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27 **IN THE UNITED STATES DISTRICT COURT**
28 **FOR THE DISTRICT OF ARIZONA**

29 Child Evangelism Fellowship Phoenix,) No. _____
30 and Brian Hughes,)

31 Plaintiffs,)

32 v.)

33 Dysart Unified School District,)

34 Defendant.)

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

1 **I. INTRODUCTION**

2 1. This is a civil rights action under 42 U.S.C. § 1983, the First and Fourteenth
3 Amendments to the United States Constitution, and the Arizona Free Exercise of
4 Religion Act, brought to remedy a violation of the constitutional rights of Child
5 Evangelism Fellowship Phoenix (“CEFP”), a non-profit organization that —
6 among other things — holds weekly after-school meetings at West Point
7 Elementary School at which it teaches morals, values, and important life lessons
8 from an evangelical Christian viewpoint, and Brian Hughes, the executive
9 director of CEFP (hereinafter “Plaintiffs”).

10 2. Plaintiffs bring this action challenging the Dysart Unified School District’s (the
11 “District”) censorship of Plaintiffs’ religious flyers and denial of the use of
12 communicative mediums in district schools on an equal basis with other
13 community organizations.

14 3. By policy and practice, the District permits nonprofit organizations, community
15 groups, and government agencies (collectively, “community organizations”) to
16 promote their cultural, recreational, artistic, civic, and educational events and
17 meetings, and their activities that provide students instruction and practice
18 regarding a wide range of subject matters, via distribution of informational flyers
19 within District schools.

20 4. Once the District approves a submitted flyer, it is distributed, at the discretion of
21 the District, by: 1) handing the flyers directly to students to take home and give to
22 their parents for review and consideration; and/or 2) stacking the flyers in school
23 offices for students and parents to browse and pick up.

24 5. Examples of flyers the District has approved for distribution include information
25 concerning sports programs, community events, educational programs,
26 fundraisers, dance parties, and arts programs.

27 6. Pursuant to its policy and practice, the District unconstitutionally engages in
28 viewpoint- and content-based discrimination in prohibiting Plaintiffs from

1 distributing religious flyers within its flyer distribution forum.

2 7. As a result, Plaintiffs are deprived of the communicative mediums secular
3 community organizations use both to inform the public of their events and
4 activities and remind students and parents of weekly meetings.

5 8. In refusing to distribute Plaintiffs' religious flyers, the District acted pursuant to
6 two unconstitutional policies.

7 9. Specifically, the District acted pursuant to Policy K-0900 of the Dysart Unified
8 School District Policy Manual, which states: "Non-school originated material of
9 a commercial, political, or *religious* nature shall not be released through the
10 students." (emphasis added).

11 10. The District also acted pursuant to Policy K-2300 of the Dysart Unified School
12 District Policy Manual, which states: "Non-school promotional literature
13 soliciting for or promoting participation in commercial offerings, politics or
14 *religion* will not be allowed on school property during school sessions."
15 (emphasis added).

16 11. Plaintiffs challenge Policies K-0900 and K-2300 of the Dysart Unified School
17 District Policy Manual (hereinafter the "Policies"), insofar as they prohibit
18 religious materials, both on their face and as-applied to Plaintiffs' exclusion from
19 the District's flyer distribution forum.

20 12. The District's content- and viewpoint-based censorship of Plaintiffs' religious
21 speech violates the First and Fourteenth Amendments to the United States
22 Constitution.

23 **II. JURISDICTION AND VENUE**

24 13. This action arises under the United States Constitution, particularly the First and
25 the Fourteenth Amendments, under federal law, particularly 28 U.S.C. §§ 2201-
26 02, 42 U.S.C. §§ 1983 & 1988, and the Arizona Free Exercise of Religion Act,
27 Ariz. Rev. Stat. Ann. § 41-1493 *et seq.*

28 14. This Court possesses original jurisdiction over Plaintiffs' claims by operation of

1 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over Plaintiffs' state-
2 law claim pursuant to § 1367.

3 15. This Court is vested with authority to issue the requested declaratory relief under
4 28 U.S.C. §§ 2201-02, and pursuant to Rule 57 of the Federal Rules of Civil
5 Procedure.

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

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

9 18. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988 and
10 Ariz. Rev. Stat. Ann. § 41-1493.01(D).

11 19. Under 28 U.S.C. § 1391, venue is proper in the United States District Court for
12 the District of Arizona because these claims arose there and all parties reside
13 within the District of Arizona.

14 **III. IDENTIFICATION OF THE PLAINTIFFS**

15 20. Plaintiff Child Evangelism Fellowship Phoenix serves Maricopa County as the
16 local chapter of Child Evangelism Fellowship of Arizona, Inc., a registered
17 501(c)(3) organization.

18 21. Plaintiff Brian Hughes serves as CEFP's executive director.

19 22. Plaintiffs represent a Christian organization that desires to share its religious
20 views with students and parents at District schools.

