

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Kimberly Gilio, as legal guardian on behalf
of J.G., a minor,

Plaintiff,

v.

Case No. _____

The School Board of Hillsborough County,
Florida,

Defendant.

VERIFIED COMPLAINT
(INJUNCTIVE AND DECLARATORY RELIEF SOUGHT)

Now comes Plaintiff Kimberly Gilio, as legal guardian on behalf of J.G.,¹ a minor, pursuant to the Federal Rules of Civil Procedure, and for the causes of action against Defendant avers the following:

I. INTRODUCTION

1. This is a civil rights action under 42 U.S.C. § 1983, the First Amendment, the Fourteenth Amendment, and Florida’s Religious Freedom Restoration Act of 1998, Fla. Stat. § 761.01 *et seq.*, brought to remedy a violation of the constitutional rights of J.G., a student at Roland H. Lewis Elementary in Temple Terrace, Florida.
2. Plaintiff, as legal guardian on behalf of J.G., brings this action challenging Defendant School Board of Hillsborough County, Florida’s (“Board”) refusal to allow J.G. to distribute religious invitations at school during non-instructional time to an Easter

¹ Pursuant to Federal Rule of Civil Procedure 5.2(a), J.G. is identified by his initials, rather than his full name.

- Egg Hunt in his neighborhood.
3. The Board prohibited J.G. from distributing these religious invitations to each of his classmates pursuant to its policies.
 4. According to Principal Kristin Tonelli, students “are not allowed to pass out fliers related to religious events or activities.”
 5. The Board, by policy and practice, permits students to distribute literature and other written materials in the classroom during non-instructional time via student-to-student distribution.
 6. The Board has previously permitted students to distribute invitations during non-instructional time to off-campus events such as birthday parties.
 7. But Board Policy 9700, entitled “Relations with Special Interest Groups,” prohibits students from distributing written materials that “contain a proselytizing message (i.e. promote the benefits of the specific religion).”
 8. Similarly, Board Policy 5722, entitled “School-Sponsored Publications and Productions,” bans written materials that “[s]eek to establish the supremacy of a particular religious denomination, sect, or point of view over any other religious denomination, sect, or point of view.”
 9. Pursuant to the Board’s Policies 9700 and 5722 (collectively the “Religious Materials Policies”) and its practice, the Board singled out J.G.’s religious invitations for prohibition and censure even though there was no evidence that J.G.’s invitations would create a material and substantial disruption at school.
 10. Plaintiff challenges the Board’s Religious Materials Policies and practice both

facially and as applied to J.G.'s religious invitations.

11. The Board's censorship of J.G.'s religious speech, and the Religious Materials Policies and practice on which that censorship was based, violate the First and Fourteenth Amendments to the United States Constitution and Florida's Religious Freedom Restoration Act of 1998.

II. JURISDICTION AND VENUE

12. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, under federal law, particularly 28 U.S.C. §§ 2201, 2202 and 42 U.S.C. §§ 1983 & 1988, and under state law, particularly Fla. Stat. § 761.01 *et seq.*
13. This Court possesses original jurisdiction over Plaintiff's claims by operation of 28 U.S.C. §§ 1331 and 1343, and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear claims under the state statutes.
14. This Court is vested with authority to issue the requested declaratory relief under 28 U.S.C. § 2201 and 2202 and Federal Rule of Civil Procedure 57.
15. This Court has authority to award the requested injunctive relief under 28 U.S.C. § 1343(a)(3) and Federal Rule of Civil Procedure 65.
16. This Court is authorized to award nominal damages under 28 U.S.C. § 1343(a)(4).
17. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988 and Fla. Stat. § 761.04.
18. Venue is proper under 28 U.S.C. § 1391 in the Middle District of Florida because the facts underlying this suit arose there and because Defendant is located in the Middle District of Florida.

III. IDENTIFICATION OF THE PLAINTIFF

19. Kimberly Gilio is J.G.'s parent and guardian, and at all times relevant to this Complaint, is and was a resident of Temple Terrace, Florida.

20. J.G., a minor, is a fourth grade student at Roland H. Lewis Elementary School, and at all times relevant to this Complaint, a resident of Temple Terrace, Florida.

