UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

LITTLE PENCIL, LLC and DAVID L. MILLER, Plaintiffs, v. **LUBBOCK INDEPENDENT SCHOOL DISTRICT,** Defendant.	Case No. **VERIFIED COMPLAINT**

Plaintiffs, by and through counsel, and for their Complaint against the Defendant, hereby state as follows:

INTRODUCTION

1. This is a civil rights action under 42 U.S.C. § 1983 and the First and Fourteenth Amendments of the United States Constitution, brought to remedy a violation of the constitutional rights of Plaintiffs Little Pencil, LLC, a Texas Limited Liability Company, and its sole and managing member, David L. Miller.

2. Plaintiffs bring this action challenging Defendant Lubbock Independent School District's (the "District") exclusion of Plaintiffs' religious advertisement from the jumbotron at Lowrey Field at PlainsCapital Park during high school football games and denial of Plaintiffs' equal use of additional communication channels the District makes available to other nonschool-related organizations.

3. Plaintiffs' advertisement promoted an advertising campaign centered around a Jesus Tattoo marketing concept, which Mr. Miller developed as a new way to share the Bible's teachings through contemporary marketing methods, and included, *inter alia*, an image of a tattooed Jesus and the website address jesustattoo.org.

4. The District prohibited Plaintiffs' religious advertisement and denied them equal access pursuant to its policies.

5. Pursuant to its policy and practice, the District permits nonschool-related organizations to advertise through numerous communication channels at District facilities and sports venues throughout the year.

6. For example, the District permits nonschool-related organizations to advertise in multiple ways at Lowrey Field during high school football games, including, *inter alia*: video advertisements displayed on the jumbotron, still images appearing on the jumbotron, an advertisement on the back of game tickets, 8' by 3' advertising signs along the field's sidelines or end zones, advertisements in the Gameday Program, and signage placed adjacent to the :25 second clocks in the north and south entrances.

7. The District permits many nonschool-related organizations, including nonprofit and for-profit organizations, to advertise at Lowrey Field during football games. Among those organizations the District has permitted to advertise at Lowrey Field are: United Supermarkets, Lubbock Christian University, Wentz Orthodontics, Sonic, South Plains College, Coronado Cheer, Reagor Auto Mall, Taco Villa, Dions, Academy (a sports equipment and apparel retail chain), Tejas Motors, Whataburger, and Lubbock National Bank.

8. The District has also permitted, *inter alia*, Mission Rehab Services, Chick-fil-A, and Full Armor Ministries, a local church, to advertise at District basketball facilities, and numerous nonschool-related organizations, including Bethany Baptist Church, to place large banners, year-round on a Monterey High School fence facing one of the highest traffic intersections in Lubbock (50^{th} and Indiana).

9. The District permits nonschool-related organizations to include pictures, logos, website addresses, mottos/taglines, descriptive content of their products or services, and other promotional messages in their advertisements.

10. Pursuant to its policy and practice, the District denied and continues to deny Plaintiffs the ability to express their religious views through the many communication channels set forth above and made available to many other nonschool-related organizations.

11. In denying Plaintiffs access to these communication mediums, the District acted pursuant to an unconstitutional policy.

12. Specifically, the District acted pursuant to Policy GKB (LOCAL) of the LISD Board Policy Manual—titled Community Relations: Advertising and Fund Raising in the Schools—which states that nonschool-related organizations may use school facilities "to advertise, promote, sell tickets, or collect funds for any nonschool-related purpose" subject to the "prior approval of the Superintendent or designee," and that the "District retains final editorial authority to accept or reject submitted advertisements in a manner consistent with the First Amendment." *See* Policy GKB (LOCAL).

13. Yet, Policy GKB (LOCAL) fails to set out any written guidelines for District officials to follow in deciding whether to permit or deny a nonschool-related organization's advertisement, thereby granting District officials unbridled discretion to accept or reject private expression protected by the First Amendment.

14. The District's contract with the advertising agency that solicits advertisements for the communication channels described above states that "[t]he District has the right to deny any sponsor affiliation at any time," and requires the ad agency to "seek approval of the District for every potential sponsor."

15. This contract language underscores the broad, unbounded power District officials exercise over Plaintiffs' protected expression.

16. In addition, Policy GKB (LOCAL) directly incorporates standards from Policy FMA as the standards its officials should use in exercising "final editorial authority" over advertising requests from nonschool-related organizations.

17. But many of the "standards" set out in FMA (LEGAL), and incorporated by reference in Policy GKB, are vague and grant unbridled discretion to District officials in

violation of the First Amendment, including, but not limited to, a ban on speech that "[m]ight reasonably be perceived to advocate . . . conduct . . . inconsistent with the shared values of a civilized social order," "[i]s inappropriate for the level of maturity of the readers," and "[d]oes not meet the standards of the educators who supervise the production of the publication."

18. Prior to filing this complaint, Plaintiffs' attorneys sent a letter to the District, requesting equal access for Plaintiffs' religious advertisements. Relying on its Policies and practice, the District responded that it "is prohibited from allowing religious advertisement with the use of government property based on the Establishment Clause."

19. Plaintiffs challenge District Policies GKB (LOCAL) and FMA (LEGAL), as incorporated by reference in Policy GKB (hereinafter referred to as the "Policies"), facially and as-applied to their religious advertisement.

