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* Motion for admission *pro hac vice* to be filed

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

SOLID ROCK CHRISTIAN CLUB, KELSEY REED,
and DANIEL SPENCER,

Plaintiffs,

v.

SCOTT L. WYATT, President of Snow College;

COMPLAINT

JURY DEMANDED

THE HONORABLE DAVID NUFFER

Case No. 2:12-cv-978 DN

CRAIG MATHIE, Vice President for Student Success at Snow College; MICHELLE BROWN, Director of Student Life and Leadership at Snow College; BONNIE JEAN BEESLEY, KEITH BUSWELL, DANIEL W. CAMPBELL, WILFORD CLYDE, FRANCE A. DAVIS, JAMES T. EVANS, MARLIN K. JENSEN, NOLAN E. KARRAS, THOMAS D. LEAVITT, ROBERT S. MARQUARDT, CAROL MURPHY, JED H. PITCHER, ROBERT W. PRINCE, MARK STODDARD, TERESA L. THEURER, and JOHN H. ZENGER, members of the Utah State Board of Regents; and THERESSA ALDER, DOUG BARTON, SCOTT BUSHNELL, SAM CARDON, EDDI COX, DEVERE DAY, MARY GREATHOUSE, DAN JORGENSEN, and JIM SHANK, members of the Board of Trustees at Snow College,

Defendants.

Plaintiffs Solid Rock Christian Club, Kelsey Reed, and Daniel Spencer, by and through counsel, and for their Complaint against the Defendants, hereby state as follows:

INTRODUCTION

1. The hallmark of higher education is that all students and all viewpoints are allowed to compete in the “marketplace of ideas” on campus. The First Amendment dictates that this marketplace cannot prefer some viewpoints and cannot exile or denigrate others. In direct violation of these principles, Snow College relegates student organizations affiliated with “religious institutions” to a second tier “affiliate” status—one that deprives them of the ability to reserve facilities on campus without charge, to advertise their events on campus without charge, and to seek student fee funding—while it confers these same benefits on a broad variety of other student organizations. Snow College requires student organizations that affiliate with “religious institutions” to abandon their rights to free speech, free association, free exercise of religion,

freedom from unconstitutional conditions, due process, and equal protection as a condition of access to its benefits and does not impose these same requirements on student organizations that affiliate with non-religious non-profit entities. Furthermore, even if student organizations affiliated with “religious institutions” could seek student fee funding, the Snow College students and officials charged with allocating the funds act with unbridled discretion, allowing them to favor the speech of popular groups and exclude unpopular ones.

2. Plaintiff Solid Rock Christian Club operated freely on campus as a “club” for eight years. During that time, it regularly reserved campus facilities for its meetings and events without paying the community rental rate, regularly advertised its meeting and events using materials that the Student Life Office made freely available, and regularly sought and obtained student fee funding. But over the summer of 2012, Snow College officials suddenly changed their policies, relegating Solid Rock to the inferior “affiliate” status and denying it these benefits that are readily available to other “clubs” affiliated with non-religious non-profit entities.

3. During homecoming, Plaintiff Solid Rock Christian Club and its members sought to participate in an event entitled “Paint the Town,” which allowed any student organization to decorate the windows of participating businesses with the homecoming-themed message of its choice. When Plaintiffs sought to celebrate homecoming from a religious viewpoint by including religious imagery in their display, Defendants took instantaneous and aggressive action to censor their expression by scolding Plaintiffs and their colleagues for the display, by threatening to remove the display, by forcing Solid Rock members to wash away their display, and by actually washing away a similar display a private property owner invited Plaintiffs to create on his property.

4. By treating Solid Rock Christian Club different than other student organizations affiliated with non-religious non-profit entities, by censoring its and its members speech due to its religious content and viewpoint, and by allocating student organization funds without any criteria or standards, Defendants violated Plaintiffs' constitutional rights and caused irreparable injury to Plaintiffs.

5. This action is premised on the United States Constitution concerning the denial of Plaintiffs' fundamental rights to free speech, free association, free exercise of religion, freedom from unconstitutional conditions, equal protection, and due process. The aforementioned policies and actions are challenged on their face and as applied to Plaintiffs. Defendants' policies and actions have deprived and will continue to deprive Plaintiffs of their paramount rights and guarantees under the United States Constitution.

6. Each and every act of Defendants alleged herein was committed by Defendants, each and every one of them, under the color of state law and authority.

JURISDICTION & VENUE

7. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

8. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. § 1331 as they raise federal questions under the First and Fourteenth Amendments and pursuant to 28 U.S.C. § 1343 as they seek to redress deprivations of constitutional rights and to secure equitable relief and damages under 42 U.S.C. § 1983.

9. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343,

the requested declaratory relief pursuant to 28 U.S.C. §§ 2201–02, the requested injunctive relief pursuant to 28 U.S.C. § 1343 and FED. R. CIV. P. 65, and the requested costs and attorneys fees pursuant to 42 U.S.C. § 1988.

10. The venue in this action is properly within this district and division pursuant to 28 U.S.C. § 1391(b) because Defendants are situated within this judicial district and all or a substantial part of acts described in this Complaint occurred within this judicial district and division.

PLAINTIFFS

11. Plaintiff Solid Rock Christian Club (“Solid Rock”) is an unincorporated expressive student organization made up of Snow College students. It is committed to exalting and glorifying Jesus Christ on campus, to encouraging students and faculty to believe in Jesus Christ, and to strengthening students’ relationship with Jesus Christ. Until the 2012–13 academic year, it was recognized as a club at Snow College, and it is currently recognized as an affiliate. It brings this action on its own behalf and on behalf of its individual student members.

12. Solid Rock Christian Club is affiliated with Tri Grace Ministries, a local evangelical Christian ministry with similar objectives. Solid Rock Christian Club and its members associate with Tri-Grace Ministries as a means for exercising their sincerely held religious beliefs.

13. Plaintiff Kelsey Reed is a student at Snow College and serves as the president of Solid Rock Christian Club and brings this action both in her capacity as president of the Club and in her individual capacity.

14. Plaintiff Daniel Spencer is a student at Snow College and serves as the vice president of Solid Rock Christian Club and brings this action both in his capacity as vice president of the Club and in his individual capacity.

DEFENDANTS

15. Defendant Scott L. Wyatt is, and was at all times relevant to this Complaint, the President of Snow College. Mr. Wyatt's duties include, among others, authorizing and executing the policies governing faculty and students at Snow College and overseeing the operation and management of Snow College.

16. As president, Mr. Wyatt possesses the power to veto any act of any council, faculty, or committee of the College.

17. Mr. Wyatt has failed to veto the decision to censor Solid Rock's homecoming speech and has thereby approved that decision.