21. J.G. is an adherent of the Christian faith and desires to share his religious views with his schoolmates.

22. Pursuant to his sincerely held religious beliefs, J.G. desires to distribute religious literature to his schoolmates, including invitations to religious activities and events, at Board schools without facing censorship or punishment.

23. In addition, pursuant to his sincerely held religious beliefs, J.G. desires the opportunity to access all other communicative mediums the Board makes generally available to students.

24. J.G. desires to distribute religious invitations and materials to students attending Board schools for the same reason other students desire to distribute their materials—to invite friends and classmates to beneficial activities that J.G. believes his friends and classmates will enjoy.

IV. IDENTIFICATION OF THE DEFENDANT

25. Defendant School Board of Hillsborough County, Florida is organized under the laws of the State of Florida and may sue and be sued. Fla. Stat. § 1001.41 (recognizing that a district school board may “sue, and be sued”).

26. The Board is charged, *inter alia*, with the administration, operation, and supervision of Roland H. Lewis Elementary, a public primary school.
27. The Board is charged with the formulation, adoption, implementation, and enforcement of Board policies, including the Religious Materials Policies challenged herein.
28. The Board is responsible for the enforcement of its Religious Materials Policies by its employees.
29. The Board is responsible for the enactment, enforcement, and existence of policies and practices related to student expression and student distribution of nonschool literature.
30. The Board prohibited J.G. from distributing religious invitations to his friends and classmates at school during non-instructional time pursuant to its Religious Materials Policies and practice.
31. The Board is responsible for the implementation and application by the Superintendent, Board officials, and local principals of its Religious Materials Policies and practices pertaining to distribution of written materials by students.
32. The Board has delegated to the Superintendent, Board officials, and local principals final authority as to the approval and denial of the distribution of written materials by students, and for the denial of J.G.'s religious invitations.

V. ALLEGATIONS OF FACT

**THE BOARD'S POLICIES AND PRACTICE
REGARDING STUDENT EXPRESSION ON CAMPUS**

33. Roland H. Lewis Elementary ("Lewis Elementary") is a public elementary school

located in Temple Terrace, Florida.

34. Lewis Elementary is under the direction of the Board and includes kindergarten through fifth grade.
35. The Board is the official policy maker and as such has enacted the Religious Materials Policies challenged herein.
36. Board Policy 9700, entitled "Relations with Special Interest Groups" specifically governs literature distribution by students.
37. Section C of Policy 9700 states:

Distribution/Posting of Literature

No outside organization or staff member or student representing an outside organization may distribute or post literature on that organization's behalf on District property either during or after school hours without the permission and prior review of the Superintendent.

The Superintendent shall establish administrative procedures which require that

1. **criteria established in Policy 5722 - Student Publications and Productions - are used to make a decision regarding materials that students seek to post or distribute.**

...

4. flyers and notices from outside organizations may be made available for parent review in the community resource notebook that is maintained in the school building's office, or distributed to students under the following circumstances:

...

- b. **When the event or activity is sponsored by a religious institution/organization, the flyer may not contain a proselytizing message (i.e., promote the benefits of the specific religion).**

(emphasis added.)

38. Board Policy 9700 thus prohibits a student from distributing any written materials that "contain a proselytizing message (i.e., promote the benefits of a specific

religion).”

39. In addition, Board Policy 9700 requires students who “seek to post or distribute” materials to comply with Policy 5722.
40. Board Policy 5722, entitled “School-Sponsored Publications and Productions,” states:

The Board reserves the right to designate and prohibit the publications or productions of any material which is deemed inappropriate. Such materials include those which:

- ...
- C. **Seek to establish the supremacy of a particular religious denomination, sect, or point of view over any other religious denomination, sect, or point of view**

(emphasis added.)

41. Policy 9700 and Policy 5722 apply to all grade levels within the school district, up to and including the 12th grade.
42. Pursuant to the Board’s policies and practices, school officials at Lewis Elementary permit students to distribute literature and materials in the classrooms during non-instructional time.
43. Students distribute literature and materials with various types of secular messages including personal notes, birthday party invitations, etc., during non-instructional times.

THE DENIAL OF J.G.’S RELIGIOUS INVITATION

44. In March 2012, J.G.’s mother, Kimberly Gilio, along with other members of J.G.’s church, decided to organize several neighborhood Easter Egg Hunts for children and their parents in the community.

