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12 **UNITED STATES DISTRICT COURT**
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 TYLER CHASE HARPER, a minor, by and
15 through his parents RON and CHERYL
HARPER,

16 Plaintiffs,

17 v.

18 POWAY UNIFIED SCHOOL DISTRICT;
JEFF MANGUM, LINDA VANDERVEEN,
19 PENNY RANFTLE, STEVE MCMILLAN, and
ANDY PATAPOW, all individually and in their
20 official capacity as Members of the Board of the
Poway Unified School District; DR. DONALD
21 A. PHILLIPS, individually, and in his official
capacity as Superintendent of the Poway
22 Unified School District; SCOTT FISHER,
individually and in his official capacity as
23 Principal of Poway High School; LYNELL
ANTRIM, individually and in her official
24 capacity as Assistant Principal of Poway High
School; ED GILES, individually and in his
25 official capacity as Vice Principal of Poway
High School; and DAVID LEMASTER
26 individually and in his official capacity as
Teacher of Poway High School; and DOES 1
27 through 20 inclusive,

28 Defendants.

CASE NO.

**VERIFIED COMPLAINT AND
DEMAND FOR JURY TRIAL**

**Nature of Action:
Civil Rights Suit Under 42 U.S.C. § 1983**

1 COME NOW Plaintiffs, by and through counsel, to show the Court the following:

2 **I.**

3 **INTRODUCTION**

4 1. This is a case to vindicate the First Amendment rights of Plaintiff Chase Harper, a
5 high school student who used a T-shirt message to express his sincerely-held religious beliefs
6 among his public high school classmates in response to an event known as the “Day of Silence.”
7 This event was sponsored by his school and its Gay Straight Alliance student club. Because
8 Plaintiff refused to compromise his religious beliefs and his First Amendment rights, he was
9 suspended from school for simply continuing to wear a homemade message on his T-shirt. The
10 arbitrary suspension and unambiguous threat of further punishment by school district personnel
11 have violated his rights to freedom of speech, to the free exercise of his religion, and his right to
12 the equal protection of the law guaranteed to him by the First and Fourteenth Amendments to the
13 United States Constitution.

14 **II.**

15 **JURISDICTION AND VENUE**

16 2. This action arises under the First and Fourteenth Amendments to the United
17 States Constitution, and the Civil Rights Act (42 U.S.C. §§ 1983 and 1985) and California Civil
18 Code § 52.1.

19 3. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 1343,
20 this being a suit in equity authorized by law to be brought to redress the deprivation, under color
21 of law, statute, regulation, or custom and usage of the state of California of rights, privileges and
22 immunities secured by the laws and Constitution of the United States; particularly, the First and
23 Fourteenth Amendments of the Constitution of the United States pursuant to 42 U.S.C. § 1983.
24 The Court has supplemental jurisdiction over this case pursuant to 28 U.S.C. § 1367(a).

25 4. Venue is proper in the Southern District of California under 28 U.S.C. § 1391(b),
26 because a substantial part of the actions or omissions giving rise to this case occurred within the
27 Southern District of California.

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1 22. Plaintiff is a Christian with sincerely-held religious beliefs regarding Biblical
2 teachings on homosexual behavior.

3 23. Plaintiff believes, among other things, that a loving God has and must continue to
4 condemn behavior that is destructive to humankind, the principal object of His love, and that
5 homosexual behavior is immoral, damaging to the practitioners and to human society in general,
6 and is demonstrably contrary to the teachings of the Bible, which he believes is the inspired
7 Word of God.

8 24. Plaintiff is informed and believes that the true purpose of the programs and events
9 sponsored by Poway High School on April 21, 2004 was to endorse, promote and encourage
10 homosexual activity.

11 25. Plaintiff's sincerely-held religious beliefs compel him to communicate, out of a
12 sense of compassionate duty, the Biblical condemnation of homosexual behavior to others in his
13 school and his community.

14 26. In the days and weeks prior to April 21, 2004, Plaintiff became aware that a "Day
15 of Silence" would be observed, endorsed, encouraged, subsidized and promoted at Poway High
16 School on April 21, 2004.

17 27. Plaintiff is informed and believes that the "Day of Silence" was organized to
18 encourage students and other individuals to refrain from speaking during the school day in order
19 to demonstrate support for individuals engaged in overt homosexual lifestyles and behavior.