18. Mr. Wyatt not only authorized, approved, or implemented the policies used to deny Solid Rock the same privileges afforded other student organizations, but he also failed to stop Snow College officials from applying those policies to Solid Rock.

19. Mr. Wyatt is ultimately responsible for administration and policymaking for the College, including the student organization policies challenged herein. He is sued in both his individual and official capacities.

20. Defendant Craig Mathie is, and was at all times relevant to this Complaint, the Vice President for Student Success of Snow College.

21. Mr. Mathie's duties include, among others, overseeing the Director of Student Life and Leadership and creating, reviewing, authorizing, and enforcing the policies governing the conduct of students and student organizations at Snow College—including the policy that denies club status and the privileges that accompany that status to religious student organizations.

22. Mr. Mathie is responsible for making final decisions on all student organization

matters, including making the decision to deny club status to Solid Rock Christian Club and to censor Solid Rock Christian Club's homecoming display. He is sued in both his individual and official capacities.

23. Defendant Michelle Brown is, and was at all times relevant to this Complaint, the Director of Student Life and Leadership at Snow College.

24. Ms. Brown's duties include, among others, overseeing the Director of Student Life and Leadership and creating, reviewing, authorizing, and enforcing the policies governing the conduct of students and student organizations at Snow College—including the policy that denies club status and the privileges that accompany that status to religious student organizations.

25. Ms. Brown is responsible for making final decisions on all student organization matters, including making the decision to deny club status to Solid Rock Christian Club and to censor Solid Rock Christian Club's homecoming display. She is sued in both her individual and official capacities.

26. Defendants Bonnie Jean Beesley, Keith Buswell, Daniel W. Campbell, Wilford Clyde, France A. Davis, James T. Evans, Marlin K. Jensen, Nolan E. Karras, Thomas D. Leavitt, Robert S. Marquardt, Carol Murphy, Jed H. Pitcher, Robert W. Prince, Mark Stoddard, Teresa L. Theurer, and John H. Zenger are, and were at times relevant to this Complaint, members of the Utah State Board of Regents (hereafter, "Regent Defendants"). These defendants' duties include, among others, the adoption and authorization of policies that govern students at Snow College (including policies discussed and challenged herein) and the oversight of operation of Snow College. The defendants named in this paragraph are sued in their official capacities only.

27. Defendants Theresa Alder, Doug Barton, Scott Bushnell, Sam Cardon, Eddi Cox,

Devere Day, Mary Greathouse, Dan Jorgensen, and Jim Shank are, and were at times relevant to this Complaint, members of the Board of Trustees of Snow College (hereafter, “Trustee Defendants”). These defendants’ duties include, among others, the adoption and authorization of policies that govern students at Snow College (including policies discussed and challenged herein) and the oversight of operation of Snow College. The defendants named in this paragraph are sued in their official capacities only.

FACTUAL BACKGROUND

28. Snow College is a public two-year college in the Utah System of Higher Education, is organized and exists under the laws of the State of Utah, and receives funding from the State of Utah in order to operate.

29. As an institution in the Utah System of Higher Education, Snow College is governed by the Utah State Board of Regents.

30. The Utah State Board of Regents delegates certain authority and responsibilities to the President and Board of Trustees of Snow College.

A. SNOW COLLEGE’S STUDENT ORGANIZATION FORUM AND POLICIES

31. Snow College operates a forum of student organizations.

32. Snow College encourages students to create and participate in these organizations so as to develop, among other things, a strong social network, leadership skills, and an appreciation for Snow College.

33. Snow College charges all students a mandatory student fee.

34. On information and belief, Snow College and its officials use all or part of the funds collected through that mandatory student fee to fund the activities and expression of student

organizations.

35. Plaintiffs Reed and Spencer have paid and continue to pay this mandatorily collected student fee each semester.

36. The policies governing Snow College's student organization forum are outlined in the *Snow College Handbook for Clubs and Affiliated Organizations 2012–2013* ("Handbook"), which is attached as Exhibit 1 to this Complaint.

37. Snow College explicitly distances itself from the objectives, opinions, and expression of student organizations.

38. Snow College's policy is that the "[c]hartering of a club by the college does not necessarily represent college approval of the objectives or opinions of the club members." *See* Ex. 1 at 4.

39. Within this forum, Snow College has created two tiers of organizations: clubs and affiliates.

40. Student organizations that are recognized as "clubs" receive the maximum number of privileges on campus, including:

- The ability to reserve space in campus buildings and facilities for free,
- The ability to advertise its events on campus using materials from the Student Life Office for free, and
- The ability to seek and receive student fee funding for their activities and expression.

41. Student organizations that are recognized as "affiliates" do not receive these same privileges. Instead, they receive markedly different and inferior treatment:

- They may "[s]chedule and use college facilities at the community rental rate." Ex. 1 at 5.

- They may “[a]dvertise events for students on campus, using their own materials or by arranging to use Student Life Office publicity materials at cost.” Ex. 1 at 5.
- They may not seek or receive student fee funding for their activities and expression because “[f]unding is available to chartered clubs only.” Ex. 1 at 6.

42. Snow College categorizes student organizations as “clubs” or “affiliates” based on the type of entity with which the student organization chooses to associate.

43. It is Snow College’s policy that a “club must not be affiliated with any commercial or for-profit organization or religious institution.” Ex. 1 at 3.

44. Indeed, it is Snow College’s policy that “[a]ny club or organization associated with a religious institution, a commercial entity, or a for-profit organization does not qualify for chartering. However, such student related organizations may apply for ‘affiliate organization’ status. . . .” Ex. 1 at 4.

45. Snow College’s policies make student fee “[f]unding . . . available to chartered clubs only, and [it] is allocated following recommendations of the elected Student Advocates, Student Body President and the Director of Student Life.” *See* Ex. 1 at 6.

46. Defendants’ policies have three guidelines for the “disbursement of monies to student organizations”:

1. Funds will only be allocated to clubs that are chartered and have submitted a funding application to the Student Life Office. . . .
2. To be eligible for funding, clubs must be in good standing by complying with all club requirements. Items that will affect approval of funding include completion of the service project, participation in student activities, holding regular club meetings, attendance at all Clubs/Organizations Communication Meetings, completion of Advisor Training and how much the club currently has in their account.
3. Funding Request Forms can be obtained upon request in the Student Life Office or on the clubs web page.

Ex. 1 at 6.

47. The *Handbook* does not define “religious institution” or set forth any criteria, factors, or standards to be used when deciding what constitutes a “religious institution.”

48. On information and belief, Snow College does not possess any official policies that define “religious institution” or that set forth any criteria, factors, or standards to be used when deciding what constitutes a “religious institution.”