21 23. The religious beliefs of CEFP's members compel them to share their Christian
22 faith and beliefs with students and parents at District schools.

23 24. As a crucial part of their mission, Plaintiffs conduct weekly, after-school Good
24 News Club meetings in the District's elementary schools, and in schools in
25 neighboring districts, where children recite Bible verses, sing songs, play games,
26 learn Bible stories, and pray under the leadership of trained staff and volunteers.

27 25. Good News Club meetings assist parents in the moral and character development
28 of their children through cultural, recreational, artistic, and educational activities

1 from a traditional evangelical Christian viewpoint.

2 26. Plaintiffs currently hold weekly Good News Club meetings at West Point
3 Elementary School (the “School”) and plan to start additional clubs at schools
4 within the District.

5 27. Plaintiffs desire to have religious flyers informing students and parents of their
6 activities distributed to students and parents on an equal basis with other
7 community organizations.

8 28. Plaintiffs, pursuant to their sincerely held religious beliefs, desire to use the flyer-
9 distribution forum the District makes available to other community organizations.

10 29. Plaintiffs desire such communicative opportunities for the same reason other
11 community organizations desire to have their information made publicly
12 available—to promote their meetings and facilitate voluntary student/parent
13 involvement in their activities.

14 **IV. IDENTIFICATION OF THE DEFENDANT**

15 30. Defendant District is a body corporate and politic organized under the laws of the
16 State of Arizona and may sue and be sued. Ariz. Rev. Stat. Ann. § 15-326(1)
17 (providing that school districts “may sue and be sued”); *see also Jarvis v.*
18 *Hammons*, 256 P. 362, 364 (Ariz. 1927).

19 31. The District is charged, *inter alia*, with the administration, operation, and
20 supervision of all District schools, including West Point Elementary School.

21 32. The District is charged with the formulation, adoption, implementation, and
22 enforcement of District policies, including the Policies challenged herein.

23 33. The District is responsible for its employees’ enforcement of its policies.

24 34. The District is responsible for the enactment, enforcement, and existence of the
25 District’s Policies and practice related to community organizations’ access to
26 schools’ flyer-distribution mediums.

27 35. The District excludes Plaintiffs from distributing information through these
28 mediums pursuant to its Policies and practice.

1 36. The District is responsible for District officials', including the District
2 Superintendent's and local principals', application of its Policies and practice
3 pertaining to the distribution of flyers.

4 37. The District is also responsible for delegating to the Superintendent, District
5 officials, and local principals final authority to approve or deny the distribution of
6 flyers, and is thus responsible for the refusal to allow Plaintiffs equal access to
7 these communicative mediums.

8 **V. ALLEGATIONS OF FACT**

9 **The District's Denial Of Plaintiffs' Religious Flyers**

10 38. Plaintiffs operate weekly after-school Good News Bible clubs, which students
11 obtain parental permission to attend.

12 39. These meetings include Bible lessons, religious songs, memorization of Bible
13 verses, missions stories, review games, and other activities.

14 40. Plaintiffs recently started a Good News Club at West Point Elementary School,
15 which is located within the District.

16 41. The club's first meeting took place on November 16, 2011. The club meets from
17 3:50 p.m. until 5:15 p.m.

18 42. Whereas schools in which Plaintiffs are allowed to distribute flyers on a
19 consistent basis have a regular attendance of at least forty to sixty students, no
20 students attended the West Point club's first six meetings after Plaintiffs' request
21 to distribute flyers was denied.

22 43. On October 19, 2011, Plaintiffs emailed a completed Flier Approval Request
23 Form and sample flyer to Polly Corsino, the District's Community Specialist, to
24 advertise the formation of a new Good News Club at the School.

25 44. The flyer Plaintiffs wished to distribute read as follows:

26 GOOD NEWS IS COMING AFTER SCHOOL
27 TO YOUR SCHOOL ...

28 BOYS AND GIRLS **KINDERGARTEN THROUGH 6TH GRADE**

1 ARE INVITED TO COME TO GOOD NEWS CLUB!
2 EVERY WEDNESDAY ... BEGINNING NOVEMBER 9, 2011

3 TIME... 3:30 pm to 5:00 pm (right after dismissal) West Point Library

4 CONTACT PERSON: Brian Hughes [REDACTED]

5 IT'S FUN! IT'S FREE! IT'S for YOU!

6
7 The Dysart Unified School District neither endorses nor sponsors the
8 organization or activity represented in this material. The distribution or
9 display of this material is provided as a community service.

10 **WRITTEN PERMISSION IS REQUIRED FOR CLUB
11 ATTENDANCE**

(Please detach and return lower portion when child attends first club)

12 **PARENTAL PERMISSION SLIP / REGISTRATION FORM**

13 (Please write clearly)

14 _____ Age/Grade: ___/___ has permission to attend Good News Club.
15 Child's First & Last Name

16 _____
17 Address City ZIP CODE

18 _____
19 Parent's Phone Number Emergency Phone Number Parent's Email
Address

20 _____
21 Parent/Guardian Name (printed) Parent/Guardian Signature

22 Parent/Guardians are responsible for their child's safety from the time the
23 child leaves the school grounds until the child reaches home.