20. The District's censorship of Plaintiffs' religious speech, and the Policies on which that censorship was based, violate the First and Fourteenth Amendments to the United States Constitution.

JURISDICTION AND VENUE

21. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, and under federal law, particularly 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. §§ 1983 and 1988.

22. This Court possesses original jurisdiction over Plaintiffs' claims by operation of 28 U.S.C. §§ 1331 and 1343.

23. This Court is vested with authority to issue the requested declaratory relief under 28 U.S.C. § 2201 and 2202, and pursuant to Rule 57 of the Federal Rules of Civil Procedure.

24. This Court has authority to award the requested injunctive relief under Rule 65 of the Federal Rules of Civil Procedure and 28 U.S.C. § 1343(a)(3).

25. This Court is authorized to award nominal damages under 28 U.S.C. § 1343(a)(4).

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

27. Venue is proper under 28 U.S.C. § 1391 in the Northern District of Texas because Plaintiffs' claims arose there and because the Defendant is located within the District.

PLAINTIFFS

28. Plaintiff Little Pencil, LLC, is a Texas Limited Liability Company.

29. Plaintiff David L. Miller is, and was at all times relevant to this Complaint, a resident of Texas.

30. Mr. Miller served as the Vice Chancellor of Research and Commercialization at Texas Tech University from 2007-2011.

31. Mr. Miller has been appointed to two state committees by Governor Rick Perry, including the Texas Emerging Technology Fund, which he chairs, and the Product Development and Small Business Incubator Board.

32. Mr. Miller is the founding member of Little Pencil, LLC, serves as its sole and managing member, runs it according to his religious faith, and makes all business decisions according to his sincerely held religious beliefs.

33. Mr. Miller is an adherent of the Christian faith and is called by God to share his religious views with as many people as possible.

34. Based on this religious calling, and drawing from his marketing and business background, Mr. Miller sought out new and innovative ways to share the Bible's teachings regarding real-life issues that people face in their daily lives.

35. Mr. Miller's broad vision includes developing and utilizing numerous marketing methods, including video and audio advertisements, social media, websites, etc., to deliver his religious message.

36. Mr. Miller recognized that a corporate entity would help to achieve his broad vision and formed Little Pencil, LLC to serve that purpose.

37. Mr. Miller chose the name "Little Pencil" for his Limited Liability Company based on his religious beliefs.

38. The name "Little Pencil" is drawn from the following quote from Mother Theresa: "I am a little pencil in God's hands. He does the thinking. He does the writing. He does everything and sometimes it is really hard because it is a broken pencil and He has to sharpen it a little more."

39. Pursuant to his sincerely held religious beliefs, Mr. Miller desires to utilize the communication channels the District makes available to nonschool-related organizations, including but not limited to the Lowrey Field jumbotron, to display his religious advertisements.

DEFENDANTS

40. Defendant Lubbock Independent School District (the "District") is organized under the laws of the State of Texas and may sue and be sued. Texas Education Code § 11.151(a) (recognizing that an independent school district may "sue and be sued"); *Bonillas v. Harlandale Indep. Sch. Dist.*, 832 F. Supp. 2d 729, 736-37 (W.D. Tex. 2011) (recognizing that "Texas independent school districts . . . are not protected by the sovereign immunity of the Eleventh Amendment.").

41. The District is charged, *inter alia*, with the administration, operation, and supervision of all schools and facilities within the District, including Lowrey Field at PlainsCapital Park.

42. Lowrey Field serves as the home field for the varsity football teams of four schools within the District: Lubbock High School, Coronado High School, Monterey High School, and Estacado High School.

43. The District is charged with the formulation, adoption, implementation, and enforcement of District policies, including the Policies governing advertising by nonschool-related organizations challenged herein.

44. The District is responsible for its employees' enforcement of the Policies governing advertising by nonschool-related organizations.

45. The District is responsible for the enactment, enforcement, and existence of Policies and practices related to advertising by nonschool-related organizations at District schools and facilities.

46. The District excluded Plaintiffs' religious advertisement from the Lowrey Field jumbotron and denied them equal access to additional communication channels made available to other nonschool-related organizations pursuant to its Policies and practices governing advertising by nonschool-related organizations.

47. The District is responsible for its officials' implementation and application of its Policies and practices pertaining to advertising by nonschool-related organizations at District events and facilities.

48. The District is similarly responsible for delegating to District officials final authority as to the approval and denial of advertising requests submitted by nonschool-related organizations, including the denial of Plaintiffs' religious advertisement.

ALLEGATIONS OF FACT

The District's Policies and Practice Regarding Advertising by Nonschool-Related Organizations

49. As the official policy maker, the District has enacted and is responsible for the Policies and practice challenged herein.

50. The District, pursuant to its Policies and practice, permits nonschool-related organizations to use school facilities—which includes Lowrey Field, the jumbotron, and other communication channels at the stadium and at other District facilities and sports venues—"to advertise, promote, sell tickets, or collect funds for any nonschool-related purpose," subject to the "prior approval of the Superintendent or designee." *See* Policy GKB (LOCAL).

51. Policy GKB (LOCAL) states that nonschool-related organizations may use school facilities pursuant to Policy GKD.

52. Policy GKD (LOCAL) states that nonschool-related organizations may use school facilities for "educational, recreational, civic, or social activities when these activities do not

conflict with school use or with this policy," and that school facilities are open for the use of both non-profit and for-profit organizations.