49. The *Handbook* does not set forth any criteria, factors, or standards to be used when deciding whether to grant, adjust, or deny a student organization’s request for student fee funding.

50. On information and belief, Snow College does not possess any official policies that set forth any criteria, factors, or standards that “the elected Student Advocates, Student Body President and the Director of Student Life” must apply when deciding whether to grant, adjust, or deny a student organization’s request for funding.

51. The *Handbook* does not set forth any appeal process for student organizations denied student organization funding.

52. On information and belief, Snow College does not offer any appeal process for student organizations denied student organization funding.

53. The *Handbook* does not require “the elected Student Advocates, Student Body President and the Director of Student Life” to hold public meetings, to provide advance notice of their meetings, to record their meetings where they make decisions on how to disburse and allocate funding to student organizations, or to remove members who violate the constitutional norm of viewpoint neutrality when making a funding decision.

54. On information and belief, “the elected Student Advocates, Student Body President and the Director of Student Life” do not hold public meetings, provide advance notice of their meetings, record their meetings where they make decisions on how to disburse and allocate funding to student organizations, or remove members who violate the constitutional norm of viewpoint neutrality when making a funding decision.

55. On information and belief, Snow College does not possess any official policies that require “the elected Student Advocates, Student Body President and the Director of Student Life” to hold public meetings, to provide advance notice of their meetings, to record their meetings where they make decisions on how to disburse and allocate funding to student organizations, or to remove members who violate the constitutional norm of viewpoint neutrality when making a funding decision.

B. SNOW COLLEGE’S DEMOTION OF SOLID ROCK’S STATUS ON CAMPUS

56. Solid Rock Christian Club was chartered as an official student club in 2004.

57. In the eight years since then, Solid Rock has annually renewed its charter and has functioned as an officially chartered club on campus, with one temporary month-long exception.

58. In 2010, Snow College officials temporarily demoted Solid Rock from “club” status to an inferior status—an “organization”—that featured fewer campus privileges.

59. When representatives of Solid Rock protested this move, pointing out how this group met all the requirements for “club” status, Snow College officials relented and returned it to “club” status less than a month after initially demoting it.

60. During those eight years, Solid Rock regularly received reserved rooms and other facilities on campus for its activities and regularly advertised its events on campus, without

having to pay any fees to do so. It also regularly sought and received student fee funding to help it carry out its activities on campus.

61. During those years, Snow College had never denied a request from Solid Rock to use campus facilities for its activities.

62. Beginning in 2012, Dr. Rachel Keller, an assistant professor of English at Snow College, agreed to serve as Solid Rock's faculty advisor. She has held that position ever since and continues to do so.

63. In the 2012–2013 academic year, Dr. Keller also serves as the faculty advisor for two other student clubs: Badger Bikes and the Native American Club.

64. During the summer of 2012, Dr. Keller spoke with Shaun Kjar, the Assistant Director of Student Life at Snow College, about several matters related to Solid Rock.

65. During this conversation, Mr. Kjar informed her that Solid Rock would no longer receive or be eligible to receive student fee funding in the upcoming school year (*i.e.*, 2012–2013).

66. As Mr. Kjar's announcement came as a surprise to Dr. Keller, she pressed him to explain why Solid Rock would no longer be eligible for funding.

67. Mr. Kjar responded simply: "Due to an internal audit, funding will not be allowed for religious organizations."

68. Shortly thereafter, Dr. Keller again sought to reserve space on campus for Solid Rock's weekly Bible study that would start at the beginning of the fall semester. After consulting with Defendant Brown, Dr. Keller e-mailed her facilities request to Ms. Diane Adams, an administrative assistant for Student Success at Snow College.

69. Though Solid Rock had successfully made similar requests for free reservations on Solid Rock's behalf before, this time Dr. Keller received an unprecedented denial of the request for free space. Ms. Adams responded by e-mail on July 12, 2012:

I have been informed that due to an internal audit of state funds used for student clubs[,] we have had to make a change this coming year. Unfortunately under the directions from the recent internal audit, we cannot schedule free space for religious activities. You are welcome to schedule a room for the club, but they would be required to pay the community room rental rate between \$25-\$50 each time they use the room.

70. Since July 12, 2012, Defendants have not allowed Solid Rock to reserve campus facilities for its activities without paying a fee not charged to clubs.

71. On September 13, 2012, Defendant Brown conducted a training session for advisors of student organizations at Snow College.

72. Also conducting this training were several other Snow College Administrators, including Ms. Ellie Cox (Service Coordinator in the Student Life Office), Mr. Kjar, and Ms. Donne Hewko (Office Manager for the Student Life Office).

73. Dr. Keller attended this training session, representing the three organizations she advises, and at least two other faculty members did as well.

74. During the meeting, Ms. Hewko gave Dr. Keller a copy of the *Handbook*.

75. After skimming the *Handbook*, Dr. Keller observed that it distinguishes between "clubs" and "affiliates" when it says: "Any club or organization associated with a religious institution, a commercial entity, or a for-profit organization does not qualify for chartering." Ex. 1 at 4. Thus, Dr. Keller asked Defendant Brown whether Solid Rock was considered a club or an affiliate.

76. Defendant Brown answered that Solid Rock was an affiliate.

77. When Dr. Keller asked Defendant Brown to explain why Solid Rock had been relegated to this status, Defendant Brown pointed to the phrase in the *Handbook* that read, “. . . associated with a religious institution . . .,” and said that this applied to Solid Rock.

78. Dr. Keller responded by explaining that Solid Rock is not associated with a church or any other formal religious institution. But Defendant Brown curtly interrupted her, announcing: “I am not going to discuss this with you right now.”

79. Defendant Brown’s dismissive response created considerable awkwardness for all advisors present, to the point that Dr. Keller shortly thereafter excused herself from the room.

80. On October 4, 2012, Defendant Mathie held a meeting with Dr. Keller, Defendant Brown, and several other Snow College faculty members to discuss the distinction between “clubs” and “affiliates.”

81. Defendant Mathie explained that the Utah legislature had audited one college or university in the state and that this audit prompted other universities, including Snow College, to conduct their own audits.

82. On information and belief, Defendant Wyatt, the Regent Defendants, and the Trustee Defendants ordered this audit of Snow College and adopted its recommendations, which included demoting any student organization that was deemed to be associated with a religious organization to affiliate status.

83. Defendant Mathie continued by explaining that Snow College will not allow student groups related to religious organizations to receive them.

84. Defendant Mathie also explained that Snow College will no longer allow these student groups, including Solid Rock, to use school facilities for their events without charge.