45. At each Easter Egg Hunt, children would participate in an egg hunt, play games, have snacks and candy, and hear the Biblical story of Easter.
46. Kimberly Gilio organized the Easter Egg Hunt for her neighborhood.
47. In addition to preparing over 200 Easter Eggs for the hunt, she also prepared invitations for the event.
48. J.G. decided he wanted to invite his classmates at school to the Easter Egg hunt.
49. On March 26, 2012, J.G. took 20 invitations with him to school to hand out to his friends and classmates during non-instructional time.
50. Other students in his class are routinely permitted to distribute invitations to birthday parties and other non-school events to their classmates before class.
51. J.G.'s invitations read:

Join us for an Easter Egg Hunt
What: Easter Egg Hunt
Date: April 7th
Time: 2:00 pm
Location: Raintree Manor
Why: To have fun and learn the true
meaning of Easter.
Bring: Your Easter basket and wear play
clothes—parents are welcome to join us.

52. The invitation also contained Ms. Gilio's telephone number and e-mail address.
53. Each invitation was tri-folded and sealed with a sticker.
54. Prior to the start of instructional time, J.G. handed out one of the invitations to a friend.
55. The distribution of this invitation did not create any disruption at school.
56. In fact, this friend's parent later called to RSVP for the Easter Egg Hunt.

57. J.G. then went to request permission from his teacher to distribute the remaining invitations to his classmates.
58. That day, J.G.'s regular teacher was absent, and a substitute teacher was filling in.
59. The substitute teacher told J.G. that she would have to ask the principal for permission.
60. The substitute teacher then took the flyers and gave them to Principal Kristin Tonelli.
61. Later that day, the substitute teacher returned the flyers to J.G.
62. Attached to the flyers was a note from Principal Tonelli telling J.G. that he could not hand out the invitations to his friends and classmates.
63. The note stated:
- We are not allowed to pass out fliers related to religious events or activities. Thank you for your understanding.
- Mrs. Tonelli
Principal
64. As a result, J.G. was prohibited from handing any of the remaining 19 invitations to his friends and classmates at school.
65. J.G. is a Bible-believing Christian who desires to share his faith and beliefs with other students and to invite them to religious events and activities.
66. J.G.'s sincerely held religious beliefs compel him to share his faith and beliefs with his friends and classmates at school.
67. One way J.G. accomplishes this goal at school is through inviting his friends to religious events and activities at his church and to other similar religious activities for children.

68. In the future, J.G. desires to engage in religious speech during non-instructional time through the distribution of other similar religious literature absent fear of reprisal and without facing punishment or being prohibited from doing so.
69. J.G.'s church continues to hold events and activities for children, and J.G. desires to share this information through invitations and literature distribution immediately.

VI. ALLEGATIONS OF LAW

70. Students do not shed their constitutional rights at the schoolhouse gate.
71. Non-disruptive, private student expression is protected by the First Amendment.
72. Private speakers are entitled to equal, viewpoint neutral access to public fora.
73. Religious speech is fully protected by the First Amendment.
74. Prior restraints on speech may not delegate overly broad discretion to government decision-makers, may not allow for content based restrictions, must further a compelling government interest, must be narrowly tailored, and must be the least restrictive means available.
75. The government may not discriminate against speech based on its viewpoint, regardless of the forum.
76. Content-based restrictions on speech in a public forum are presumptively unconstitutional and are subject to strict scrutiny.
77. Time, place, and manner restrictions on speech must be content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.
78. All of the acts of the Board, its officers, agents, employees, and servants were

executed and are continuing to be executed by the Board under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of Florida.

79. J.G. is suffering irreparable harm from the conduct of the Board.

80. J.G. has no adequate or speedy remedy at law to correct or redress the deprivation of his rights by the Board.

81. Unless the Board's Religious Materials Policies are enjoined, J.G. will continue to suffer irreparable injury.

FIRST CAUSE OF ACTION: VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

82. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 81 of this Complaint.

83. 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 religious expression.

84. The Board's Religious Materials Policies and practice permit students to distribute literature to their classmates during non-instructional time.

85. The Board permits the distribution of written materials by students covering a wide range of topics including birthday invitations and other non-school events.

86. In contrast, the Board's Religious Materials Policies and practice prohibit J.G. from distributing a invitation for a religious event through student-to-student distribution.

