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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION**

CITIZENS FOR LIFE, ALLEN K. CARLSON,  
Plaintiffs,

Case No. 08-5009

vs.

RAPID CITY AREA SCHOOL DISTRICT,  
PETER M. WHARTON, in his official capacity  
as Superintendent of Rapid City Area School  
District, BRADLEY TUCKER, individually  
and in his official capacity as Principal of  
Dakota Middle School, RONALD MINCKS,  
individually and in his official capacity as  
Assistant Building and Grounds Supervisor,  
MIKE KENTON, in his official capacity as  
Building and Grounds Supervisor,

**VERIFIED COMPLAINT**

Defendants.

Now comes Plaintiffs Citizens for Life and Allen K. Carlson, and aver the following for their complaint against Defendants:

### **I. INTRODUCTION**

1. This is a civil rights action seeking declaratory and injunctive relief against the Rapid City Area School District (hereinafter "District") and its agents for their unconstitutional policy of excluding community groups from using district facilities based on the political, religious, and controversial viewpoint of the group.

2. The Defendants' policy violates the Plaintiffs' freedom of speech, freedom of association, free exercise of religion, equal protection under the law, due process, and the Establishment Clause, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

### **II. JURISDICTION AND VENUE**

3. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 because the action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), because it is brought to redress deprivations, under color of state law, of rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), because it seeks to recover damages and secure equitable relief under an Act of Congress, specifically, 42 U.S.C. § 1983; under 28 U.S.C. § 2201(a) to secure declaratory relief; and under 28 U.S.C. § 2202 to secure preliminary and permanent injunctive relief and damages.

4. Venue is proper in the United States District Court District of South Dakota, Western Division, under 28 U.S.C. § 1391(b) because the events giving rise to the claims occurred within the district and because the Defendants are residents of or are located in the district.

### **III. IDENTIFICATION OF PLAINTIFFS**

5. Citizens for Life is a non-profit Christian grassroots organization established out of a conviction that it is their civic duty to, among other things, educate and persuade the public about physical and mental health issues, morality, ethics, law, education, and politics as these relate to the protection of vulnerable members of the community, affirming human life and the human potential, restoring the moral and vocational principle that medicine should do no harm, that law should do no unjust harm to the innocent, and restoring and establishing a civic duty to treat all members of the community, and especially the vulnerable, with compassion and respect. Citizens for Life exists to raise up, motivate, and encourage leaders in the community to work charitably through their vocations and other relationships to achieve the highest level of protection and respect for the unborn and by extension all human beings as they are priceless members of the community. Citizens for Life approaches these tasks from the position that all human beings are inherently endowed with the highest value since they are created and reflect the image of their Creator. Citizens for Life is motivated by a respect for the individual's inherent value and self-evident right to freely maximize their talents and abilities to the benefit of themselves, other individuals and the community as a whole. Citizens for Life appeals to all members of the public on the universal sentiment that a human being should do unto others as he or she would have done unto them.

6. Allen K. Carlson is President of Citizens for Life. He is a resident of Rapid City, South Dakota.

### **IV. IDENTIFICATION OF DEFENDANTS**

7. Rapid City Area School District is a public body corporate and politic established, organized, and authorized pursuant to South Dakota law with the authority to sue and be sued. The District's main office is located at 300 6th St., Rapid City, South Dakota 57701. Dakota

Middle School, which provides instruction to students in the sixth, seventh, and eighth grades, is an operating extension of the Rapid City Area School District. Dakota Middle School is located at 601 Columbus St., Rapid City, South Dakota 57701.

8. Defendant Peter M. Wharton is the Superintendent of Rapid City Area School District and is sued in his official capacity.

9. Defendant Bradley Tucker is the Principal of Dakota Middle School, an agent of the Rapid City Area School District and is sued in both his individual and official capacities.

10. At the time of the alleged violations, Defendant Ronald Mincks was the Assistant Buildings and Grounds Supervisor for the Rapid City Area School District. He is now Rapid City Area Schools Coordinator of Energy Management/Custodial Services. He is sued in both his individual and official capacities.

11. At the time of the alleged violations, Defendant Mike Kenton was the Buildings and Grounds Supervisor for the Rapid City Area School District. He is now the Director of Support Services for Rapid Area City Schools. He is sued in his official capacity.

#### **V. STATEMENT OF FACTS**

12. The Rapid City Area School District has established a community use policy allowing community groups to use its schools' facilities. (See attached Ex. 1, Community Use of School Facilities (CUSF).)