20 28. Plaintiff took one of his T-shirts and placed words on the front of it that read:

21 "I WILL NOT ACCEPT WHAT GOD HAS CONDEMNED."

22 29. Plaintiff placed words on the back of the T-shirt that read:

23 "HOMOSEXUALITY IS SHAMEFUL

24 "Romans 1:27"

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1 39. Defendant Lynell Antrim then sent Plaintiff to Defendant Scott Fisher’s office.

2 40. Plaintiff was interviewed by Defendant Scott Fischer in the company of an
3 unidentified adult female individual who is believed, and therefore alleged, to be a district
4 official observer from another school within the Poway School District, believed to be the
5 Abraxis Continuation School.

6 41. During the interview time with Defendant Scott Fischer, Plaintiff was asked
7 repeatedly by Defendant Scott Fischer why he had worn his T-shirt to school on both days, was
8 told by Defendant Scott Fischer that his T-shirt was too “aggressive,” and that wearing it would
9 not be tolerated at Poway High School.

10 42. Defendant Scott Fisher stated that it would not matter whether the T-shirt was
11 homemade or whether it was a pre-manufactured T-shirt as the punishment would be the same
12 because the content was inflammatory.

13 43. Defendant Scott Fisher ended the discussions by informing Plaintiff that because
14 he had been both courteous and respectful to school authorities his punishment would be
15 mitigated but that still he was going to be suspended from school, that he would remain in an
16 office until the school day was over, and that he would then be required to depart the school
17 grounds by the most direct route.

18 44. Defendant Scott Fischer stated that Plaintiff was not to leave the small office, in
19 which he was detained, for any reason unless he had an escort.

20 45. As the day wore on, Plaintiff received his belongings, including his backpack and
21 his lunch, which he had earlier left in his classroom.

22 46. Except for supervised visits to the toilet room, Plaintiff remained in the school
23 office until the end of the school day.

24 47. Through the course of the afternoon, various school security personnel visited
25 Plaintiff and engaged him in conversations.

26 48. One of them, a former coach of Plaintiff, pointedly questioned Plaintiff as to why
27 he would wear such a T-shirt and he encouraged him to question whether it was “worth it.”

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1 49. A Deputy Sheriff came to interrogate Plaintiff while he was detained in this
2 office. At the time, he presented his badge to Plaintiff and at all times during the visit was
3 openly carrying a firearm. The Deputy also took a number of photographs of Plaintiff but did
4 not arrest him. True and correct copies of three of those photographs are attached as Exhibit A.

5 50. The Deputy informed Plaintiff that he was there to determine if he was a
6 dangerous student, to find out why he wore the particular T-shirt, and to determine if he was
7 going to engage in similar behavior in the future.

8 51. The Deputy proposed to Plaintiff that as a member of the Christian faith, he
9 should understand that Christianity was based on love not hate, and that Plaintiff should not be
10 offensive to others.

11 52. The Deputy told Plaintiff that his T-shirt was “inflammatory” and “could
12 encourage uprising and violence against homosexuals.”

13 53. Finally, toward the very end of the school day, Plaintiff was told to collect his
14 things and go to Defendant Ed Giles’ office.

15 54. Plaintiff walked into Defendant Ed Giles' office and closed the door as directed.

16 55. During a 10-15 minute visit, Plaintiff was told that Defendant Ed Giles knew his
17 family and his youth pastor, and that he, Defendant Ed Giles, was also a Christian believer.

18 56. Defendant Ed Giles stated that when he came to the school, he had to leave his
19 faith “in the car.”

20 57. Defendant Ed Giles further advised Plaintiff that when he comes to Poway High,
21 if his religious beliefs are offensive, he too must “leave his faith in the car.”

22 58. Plaintiff respectfully told Defendant Ed Giles that he could not do that.

23 59. Following this final “counseling” session at the end of the day, Plaintiff was told
24 he was free to go home but that he was to proceed immediately and directly off the campus and
25 remain off campus for the rest of the day.

26 60. Plaintiff was thus not allowed to go to his locker to get his homework.

27 61. Plaintiff complied with the directions of the school administrators in every
28 particular.

1 62. Defendants did not notify either of Plaintiff's parents until shortly before the end
2 of the school day.

3 63. Defendant Ed Giles made the call to Plaintiff Ron Harper informing him that his
4 son had been detained and suspended for the day for wearing the expressive T-shirt.