24 **Other Adults authorized to pick up my child:** _____ **AFTER CLUB:**
25 _____ I will pick up my
26 _____ My child has
27 _____ permission to
28 _____ walk/bike home
 Have my child
 return to After
 School Care

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GOOD NEWS CLUB is a Bible Centered after school club program sponsored by Child Evangelism Fellowship, Inc. This is a non-denominational organization made up of caring Christian adults and teenagers, who have been screened and have received specialized training to lead these clubs. GOOD NEWS CLUBS are offered in neighborhood homes, apartment complexes, and schools in communities across the United States, as well as in over 163 countries around the world.

GOOD NEWS CLUB teaches and encourages Biblical morals and values through a structured curriculum provided by Child Evangelism Fellowship including:

- EXCITING BIBLE LESSONS
- BIBLE MEMORY ACTIVITIES
- FUN GAMES
- ACTION SONGS

GOOD NEWS CLUB is FREE to all children that participate. Members of this community have contributed to Child Evangelism Fellowship, which is recognized by the US Government as a 501(c)3 non-profit organization, so that your child can participate in Good News Club at no cost to them. These contributions include facility usage fees charged to us by some school districts, background check screening of all of our workers, and liability insurance to protect the children, the workers, and the school from harm.

If you have questions or concerns about GOOD NEWS CLUB you can contact the local Child Evangelism Fellowship office at [REDACTED] during business hours, or email us at [REDACTED] at your convenience.

HEALTH CONCERNS / CHALLENGES / KNOWN ALLERGIES OF YOUR CHILD ...

45. Plaintiffs received an emailed response from Ms. Corsino on October 25, 2011 indicating that their request to distribute fliers had been denied.

1 46. When pressed to provide a reason for the denial, Ms. Corsino stated that “[t]he
2 majority of the flyers in our schools are originated by the Dysart District or are
3 promoting an activity that directly relates to our curriculum” and provided
4 Plaintiffs with a link to the District’s flyer-distribution website.

5 47. Plaintiffs then inquired whether the “denial of [CEFP’s] request [was] because [it
6 is] a Bible centered club?”

7 48. Ms. Corsino replied in the affirmative, stating that Plaintiffs’ “program is a
8 teaching/learning program which doesn’t support our curriculum because it is
9 religious in nature.”

10 49. This statement is confirmed by the notation written on Plaintiffs’ flyer-
11 distribution-request form, which states “Against district policy. Religious-based
12 curriculum.”

13 **The District’s Policies and Practices Regarding Literature Distribution**

14 50. West Point is a public elementary school located in Surprise, Arizona, which
15 includes grades K-8.

16 51. The School is under the direction of the District.

17 52. The District is the official policy maker and as such has enacted the Policies
18 challenged herein.

19 53. The District, pursuant to its Policies and practice, allows community
20 organizations to distribute flyers at District schools promoting their cultural,
21 recreational, artistic, civic, and educational opportunities, as well as their
22 activities providing instruction to students on a wide array of subject matters.

23 54. The following is a non-exhaustive list of the types of flyers the District has
24 distributed promoting the cultural, recreational, artistic, civic, and educational
25 events and activities of various community organizations:

- 26 a. Boy Scouts of America flyers advertising the various meetings and events of
27 local scouting Packs;
- 28 b. Cesar Chavez Foundation flyers advertising a “fun reading day to learn about

- 1 Dr. Martin Luther King Jr. and celebrate diversity in our community” and a
2 “Free Movie Night!” featuring “A Charlie Brown Thanksgiving”;
- 3 c. Interfaith Community Care flyer advertising a “Festival of Cheer,” a
4 community event “[c]elebrating cultures, diversity and holidays from around
5 the world”;
- 6 d. El Mirage Police Department flyer advertising “a toy drive to benefit the
7 Children of El Mirage”;
- 8 e. Luke Officers’ Spouses’ Club flyer asking students “to write cards for Luke
9 Airmen” to be distributed with “homemade care packages”;
- 10 f. Challenger Space Center flyer advertising “[i]nteractive astronomy night[s]”
11 and “Giant StarLab Planetarium programs” to help students learn “about
12 upcoming sky events, the stars, the moon, constellations, planets, folklore,
13 mythology and much more”;
- 14 g. Maricopa Live Steamers Club flyer advertising a “Military Appreciation
15 Day”;
- 16 h. City of Surprise Recreation Centers flyers advertising events and parties for
17 students, including Battle of the Bands, Electro Dance Party, Hands in the Air
18 Dance Party, Off the Wall Hip Hop Party, School’s Out Dance Party, Laser
19 Dance Party, The Hip Hop Takeover, iParty, Teen Talent Show, Pop Rock and
20 Hip Hop Dance Party, Glowstix Party, and much more;
- 21 i. Walk Now for Autism Speaks flyers encouraging “Students, Teachers, Parents
22 and Friends” to “[f]orm a walk team . . . to promote autism awareness and
23 acceptance”;
- 24 j. Estrella Mountain Community College flyer advertising a “kid’s college”
25 program including “culinary camp,” “robots & dance,” “art & languages,”
26 “music & more”;
- 27 k. Sun City Area Interfaith Services flyer advertising a “Strong Families,
28 Healthy Kids Fair” held by the Benevilla Family Resource Center, aimed at