53. Policy GKB (LOCAL) incorporates additional "standards" that govern the content of nonschool-related advertisements.

54. According to Policy GKB (LOCAL):

> The District retains final editorial authority to accept or reject submitted advertisements in a manner consistent with the First Amendment. [See FMA regarding school-sponsored publications]

55. Policy FMA (LEGAL), which governs "School-Sponsored Publications" states that the District "may refuse to disseminate or sponsor student speech" that:

1. Would substantially interfere with the work of the school.
2. Impinges on the rights of other students.
3. Is vulgar or profane.
4. Might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with the shared values of a civilized social order.
5. Is inappropriate for the level of maturity of the readers.
6. Does not meet the standards of the educators who supervise the production of the publication.
7. Associates the school with any position other than neutrality on matters of political controversy.

56. In other words, the District's Policy GKB (LOCAL) states that the same standards the District uses to govern student expression in school-sponsored publications will be used to govern the speech of nonschool-related organizations seeking to use school communication channels, such as the Lowrey Field jumbotron, for advertising and promotional purposes.

57. The District has explicitly incorporated Policy FMA (LEGAL) and its standards for regulating certain types of student speech, into its policies governing nonschool-related advertisements.

58. Pursuant to its Policies and practice, the District permits nonschool-related organizations to advertise at Lowrey Field through short, TV-style commercials played on the jumbotron, still images displayed on the jumbotron, advertisements on the back of game tickets, large advertising signs along the field's sidelines or end zones, advertisements in the Gameday Program, and signage placed adjacent to the twenty-five second clock in the north and south entrances, among other means.

59. The District has contracted with an advertising agency, Texas Sports Marketing, to, *inter alia*, solicit advertisements for the various communication channels open to nonschool-related organizations during football games at Lowrey Field and at other sports venues and District facilities throughout the school year.

60. Texas Sports Marketing has, on behalf of the District, solicited local churches to advertise during high school football games at Lowrey Field, so long as the church does not seek to advertise an associated private school.

61. The District has permitted at least the following nonschool-related organizations to advertise at Lowrey field during football games: United Supermarkets, Lubbock Christian University, Wentz Orthodontics, Sonic, South Plains College, Coronado Cheer, Reagor Auto Mall, Taco Villa, Dions, Academy, Tejas Motors, Whataburger, and Lubbock National Bank.

62. The District has also permitted Mission Rehab Services, Chick-fil-A, and Full Armor Ministries, a local church, among others, to advertise at District basketball facilities, and has allowed numerous nonschool-related organizations, including Bethany Baptist Church, to place large banners on a fence at Monterey High School.

63. Nonschool-related organizations that have advertised at District facilities and sports venues have included photographs, logos, website addresses, mottos/taglines, descriptive content of their products or services, and other promotional messages in their advertisements.

64. Some of the advertisements the District has permitted include the following:

a. Thirty second, TV-style commercials on the Lowrey Field jumbotron promoting Reagor Auto Mall, Tejas Motors, and Whataburger.

b. End zone signs at Lowrey Field promoting Lubbock Christian University, a nonprofit organization, that include the university's name, its motto ("Be Blue"), and the school's website address, LCU.edu. LCU's website states that it was "founded by members of the Churches of Christ dedicated to restoring New Testament Christianity. To honor its heritage, the university is committed to imparting this faith and its values to future generations." *See* http://www.lcu.edu/about-lcu/message-from-the-president/our-mission.html.

c. Signs adjacent to the twenty-five second clocks at Lowrey Field promoting Sonic that include the company's name and the phrase "America's Drive-In."

d. Still images on the Lowrey Field jumbotron promoting the sports-retailer Academy.

e. A sign hung on the Estacado High School gymnasium wall promoting Full Armor Ministries, a local church, which includes its website, fullarmorministries.net, images of a Bible and cross, and the phrase "The Place Where We Move Men From Religion To Relationship."

f. A sign hung on the Lubbock High School gymnasium wall promoting Mission Rehab Services, which includes, among other things, the organization's website and the phrase "Empowering patients and caregivers to reach their goals."

g. A sign hung on the Lubbock High School gymnasium wall promoting Chick-fil-A.

h. A sign hung on a fence at Monterey High School promoting Advanced Graphics, which is owned by the chair of the LISD Board of Education, Steve Massengale. The sign includes the company website, advancedgraphix.net,

and the phrase "Your Promotional Idea Source," among other promotional messages.

i. A sign hung on a fence at Monterey High School promoting Bethany Baptist Church, which includes the image of a cross, the church's address, and its website, bethanybaptistlubbock.com.

j. A sign hung on a fence at Monterey High School promoting Just Kids Preschool, which is operated by Sunset Church of Christ. The Preschool's website states that its purpose is to "provide a solid academic foundation in a Christ-centered educational environment." *See* www.sunset.cc/justkids.

k. A sign hung on a fence at Monterey High School promoting Brodericks Therapeutic World, which includes the company's website, brodericksthерapeuticworld.com, and an image of a bare-shouldered woman who is lying down and appears to be receiving a massage.