85. At present, Defendants deem Solid Rock to be an “affiliate,” a stark departure from the prior eight years when it enjoyed club status. They have also denied Solid Rock the privileges of club status, including the ability to reserve College facilities for free and the ability to seek or receive student fee funding.

86. The “elected Student Advocates, Student Body President and the Director of Student Life” have already allocated and distributed student organization funding for the fall 2012 semester to various clubs.

87. Solid Rock was not permitted to apply for funding and did not receive any of the same.

C. SNOW COLLEGE’S EXCLUSION AND CENSORSHIP OF SOLID ROCK DURING THE “PAINT THE TOWN” HOMECOMING EVENTS

88. “Paint the Town” is an annual event that Snow College sponsors during homecoming week. Student organizations register with the Student Life Office and are assigned to paint the windows of an area business that volunteers to participate in the event. The Student Life Office provides each student organization with a bucket of paints and other supplies to use for this event.

89. The purpose of the “Paint the Town” event is to promote school spirit by advertising homecoming.

90. The rules for “Paint the Town” set forth this purpose. These rules—both the edition given to student organizations and the edition given to participating businesses—are attached as Exhibit 2 to this Complaint.

91. Snow College placed no limits or constraints on how each student organization chooses to “promote school spirit” on its assigned window or on the content and viewpoint of its homecoming-related message. *See* Ex. 2 at 9.

92. Snow College placed no limits or constraints on how each student organization selected to “promote school spirit . . . by advertising the upcoming Homecoming” on its assigned window or on the content and viewpoint of its homecoming-related message. *See Ex. 2 at 10.*

93. At the advisor training session on September 13, 2012, Dr. Keller discussed the upcoming “Paint the Town” event with Mr. Kjar, while Ms. Cox and Ms. Hewko were also present.

94. Specifically, Dr. Keller remarked that the homecoming theme—“Then, Now, and Forever”—would easily lend itself to a window display that celebrated both homecoming and Solid Rock’s Christian mission and message.

95. Dr. Keller even mentioned the idea of including the theme along with Jesus’ name in a window display.

96. None of the Student Life Office officials present objected or even hinted that such a display would violate the event’s rules.

97. On September 14, 2012, Dr. Keller turned in the form so that Solid Rock could register for the Paint the Town event and be assigned to decorate the windows of a local business. Both she and Miss Reed had signed this form. *See Ex. 2 at 9.*

98. A Student Life Office official informed Dr. Keller that Solid Rock was the first student organization to attempt to register and that the list of businesses was not yet available. Thus, Solid Rock could not be assigned one at that time.

99. Shortly thereafter, the members of Solid Rock asked Mr. Travis Thompson, a local property owner, if they could decorate the large store-front windows of his property on Main Street with their message, and he agreed to let them do so.

100. In her September 19, 2012 e-mail to Dr. Keller, Defendant Brown specifically invited the students in Solid Rock to participate in the annual “Paint the Town” event connected with homecoming. She even remarked: “We still have space if they would like too [sic] [participate].”

101. On the night of September 19, 2012, members of Solid Rock held a meeting to decide what they wanted to depict as part of the “Paint the Town” event.

102. They ultimately decided to paint a cross along with the message, “The cross covers sin then, now, and forever.” They selected this message because it promoted the homecoming theme from a Christian perspective.

103. At some point during this time, a Student Life Office official, Ms. Maria Reyes, apologized to Dr. Keller for the difficulties surrounding Paint the Town. She specifically noted that Solid Rock had been the first group to submit its registration paperwork, but the list of approved businesses was not ready at the time. By this point, only one business on that list remained unassigned, and so Ms. Reyes apologized that Solid Rock would actually get the last choice.

104. On September 24, 2012, Dr. Keller arrived at the Student Life Office at 10:00 a.m. to pick up Solid Rock’s bucket of supplies.

105. Defendant Brown and Ms. Hewko from the Student Life Office told Dr. Keller that Solid Rock could not receive any supplies because they had not been assigned a window on the “approved business list” and because Mr. Thompson’s building was not on the “approved business list.”

106. Hearing this, Dr. Keller left to consult with the co-advisors of Solid Rock, Shane and

Kim Jones.

107. Mr. Jones then returned with her to the Student Life Office, and they signed up to paint the window of Los Amigos, a local Mexican restaurant, which was on the list of approved businesses.

108. At this point, Ms. Hewko provided the bucket of supplies without further obstruction.

109. At this point, Ms. Reyes asked Dr. Keller—in Mr. Jones' and Ms. Hewko's presence—if Solid Rock still planned to paint Mr. Thompson's property.

110. Dr. Keller answered: "We will see if we have time. I am not sure."

111. Neither Ms. Hewko nor Ms. Reyes objected to Solid Rock's plan to paint the windows of Mr. Thompson's property as well as those of the Los Amigos restaurant.

112. Between 1:00 p.m. and 2:00 p.m., members of Solid Rock painted the window of Mr. Thompson's building on Main Street with the display approved by Mr. Thompson.

113. After finishing Mr. Thompson's window, the members of Solid Rock went to Los Amigos to begin painting those windows as well. Before starting, they consulted with the restaurant owners and were shown the three windows that they could use for their display, which was approved by the owners.

114. As these windows were slightly smaller than anticipated, the students adjusted the display slightly without altering its content. They decided to paint the cross and the saying on one of the front windows.

115. Mr. Spencer, Solid Rock's vice president, then began drawing the outline of the cross on the window.

116. Before he had even finished the outline, a woman rushed out of the restaurant and

confronted him, demanding: “What club are you with?”

117. Mr. Spencer responded: “We are from Snow College. We are the Solid Rock Christian Club.”

118. The still unidentified woman continued angrily: “How did you get this building?”

119. Miss Katelynn Arthur, a Tri-Grace Ministries intern who was assisting the Solid Rock students, explained that Solid Rock had spoken with officials at the Student Life Office, and those officials had allowed the group to sign up for this restaurant and supplied it with the paints and other supplies.

120. Hearing this, the woman identified herself as Defendant Brown and continued her scolding: “My name is Michelle, and I am the head of the Student Life Office.”

121. Defendant Brown announced to the students that “you can’t paint any religious symbols or anything related with religion. We are a state school, and that isn’t allowed. If you are going to paint, it must be school spirited only.”

122. At this, Miss Arthur tried to explain to Defendant Brown that Solid Rock was celebrating the homecoming theme in a way that also highlighted the Christian theme of its club. Trying to describe what the display would look like once complete, Miss Arthur said: “We figured we could combine our club theme with the homecoming theme. Since the theme is ‘now, then, and forever,’ we were going to put, ‘The cross covers sin now, then, and forever.’”