13. The community use policy is entitled "Community Use of School Facilities." (Ex. 1, CUSF.)

14. According to the community use policy, use of school facilities may be rent free to all non-profit community groups that are meeting for a civic, educational, and charitable purpose. (Ex. 1, CUSF ¶ A.4.)

15. Similar groups that charge an admission fee or take a collection from attendees must pay a rental fee to the District. (Ex. 1, CUSF ¶ A.3.)

16. According to the community use policy, school facilities “shall not be used for political purposes,” except that “[p]olitically associated requests may be considered on an individual basis.” (Ex. 1, CUSF ¶ A.9.a.)

17. The community use policy also forbids use of school facilities for “sectarian or religious purposes” (Ex. 1, CUSF ¶ A.9) except for “[r]eligious organizations that require initial or additional space for the assembly of members or for delegates in convention” provided that “the organization is actively proceeding to build, expand or replace its own facility (Ex. 1, CUSF ¶ A.9.b).

18. Applications for use of school facilities must be made by the supervisor of the group not later than 15 days in advance. (Ex. 1, CUSF ¶ C.1.)

19. A “Building Use Agreement” must be signed by the group’s supervisor and the building principal/supervisor. (Ex. 1, CUSF ¶ C.2.)

20. Each group that is granted use of district facilities must have a supervisor who carries the Building Use Agreement on him or her “at all times.” (Ex. 1, CUSF ¶ B.1.)

21. Dakota Middle School is located within and is owned by the Rapid City Area School District.

22. Dakota Middle School has an auditorium that seats approximately 1000 people and is a school facility under the community use policy.

23. Allen K. Carlson is President of Citizens for Life, a grassroots Christian organization, which is dedicated to, among other things, educating people about the true nature

of Planned Parenthood, promoting alternatives to abortion, abstinence, and pro-family ideas and legislation.

24. Citizens for Life has been in existence for six years and has 245 members.

25. Citizens for Life's central mission is to educate the community about abortion from a Christian perspective and the universal principle that all human beings, especially the vulnerable, should be treated with the highest degree of compassion and respect. For example, Citizens for Life seeks to protect the unborn members of the community, foster compassion for unwed mothers, discourage promiscuity, make health risks regarding abortion known, make abortion and its organizational supporters unpopular, and reestablish the value of human life in the community and its private and public institutions, and to encourage community service to such ends.

26. Citizens for Life's Christian faith and philosophy is the motivation behind its mission to educate the community about abortion and to maximize care and protection to the most vulnerable members of society.

27. Citizens for Life engages in various educational and civic activities in furtherance of the protection and promotion of human life. Its members pray outside the Rapid City Planned Parenthood Clinic every Monday through Friday; it hosts pro-life speakers, concerts, and other events to educate people about the abortion; it organizes events to support or oppose legislation related to life issues; it meets to discuss how to better protect the unborn members of the community and how to better communicate the pro-life side of abortion as opposed to the Planned Parenthood position, and it meets to encourage people to apply their time, talent, resources and energy to these ends.

28. In July of 2006, Mr. Carlson phoned Dakota Middle School and spoke with the school's secretary. He explained he was phoning on behalf of Citizens for Life to request that they be allowed to host pro-life speaker, Gianna Jessen, in the schools' auditorium sometime in September, 2006. The Secretary at Dakota Middle School notified Mr. Carlson that she would speak to the principal about his request, and that the principal would contact him.

29. Gianna Jessen is a saline abortion survivor.

30. The purpose of having Ms. Jessen as the speaker was to put a "face on abortion" so that people could hear from a survivor and more fully understand the truth about abortion.

31. In addition, the purpose of the meeting was to educate the local community about how abortion in South Dakota could be affected by legislation entitled "Referred Law 6," which would have restricted abortions in most circumstances.

32. Mr. Carlson selected the Dakota Middle School auditorium as the best site for the group's meeting because it is well-maintained, spacious, and would be a convenient and comfortable venue for any member of the community to attend.

33. No admission was to be charged for the event, and no collection would have been taken.

34. In late August of 2006, Mr. Carlson phoned the school to find out when in September he could use the auditorium.

35. The Secretary at Dakota Middle School notified Mr. Carlson that she would speak to the principal about his request, and that the principal would contact him.

36. Defendant Tucker, Principal of Dakota Middle School, returned Mr. Carlson's phone call. Tucker told Mr. Carlson that he had spoken to Defendant Mincks, Assistant

Buildings and Grounds Supervisor for the District, and that pursuant to Mr. Minck's instruction, Citizens for Life would not be able to use the school's auditorium.