- 1 “strengthening family relationships & preparing children for success”;
- 2 l. Salvation Army Sun Cities Corps flyer advertising a “Back to School
- 3 Clothing” program for those experiencing “hard economic times;”
- 4 m. Theater Works flyer advertising a “Puppet Works” presentation of “Saving
- 5 Santa”;
- 6 n. Phoenix Conservatory of Music flyer advertising “the new innovative
7 Phoenix Conservatory of Music Youth Choir for students in grades 7-12”;
- 8 o. Duet: Partners in Health and Aging flyer advertising a “free informational
9 session” about “the issues that affect grandparents raising grandchildren and
10 relatives as parents,” including “the joys and challenges of raising
11 grandchildren, available resources, the reasons parents are unable to care for
12 their children, and the services available to these special families”;
- 13 p. Camp Invention flyer advertising “the Camp Invention program — a safe,
14 innovative experience for children” that teaches “critical-thinking skills that
15 benefit them both in school and in life”;
- 16 q. City of Goodyear flyer advertising a “Movie Night in the Park” featuring “The
17 Blind Side” held to raise funds for a “Homeless Youth Challenge”;
- 18 r. Valley of the Sun United Way flyer advertising a program that “provides pool
19 fences to eligible families with children 6 years old or younger living in the
20 home”;
- 21 s. Arizona State University flyer advertising a “Summer Program for Early
22 Literacy and Language” for “4- and 5-year olds” “designed to boost oral
23 language and early literacy skills through fun and interesting teaching
24 activities”;
- 25 t. West Valley Arts Council flyer advertising a “spring break arts camp”;
- 26 u. National Brain Tumor Society flyer advertising “5K Brain Tumor Walk”;
- 27 v. Interfaith Community Care flyer advertising “Wirtzie’s Child Development
28 Center,” “an uniquely designed facility that offers high quality care to children

1 six weeks to five years old” featuring “[l]ow child to adult ratios that surpass
2 Arizona State standards, open classroom designs, highly education and trained
3 teachers, planned curriculum and child-centered, child-initiated activities”;
4 and

5 w. Numerous flyers on behalf of community organizations promoting youth
6 sports programs and activities.

7 55. In addition to distributing flyers from community organizations promoting their
8 cultural, recreational, artistic, civic, and educational opportunities, District Policy
9 K-2300 also allows nonprofit organizations to distribute flyers promoting
10 activities “providing instruction and practice for school age students” in numerous
11 subject areas. *See* Policy K-2300.

12 56. The subject areas identified in Policy K-2300 include: Language Arts; Literature;
13 Mathematics; Science; Social Studies; Music; Visual Arts; Health; Physical
14 Education; Foreign or Native American language; and Career and Technical
15 (Vocational) education.

16 57. The District has permitted many community organizations to distribute flyers
17 promoting programs that address many of the subject matters identified in Policy
18 K-2300.

19 58. The Plaintiffs’ religious flyers promote a program (its afterschool Good News
20 Club meetings) that addresses many of the subject matters identified in Policy K-
21 2300 from a religious perspective.

22 59. For example, the District approved Boy Scouts flyers publicizing educational
23 activities that “build[] character, train[] [students] in the responsibilities of
24 participating citizenship, and develop[] personal fitness.” Boy Scouts of
25 America, About the BSA, *available at* <http://www.scouting.org/About.aspx>.

26 60. These teachings are exemplified by one Boy Scouts poster distributed by the
27 District that promotes the following “words to live by”: “trustworthy,” “loyal,”
28

1 “helpful,” “friendly,” “courteous,” “kind,” “obedient,” “cheerful,” “thrifty,”
2 “brave,” “clean,” and “reverent.”

3 61. Like the Boy Scouts, Plaintiffs offer educational opportunities that instruct
4 students in moral values and aid their future Career success. For example,
5 Plaintiffs teach students many biblical values like treating others as they wish to
6 be treated; being honest and taking personal responsibility for their actions;
7 respecting others regardless of their appearance, behavior or beliefs; loving and
8 serving the members of their communities, and giving every task their best effort.