87. J.G.'s distribution of his religious handwritten invitation does not materially and substantially interfere with the orderly conduct of educational activity within the

school.

88. This unequal treatment of J.G.'s religious expression pursuant to the Religious Materials Policies is a content-based restriction in an otherwise open forum.
89. The Board permitted students to distribute invitations to off-campus birthday parties where students would play games, eat snacks and candy, and hear stories.
90. However, the Board's Religious Materials Policies and practice discriminate against J.G.'s religious viewpoint by prohibiting him from distributing a religious invitation to his friends and classmates for a community-wide Easter Egg Hunt where the children would hunt for Easter Eggs, play games, eat snacks and candy, and hear the Bible story of Easter, all from a religious perspective.
91. This denial of J.G.'s religious invitation while permitting secular invitations from other students constitutes viewpoint discrimination, which is unconstitutional in any type of forum.
92. Board Policy 9700, which prohibits written materials that "contain a proselytizing message (i.e., promote the benefits of the specific religion)," and Board Policy 5722, which prohibits written materials that "[s]eek to establish the supremacy of a particular religious denomination, sect, or point of view," are both content-based and viewpoint-based restrictions on their face due to their censorship of any religious materials.
93. The Board's Religious Materials Policies and practice additionally impose an unconstitutional prior restraint because they vest Board officials with unbridled discretion to permit or refuse protected religious speech by students.

94. The Board's Religious Materials Policies and practice give unbridled discretion to Board officials when deciding if written material a student desires to distribute "contain[s] a proselytizing message."
95. All flyers by definition proselytize (i.e. promote the benefits of an individual's or organization's particular event and/or message).
96. The Board's Religious Materials Policies and practice also give unbridled discretion to Board officials when deciding if written materials a student desires to distribute "[s]eek to establish the supremacy of a particular religious denomination, sect, or point of view."
97. The Board's Religious Materials Policies and practice are additionally overbroad because they sweep within their ambit protected First Amendment expression.
98. The overbreadth of the Board's Religious Materials Policies and practice chill the speech of students who might seek to engage in private religious expression through the distribution of invitations and other written materials during non-instructional time.
99. The Board's Religious Materials Policies and practice chill, deter, and restrict J.G. from freely expressing his religious beliefs.
100. The Board's Religious Materials Policies and practice, as interpreted and applied by Board officials to prohibit religious speech, are not the least restrictive means necessary to serve any compelling interest which the Board seeks thereby to secure.
101. The Board's Religious Materials Policies and practice are not reasonably related to any legitimate pedagogical concerns.

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

103. The Board's Religious Materials Policies and practice, both facially and as applied, accordingly violate J.G.'s right to Free Speech as guaranteed by the First Amendment to the United States Constitution.

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

SECOND CAUSE OF ACTION: VIOLATION OF THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

104. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 81 of this Complaint.

105. The Board's Religious Materials Policies and practice, by expressly targeting J.G.'s private religious expression for special disabilities because it is religious, violate his constitutional right to the free exercise of religion.

106. J.G. desires to distribute invitations to religious activities and events to his classmates at school during non-instructional time on the basis of his sincerely held religious beliefs.

107. The Board's Religious Materials Policies and practice explicitly exclude – and thus discriminate against – religious expression.

108. The Board's Religious Materials Policies and practice substantially burden J.G.'s free exercise of religion by conditioning his ability to speak on foregoing his free exercise rights.

109. The Board's Religious Materials Policies and practice force J.G. to choose between

- engaging in religious speech and being censored, or foregoing the free exercise of religion to be able to speak without censorship or punishment.
110. The Board's Religious Materials Policies and practice substantially burden J.G.'s free exercise of religion by denying him the right to include private religious speech.
 111. The Board's Religious Materials Policies and practice constitute the imposition of special disabilities on J.G. due to his religion and his intent to include private religious expression.
 112. The Board's Religious Materials Policies and practice of banning J.G.'s religious invitation selectively imposes a burden on expression based on the religious nature of the expression by singling out his expression for discriminatory treatment.
 113. The Board's Religious Materials Policies and practice cannot be justified by a compelling governmental interest and are not narrowly tailored to advance any such interest.
 114. The Board's interpretation and application of its Religious Materials Policies chill J.G.'s freedom of religious expression and exercise, both of which are fundamental rights guaranteed to J.G. by the First Amendment.
 115. These special disabilities placed on J.G. are neither neutral nor of general applicability.
 116. The Board's Religious Materials Policies is not neutral because it targets religious speech on its face and permits Board officials to arbitrarily decide what speech is permitted under the Policies and what speech is not.
 117. The Board's Religious Materials Policies and practice are likewise not generally