l. A sign hung on a fence at Monterey High School promoting the Lubbock Area Amputee Support Group, which is a nonprofit organization that exists to "improve the lives of individuals with amputations, limb differences, and diseases which may lead to limb loss through encouragement, education, and empowerment." *See* www.lassg.org. The sign includes, *inter alia*, the group's website and the word hope, displayed as "H.O.P.E."

m. A sign hung on a fence at Monterey High School promoting Superior Health Plan, a Texas health care company, which includes the company website, superiorhealthplan.com, the phrase, "You Don't Have Superior Health Care?," and the image of a child with a shocked expression on his face.

n. A sign hung on a fence at Monterey High School promoting All About Looks, which includes the phrase "Fabric ~ Furniture & Thrills," the company website, allaboutlooks.com, and other messages.

o. A sign hung on a fence at Monterey High School promoting Regal Pet Resort, which includes, *inter alia*, the company website, regalpetresort.com, the phrase "Where You And Your Pet Are Treated Like Royalty," and an image of a dog dressed up in king's clothes and wearing a crown.

p. A sign hung on a fence at Monterey High School promoting Little Guys Movers, which includes, *inter alia*, the company website, littleguys.com, and an image of a smiling "little guy" carrying a large fridge on his back.

65. Because the Lowrey Field stadium has an 8,500 seating capacity and hosts multiple high school football games each week from the end of August until the beginning of November, advertising space on the Lowrey Field jumbotron is highly sought after.

66. High school football games at Lowrey Field are major community events, are open to the public, and are well attended, with the stadium typically at or close to capacity for each game.

Plaintiffs' Religious Advertisement

67. In 2012, based on his sincere religious beliefs and calling, Mr. Miller set out to develop new and innovative ways to share the Bible's teachings through contemporary marketing methods.

68. In 2013, Mr. Miller contracted with an advertising agency, RD Thomas, to help him achieve his vision.

69. Through concept meetings, storyboarding, and other marketing techniques, Mr. Miller decided to develop a marketing campaign centered around a Jesus Tattoo concept.

70. As part of this concept, RD Thomas produced a video. In the video, people struggling with common life issues have negative words representing those issues tattooed onto their skin. They come to a "tattoo parlor" operated by Jesus for help. Using a tattoo pen, Jesus changes those negative words into positive ones (*i.e.*, "fear" becomes "trust," "outcast" becomes "accepted," "useless" becomes "purpose," etc.), representing how a relationship with Jesus can transform a person's negative past into a positive future. At the end of the video, it is revealed

that Jesus has taken all these people's struggles onto himself, which is visually depicted through Jesus now bearing tattoos of all of the negative words on his own skin.

71. Mr. Miller directed RD Thomas to film the Jesus Tattoo video, and to create a website (jesustattoo.org) and social media content to support a marketing campaign centered around the Jesus Tattoo concept.

72. The Jesus Tattoo video and jesustattoo.org are copyrighted. Mr. Miller owns the copyrights to these materials and to any other materials or works developed in relation to the Jesus Tattoo concept.

73. Mr. Miller's vision is to use many of the same methods (TV and radio spots, billboard advertising, etc.,) used by companies to market nationally known consumer brands to promote the Jesus Tattoo concept and to drive traffic to an interactive website and social media.

74. Like many advertisements, including many that the District permitted within its Lowrey Field advertising forum, Mr. Miller's jesustattoo.org marketing materials were designed to drive viewers to an interactive website where they could access further information, interface with social media, speak with a representative, and purchase products designed to spread Plaintiffs' religious message.

75. Persons visiting the jesustattoo.org website are also provided contact information to speak with persons trained to provide biblically-based counsel about addiction, thoughts of suicide, divorce, family issues, grief, finances, and other issues.

76. Plaintiffs are also currently developing curriculum for a prisoner rehabilitation aspect of their ministry, which will soon be available on the jesustattoo.org website.

The District's Denial of Plaintiffs' Religious Advertisement

77. Mr. Miller desired to roll out an initial Jesus Tattoo advertising campaign in Lubbock, Texas, and surrounding areas during Fall 2013.

78. In addition to the purchase of advertising space on billboards throughout Lubbock and surrounding communities, Mr. Miller also instructed RD Thomas to seek to place a Jesus Tattoo advertisement on the Lowrey Field jumbotron during District high school football games.

79. On July 24, 2013, RD Thomas inquired with Beverly McBeath at Texas Sports Marketing about whether a still image could be displayed on the Lowrey Field jumbotron and asked for pricing.

80. Ms. McBeath responded that a still image could be displayed for at least 15 seconds two times per game, and that the cost would be $1,600 dollars.

81. Ms. McBeath proposed the following dates for the advertisement to run: October 4, 10, 11, 17, 18, 24, 25, and 31.

82. The RD Thomas representative asked a few additional questions, including whether "a church can advertise at the field."

83. Ms. McBeath responded that "a church can advertise....in fact, we've been calling on churches….as long as it's not private school related."

84. On July 29, 2013, RD Thomas informed Ms. McBeath that it wanted to book her July 24, 2013 proposal for advertising on the Lowrey Field jumbotron on behalf of its client.

