assessment, to censor Chase's religious expression while permitting other students to engage in non-religious expression during open time.

115. Defendants' Open Time Policy and practice constitute the imposition of special disabilities on Chase due to his religion and his intent to engage in religious expression.

116. These special disabilities apply only to religious speech and exercise and to no other student speech.

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

118. Defendants' Open Time Policy and practice chills Plaintiff's freedom of religious exercise, which is a fundamental right guaranteed to Plaintiff by the First Amendment.

119. Defendants' Open Time Policy and practice of prohibiting Chase and his group of friends from engaging in religious activities during the open time of Seminar period violates the Free Exercise Clause of the First Amendment to the United States Constitution, as incorporated and applied to Defendants under the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the Prayer for Relief.

Fourth Cause Of Action: Violation of the Equal Protection Clause of the Fourteenth Amendment

120. Plaintiff realleges all matters set forth in paragraphs 1 through 84 and incorporates them herein.

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

122. Pursuant to its Open Time Policy and practice, Defendants allow all students to leave their assigned Seminar room on Mondays and Wednesdays, and those students who meet certain academic qualifications to leave their Seminar room on Fridays, for open time, during which they are free to engage in a multitude of activities of their own choosing, including joining together to engage in expressive activities of interest to them.

123. But Defendants have denied Chase and his classmates the ability to join together in religious expression simply because of the religious content and viewpoints of their speech.

124. By discriminating against the religious content and viewpoint of Chase's and other like-minded students' speech, Defendants are treating Chase and his friends differently than other similarly situated public school students on the basis of their religion, a protected classification.

125. Defendants' Open Time Policy and practice violate various fundamental rights of Chase, including his rights to freedom of speech and the free exercise of religion.

126. When government regulations, like the District's policy and practice challenged herein, infringe on such fundamental rights, discriminatory intent is presumed.

127. Defendants' Open Time Policy and practice have also been applied to intentionally discriminate against Chase's rights of free speech and free exercise of religion.

128. Defendants lack a rational or compelling state interest for such disparate treatment of Chase and other like-minded religious students.

129. Defendants' discrimination against Chase is not narrowly tailored to serve a compelling state interest.

130. Accordingly, Defendants' Open Time Policy and practice of prohibiting Chase and his Christian friends from assembling and discussing matters solely because of the religious nature of their speech violates Chase's right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the Prayer for Relief.

Fifth Cause of Action: Violation of the Due Process Clause of the Fourteenth Amendment

131. Plaintiff realleges all matters set forth in paragraphs 1 through 84 and incorporates them herein.

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

133. The arbitrary determination by District officials of what is and is not forbidden speech violates this norm.

134. Students of common intelligence must therefore guess as to whether their expression will be of the type that District officials ban at school—including “religious” expression.

135. Defendants’ Open Time Policy and practice are vague and allow for unbridled discretion in determining which student speech satisfies its ban against “religious” expression.

136. Defendants’ Open Time Policy and practice allow District officials like Defendants Back and Lucas to act with complete unbridled discretion when deciding if expression that students desire to engage in during the open time of Seminar period is prohibited.

137. The discretion given to District officials pursuant to Defendants’ Open Time Policy and practice leaves censorship of student speech to the whim of District officials.

138. Indeed, this is evidenced by the fact that Chase and his classmates were permitted to meet together to sing, pray, and discuss issues of the day from a religious perspective during open time for the previous three years, but were abruptly banned by Defendants shortly after the start of the 2014-2015 school year.

139. Defendants’ Open Time Policy and practice accordingly violate Chase’s rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the Prayer for Relief.

Sixth Cause of Action: Violation of the Establishment Clause of the First Amendment

140. Plaintiff realleges all matters set forth in paragraphs 1 through 84 and incorporates them herein.

141. Defendants' Open Time Policy and practice embody hostility toward religious expression and require excessive entanglement with religion, both forbidden under the First Amendment's Establishment Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution.

142. Defendants' Open Time Policy and practice of banning Chase's religious expression evinces discriminatory suppression of private speech that is not neutral, but rather is hostile toward religion.

143. Defendants, pursuant to their Open Time Policy and practice of suppressing private religious expression, sends the message to students that religious speakers such as Chase are second-class citizens, outsiders, and not full members of the academic community.

144. Defendants send the message that Christian students like Chase are outsiders by excluding religious points of view and expression during open time while concurrently permitting all other points of view and expression by students.

145. Defendants' Open Time Policy and practice compel District officials to classify private student speech according to its perceived religious-versus-nonreligious nature.

146. Drawing this distinction necessarily requires District officials to inquire into the significance of words and practices to different religious faiths.

147. Such inquiries by District officials excessively entangle them with religion in a manner forbidden by the First Amendment.

148. Entanglement problems exist because District officials must attempt to discern which private student expression is too "religious" in nature to be permitted during open time.

149. District officials must make theological interpretations in order to conclude that some student speech is “religious,” while other student speech is not.

150. The District denied Chase and his fellow classmates the right to engage in private, religious expression during open time, an action that represents the antithesis of neutrality.

151. No compelling state interest exists to justify the censorship of Chase’s private religious expression.

152. Defendants’ Open Time Policy and practice therefore violate the Establishment Clause of the First Amendment to the United States Constitution, as incorporated and applied to Defendants under the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the Prayer for Relief.

VIII. PRAYER FOR RELIEF

A. That this Court issue a Preliminary and Permanent Injunction, restraining Defendants, their officers, agents, employees, and all other persons acting in active concert with them, from enforcing the Open Time Policy and practice outlined above that prohibit Plaintiff from praying, singing, discussing topics from a religious perspective, and engaging in other forms of religious expression during open time of Seminar period, and ordering Defendants to immediately allow Chase Windebank and his friends to engage in private religious expression on the same terms other students are allowed to engage in secular expression on topics of their choice.

B. That this Court render a Declaratory Judgment declaring unconstitutional Defendants’ Open Time Policy and practice of prohibiting students from joining together to engage in religious expression during the open time of Seminar period;

- C. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment;
- D. That this Court retain jurisdiction of this matter for the purpose of enforcing any Orders;
- E. That this Court award Plaintiff's costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. § 1988 and other applicable law;
- F. That this Court award nominal damages in the amount of one (1) dollar for the violation of Plaintiff's constitutional rights;
- G. That this Court issue the requested injunctive relief without a condition of bond or other security being required of Plaintiff; and
- H. That this Court grant such other and further relief as the Court deems equitable, just, and proper in the circumstances.

Respectfully submitted this 7th day of November, 2014.

Attorneys for Plaintiff:

s/ Jeremy D. Tedesco

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DECLARATION UNDER PENALTY OF PERJURY

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

Executed this 6th day of November, 2014, at Colorado Springs, Colorado.



CHASE WINDEBANK