9 62. Also like the Boy Scouts, Plaintiffs’ biblically-based moral lessons facilitate the
10 District’s “Character Counts” program, which teaches values such as
11 “truthfulness, responsibility, compassion, diligence, sincerity, trustworthiness,
12 respect, attentiveness, obedience, orderliness, forgiveness, virtue, fairness, caring,
13 citizenship and integrity, and motivates young men and women to incorporate
14 these values into their lives.” West Point Elementary School Handbook at iv.

15 63. Moreover, the District permitted the distribution of a Chess Emporium flyer
16 inviting students to a chess club, which suggested that students who play chess
17 may “increase their math and verbal skills, as well as their creative and critical
18 thinking abilities.”

19 64. Like the Chess Emporium, Plaintiffs provide educational training — including
20 Bible stories, verse memorization, and review games — that increase students’
21 knowledge and understanding of Literature and Language Arts, as well as
22 studying techniques that aid all of their future academic endeavors.

23 65. The District also permitted Estrella Community College to distribute flyers
24 promoting artistic programs, such as singing and art classes, intended to “[s]park
25 young imaginations and give children a place to express their talents, learn new
26 skills and explore careers in an exciting campus setting.” Estrella Mountain
27 Community College, Kid’s College Registration Now Open, *available at*

28

1 [http://news.estrellamountain.edu/briefs/20110408/kids-college-registration-now-](http://news.estrellamountain.edu/briefs/20110408/kids-college-registration-now-open)
2 open.

3 66. Like Estrella Mountain Community College, Plaintiffs teach children how to sing
4 songs and engage in other artistic activities, all from a biblical perspective, thus
5 enhancing their skill and appreciation of Music and the Visual Arts.

6 67. Additionally, the District allowed the Challenger Space Center to disseminate
7 flyers promoting “astronomy night[s]” and “planetarium programs” that teach
8 students “about upcoming sky events, the stars, the moon, constellations, planets,
9 folklore, mythology and much more.” The center offers these programs “to
10 inspire, excite and educate people of all ages about the mysteries and wonders of
11 space, science and the universe in which we live.” Challenger Space Center, Our
12 Mission, *available at* <http://www.azchallenger.org/about-us>.

13 68. Like the Challenger Space Center, Plaintiffs’ Bible lessons teach students to
14 admire the complexity and beauty of the natural world, thus increasing their
15 appreciation of Science.

16 69. The District also distributed a flyer submitted by Interfaith Community Care
17 publicizing a Festival of Cheer held to “[c]elebrat[e] cultures, diversity and
18 holidays from around the world” featuring “Inflatables,” “Food Tastings,”
19 “Artists,” “Carolers,” “Face painting,” and “Crafts.”

20 70. Like Interfaith Community Care’s Festival of Cheer, Plaintiffs’ Bible lessons and
21 missionary stories enhance students’ familiarity with distant places and foreign
22 cultures, thus contributing to their knowledge of Social Studies.

23 71. Furthermore, the District approved a Cesar Chavez Foundation flyer regarding a
24 MLK Reading Day activity meant to help students “learn about Dr. Martin Luther
25 King Jr. and celebrate diversity in [their] community,” including a “[l]esson on
26 Dr. King’s values of helping others and celebrating who we are.”

27 72. Like Cesar Chavez Foundation, Plaintiffs’ Bible lessons and missionary stories
28 familiarize students with other peoples and cultures, thus contributing to their

1 knowledge of Social Studies. They also teach what the Bible has to say about
2 helping others and about celebrating who they are through understanding and
3 appreciating the gifts, talents, and abilities God gave them.

4 73. The District further permitted other religious groups to advertise activities and
5 programs it deemed sufficiently “secular,” including the Salvation Army’s Back-
6 to-School Clothing Drive, New Jerusalem Ministries’ Community Connection
7 Event, St. Mary’s Food Bank Alliance, and various programs offered by Interfaith
8 Services’ Benevilla Family Resource Center.

9 74. However, the District, pursuant to its Policies and practice, prohibited Plaintiffs
10 from distributing flyers advertising its events and activities because they are
11 considered too “religious.”

12 75. Even though the Plaintiffs’ flyers 1) promote activities that are similar to the
13 multitude of other cultural, recreational, artistic, civic, and educational events and
14 activities the District has permitted other community organizations to promote via
15 flyers, and 2) promote a program that addresses many of the subject matters
16 identified in Policy K-2300, the District is excluding Plaintiffs’ religious flyers
17 from their literature distribution forum.

18 **VI. ALLEGATIONS OF LAW**

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

21 77. Religious speech is fully protected by the First Amendment.

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

26 79. The government may not engage in viewpoint discrimination, regardless of the
27 forum.

28 80. Content-based restrictions on speech in a public forum are presumptively

1 unconstitutional and are subject to strict scrutiny.

2 81. Time, place, and manner restrictions on speech must be content-neutral, narrowly
3 tailored to serve a significant government interest, and leave open ample
4 alternative channels of communication.