37. No reason was given to Mr. Carlson at that time as to why access to the facility was denied.

38. On October 13, 2006, counsel for Citizens for Life, Ms. Delia van Loenen, sent a letter to Defendants Peter M. Wharton and Ronald Mincks requesting, pursuant to South Dakota Codified Laws § 1-27-1 *et seq.*, certain public records. (Ex. 2, Oct. 13 Public Records Request.)

39. Specifically, Ms. van Loenen requested a copy of: the District's facility use policy; all applications for use of school facilities that were made in the past five years, including, but not limited to, records showing the name of the applicant, the purpose for which the applicant requested use of the facilities, and whether the request was granted or denied; all building use agreements executed in the past five years; and all policies or documents regarding criteria or guidelines to be used by the principal and/or superintendent or his/her designee in determining whether to deny or approve use of school facilities, including but not limited to, criteria used to consider politically associated requests. (Ex. 2, Oct. 13 Public Records Request at 1.)

40. Ms. van Loenen requested a copy of these documents within seven days. (Ex. 2, Oct. 13 Public Records Request at 2.)

41. Eleven days later, on October 24, 2006, attorney J. Crisman Palmer responded by letter to Ms. van Loenen's request, and identified himself as counsel for the School District. (Ex. 3, Oct. 24 Response Letter, Palmer to van Loenen.)

42. In that letter, Mr. Palmer provided only the District's policy on facility use; he did not provide the other requested documents, as he stated that they are "not regularly kept in the



course of business by [his] client.” Mr. Palmer stated that those documents are therefore not covered by the public records law. (Ex. 3, Oct. 24 Response Letter, Palmer to van Loenen.)

43. On December 15, 2006, Ms. van Loenen again corresponded by letter and facsimile with Palmer. She informed Palmer that under S.D.C.L. § 1-27-1, any records that are required to be kept under state statute shall be open to public inspection, regardless of whether they are kept in the regular course of business. (Ex. 4, Dec. 15 Second Request Letter, van Loenen to Palmer.)

44. Ms. van Loenen noted that S.D.C.L. § 13-8-43 requires that all records and contracts in the office of the business manager relating to school business in the district shall be open for inspection. Use of school facilities constitutes school business. Further, Ms. van Loenen pointed out that the community use policy requires that all Building Use Agreements must be executed before facility access is granted, and the supervisor of each group using District facilities must have a Building Use Agreement on him/her at all times. Ms. van Loenen explained that given that the District places such high importance on these Agreements, the District should have copies of such documents. (Ex. 4, Dec. 15 Second Request Letter, van Loenen to Palmer at 1.)

45. Ms. van Loenen then requested that the District locate the Building Use Agreements and the remainder of the documents listed in her first public records request, wherever those records are kept in the District. (Ex. 4, Dec. 15 Second Request Letter, van Loenen to Palmer at 2.)

46. Mr. Palmer responded on December 21, 2006. In that letter, he stated that he would speak with the school officials again regarding the records request. (Ex. 5, Dec. 21 Second Response Letter, Palmer to van Loenen.)

47. After not hearing back from Mr. Palmer, on February 6, 2007, Ms. van Loenen again contacted him by facsimile and email. In that correspondence, Ms. van Loenen emphasized that the records request was neither unclear nor burdensome, and she asked that the records be sent immediately. (Ex. 6, Feb. 6 Third Request Letter, van Loenen to Palmer.)

48. On February 21, 2007, Mr. Palmer responded by letter and assured Ms. van Loenen that he was “not ignoring [her].” He stated that he had again provided the request to the School District and would respond as “quickly as possible.” (Ex. 7, Feb 21 Third Response Letter, Palmer to van Loenen.)

49. To-date, counsel for the Plaintiffs still have not heard back from Mr. Palmer or the School District with regard to the records request.

50. This past summer, Citizens for Life again contacted the School District and Dakota Middle School to request the use of the Dakota Middle School auditorium for an upcoming event.

51. On June 21, 2007, Mr. Carlson wrote a letter to Defendant Wharton and Defendant Tucker, and explained that Citizens for Life would like to use the auditorium in August to host a pro-life speaker, Joe Scheidler, who is the National Director of the Pro-Life Action League. The topic of his talk was going to be “Why Do We Protest Planned Parenthood?” Mr. Carlson stated that he expected approximately 100 people to attend the talk. No admission was to be charged for the event, and no collection would have been taken. The talk would have been during the evening of a weekday, or on the weekend, when school is not in session. Mr. Carlson also stated that Citizens for Life is a peaceful organization that will abide by all the rules regarding use of Dakota Middle School facilities. An unsigned copy of this written facilities use request is attached as Exhibit 8.