123. Defendant Brown remained obstinate, shaking her head and saying, “No, that isn’t allowed,” a reference to the religious content of Solid Rock’s display.

124. Miss Arthur then mentioned that Solid Rock’s president, Kelsey Reed, would soon be there and offered to see if Miss Reed had more information.

125. Defendant Brown responded: “You can talk with your president all you want, but that won’t change anything.”

126. At this point, Miss Reed arrived, and Defendant Brown turned to her, saying: “Are you the president?”

127. When Miss Reed replied affirmatively, Defendant Brown continued: “You are not allowed to paint any religious symbols.”

128. Defendant Brown also said that Solid Rock could continue painting as long as it did not include any religious content.

129. Defendant Brown continued by saying: “Snow College is a public school, not a private school. And therefore, you are not allowed to paint anything religion oriented on the business window.” Instead, she announced, “You can only paint school spirited themes.”

130. Defendant Brown concluded her dressing down of Solid Rock’s members with a threat: “Your advisor should know better. It would be a shame for you to paint this whole window just to have me come and wash it off.” Then she promptly walked away to her vehicle and drove from the scene.

131. Facing the threat of having their display washed away and fearing further punishment from Defendant Brown, Solid Rock’s members then decided—in consultation with their advisor, Mrs. Jones—not to paint the window and to wash off the little work they had done so far. They then apologized to the restaurant manager.

132. The members of Solid Rock feared further discipline from Defendant Brown if they did not stop painting immediately because of both her conduct at the restaurant and the fact that she serves as the college conduct officer for Snow College and enforces its code of conduct against

students.

133. Though Defendant Brown never requested it, Solid Rock members would have added their organization's name to their display so as to clarify who was speaking.

134. As Mrs. Jones was bringing buckets, soap, and water to the restaurant at the students' request in order to comply with Defendant Brown's order, she noticed four Snow College students who were not members of Solid Rock—Brian Chappell, Emily Banks, Alexis Carson, and Tyler Ingram—washing Solid Rock's display off of Mr. Thompson's windows.

135. Mrs. Jones confronted these students, asking them what they were doing. Mr. Chappell responded by saying, "Who are you?"

136. Mrs. Jones replied by explaining, "I am the co-advisor for the club whose message you are removing. Do you have permission from the property owner to be doing this?"

137. As the other students continued removing the display, Mr. Chappell answered by saying that they had been instructed to remove the display because it violated Snow College rules.

138. Defendant Brown ordered the students to wash Solid Rock's display off of Mr. Thompson's property windows.

139. Mr. Thompson never requested that Solid Rock's display be removed from his windows.

140. At about 3:00 p.m. on September 24th, Defendant Brown sent an e-mail to Dr. Keller (copying Defendant Mathie), emphasizing that she would not tolerate religious content in the "Paint the Town" event and that she had instructed the students to remove the display from Mr. Thompson's windows. This e-mail stated, in its entirety:

Hey Rachel,

Thought I would send you a quick email to see if I could understand possibly where our communication breakdown [h]as occurred. I understand that you were able to come back and find a restaurant to paint which I think is great. What [i]s unfortunate is that you may not have understood the purpose of the activity. “Paint the Town” is to promote school spirit [t]hroughout the community. This is stated on the rules you signed. Your club officers this afternoon went out and put our Homecoming [l]ogos with your club[']s religious symbols on the windows. This is not part of the competition, or the spirit of the competition. “[T]hen, now and forever” was created by the SBA’s [sic] and the theme is to celebrate the new school colors.

Please remember we are a public institution and when you are participating in activities tied to the school, you must [f]ollow the rules and set the example for the students. I have asked my SBA’s to remove the window you did on Main Street. If you would like to paint a religious message, please do not come to Student Life, use our supplies, and the school [c]olors or our Homecoming [l]ogo. This is in poor taste and does not support the event.

Please see the copy of the email that went out to all club presidents regarding the event. Your club president is listed on [h]ere so you all have been properly informed.

A copy of Defendant Brown’s September 24th e-mail to Dr. Keller is attached as Exhibit 3 to this Complaint.

141. Defendant Brown referenced an “email that went out to all club presidents regarding [‘Paint the Town’].” That e-mail—like the “Paint the Town” rules—said nothing about how each student organization could choose to “promote school spirit” and placed no constraints on the content and viewpoint of the homecoming-related message it could display while participating in the event. It reads in its entirety:

Hi Everyone!

Just a reminder to come pick up your bucket TODAY to go window paint the business you signed up for. We have supplied everything and you and your club members can go window paint anytime between 11am to 4:30pm. Please be sure to only promote Snow College and Homecoming and use good sportsmanship.

Thanks for being a part of Paint the Town.

A copy of this e-mail is also included in Exhibit 3.

142. On September 26, 2012, counsel for Solid Rock sent a letter to Defendants Wyatt, Mathie, and Brown. A copy of the September 26, 2012 letter from Solid Rock's counsel is attached as Exhibit 4.

143. This letter informed them that Defendant Brown's actions violated the First Amendment rights of Solid Rock and its members and requested that they permit Solid Rock to participate in "Paint the Town" with no restrictions on the content and viewpoint of its homecoming-related message.

144. On September 27, 2012, counsel for Snow College responded by letter, explaining that Solid Rock's expression would continue to be censored because religious imagery and content were not permitted in the event. A copy of the September 27, 2012 letter from Snow College's counsel is attached as Exhibit 5.

145. On October 4, 2012, Defendant Mathie met with Defendant Brown, Dr. Keller, and several other Snow College faculty to discuss the "Paint the Town" controversy.

146. At this meeting, Defendant Brown again asserted that because Snow College is a public institution, no religious symbols or messages were allowed.

147. During the meeting, Defendants Brown and Mathie indicated that they intended to revise the rules for "Paint the Town" to make it clearer that religious messages would not be permitted at future events.

148. Solid Rock and its members intend to participate in future "Paint the Town" events and to celebrate homecoming from a religious perspective by using religious imagery and messages

when doing so.

149. In the process, Defendant Brown admitted that she probably overreacted and that this was because she found Solid Rock's display of a cross (which she called a "crucifix") personally offensive in the extreme.

150. During the meeting, Defendant Brown upbraided Dr. Keller because Solid Rock contacted legal counsel and because its legal counsel sent Snow College officials a letter.

151. Defendant Brown accused Dr. Keller of being the person who contacted legal counsel and who authorized the letter that Solid Rock's legal counsel sent to Snow College officials.

152. When Dr. Keller denied this accusation, Defendant Brown continued to accuse her, saying: "Well, your name is all over the report."