5 82. All of the acts of the District, its officers, agents, employees, and servants were
6 executed and are continuing to be executed by the District under the color and
7 pretense of the policies, statutes, ordinances, regulations, customs, and usages of
8 the State of Arizona.

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

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

12 85. Unless the District's Policies and practice are enjoined, Plaintiffs will continue to
13 suffer irreparable injury.

14 86. Plaintiffs continue to hold events and activities at the School and continue to
15 desire to send flyers home through the District's literature distribution forum.

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

18 87. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1
19 through 86 of this Complaint.

20 88. The First Amendment's Freedom of Speech Clause, incorporated and made
21 applicable to the states by the Fourteenth Amendment to the United States
22 Constitution, prohibits censorship of religious expression.

23 89. The District's Policies and practice create an open forum by allowing community
24 organizations to distribute flyers that promote cultural, recreational, artistic, civic,
25 and educational opportunities, as well as activities that provide instruction to
26 students on various topics.

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- 1 90. However, Defendant's Policies and practice prohibit Plaintiffs from distributing
2 religious flyers promoting their events, activities, and instruction on permissible
3 topics.
- 4 91. Defendant is prohibiting Plaintiffs' speech despite the fact that it desires to
5 address the same or similar subject matters that other community organizations
6 are permitted to discuss, including, but not limited to: Literature; Science; Music;
7 the Visual Arts, Social Studies; Career and Technical (Vocational) education; as
8 well as cultural, recreational, artistic, civic, and educational opportunities
9 available to the community.
- 10 92. This unequal treatment of Plaintiffs' religious expression is a content-based
11 restriction in an otherwise open forum.
- 12 93. Barring Plaintiffs from conveying their religious speech promoting cultural,
13 recreational, artistic, civic, and educational opportunities, and their instructional
14 activities regarding the subject matters identified in Policy K-2300, while
15 permitting similar speech from secular community organizations, constitutes
16 viewpoint discrimination, which is unconstitutional in any type of forum.
- 17 94. District Policy K-0900, which prohibits "[n]on-school-originated material of a ...
18 religious nature," is both viewpoint-based and content-based on its face, and as
19 applied to Plaintiffs, due to its censorship of "religious" materials.
- 20 95. District Policy K-2300, which prohibits "[n]on-school promotional literature
21 soliciting for or promoting participation in ... religion," is also viewpoint-based
22 and content-based on its face, and as applied to Plaintiffs, due to its censorship of
23 "religious" materials.
- 24 96. The District's Policies and practice additionally impose an unconstitutional prior
25 restraint because they vest District officials with unbridled discretion to approve
26 or deny protected religious speech by community organizations.

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- 1 97. For example, the District's Policies allow District officials to act with unbridled
2 discretion in deciding if materials from community groups are "religious" in
3 nature, without any guidance as to what that term means. Policy K-0900.
- 4 98. District Policy K-2300 similarly specifies that "[n]on-school promotional
5 literature soliciting for or promoting participation in ... religion will not be
6 allowed on school property during school sessions," but fails to provide any
7 guidance on how to determine whether literature "solicits" or "promotes"
8 participation in "religio[us]" activities.
- 9 99. The District's Policies and practice, on their face and as applied, thus give District
10 officials unbridled discretion to prohibit certain community groups from
11 distributing flyers, while providing other community groups access to these
12 communicative mediums.
- 13 100. Even if a flyer is approved, the District's Policies and practice grant District
14 officials unbridled discretion to determine whether a flyer is given directly to
15 students and/or stacked in school offices.
- 16 101. The District's Policies and practice are also overbroad because they sweep within
17 their ambit protected First Amendment expression.
- 18 102. The overbreadth of the District's Policies and practice chills the speech of
19 community groups, like Plaintiff CEF, that seek to engage in private religious
20 expression through the distribution of flyers.
- 21 103. For example, the District's Policies and practice chill, deter, and restrict Plaintiffs
22 from freely expressing their religious beliefs.
- 23 104. The Policies, as interpreted and applied by the District to prohibit religious
24 speech, are not the least restrictive means required to serve any compelling
25 interest the District seeks to promote.
- 26 105. The District's Policies and practice burden more of Plaintiffs' speech than is
27 necessary because they foreclose Plaintiffs from using religious content and
28 viewpoints in their speech, even though this content is not disruptive.

1 106. The District's Policies and practice are furthermore not reasonably related to any
2 legitimate pedagogical concern.

3 107. Censoring community groups' religious speech *per se* is not and cannot be a
4 legitimate pedagogical concern.

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

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

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

12 109. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1
13 through 86 of this Complaint.

14 110. The District's Policies and practice target private religious expression for special
15 disability, thus violating Plaintiffs' constitutional right to the free exercise of
16 religion.

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

19 112. The District's Policies and practice explicitly exclude – and thus discriminate
20 against – religious expression.

21 113. The District's Policies and practice substantially burden Plaintiffs' free exercise
22 of religion by conditioning Plaintiffs' ability to speak on forgoing their free
23 exercise rights.