85. RD Thomas informed Ms. McBeath that its client's name was "Little Pencil."

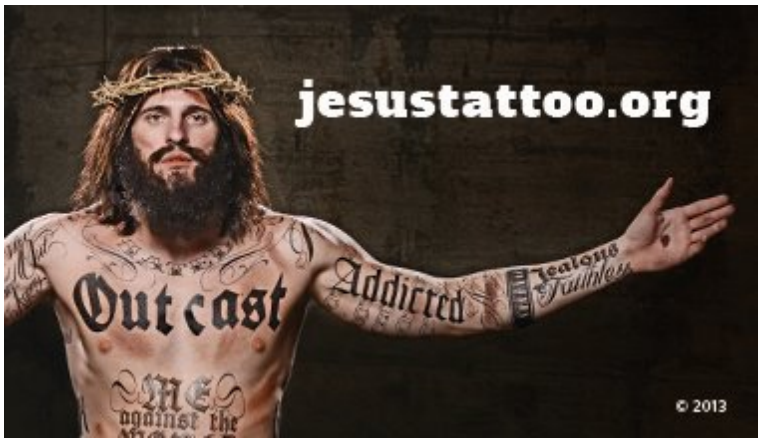
86. Ms. McBeath informed RD Thomas that the total gross for the advertisement would be $1,882 and exclaimed "THANKS for the business! Woohoo – great way to start the week."

87. On September 26, 2013, Ms. McBeath asked RD Thomas for the advertisement.

88. RD Thomas asked for dimensions of the jumbotron, which Ms. McBeath provided.

89. A few days later, on October 1, 2013, RD Thomas sent the advertisement to Ms. McBeath.

90. The following is the advertisement that was submitted:



91. Ms. McBeath sent a copy of the Jesus Tattoo advertisement to Nancy Sharp, the District's Director of Communications and Community Relations, along with an email that stated: "Nancy – this is a campaign that was launched today. There are billboards, You Tube videos, and it started floating around Facebook in the past few days. They have purchased space on the Lowrey video board to run this graphic at every home [game] in October beginning this Friday. There is no audio associated with it, just the graphic. I wanted you to be aware of it in case you get questions about it. The ad was placed by the R.D. Thomas ad agency."

92. Shorty after RD Thomas submitted the advertisement, Ms. McBeath called RD Thomas and told them that the District had denied the advertisement because tattoos are prohibited by District policy.

93. No District policy bans tattoos, and the District policies that apply to nonschool-related organizations' advertisements do not mention tattoos at all.

94. Nonetheless, RD Thomas asked Ms. McBeath if the District would accept the advertisement if the tattoos were removed from the image.

95. Ms. McBeath said the District would still deny the advertisement because of its religious message.

96. On October 25, 2013, Mr. Miller's counsel delivered a letter via email and overnight courier to the District informing it that the exclusion of the Jesus Tattoo advertisement

violated the First Amendment and requesting that the District immediately approve and run the ad at several upcoming football games.

97. Mr. Miller's counsel asked for a response by October 30, 2013, and included a public records request pursuant to the Texas Open Records Law.

98. Counsel indicated that a response to the public records request was required only if the District denied the advertisement.

99. On November 1, 2013, the District's attorneys responded on behalf of the District denying the Jesus Tattoo advertisement. Relying on *Doe v. Santa Fe ISD*, 520 U.S. 290 (2000), the letter stated:

> [T]he District is a governmental entity. Your client, a non-student, desires to exercise its free speech rights which would be deemed public speech of a religious nature. District property and equipment would be used at a school-related event. Therefore, the District is prohibited from authorizing this public religious speech on governmental property using the jumbotron which is governmental property at a school-related event based on the Establishment Clause.

100. The District also inquired if Mr. Miller's counsel still desired a response to the public records request.

101. On November 5, 2013, Mr. Miller's counsel sent the District's counsel a letter confirming that they still desired the public records requested.

102. On November 18, 2013, the District provided a response to the public records request.

103. The District's public records response shows that the District has not rejected any nonschool-related organizations' advertising request, except Plaintiffs.

104. Upon information and belief, the District, on its own and through its agent Texas Sports Marketing, solicits and books advertisements to be run on the jumbotron during high school football games, and for the additional communicative channels at Lowrey Field and other District facilities and sports venues, throughout the year.

105. Plaintiffs continue to desire to secure access to display the jesustattoo.org advertisement on the Lowrey Field jumbotron during the 2014 and successive football seasons,

and to gain equal access to the numerous additional communication channels at Lowrey Field and at other District facilities and sports venues for their religious advertisements.

106. But the District's Policy and practice of barring religious advertisements currently prohibits Plaintiffs from accessing these means of communication on equal terms with other nonschool-related organizations.

ALLEGATIONS OF LAW

107. Private speakers are entitled to equal access to public fora, free of content- and viewpoint-based discrimination.

108. Religious speech is fully protected by the First Amendment.

109. Policies establishing prior restraints on private speech may not delegate overly broad discretion to government decision-makers or allow for content- and viewpoint-based restrictions, and must be narrowly tailored to serve a compelling governmental interest.

110. The government may not discriminate against private speech based on its viewpoint, regardless of the forum in question.

111. Content-based restrictions on speech in a public forum are presumptively unconstitutional and are subject to strict scrutiny.

112. 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.

113. All of the acts of the District, its officers, agents, employees, and servants were executed and are continuing to be executed by the District under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of Texas.

114. Plaintiffs are suffering irreparable harm as a result of the District's conduct.

115. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivation of their rights by the District.