5 64. Initially, Mr. Harper was told that the problem was that "homemade shirts were
6 not allowed."

7 65. Plaintiff Ron Harper stated that he had seen other homemade shirts at the School
8 before and was then told that "only positive community messages were allowed" and that shirts
9 with "negative" messages were not allowed.

10 66. Plaintiff Ron Harper asked who was responsible for determining whether a
11 message was positive or negative and was told that it was in the Principal's discretion.

12 67. The following day, Plaintiff Ron Harper went to the School to discuss his son's
13 suspension and was told that Plaintiff Chase Harper had conducted himself honorably and with
14 respect to school administrators at all times.

15 68. Plaintiff Ron Harper was also informed that there had been no disruptions,
16 altercations or other incidents among students at the school giving rise to his son's suspension.

17 69. Poway High School has published a student policy handbook that includes a
18 section entitled "Socially Responsible Behavior" (Policy). This Policy, at page 15 of the
19 handbook, states in relevant part:

20 C. Dress: School clothing should be neat, clean, and appropriate
21 for school activities and should follow the standards of common
22 decency. The dress code will be enforced at school-sponsored
23 activities. Clothing that violates this standard is unacceptable, and
24 the student in violation will be disciplined appropriately.
25 Examples of unacceptable dress are as follows:

26

27 3. Clothing and accessories (including backpacks) that promote or
28 portray:

 e. Violence or hate behavior including derogatory connotations
 directed toward sexual identity.

1 A true and correct copy of this policy is attached as Exhibit B.

2 70. Defendants, and each of them, wrongfully interpreted and/or applied this Policy to
3 Plaintiff Chase Harper for wearing his homemade T-shirt containing religious expression
4 criticizing homosexual behavior.

5 71. Poway High School’s “Socially Responsible Behavior” policy at Section C.3.e. is,
6 on its face, and as applied in this case, overbroad, impermissibly vague and subject to abuse.
7 This policy effectively grants unbridled discretion to school officials as to its application and it
8 therefore, violates the First and Fourteenth Amendments of the United States Constitution.

9 72. Since July 29, 1991 the Poway Unified School District has maintained a Board
10 Policy relating to student personnel and their freedom of speech and expression. The Board
11 Policy at Article 5.0, Section 5.6 in relevant part provides as follows:

12 Students attending schools within the District have the right to
13 exercise free expression including, but not limited to, the use of
14 bulletin boards, distribution of printed materials or petitions, and
15 wearing buttons, badges, and other insignia. The Board respects
16 students’ rights to express ideas and opinions, take stands, and
17 support causes, whether controversial or not, through their speech,
18 their writing, their clothing, and the printed materials they choose
19 to post or distribute.

20

21 In the exercise of the student rights described above, no student
22 shall distribute materials, wear buttons or displays, or post notices
23 or other materials which:

- 24 1. Are obscene to minors according to current legal definitions.
- 25 2. Are libelous or slanderous according to current legal
26 definitions.
- 27 3. Incite students so as to create a clear and present danger of the
28 imminent commission of unlawful acts on school premises or of
the violation of lawful school regulations or of the substantial
disruption of the orderly operation of the school.
4. Express or advocate racial, ethnic, or religious prejudice so as
to create a clear and present danger of imminent commission of
unlawful acts on school premises or of the violation of lawful
school regulations or of the substantial disruption of the orderly
operation of the school.

A true and correct copy of this policy is attached as Exhibit C.

1 73. Neither Plaintiff’s T-shirt message nor any of his behavior while attending
2 school on April 21 and 22, 2004 in any way created a clear and present danger of imminent
3 commission of unlawful acts on school premises or constituted the violation of lawful school
4 regulations or threatened substantial disruption of the orderly operation of the school.

5 74. Since July 28, 1997 the Poway Unified School District has maintained a Board
6 Policy relating to student personnel and their freedom of speech and expression. The Board
7 Policy at Article 5.0, Section 5.28.1 concerns so-called hate behavior and, in relevant part,
8 provides as follows:

9 “In order to foster a supportive environment for a diverse student
10 body, the Poway Unified School District provides guidelines to
11 assist schools in the reduction and/or prevention of hate behavior.

12 For the purpose of these guidelines the operational definition of hate behavior is as
13 follows:

14 A hate behavior is any act or attempted act to cause physical
15 injury, emotional suffering, or property damage through
16 intimidation, harassment, racial/ethnic slurs and bigoted epithets,
17 vandalism, force or the threat of force, motivated all or in part by
18 hostility to the victim’s real or perceived gender, race, ethnicity,
19 religion, sexual orientation, or mental or physical challenges.” . . .