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

27 115. The District's Policies and practice thereby substantially burden Plaintiffs' free
28 exercise of religion by denying them the ability to include private religious speech

1 in the District's otherwise open communicative fora.

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

5 117. The special disabilities placed on Plaintiffs are neither neutral nor of general
6 applicability, as they are not applied to secular community groups.

7 118. The District's Policies and practice of barring Plaintiffs from distributing
8 religious flyers selectively imposes a burden on religious expression by singling it
9 out for discriminatory treatment.

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

12 120. The District's application of its Policies unconstitutionally chills Plaintiffs'
13 freedoms of religious exercise and expression, both of which are fundamental
14 rights guaranteed to Plaintiffs by the First Amendment.

15 121. The District's Policies, both facially and as applied, constitute an excessive
16 burden on Plaintiffs' free exercise of religion and violate the Free Exercise Clause
17 of the First Amendment to the United States Constitution, as incorporated by the
18 Fourteenth Amendment to the United States Constitution.

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

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

23 122. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1
24 through 86 of this Complaint.

25 123. The Due Process Clause of the Fourteenth Amendment prohibits the government
26 from censoring speech pursuant to vague or overbroad standards that grant
27 unbridled discretion.

28 124. The determination by the District of what is and what is not forbidden "religious"

1 speech violates this norm.

2 125. The District's Policies are vague and allow for unbridled discretion in
3 determining which community groups' speech transgresses their bounds.

4 126. The District's Policies lack any guidelines or directives to guide the decisions of
5 District officials when approving requests to distribute flyers and other literature
6 sought to be distributed by community groups.

7 127. Specifically, District Policy K-0900 bars the "release[]" of "[n]on-school
8 originated material of a ... religious nature ... through the students," but lacks any
9 guidelines for determining whether literature is "of a ... religious nature."

10 128. District Policy K-2300 similarly specifies that "[n]on-school promotional
11 literature soliciting for or promoting participation in ... religion will not be
12 allowed on school property during school sessions," but fails to provide any
13 guidance on how to determine whether literature "solicits" or "promotes"
14 participation in "religio[us]" activities.

15 129. The discretion given to District officials in the District's Policies leaves the
16 censorship of community groups' speech to the whim of District officials.

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

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

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

24 131. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1
25 through 86 of this Complaint.

26 132. The District's Policies and practice embody hostility toward religious expression
27 and require excessive entanglement with religion, both forbidden under the First
28 Amendment's Establishment Clause, incorporated and made applicable to the

- 1 states by the Fourteenth Amendment to the United States Constitution.
- 2 133. The District's Policies and practice, which specifically disallow Plaintiffs'
- 3 religious expression, evince a discriminatory suppression of private speech that is
- 4 not neutral, but rather is hostile toward religion.
- 5 134. The District, pursuant to its Policies and practice of suppressing private Christian
- 6 religious expression, sends the message to students, community groups, and
- 7 individuals that Christian organizations and individuals — like Plaintiffs — are
- 8 outsiders whose viewpoint should be excluded, rather than permitted along with
- 9 all other points of view.
- 10 135. The District's Policies and practice compel District officials to classify the speech
- 11 of private community groups according to its perceived religious-versus-
- 12 nonreligious nature.
- 13 136. This distinction necessarily requires District officials to consider the meaning
- 14 adherents of different faiths place on the words and events mentioned in their
- 15 communications to students and parents.
- 16 137. Such inquiries entangle District officials in the interpretation of religious doctrine
- 17 in a manner forbidden by the First Amendment.
- 18 138. For example, entanglement results from District officials attempting to discern
- 19 which private community groups' expression is too "religious" in nature to be
- 20 permitted.
- 21 139. District officials must also make theological interpretations in order to conclude
- 22 that the speech of certain community groups has "religious" overtones, while the
- 23 speech of other community groups does not.
- 24 140. In denying Plaintiffs the right to distribute flyers, the District exhibits hostility
- 25 towards religion that is the antithesis of neutrality.
- 26 141. No compelling state interest justifies the District's censorship of Plaintiffs'
- 27 religious expression.
- 28 142. The District's Policies and practice therefore violate the Establishment Clause of

1 the First Amendment to the United States Constitution.

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

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

6 143. Plaintiffs re-allege and incorporate herein, as though fully set forth, paragraphs 1
7 through 86 of this Complaint.

8 144. The Equal Protection Clause of the Fourteenth Amendment requires the
9 government to treat similarly situated groups equally.

10 145. Pursuant to its Policies and practice, the District allows community groups
11 similarly-situated to Plaintiffs to distribute flyers communicating secular
12 expression.

13 146. The District has treated Plaintiffs disparately when compared to similarly situated
14 community groups by banning only Plaintiffs' religious expression.

15 147. By discriminating against the content and viewpoint of Plaintiffs' speech, the
16 District is treating Plaintiffs' religious speech differently than that of other
17 similarly situated community groups.