FIRST CAUSE OF ACTION

Violation of Plaintiffs' First Amendment Right to Freedom of Speech Content and Viewpoint Discrimination (42 U.S.C. § 1983)

153. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–152 of this Complaint.

154. By allowing students to create student organizations, Defendants have created a public forum for student speech and expression.

155. By allowing student clubs to seek activity fee funding, Defendants have created a public forum for student speech and expression.

156. By inviting student organizations to participate in "Paint the Town," Defendants have created a public forum for student speech and expression.

157. In each of these public forums, the government is not speaking. Rather, it has created

public forums for student speech and expression.

158. The First Amendment's Free Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits content and viewpoint discrimination in the public forums a public university creates for student speech and expression.

159. The government's ability to restrict speech in a public forum is limited.

160. A public university may not condition access to a student organization forum on content-based or viewpoint-based standards.

161. By denying Plaintiffs club status (and the benefits that accompany that status) due to the religious nature of their viewpoints, expression, and affiliations, Defendants have engaged in unconstitutional content and viewpoint discrimination.

162. By denying Plaintiffs the benefit of freely reserving campus facilities due to the religious nature of their viewpoints, expression, and affiliations, Defendants have engaged in unconstitutional content and viewpoint discrimination.

163. Accordingly, Defendants' policy and practice of denying club status (and the benefits that accompany that status) to student organizations due to the religious nature of their viewpoints, expression, and affiliation violates Plaintiffs' right to freedom of speech guaranteed by the First Amendment.

164. The use of student organization funding by student organizations is a form of protected speech.

165. The funds that a public university collects through a student fee and uses to fund student organizations do not constitute government funds.

166. A public university may not condition student organization access to funding support on content-based or viewpoint-based standards.

167. A restriction on funding religious student organizations in a student organization funding forum is content and viewpoint discriminatory.

168. A restriction on funding religious expressive activities in a student organization funding forum is content and viewpoint discriminatory.

169. Defendants' prohibition on funding religious speech in the student organization funding forum fails to satisfy strict scrutiny because it is not narrowly tailored to promote a compelling government interest.

170. Defendants' prohibition on funding religious speech in the student organization funding forum unconstitutionally restricts speech based on viewpoint and is not reasonable.

171. If the policies and practices governing a student organization funding forum give government officials unbridled discretion to exclude or prohibit speech from that forum, then the student organization funding forum is content- and viewpoint-discriminatory in violation of the First Amendment.

172. Defendants' policies governing the allocation of student organization funding confers unbridled discretion on the "the elected Student Advocates, Student Body President and the Director of Student Life" charged with allocating those funds.

173. Defendants engaged in content- and viewpoint-based discrimination by funding the expressive activities of other student organizations at Snow College, but not Solid Rock.

174. Accordingly, Defendants' student organization funding policy and their enforcement of that policy against Plaintiff Solid Rock violates Plaintiffs' right to freedom of speech guaranteed

by the First Amendment.

175. A public university may not condition access to a student organization speech forum on content-based or viewpoint-based standards.

176. By censoring, threatening to erase, and ordering students to erase Plaintiffs' "Paint the Town" display because it included religious content and viewpoints, Defendants have engaged in unconstitutional content and viewpoint discrimination.

177. Accordingly, Defendants' actions to censor and exclude Plaintiffs from "Paint the Town" due to the religious content and viewpoint of their display violate Plaintiffs' right to freedom of speech guaranteed by the First Amendment.

178. No compelling state interest justifies Defendants' content and viewpoint discrimination against Plaintiffs in any of these forums.

179. Defendants, acting under color of state law, and by policy and practice have explicitly and implicitly discriminated on the basis of viewpoint, compelled Plaintiffs and all students to support viewpoints with which they disagree, and deprived Plaintiffs of their clearly established rights to freedom of expression secured by the First Amendment to the United States Constitution.

180. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

181. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their First Amendment right to freedom of speech and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to

be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

SECOND CAUSE OF ACTION

**Violation of Plaintiffs' First Amendment Right to Freedom of Speech
Compelled Speech
(42 U.S.C. § 1983)**

182. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–152 of this Complaint.

183. The First Amendment's Free Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, permits a public university to charge a mandatory student fee only if it allocates those funds in a viewpoint neutral manner.

184. The funds a public university collects through a student fee and uses to fund student organizations do not constitute government funds.

185. A student fee system in which the funds are not allocated on a viewpoint-neutral basis compels student to support financially expression with which they disagree.

186. A restriction on funding religious student organizations in a student organization funding forum is content and viewpoint discriminatory.

187. A restriction on funding religious expressive activities in a student organization funding forum is content and viewpoint discriminatory.

188. If the policies and practices governing a student organization funding forum give government officials unbridled discretion to exclude or prohibit speech from that forum, then the student organization funding forum is content- and viewpoint-discriminatory in violation of the

First Amendment.

189. Defendants' policies governing the allocation of student organization funding confers unbridled discretion on the "the elected Student Advocates, Student Body President and the Director of Student Life" charged with allocating those funds.

190. Defendants engaged in content- and viewpoint-based discrimination by funding the expressive activities of other student organizations at Snow College, but not Solid Rock.

191. Accordingly, Defendants' student organization funding policy and their enforcement of that policy against Plaintiff Solid Rock violate Plaintiffs' right to freedom from compelled speech guaranteed by the First Amendment.

192. Defendants, acting under color of state law, and by policy and practice have explicitly and implicitly discriminated on the basis of viewpoint, compelled Plaintiffs and all students to support viewpoints with which they disagree, and deprived Plaintiffs of their clearly established rights to freedom of expression secured by the First Amendment to the United States Constitution.

193. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

194. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their First Amendment right to freedom of speech and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

THIRD CAUSE OF ACTION

**Violation of Plaintiffs' First Amendment Right to Freedom of Association
(42 U.S.C. § 1983)**

195. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–152 of this Complaint.

196. The First Amendment, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, permits students and student organizations at a public university to associate with off-campus individuals and organizations to facilitate their speech and expression.

197. The government's ability to restrict the freedom of association is limited.

198. A public university infringes the free association rights of students and student organizations when it conditions recognized status and the benefits that accompany that status on students and student organizations ceasing the associations of their choosing.

199. By denying club status (and the benefits that accompany that status) to Plaintiffs because they are "associated with a religious institution," Defendants have infringed Plaintiffs' right to free association.

200. Defendants' infringement of Plaintiffs' freedom of association fails to satisfy strict scrutiny because it is not narrowly tailored to promote a compelling government interest.

201. Defendants, acting under color of state law, and by policy and practice have explicitly and implicitly infringed Plaintiffs' freedom of association and deprived Plaintiffs of their clearly established rights to freedom of expression secured by the First Amendment to the United States Constitution.

202. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer,

economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

203. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their First Amendment right to freedom of association and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

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

204. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–152 of this Complaint.

205. The First Amendment's Free Exercise Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, guarantees Plaintiffs free exercise of religion.

206. Laws that burden the free exercise of religion must be neutral and generally applicable.

207. If they are not neutral and generally applicable, then laws that burden the free exercise of religion must be justified by a compelling state interest.

208. Plaintiffs' decision to affiliate with Tri-Grace Ministries, an off-campus religious organization, is motivated by their sincerely held religious beliefs, is an avenue through which they exercise their religious faith, and constitutes a central component of their sincerely held religious beliefs.

209. By denying club status (and the benefits that accompany that status) to Plaintiffs

because they are “associated with a religious institution,” Defendants have infringed Plaintiffs’ right to free exercise of their religion.

210. By conditioning club status (and the benefits that accompany that status) on Plaintiffs relinquishing their affiliation with all “religious institution[s],” Defendants have infringed Plaintiffs’ right to free exercise of their religion.

211. Defendants’ policy and practice of denying club status (and the benefits that accompany that status) to Plaintiffs because they are “associated with a religious institution,” while not applying the same prohibition to student organizations not affiliated with religious organizations, are neither neutral nor generally applicable but target religious associations and affiliations specifically.

212. Plaintiffs’ expression during the “Paint the Town” event was motivated by their sincerely held religious beliefs.

213. By censoring, threatening to erase, and ordering students to erase Plaintiffs’ “Paint the Town” display because it included religious content and viewpoints, Defendants have infringed Plaintiffs’ right to free exercise of their religion.

214. Defendants’ policy and practice of targeting and censoring student expression due to its religious viewpoint, content, and imagery are neither neutral nor generally applicable but target religious expression specifically.

215. Defendants’ infringement of Plaintiffs’ free exercise of religion fails to satisfy strict scrutiny because it is not narrowly tailored to promote a compelling government interest.

216. Defendants, acting under color of state law, and by policy and practice have explicitly and implicitly infringed Plaintiffs’ free exercise of religion and deprived Plaintiffs of their

clearly established rights to freedom of expression secured by the First Amendment to the United States Constitution.

217. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

218. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their First Amendment right to free exercise of religion and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

Violation of the First Amendment's Establishment Clause (42 U.S.C. § 1983)

219. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–152 of this Complaint.

220. The First Amendment's Establishment Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, guarantees Plaintiffs freedom from government hostility towards religion, inhibition of religion, and entanglement with religion.

221. Government laws must have a secular purpose, neither advance nor inhibit religion, and not entangle the government with religion.

222. Without access to student organization funding, religious students cannot hold events and activities that they would otherwise be able to hold with funding.

223. Defendants' policy and practice of denying student organization funding to student organizations that affiliate with "religious institutions" conveys hostility towards religion and inhibits religion.

224. Defendants' student organization funding policy requires that the government scrutinize a student organization's affiliations and determine whether those private organizations constitute a "religious institution," thus impermissibly entangling the government with religion.

225. Defendants' policy and practice of denying student organization funding to student organizations that affiliate with "religious institutions" entangles the government with religion.

226. By censoring, threatening to erase, and ordering students to erase Plaintiffs' "Paint the Town" display because it included religious content and viewpoints, Defendants have exhibited hostility towards religion and have inhibited religion.

227. Defendants' policy and practice of targeting and censoring student expression due to its religious viewpoint, content, and imagery betrays hostility toward religion, inhibits religion, and entangles the government with religion.

228. Defendants have no compelling interest that would justify their hostility towards religion, inhibition of it, or entanglement with it.

229. Defendants' student organization funding policy and their enforcement of that policy against Plaintiffs violates Plaintiffs' rights under the Establishment Clause of the First Amendment.

230. Defendants' policy and practice of targeting and censoring student expression due to its religious viewpoint, content, and imagery violates Plaintiffs' under the Establishment Clause of the First Amendment.

231. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

232. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their First Amendments under the Establishment Clause and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

Violation of Plaintiffs' Right to be Free from Unconstitutional Conditions (42 U.S.C. § 1983)

233. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–152 of this Complaint.

234. The Constitution and decades of Supreme Court precedent prohibit the government, including state universities, from conditioning access to government benefits, programs, and privileges on the voluntary relinquishing or suspension of constitutional rights.

235. Students and student organizations at public universities retain the right to speak freely in public forums, the right to associate freely with like-minded individuals and organizations, the right to viewpoint-neutral access to mandatorily collected student fee funds, and the right to exercise freely their religious beliefs.

236. Students at public universities retain the right to be free of measures that would compel them to support expression financially with which they disagree.

237. By conditioning club status (and the benefits that accompany that status) on Plaintiffs

ending their affiliation with Tri-Grace Ministries, a religious organization, Defendants condition access to state benefits, programs, and privileges on Plaintiffs surrendering or suspending their constitutional rights to free speech, free association, and free exercise of religion.

238. By censoring, threatening to erase, and ordering students to erase Plaintiffs' "Paint the Town" display because it included religious content and viewpoints, Defendants have imposed unconstitutional conditions on Plaintiffs' expression and participation in that event.

239. Defendants' policy and practice of targeting and censoring student expression due to its religious viewpoint, content, and imagery imposes unconstitutional conditions on student expression.

240. Defendants, acting under color of state law, and by policy and practice have explicitly and implicitly imposed unconstitutional conditions on Plaintiffs and deprived Plaintiffs of their clearly established constitutional right to be free of such conditions.

241. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

242. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their right to be free of unconstitutional conditions and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

SEVENTH CAUSE OF ACTION

**Violation of Plaintiffs' Fourteenth Amendment Right to Due Process of Law
(42 U.S.C. § 1983)**

243. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–152 of this Complaint.

244. The Fourteenth Amendment to the United States Constitution guarantees Plaintiff the right to due process of law and prohibits Defendants from promulgating and employing vague and overbroad standards that allow for viewpoint discrimination in Defendants' handling of Plaintiff's application for student organization funding support.

245. The government may not regulate speech based on policies that permit arbitrary, discriminatory, and overzealous enforcement.

246. The government may not regulate speech based on policies that cause persons of common intelligence to guess at their meaning and differ as to their application.

247. The government may not regulate speech based on policies that do not provide persons of common intelligence fair warning as to what speech is permitted and what speech is prohibited.

248. Defendants' student organization policies, procedures, practices, and customs provide no definition of "religious institution" or criteria for determining what constitutes a "religious institution."

249. Defendants' student organization funding policy, procedures, practices, and customs contain no criteria to guide administrators and "the elected Student Advocates, Student Body President and the Director of Student Life" when deciding whether to allocate money to a student organization.