applicable because they grant the Board officials unbridled discretion, enforced via a policy of individualized assessment (since students must submit a copy of the materials they wish to distribute beforehand), to censor J.G.'s religious invitations while permitting other students to distribute written materials, such as birthday party invitations.

118. The Board's Religious Materials Policies and practice, both facially and as applied, constitutes an excessive burden on J.G.'s rights to freedom of exercise of his religion and have violated the Free Exercise Clause of the First Amendment to the United States Constitution.

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

THIRD CAUSE OF ACTION: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

119. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 81 of this Complaint.
120. The Due Process Clause of the Fourteenth Amendment prohibits the government from censoring speech pursuant to vague or overbroad standards that grant unbridled discretion.
121. The arbitrary determination by district officials of what is and is not forbidden proselytizing or religious speech violates this norm.
122. Students of common intelligence must therefore guess as to whether their religious expression will be permitted under the Board's Religious Materials Policies.
123. The Board's Religious Materials Policies and practice are vague and allow for

unbridled discretion in determining which student speech satisfies its Religious Materials Policies.

124. The Board's Religious Materials Policies and practice allow district officials to act with unbridled discretion when deciding if written material a student desires to distribute "contain[s] a proselytizing message."
125. The Board's Religious Materials Policies and practice also allow district officials to act with unbridled discretion when deciding if written materials a student desires to distribute "[s]eek to establish the supremacy of a particular religious denomination, sect, or point of view."
126. The discretion given to Board officials in the Board's Religious Materials Policies leaves censorship of student speech to the whim of Board officials.
127. The Board's Religious Materials Policies and practice, both facially and as applied, accordingly violate J.G.'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 relief set forth hereinafter in the Prayer for Relief.

FOURTH CAUSE OF ACTION: VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

128. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 81 of this Complaint.
129. The Board's Religious Materials Policies 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.
130. The Board's Religious Materials Policies and practice of banning J.G.'s religious expression evinces discriminatory suppression of private speech that is not neutral, but rather is hostile toward religion.
 131. The Board, pursuant to its Religious Materials Policies and practice of suppressing private Christian religious expression, sends the message to students that religious speakers such as J.G. are second-class citizens, outsiders, and not full members of the academic community.
 132. The Board sends the message that Christians like J.G. are outsiders by excluding religious points of view and events while concurrently permitting all other points of view and events.
 133. The Board's Religious Materials Policies and practice compel district officials to classify private student speech according to its perceived religious-versus-nonreligious nature.
 134. Drawing this distinction necessarily requires district officials to inquire into the significance of words and practices to different religious faiths.
 135. Such inquiries by district officials entangle them with religion in a manner forbidden by the First Amendment.
 136. Entanglement problems exist because district officials must attempt to discern which private student expression is "proselytizing" or is too religious in nature to be permitted.

137. District officials must make theological interpretations in order to conclude that some student speech is “proselytizing” or religious, while other student speech is not.
138. The Board denied J.G. the right to distribute his religious invitation because it contained a religious point of view, an action that represents the antithesis of neutrality.
139. No compelling state interest exists to justify the censorship of J.G.’s religious expression.
140. The Board’s Religious Materials Policies and practice, both facially and as applied, therefore violate the Establishment Clause of the First Amendment to the United States Constitution.