52. Mr. Carlson explained that he had requested to use the facilities in the past, but had been denied. He also stated that he did not know why he has been denied access to the auditorium. He asked that the District please explain the reasons for the denial if it denied this request. (Ex. 8, June 21 Written Facilities Use Request.)

53. Mr. Carlson requested a response in writing no later than June 30, 2007, so that Citizens for Life would have enough time to plan the event. (Ex. 8, June 21 Written Facilities Use Request.)

54. In early July, Mr. Carlson received a phone call from Defendant Mincks, who told him that Citizens for Life would not be able to use the Dakota Middle School auditorium in August.

55. Mr. Carlson asked if he needed to fill out any more paperwork or follow any other protocol in order to obtain permission to use the facilities, but Defendant Mincks told him not to bother because, "We would deny you anyway."

56. Defendant Mincks stated that, "We just don't like to encourage discussion of those types of issues in our facilities."

57. Defendant Mincks also stated that any event held by a group like Citizens for Life would be "too controversial" to be held in the facilities.

58. Mr. Carlson asked that Defendant Mincks put the denial in writing, as requested in his June 21, 2007 letter, but Defendant Mincks stated that, "This is something we don't wish to put in writing."

59. Defendant Mincks assured Mr. Carlson that, "We treat everyone the same," and that, "We would not let anyone from the other side use the facilities either."

60. Plaintiffs strongly desire to use the District's facilities to share their pro-life and religious message and engage in activities that further their organizational mission.

61. Citizens for Life wants to use the Dakota Middle School auditorium in May of 2008 for an event where Joe Scheidler will educate people in the local community about how to protect the unborn in the local community and how to overcome the influence of organizations working in opposition to the pro-life movement. No admission will be charged for the event, and no collection will be taken.

62. The District and its community use policy are continuing to prevent Citizens for Life from holding such a meeting.

#### **VI. STATEMENTS OF LAW**

63. Each and all of the acts herein alleged of the Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color of state law.

64. Defendants' actions in excluding Plaintiffs from District facilities pursuant to a vague, overbroad and discriminatory policy in violation of their constitutional rights constitute irreparable harm to Plaintiffs.

65. Unless and until the enforcement of Defendants' policies and actions identified herein are enjoined, Plaintiffs will suffer, and continue to suffer, irreparable harm to their constitutional rights.

66. Plaintiffs have no adequate remedy at law for the loss of their constitutional rights.

#### **VII. VIOLATIONS OF 42 U.S.C. § 1983**

67. Plaintiffs hereby incorporate by reference all foregoing allegations as if set forth herein.

**A. FREEDOM OF SPEECH**

68. By policy and practice, Defendants have created a designated public forum at the District's school facilities open to a broad array of community groups and subject matter, by permitting non-school community groups and individuals to conduct meetings and other activities at the school buildings for civic, educational, and charitable purposes. (Ex. 1, CUSF ¶ A.2.)

69. Defendants' community use policy unconstitutionally discriminates on its face by prohibiting sectarian or religious speech at District facilities and by targeting religious organizations for disfavored treatment in having access to District facilities. (Ex. 1, CUSF ¶ A.9.)

70. In applying the community use policy, Defendants engage in content-based and viewpoint discrimination in violation of the First and Fourteenth Amendments to the United States Constitution because they allow community groups to use District facilities for meetings and activities, but deny access to Citizens for Life because it addresses issues related to abortion from a religious, political, and even controversial perspective. (Ex. 1, CUSF ¶ A.9.) Defendants' discriminatory conduct is not justified by a compelling state interest.

**B. DUE PROCESS**

71. The District's community use policy is unconstitutionally vague on its face. The policy contains undefined terms that fail to provide any discernable meaning. (Ex. 1, CUSF ¶¶ A.1, A.4.) As a result, the policy supplies District officials with unbridled discretion in determining whether to grant certain community groups access to use District facilities.

72. The community use policy's statement that the "use of school facilities will be granted only when a proposed activity is suited to the available facility" (Ex. 1, CUSF ¶ A.1) is unconstitutionally vague on its face.

73. Without guiding criteria, the community use policy empowered school officials to subjectively determine whether community uses “benefit the local community.” (Ex. 1, CUSF ¶ A.4.)

74. The community use policy states that “[p]olitically associated requests may be considered on an individual basis,” with no guiding criteria for determining which politically associated requests may be granted or denied. (Ex. 1, CUSF ¶ A.9.a.)