116. Unless the District's Policies and practices are enjoined, Plaintiffs will continue to suffer irreparable injury to their First and Fourteenth Amendment rights.

FIRST CAUSE OF ACTION
Violation of Plaintiffs' First Amendment Right to Freedom of Speech (42 U.S.C. § 1983)

117. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1 through 116 of this Complaint.

118. 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.

119. The District's Policies and practices allow nonschool-related organizations to utilize numerous communication channels at Lowrey Field during high school football games, and at other District facilities and sports venues throughout the school year, to advertise, promote, sell tickets, or collect funds for any nonschool-related purpose.

120. For example, the District has permitted, *inter alia*, United Supermarkets, Wentz Orthodontics, Sonic, South Plains College, Coronado Cheer, Reagor Auto Mall, Taco Villa, Dions, Academy, Tejas Motors, Whataburger, Chick-fil-A, Mission Rehab Services, Lubbock National Bank, Advanced Graphics, Brodericks Therapeutic World, Lubbock Area Amputee Support Group, Superior Health Plan, All About Looks, Regal Pet Resort, and Little Guys Movers, to utilize the numerous communication channels at Lowrey Field and at other District facilities and sports venues for their secular advertisements.

121. However, the District prohibits the Plaintiffs' religious advertisements.

122. This unequal treatment of Plaintiffs' religious expression is a content-based restriction in an otherwise open forum.

123. Pursuant to its Policies, the District permits nonschool-related organizations to advertise and promote for any nonschool-related purpose, and in practice the District has permitted such organizations to promote and advertise secular products, including auto repair services, dental work, fast food, sports equipment, grocery stores, banking services,

rehabilitation and support services, pet care, health care services, and more, through logos, website addresses, mottos/taglines, and other promotional messages.

124. However, the District denied Plaintiffs' advertisements, which promoted a religious product and used religious logos, website addresses, and mottos/taglines, which is unlawful viewpoint discrimination.

125. The District permits counseling, rehabilitation, and support groups, like Lubbock Area Amputee Support Group and Mission Rehab Services, to promote their purpose of helping people overcome issues and circumstances that are negatively impacting their lives and the programs they offer to assist people in making positive life changes, yet it is denying Plaintiffs' religious advertisement concerning the same subject matter and promoting similar purposes and programs, which likewise constitutes unlawful viewpoint discrimination.

126. The District's denial of Plaintiffs' religious advertisement is also unlawful viewpoint discrimination because it solicits advertisements from religious groups, like churches, and has permitted other religious advertisers, like Lubbock Christian University, Full Armor Ministries, Just Kids Preschool (which is operated by Sunset Church of Christ), and Bethany Baptist Church to access the forum and engage in religious expression, yet has barred Plaintiffs from doing the same.

127. The District's Policy GKB (LOCAL), which states that nonschool-related organizations may use school facilities "to advertise, promote, sell tickets, or collect funds for any nonschool-related purpose" subject to the "prior approval of the Superintendent or designee" and further that the "District retains final editorial authority to accept or reject submitted advertisements in a manner consistent with the First Amendment," imposes an unconstitutional prior restraint by vesting District officials with unbridled discretion to approve or deny protected speech by nonschool-related organizations.

128. District Policy GKB (LOCAL) contains no written guidelines or limitations regarding the circumstances in which District officials may ban or prohibit advertisements by nonschool-related organizations.

129. But District Policy GKB (LOCAL) incorporates the criteria listed in Policy "FMA regarding school sponsored publications" for approving or denying advertising requests from nonschool-related organizations.

130. Policy FMA (LEGAL), which governs "student speech" in "school-sponsored publications," is being expressly applied to the speech of nonschool-related organizations, like Little Pencil, who wish to participate in a government-created speech forum, such as the communication channels the District makes available to nonschool-related organizations at Lowrey Field and other District facilities and sports venues.

131. Many of the "standards" set out in FMA (LEGAL) cannot be constitutionally enforced against nonschool-related organizations seeking access to communication channels at Lowrey Field and other District facilities and sports venues because they constitute prior restraints that grant unbridled discretion to District officials.

132. For example, Policy FMA (LEGAL) permits District officials to act with unbridled discretion in deciding whether advertisements from nonschool-related organizations "[m]ight reasonably be perceived to advocate . . . conduct . . . inconsistent with the shared values of a civilized social order," "[i]s inappropriate for the level of maturity of the readers," and "[d]oes not meet the standards of the educators who supervise the production of the publication."

133. The District's Policies and practices, on their face and as applied, give District officials unbridled discretion to prohibit certain nonschool-related organizations from utilizing the numerous communication channels at Lowrey Field during high school football games, and at other District facilities and sports venues throughout the school year, to advertise, promote, sell tickets, or collect funds for any nonschool-related purpose, while providing other religious and secular nonschool-related organizations access to these communication channels.

134. The District's Policies and practices are also overbroad because they sweep within their ambit protected First Amendment expression.

135. The overbreadth of the District's Policies and practice chills Plaintiffs' speech and that of other nonschool-related organizations who seek to utilize the numerous communication

channels at Lowrey Field during high school football games, and at other District facilities and sports venues throughout the school year, to advertise or promote religious messages.