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

FIFTH CAUSE OF ACTION: VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

141. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 81 of this Complaint.
142. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated persons and groups equally.
143. Pursuant to its Religious Materials Policies and practice, the Board has allowed other similarly situated students to distribute invitations and other written materials containing secular expression in the classroom during non-instructional time.
144. The Board has treated J.G. disparately when compared to similarly situated students,

- by banning only J.G.'s religious expression.
145. By discriminating against the content and viewpoint of J.G.'s speech, the Board is treating J.G.'s religious speech differently than other similar situated public school students.
 146. The Board's Religious Materials Policies and practice violate various fundamental rights of J.G., such as rights of free speech and free exercise of religion.
 147. When government regulations, like the Board's Religious Materials Policies and practice challenged herein, infringe on fundamental rights, discriminatory intent is presumed.
 148. The Board's Religious Materials Policies and practice have also been applied to intentionally discriminate against J.G.'s rights of free speech and free exercise of religion.
 149. The Board lacks a rational or compelling state interest for such disparate treatment of J.G.
 150. The Board's Religious Materials Policies and practice are not narrowly tailored as applied to J.G. because his speech does not implicate any of the interests the Board might have.
 151. The Religious Materials Policies and practice of the Board, as applied, thus violate J.G.'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 relief set forth hereinafter in the Prayer for Relief.

SIXTH CAUSE OF ACTION: VIOLATION OF FLORIDA'S RELIGIOUS FREEDOM RESTORATION ACT OF 1998

152. Plaintiff re-alleges and incorporates herein, as though fully set forth, Paragraphs 1 through 81 of this Complaint.
153. Pursuant to Fla. Stat. §761.01, *et seq.*, the government may not substantially burden the free exercise of religion, even under a law of general applicability, unless it demonstrates a compelling interest and that the application of the burden is the least restrictive means of furthering that interest.
154. J.G.'s desire to distribute religious invitations at school to his friends and classmates during non-instructional time is motivated by his sincerely held religious beliefs in obedience to Biblical mandates.
155. J.G. sought to, and continues to seek to, distribute religious invitations and written materials from a religious perspective to his friends and classmates at Lewis Elementary.
156. Pursuant to the Board's Religious Materials Policies and practices, the Board has excluded J.G. from distributing religious invitations and materials at school while permitting other students to distribute secular invitations promoting similar events and activities at school.
157. The Board's prohibition of J.G.'s religious invitations, pursuant to its Religious Materials Policies and practice, while permitting secular invitations and materials from other students to be distributed, constitutes a substantial burden on J.G.'s Free Exercise rights.
158. Forcing J.G. to choose between following his religious beliefs by inviting his friends

and classmates to religious activities and events and being denied access, and abandoning his religious beliefs so that he may distribute secular invitations and written materials, creates a substantial burden on J.G.

159. The Board has no rational or compelling reason that would justify its denial of J.G.'s request to distribute religious invitations at school during non-instructional time.
160. The Board does not employ the least restrictive means in applying its burden against J.G.'s religious expression.
161. The Board's Religious Materials Policies and practice, both facially and as applied, therefore violate Florida's Religious Freedom Restoration Act of 1998.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment as follows:

- a. That this Court issue a Preliminary and Permanent Injunction, restraining the Board, its officers, agents, employees, and all other persons acting in active concert with it, from enforcing Board Policy 9700(C)(4)(b), which prohibits flyers that "contain a proselytizing message (i.e., promote the benefits of a specific religion)" and Board Policy 5722's prohibition on any materials which "seek to establish the supremacy of a particular religious denomination, sect, or point of view over any other religious denomination, sect, or point of view," that violate J.G.'s constitutional rights by banning religious expression;
- b. That this Court render a Declaratory Judgment, declaring as unconstitutional

facially and as-applied Board Policy 9700(C)(4)(b), which prohibits flyers that “contain a proselytizing message (i.e., promote the benefits of a specific religion)” and Board Policy 5722’s prohibition on any materials which “seek to establish the supremacy of a particular religious denomination, sect, or point of view over any other religious denomination, sect, or point of view,” that ban religious expression in violation of the First and Fourteenth Amendments to the United States Constitution;

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 the Court award J.G.’s costs and expenses of this action, including a reasonable attorneys’ fees award, in accordance with 42 U.S.C. § 1988 and Fla. Stat. § 761.04.

f. That this Court award nominal damages for the violation of J.G.’s constitutional rights;

g. That this Court issue the requested injunctive relief without a condition of bond or other security being required of J.G.; and

h. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.

Dated this 1st day of May, 2012.

s/ David C. Gibbs III
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**Application for Admission Pro Hac Vice
Pending*

VERIFICATION

I, Kimberly Gilio, a citizen of the United States and a resident of the State of Florida, have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 23rd day of April, 2012.



Kimberly Gilio