20 75. The remainder of Board Policy is a confusing selection of subjective sentence
21 fragments collected under three subtitles: “Hate Behavior Deterrence Guidelines,” “Hate
22 Behavior Response Guidelines,” and “Examples of Hate Behavior.”

23 76. The purported preventative policy, laced as it is with undefined phrases and
24 jargon, is on its face, vague, subjective, ambiguous, overbroad and inevitably subject to
25 unfettered arbitrary discretion in its application. A true and correct copy of this policy is
26 attached as Exhibit D.

27 77. Plaintiff is informed and believes and on that basis alleges that Defendants, in this
28 case, rely on Board Policy 5.28.1 to justify their actions against Plaintiff.

 78. Board policy 5.28.1 on its face and to the extent of its application against Plaintiff
violates his rights under the First and Fourteenth Amendments to the Constitution of the
United States.

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VI.

FIRST CAUSE OF ACTION

Violation Of Freedom Of Speech Under

The First Amendment To The United States Constitution

86. Plaintiffs re-allege and incorporate herein by reference all preceding paragraphs.

87. Religious speech is protected speech under the First Amendment.

88. The Policies, including but not necessarily limited to School Board Policy Section 5.28.1 and Poway High School student handbook at page 15 (collectively hereinafter referred to as the “Policies”) and Defendants’ enforcement thereof:

- a. are vague and overbroad;
- b. single out religious speech for discriminatory treatment;
- c. discriminate against speech because of its content;
- d. discriminate against speech on the basis of the speaker’s viewpoint;
- e. restrain constitutionally protected speech in advance of its expression, with virtually no guidelines or standards to guide the discretion of School officials charged with enforcing the policy;
- f. chill the free speech and free exercise of religion of Plaintiff Chase Harper and other students, and
- g. allow the exercise of unbridled discretion.

89. Defendants have no compelling reason that would justify their censorship of Plaintiff’s T-shirt and its religious message.

90. Defendants’ Policies and the enforcement thereof thus violate the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully pray the Court grant the equitable and legal relief set forth in the prayer for relief.

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VII.

SECOND CAUSE OF ACTION

Violation Of The Free Exercise Clause Of

The First Amendment To The United States Constitution

91. Plaintiffs re-allege and incorporate herein by reference all preceding paragraphs.

92. Plaintiff Chase Harper has sincerely-held religious beliefs which compel him to express his opposition to homosexual behavior.

93. Plaintiff's sincerely-held religious belief is based upon Biblical precepts and a Christian worldview.

94. A facially-neutral policy may violate the Free Exercise Clause when it is implicated in connection with another constitutional right such as the freedom of speech.

95. The Policies and Defendants' enforcement thereof substantially burden religious expression that is critical of homosexual behavior.

96. Defendants have no compelling reason that would justify their censorship of religious expression that is critical of homosexual behavior.

97. The Policies and Defendants' enforcement thereof therefore violate the Free Exercise Clause of the First Amendment to the United States Constitution, made applicable to the states under the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully pray the Court grant the equitable and legal relief set forth in the prayer for relief.

VIII.

THIRD CAUSE OF ACTION

Violation Of The Equal Protection Clause Of

The Fourteenth Amendment To The United States Constitution

98. Plaintiffs re-allege and incorporate herein by reference all preceding paragraphs.

99. Under the Policies, Defendants have allowed other students to wear homemade T-shirts, while suspending Plaintiff Chase Harper for wearing his homemade T-shirt.

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1 G. Grant to Plaintiffs reasonable costs and expenses of this action, including
2 attorneys' fees, in accordance with 42 U.S.C. § 1988 and California Civil Code § 52(b)(3); and

3 H. Grant such other and further relief as this Court deems just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiffs hereby respectfully request a jury trial.

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7 Dated this 29th day of May 2004

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9 Respectfully submitted,

10 ALLIANCE DEFENSE FUND

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12 By:

13 ROBERT H. TYLER
14 Attorneys for Plaintiffs
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VERIFICATION

We, the undersigned, citizens of the United States and residents of the State of California, have read the foregoing Verified Complaint and declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Dated this _____ day of May, 2004

Tyler Chase Harper

Ron Harper