136. The District's Policies and practice chill, deter, and restrict Plaintiffs from freely expressing their religious beliefs.

137. The Policies, as interpreted and applied by the District to prohibit religious speech are not the least restrictive means of serving any compelling interest the District seeks to promote.

138. The District's Policies and practice burden more of Plaintiffs' speech than is necessary because they totally bar Plaintiffs' religious advertisements from the District's speech forum, even though they are not disruptive.

139. The District's Policies and practice, both facially and as applied, accordingly violate Plaintiffs' right to Free Speech as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

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

SECOND CAUSE OF ACTION
Violation of Plaintiffs' First Amendment Right to Free Exercise of Religion
(42 U.S.C. § 1983)

140. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1 through 116 of this Complaint.

141. The District's Policies and practice of expressly targeting Plaintiffs' private religious expression for special disability violates Plaintiffs' constitutional right to the free exercise of religion.

142. Plaintiffs desire to engage in the expressive activities described above on the basis of their sincerely held religious beliefs.

143. The District's Policies and practice exclude – and thus discriminate against – religious expression.

144. The District's Policies and practice substantially burden Plaintiffs' free exercise of religion by conditioning their ability to speak on foregoing their free exercise rights.

145. The District's Policies and practice force Plaintiffs to choose between engaging in religious speech and being censored, or foregoing their free exercise rights in order to speak without censorship or punishment.

146. The District's Policies and practice thereby substantially burden Plaintiffs' free exercise of religion by denying them the ability to engage in private religious expression in the District's communicative fora.

147. The District's Policies and practice constitute the imposition of special disabilities on Plaintiffs due to their religious beliefs and their intent to include private religious expression in the District's communicative fora.

148. These special disabilities placed on Plaintiffs are neither neutral nor of general applicability, as they are not applied to other nonschool-related organizations.

149. The District's Policies and practice of barring Plaintiffs from utilizing the numerous communication channels at Lowrey Field during high school football games, and at other District facilities and sports venues throughout the school year, for religious advertisements selectively imposes a burden on religious expression by singling it out for discriminatory treatment.

150. The Free Exercise Clause also forbids the government from preferring one religion over another.

151. The District impermissibly prefers some religious views over others, by permitting certain nonschool-related organizations to engage in religious speech, like Lubbock Christian University, Full Armor Ministries, Just Kids Preschool (which is operated by Sunset Church of Christ), and Bethany Baptist Church, and by soliciting advertisements from churches, while barring Plaintiffs' religious advertisements.

152. The District's preference for some religious views over Plaintiffs' religious views violates the Free Exercise Clause.

153. The District's Policies and practice are not justified by a compelling governmental interest and are not narrowly tailored to advance any such interest.

154. The District's application of its Policies unconstitutionally chills Plaintiffs' freedom of religious exercise and expression, both of which are fundamental rights guaranteed to Plaintiffs' by the First and Fourteenth Amendments.

155. The District's Policies and practice, both facially and as applied, constitute an excessive burden on Plaintiffs' free exercise of religion and impermissibly prefer some religious views over Plaintiffs', thereby violating the Free Exercise Clause of the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray the Court grant the declaratory and injunctive relief set forth hereinafter in the Prayer for Relief.

THIRD CAUSE OF ACTION
Violation of Plaintiffs' Fourteenth Amendment
Right to Due Process
(42 U.S.C. § 1983)

156. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1 through 116 of this Complaint.

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

158. The District's Policies lack sufficient guidelines or directives to guide the decisions of District officials when reviewing the requests of nonschool-related organizations to utilize the numerous communication channels at Lowrey Field during high school football games, and at other District facilities and sports venues throughout the school year, for advertising and other promotional purposes.

159. Specifically, District Policy GKB (LOCAL) conditions nonschool-related organizations' ability to speak on the "prior approval of the Superintendent or designee" and further states that the "District retains final editorial authority to accept or reject submitted

advertisements in a manner consistent with the First Amendment," but lacks any guidelines for determining whether speech meets the Superintendent's approval or does not transgress the District's "editorial authority."

160. Persons of common intelligence must guess and will differ upon what expression will meet with the Superintendent's approval and be permitted, and what speech will not and be banned.

161. There is no warning or notice as to what expression will meet with the Superintendent's approval and be permitted, and what speech will not and be banned.

162. By direct incorporation through Policy GKB (LOCAL), District Policy FMA (LEGAL) has been applied to Plaintiffs' desired speech and the speech of other nonschool-related organizations.

163. Many of the "standards" set out in FMA (LEGAL) that apply to nonschool-related organizations seeking access to communication channels at Lowrey Field and other District facilities and sports venues via their incorporation into Policy GKB (LOCAL), are vague and provide District officials unbridled discretion to accept or reject advertisements.

164. For example, Policy FMA (LEGAL) permits District officials to prohibit speech that they consider to meet any of the following criteria: "[m]ight reasonably be perceived to advocate . . . conduct . . . inconsistent with the shared values of a civilized social order," "[i]s inappropriate for the level of maturity of the readers," and "[d]oes not meet the standards of the educators who supervise the production of the publication."

165. Persons of common intelligence must guess and will differ upon what expression "[m]ight reasonably be perceived to advocate . . . conduct . . . inconsistent with the shared values of a civilized social order," "[i]s inappropriate for the level of maturity of the readers," and "[d]oes not meet the standards of the educators who supervise the production of the publication," and therefore be banned.