250. Defendants' student organization funding policy, procedures, practices, and customs are impermissibly vague and ambiguous and are thus incapable of providing meaningful guidance to Defendants.

251. The lack of objective criteria, factors, or standards for determining who may access a student organization funding forum gives government officials unbridled discretion to exclude or prohibit speech based on its content or viewpoint in violation of the First Amendment.

252. The lack of a process to remove officials who violate viewpoint neutrality when deciding student organization funding requests indicates that the government has unbridled discretion to govern the speech forum.

253. The lack of advanced notice for meetings, public meetings, and recording meetings of government officials charged with allocating student organization funding indicates that the government has unbridled discretion to govern the speech forum.

254. The lack of an appeal process in a student organization funding forum indicates that the government has unbridled discretion to govern the speech forum.

255. Defendants' student organization funding policy, procedures, practices, and customs give unbridled discretion to Defendants to suppress or discriminate against disfavored speech content or viewpoints.

256. Defendants' student organization funding policy, procedures, practices, and customs do not provide a process through which "the elected Student Advocates, Student Body President and the Director of Student Life" or other government official may remove a member for violating the constitutional prohibition against viewpoint discrimination.

257. Defendants' student organization funding policy, procedures, practices, and customs

do not require that meetings of “the elected Student Advocates, Student Body President and the Director of Student Life” to disburse or allocate student fee funds be announced in advance to the public, be open to the public, or be recorded.

258. Defendants’ student organization funding policy, procedures, practices, and customs do not provide student organizations with the ability to appeal student organization funding decisions by the “the elected Student Advocates, Student Body President and the Director of Student Life.”

259. The lack of criteria, factors, or standards in Defendants’ student organization funding policy, procedures, practices, and customs renders these policies and practices unconstitutionally vague and in violation of Plaintiff’s right to due process of law under the Fourteenth Amendment.

260. Defendants’ rules governing the “Paint the Town” event and their interpretation of those rules are impermissibly vague and ambiguous and are thus incapable of providing meaningful guidance to Defendants.

261. Defendants’ rules governing the “Paint the Town” event and their interpretation of those rules give Defendants unbridled discretion to define “promote school spirit” in any manner they like so as to censor and exclude speech they disfavor.

262. By censoring, threatening to erase, and ordering students to erase Plaintiffs’ “Paint the Town” display because it included religious content and viewpoints, Defendants exercised the unbridled discretion that the ambiguity in their rules and their interpretation of those rules gave them in order to exclude speech that they disfavored.

263. Defendants’ rules governing the “Paint the Town” event and their interpretation of

those rules violate Plaintiffs' right to due process of law under the Fourteenth Amendment.

264. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

265. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated its Fourteenth Amendment right to due process of law and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including its reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION

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

266. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–152 of this Complaint.

267. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the equal protection of the laws, which prohibits Defendants from treating Plaintiffs differently than similarly situated students and student organizations.

268. Defendants granted club status (and the benefits that accompany that status) to other similar student organizations, but denied the same to Plaintiffs.

269. Defendants do not deny club status to student organizations affiliated with non-religious non-profit entities.

270. Defendants treated Plaintiffs disparately when compared to similarly situated student organizations by refusing to let Plaintiffs reserve facilities for their activities at no charge.

271. Defendants treated Plaintiffs disparately when compared to similarly situated student organizations by denying Plaintiffs student organization funding.

272. Defendants treated Plaintiffs disparately when compared to similarly situated student organizations by censoring, threatening to erase, and ordering students to erase Plaintiffs' "Paint the Town" display because it included religious content and viewpoints.

273. Defendants' student organization funding policy and practices, their rules governing "Paint the Town," and their interpretation of those rules violate various fundamental rights of Plaintiffs, such as their freedom of speech and due process of law.

274. When government regulations, like Defendants' student organization funding policy and practices challenged herein, infringe on fundamental rights, discriminatory intent is presumed.

275. Defendants' student organization funding policy and practices have also been applied to discriminate intentionally against Plaintiffs' rights to freedom of speech and due process of law.

276. Defendants lack a rational or compelling state interest for such disparate treatment of Plaintiffs.

277. Defendants' student organization funding policy and practices are not narrowly tailored as applied to Plaintiffs because Plaintiffs' speech does not implicate any of the interests Defendants' might have.

278. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

279. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their Fourteenth Amendment right to equal protection of law and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants and provide Plaintiffs with the following relief:

- A. A declaratory judgment that Defendants' policies denying club status (and the benefits accompanying that status) to student organizations affiliated with "religious institutions" violate Plaintiffs' rights under the First and Fourteenth Amendments.
- B. A preliminary and permanent injunction prohibiting Defendants, their agents, officials, servants, employees, and any other person acting in their behalf, from enforcing the policies that deny club status (and the privileges that accompany that status) to student organizations affiliated with "religious institutions."
- C. A declaratory judgment that Defendants' policies denying access to student fee funds to student organizations affiliated with "religious institutions" violate Plaintiffs' rights under the First and Fourteenth Amendments.
- D. A preliminary and permanent injunction prohibiting Defendants, their agents, officials, servants, employees, and any other person acting in their behalf, from enforcing the policies that deny student fee funds to student organizations affiliated with "religious institutions."

- E. A declaratory judgment that Defendants' policies requiring students to pay a mandatory student fee violates Plaintiffs' rights under the First and Fourteenth Amendments because Defendants allocate those funds in a content- and viewpoint-discriminatory fashion.
- F. A preliminary and permanent injunction prohibiting Defendants, their agents, officials, servants, employees, and any other person acting in their behalf, from collecting any student fees until their policies ensure that those funds will be allocated on a content and viewpoint neutral basis.
- G. A declaratory judgment that Defendants' actions censoring Plaintiffs' religious expression and excluding Plaintiffs from "Paint the Town" due to the religious content and viewpoint of their expression violate Plaintiffs' rights under the First and Fourteenth Amendments.
- H. A preliminary and permanent injunction prohibiting Defendants, their agents, officials, servants, employees, and any other person acting in their behalf, from censoring religious expression or excluding student organizations desiring to engage in religious expression from "Paint the Town."
- I. Nominal and compensatory damages for the violation of Plaintiffs' First and Fourteenth Amendment rights;
- J. Plaintiffs' reasonable attorneys' fees, costs, and other cost and disbursements in this action pursuant to 42 U.S.C. § 1988; and
- K. All other further relieve to which Plaintiffs may be entitled.

Respectfully submitted this 22nd day of October, 2012,

/s/ Frank D. Mylar

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*Application for *pro hac vice* admission to be filed.