18 148. The District's Policies and practice violate Plaintiffs' fundamental rights,
19 including the rights of free speech and free exercise of religion.

20 149. When government regulations — like the District Policies and practice challenged
21 herein—infringe on fundamental rights, discriminatory intent is presumed.

22 150. In this case, the presumption of discriminatory intent is born out by the District's
23 Policies and practice, which intentionally discriminate against Plaintiffs' religious
24 speech and free exercise of religion.

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

27 152. The District's denial of access to Plaintiffs is not narrowly tailored in that the
28 District's restriction of Plaintiffs' speech and free exercise of religion is unrelated

1 to any legitimate government interest.

2 153. The Policies, both facially and as applied, thus violate Plaintiffs' right to equal
3 protection of the laws, as guaranteed by the Fourteenth Amendment to the United
4 States Constitution.

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

7 **SIXTH CAUSE OF ACTION: VIOLATION OF THE FREE EXERCISE OF RELIGION ACT**
8 **ARIZ. REV. STAT. ANN. § 41-1493 *et seq.***

9 154. Plaintiffs re-allege and incorporate herein, as though fully set forth, Paragraphs 1
10 through 86 of this Complaint.

11 155. The District has substantially burdened and continues to substantially burden
12 Plaintiffs' right to the free exercise of religion through its Policies and practice by
13 preventing Plaintiffs from distributing religious flyers.

14 156. The District's Policies and practice substantially burden and conflict with
15 Plaintiffs' sincerely held religious beliefs.

16 157. The District's Policies and practice force Plaintiffs to set aside their religious
17 beliefs in order to communicate with students and parents.

18 158. The District's Policies and practice substantially burden and conflict with
19 Plaintiffs' sincerely held religious beliefs by significantly constraining and
20 inhibiting conduct and expression mandated by Plaintiffs' sincerely held religious
21 beliefs.

22 159. Specifically, the District's Policies and practice substantially burden and conflict
23 with Plaintiffs' sincerely held religious beliefs by denying Plaintiffs a reasonable
24 opportunity to publicize outreach activities that are fundamental to their religion.

25 160. The District's enforcement of its Policies thus substantially burdens Plaintiffs'
26 right to the free exercise of religion.

27 161. The District does not have a compelling, or even rational, governmental interest
28 in restricting Plaintiffs' religious speech.

1 162. The District's Policies and practice are not the least restrictive means of
2 furthering any legitimate interest the District seeks to secure.

3 163. The District's Policies and practice violate the Arizona Free Exercise of Religion
4 Act, Ariz. Stat. Ann. § 41-1493 *et seq.*, on its face and as applied to Plaintiffs.

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

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

- 9 a. That this Court issue a Preliminary and Permanent Injunction (1) restraining
10 the District, its officers, agents, employees, and all other persons acting in
11 active concert with it, from enforcing the Policies and practice challenged
12 herein that infringe upon Plaintiffs' constitutional rights by banning religious
13 expression, and (2) immediately allowing Plaintiffs to distribute flyers in the
14 same manner as other community organizations;
- 15 b. That this Court issue a Declaratory Judgment declaring Dysart Unified
16 School District Policies K-0900 and K-2300 unconstitutional, both facially
17 and as applied to Plaintiffs, insofar as they ban religious expression in
18 violation of the First and Fourteenth Amendments to the United States
19 Constitution;
- 20 c. That this Court render a Declaratory Judgment declaring unconstitutional the
21 District's practice of banning religious expression in violation of the First
22 and Fourteenth Amendments;
- 23 d. That this Court render a Declaratory Judgment declaring the District's
24 Policies, insofar as they ban religious expression, unlawful under the
25 Arizona Free Exercise of Religion Act;
- 26 e. That this Court render a Declaratory Judgment declaring the District's
27 practice of banning religious expression unlawful under the Arizona Free
28 Exercise of Religion Act;

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- f. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of a final judgment;
- g. That this Court retain jurisdiction of this matter for the purpose of enforcing any Orders;
- h. That this Court award Plaintiffs' costs and expenses of this action, including a reasonable award of attorney's fees, in accordance with 42 U.S.C. § 1988 and Ariz. Rev. Stat. Ann. §41-1493.01(D);
- i. That this Court award nominal damages for the violation of Plaintiffs' constitutional rights;
- j. That this Court issue the requested injunctive relief without a condition of bond or other security being required of Plaintiffs; and
- k. That this Court grant such other and further relief as the Court deems equitable and just in the circumstances.

1 DATED this 19th day of January, 2012.

2 s/Jeremy D. Tedesco

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**Application for Admission
Pro Hac Vice Forthcoming*

Attorneys for Plaintiffs Child Evangelism Fellowship Phoenix and Brian Hughes

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VERIFICATION

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

Executed this 17th day of January, 2012.

Brian S. Hughes
Brian Hughes
Individually and on behalf of
Child Evangelism Fellowship Phoenix