166. There are no guidelines prescribing what expression will be deemed to fall in the category of speech that "[m]ight reasonably be perceived to advocate . . . conduct . . .

inconsistent with the shared values of a civilized social order," "[i]s inappropriate for the level of maturity of the readers," and "[d]oes not meet the standards of the educators who supervise the production of the publication," and must therefore be banned.

167. The terms "[m]ight reasonably be perceived to advocate," "inconsistent with the shared values of a civilized social order," "inappropriate for the level of maturity of the readers," and "standards of the educators who supervise the production of the publication," are vague and are not defined, allowing District officials to act with unbridled discretion when deciding if a nonschool-related organization's speech will be permitted or banned.

168. The discretion the District's Policies grant to District officials leaves censorship of nonschool-related organization speech subject to administrators' whims.

169. The District's Policies and practice, both facially and as applied, accordingly violate Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray the Court grant the declaratory and injunctive relief set forth hereinafter in the Prayer for Relief.

FOURTH CAUSE OF ACTION
Violation of Plaintiffs' Fourteenth Amendment Right to Equal Protection of the Law (42 U.S.C. § 1983)

170. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1 through 116 of this Complaint.

171. The Equal Protection Clause of the Fourteenth Amendment requires the government to treat similarly situated groups alike.

172. Pursuant to its Policies and practice, the District allows nonschool-related organizations to utilize the numerous communication channels at Lowrey Field during high school football games, and at other District facilities and sports venues throughout the school year, for advertising and promotional purposes.

173. The District has treated Plaintiffs disparately when compared to similarly situated nonschool-related organizations by banning only Plaintiffs' religious expression.

174. The District's public records response shows that the District has not rejected any other nonschool-related organizations' advertising request.

175. By discriminating against the content and viewpoint of Plaintiffs' speech, the District is treating Plaintiffs' religious speech differently than that of other similarly situated nonschool-related organizations.

176. The District's Policies and practice violates Plaintiffs' fundamental rights, including the rights of free speech and free exercise of religion.

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

178. In this case, the presumption of discriminatory intent is borne out by the District's Policies and practice of intentionally discriminating against Plaintiffs' religious speech and free exercise of religion.

179. The District lacks a rational or compelling state interest for treating Plaintiffs in such a disparate manner.

180. The District's denial of access to Plaintiffs is not narrowly tailored in that the District's restriction of Plaintiffs' speech and free exercise of religion are unrelated to any legitimate government interest.

181. The District's Policies and practice, both facially and as applied, thus violate Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray the Court grant the declaratory and injunctive relief set forth hereinafter in the Prayer for Relief.

FIFTH CAUSE OF ACTION
Violation of Plaintiffs' Rights Under the Establishment Clause of the First Amendment (42 U.S.C. § 1983)

182. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1 through 116 of this Complaint.

183. The Establishment Clause of the First Amendment requires governmental neutrality toward religion and prohibits the government from exhibiting hostility toward some or all religions and preferring one religion or religious view over another.

184. The District's Policies and practice of disallowing Plaintiffs' religious expression evinces a discriminatory suppression of private speech that is not neutral, but rather is hostile toward religion.

185. The District, pursuant to its Policies and practice of suppressing private religious expression, sends the message to students, community groups, and individuals that religious organizations and persons, like Plaintiffs, are outsiders whose viewpoint should be excluded, rather than permitted along with all other points of view.

186. In denying Plaintiffs the right to utilize the numerous communication channels at Lowrey Field during high school football games, and at other District facilities and sports venues throughout the school year, for advertising and promotional purposes because their message contains religious content and a religious point of view, the District exhibited hostility towards religion that is the antithesis of neutrality.

187. The District also impermissibly prefers some religious views over others, by permitting certain nonschool-related organizations to engage in religious speech, like Lubbock Christian University, Full Armor Ministries, Just Kids Preschool (which is operated by Sunset Church of Christ), and Bethany Baptist Church, and by soliciting advertisements from churches, while barring Plaintiffs' religious advertisements.

188. The District's preference for some religious views over Plaintiffs' religious views violates the Establishment Clause.

189. No compelling state interest justifies the District's censorship of Plaintiffs' religious expression.

190. The District's Policies and practice therefore violate the Establishment Clause of the First Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray the Court grant the declaratory and injunctive relief set forth hereinafter in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

a. That this Court issue a Preliminary and Permanent Injunction, restraining the District, its officers, agents, employees, and all other persons acting in active concert with it, from enforcing the Policies challenged herein that bar Plaintiffs from engaging in religious expression via the numerous communication channels at Lowrey Field during high school football games, and at other District facilities and sports venues throughout the school year;

b. That this Court render a Declaratory Judgment, declaring the Policies challenged herein unconstitutional both facially and as applied to ban the Plaintiffs' 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 Plaintiffs' costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. § 1988;

f. That this Court award nominal damages for the violation of Plaintiffs' constitutional rights;

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

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

Respectfully submitted this 28th day of January, 2014,

By: 

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*Application for Pro Hac Vice Admission Forthcoming

VERIFICATION OF COMPLAINT
PURSUANT TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of January, 2014.

DAVID L. MILLER, on behalf of himself and as sole and managing member of Little Pencil, LLC