75. In application, the community use policy terms were arbitrarily applied to deny Citizens for Life access to District facilities.

76. Therefore, the community use policy is unconstitutional on its face and as applied, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

**C. FREEDOM OF ASSOCIATION**

77. Defendants have prohibited Plaintiffs’ freedom of association in violation of the First and Fourteenth Amendment of the United States Constitution because Defendants prohibit the assembly of community members at District facilities to educate about and discuss such things as health, morals, ethics, medicine, law, education, and civic, charitable, and religious ideas and responsibility, as it relates to abortion and the value of human life, while allowing private assembly for similar discussion.

**D. FREE EXERCISE OF RELIGION**

78. Defendants discriminated against Plaintiffs’ speech because of its religious content and nature, and such action was not narrowly tailored to advance a compelling state interest. Defendants’ actions substantially burdened Plaintiffs’ religious exercise through application of a policy that is not generally applicable or neutral with respect to religion.

79. Defendants have deprived and continue to deprive Plaintiffs of their right to the free exercise of religion, as secured by the First Amendment to the United States Constitution, by targeting religion to prohibit CFL from exercising their sincerely held religious beliefs through religious expression, and by permitting individual exceptions to its policy that favor other politically associated speech.

**E. ESTABLISHMENT CLAUSE**

80. By allowing non-religious groups to meet with and conduct activities at District facilities while purposefully excluding religious groups, the Defendants have violated the Establishment Clause. The Establishment Clause requires government to treat religion in a neutral fashion. By singling out religious meetings for exclusion, the District is treating religious groups worse than other groups, which is conduct that violates the baseline constitutional requirement of governmental neutrality towards religion.

81. The Establishment Clause of the United States Constitution does not compel the District's policy and practice to exclude religious groups, exercise and ideas from District facilities.

82. By prohibiting use of District facilities for sectarian or religious purposes, the community use policy unconstitutionally entangles the Defendants with religion by requiring them to define religion, determine whether a proposed event involves religion, and then monitor events to ensure that no prohibited activity takes place.

**F. EQUAL PROTECTION**

83. Defendants have created a policy and practice of permitting other similarly situated community groups to meet and conduct activities in District facilities while excluding Citizens for Life, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

84. Defendants base their exclusion on a suspect classification (religion) and infringe on fundamental rights (freedom of speech, association, and free exercise of religion). As such, Defendants' policy and practice violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request judgment against Defendants and that this Court:

A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declarations shall have the force and effect of final judgment and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court's Orders;

B. Pursuant to 28 U.S.C. § 2202, Fed. R. Civ. P. 65, and 42 U.S.C. § 1983, issue a preliminary injunction enjoining Defendants from their unconstitutional infringement upon the Plaintiffs' First and Fourteenth Amendment rights;

C. Pursuant to 28 U.S.C. § 2201, declare that Defendants' conduct is unconstitutional and violated Plaintiffs' rights guaranteed under the First and Fourteenth Amendments to the United States Constitution;

D. Pursuant to 28 U.S.C. § 2201, declare that Defendants' Community Use of School Facilities policy, as alleged above, violates the First and Fourteenth Amendments to the United States Constitution, both on its face and as applied to Plaintiffs;

E. Pursuant to 28 U.S.C. § 2202, Fed. R. Civ. P. 65, and 42 U.S.C. § 1983, permanently enjoin Defendants from unconstitutionally discriminating against Plaintiffs and infringing upon their First and Fourteenth Amendment rights;

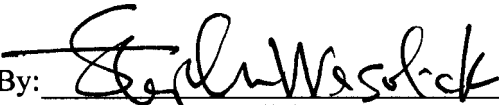


F. Award nominal damages to Plaintiffs to vindicate their constitutional rights that were violated by Defendants;

G. Pursuant to 42 U.S.C. § 1988 and other applicable law, award Plaintiffs their costs and expenses of this action, including reasonable attorneys' fees;

H. Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted this the 4th day of February, 2008.

By: 

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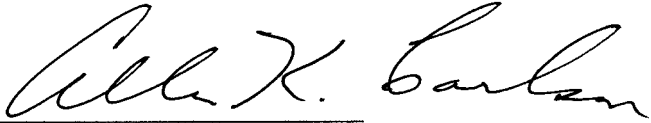
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**VERIFICATION OF COMPLAINT**

I, Allen K. Carlson, a citizen of the United States and resident of the State of South Dakota, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 4<sup>th</sup> day of February, 2008, at Rapid City, South Dakota.

  
\_\_\_\_\_  
Allen K. Carlson