

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

Christa Schultz, Danny Schultz, Trevor  
Schultz, Corwyn Schultz, and Pat Doe,

*Plaintiffs,*

v.

Medina Valley Independent School  
District,

*Defendant.*

Civil Action No. SA-11-CA-0422-FB

Chief Judge Fred Biery  
Magistrate Judge Pamela A. Mathy

**First Amended Complaint**

1. For years, the Medina Valley Independent School District has unlawfully promoted religion generally and Christianity specifically at school and school-sponsored activities and events.
2. Religion has been promoted by individuals at all levels of the School District's hierarchy – from top administrators to the principal to teachers and coaches and even school aides. Religion is promoted in the classroom and over the loudspeaker; at athletic practices and academic award ceremonies; in individual encounters and at large public events.
3. The incorporation of prayers and religious doctrine at Medina Valley High School is systemic. The School principal often makes religious statements during the morning announcements. As class begins, teachers sometimes read Bible verses; crosses

and other religious icons adorn many classroom walls. At practices and before games, coaches lead student athletes in prayers. And attendees at major school events – including football games and graduation ceremonies – are exposed to prayers and other overtly religious messages; some from students handpicked by the school to deliver Invocations and Benedictions (or their equivalents), and others by school or invited members of the state government.

4. These practices have persisted for years and have survived multiple complaints from several of the Plaintiffs. Rather than address the Plaintiffs' concerns, the School District has retaliated against them. Most notably, the repeated expressions of concern by Plaintiff Corwyn Schultz, a recent graduate of Medina Valley High School, were met with counseling referrals, discipline, and even more religious remarks. Corwyn, moreover, was ultimately compelled to skip his own commencement, rather than attend a prayer-filled event that "resembled a revival as much as a small town graduation." Craig Kapitan, *Medina Valley Graduates Hear Prayers Aplenty*, (June 4, 2011, 11:54 p.m.), <http://www.mysanantonio.com/news/education/article/Medina-Valley-graduates-hear-prayers-aplenty-1410195.php>.

5. Even after the filing of this lawsuit and the resulting public attention, the School District has not changed its ways. Crosses and Bible verses, among other things, still adorn the school walls. The principal still makes religious remarks over the loudspeaker. Absent the Court's intervention, graduation will continue to resemble a

church service. As a result, the Plaintiffs – a current student joined by two former students and their parents – seek to redress these past, present, and future harms.

#### Jurisdiction and Venue

6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

7. The Court has the authority to grant declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

8. Venue is proper in this Court under 28 U.S.C. § 1391(b).

#### Parties

##### **A. The Plaintiffs**

9. The Plaintiffs are Christa and Danny Schultz, their children Trevor and Corwyn Schultz, and current Medina Valley High School student Pat Doe (who is seeking leave to proceed anonymously). Each Plaintiff has been injured by the School District's policy and custom of unconstitutional promotion of religion in the past, and each Plaintiff faces a concrete risk of such injuries in the future.

10. *Christa & Danny Schultz*. Christa and Danny Schultz reside in the Medina Valley Independent School District. They consider themselves to be Agnostic and do not subscribe to any religion. Their son Trevor attended Medina Valley High School from 2006 until 2009; their son Corwyn attended Medina Valley Middle School from 2006 until 2007 and attended Medina Valley High School from 2007 until 2011.

11. Christa and Danny Schultz were exposed to unwelcome prayers and religious messages, from both students and the School principal, when they attended the

graduation ceremony of a family friend at Medina Valley High School in 2008. They were again exposed to unwelcome prayers and religious messages, from both students and an invited state legislator, when they attended the graduation ceremony of their son Trevor in 2009.

12. Along with their son Corwyn, Christa and Danny reluctantly declined to attend Corwyn's 2011 graduation because multiple prayers were to be presented. They both plan to attend the Medina Valley High School graduation ceremonies in 2012, 2013, and 2014 to support family friends and close friends of Corwyn.

13. Christa and Danny also experienced unwanted prayers when attending Medina Valley High School home football games to watch their son Corwyn play in the marching band in fall 2007 and 2008. Danny Schultz also experienced unwanted prayers when he attended several home football games in 2009. Along with his son Corwyn, Danny plans to attend home football games in Fall 2011 and in future football seasons.

14. Christa and Danny Schultz object to and are offended by the District's custom and practice of presenting school-sponsored prayers at school events, including before sporting events and at graduation; they also objected to and were offended by the District's custom and practice of promoting religion – in the presence of their children, Trevor and Corwyn – during morning announcements, in classrooms, and at athletic practices and extracurricular activities.

15. These practices demean and exclude their religious beliefs, fail to respect others' beliefs and religions as mandated by their personal beliefs, reflect a disregard of

the boundary between church and state that is necessary in a pluralistic society, coercively expose them and their children to publicly-sponsored religious exercises and pressure them to participate in religious exercises, and impeded their ability to direct and control the religious upbringing of their children free from governmental intrusion or interference.

16. *Trevor Schultz*. Trevor Schultz attended Medina Valley High School from fall 2006 until his graduation in June 2009. Although he no longer resides within the boundaries of the Medina Valley Independent School District, he continues to live in the State of Texas. Like his parents, Trevor is religiously Agnostic.

17. Trevor encountered prayers and religious messages and icons while attending classes and events at Medina Valley High School. In addition, Trevor was repeatedly exposed to and coerced to participate in prayers as a member of the school's soccer team. Finally, Trevor attended his own Medina Valley High School graduation ceremony in 2009, and also attended graduation ceremonies in 2008 and 2011. At each graduation ceremony, he was exposed to multiple prayers and religious messages presented as part of the official program.

18. Trevor intends to join his family in attending Medina Valley High School graduation ceremonies 2012, 2013, and 2014, to support friends of the family and several of his brother Corwyn's close friends.

19. Trevor is deeply offended by these school-sponsored prayers and efforts to promote religion. These customs and practices demean and exclude his religious beliefs,

fail to respect others' beliefs and religions as mandated by his own personal beliefs, reflect a disregard of the boundary between church and state that is necessary in a pluralistic society, and coercively expose him to publicly-sponsored religious exercises.

20. *Corwyn Schultz*. Corwyn Schultz attended Medina Valley Middle School from 2006 until 2007 and Medina Valley High School from 2007 until his graduation in June 2011. When this suit was filed, Corwyn proceeded, under the initials C.S., through his parents Christa and Danny Schultz as next friends. Corwyn Schultz has since turned 18, so he now brings suit in his own right, without his parents as his representatives.

21. Corwyn, like his parents and brother, is religiously Agnostic. He attended his brother Trevor's graduation ceremony in 2009, where he was exposed to unwelcome prayers. He repeatedly heard prayers presented before sporting events, including football games, and was required to stand for those prayers in fall 2007 and fall 2008 as a member of the marching band. He repeatedly heard the Medina Valley High School principal deliver prayers over the school's public-address system; encountered religious messages from teachers and other school staff on multiple occasions, and saw a variety of religious icons and messages displayed in classrooms and throughout the school. When he complained to school officials about these practices, he was disciplined. Finally, Corwyn wanted to attend his own graduation ceremony in June 2011, but reluctantly declined to do so because the ceremony would (and did) feature multiple prayers.

22. Corwyn plans to attend the Medina Valley High School graduation ceremonies in 2012, 2013, and 2014 to support family friends and several of his close friends. He also plans to attend Medina Valley High School football games during Fall 2011 as well as in future seasons.

23. Corwyn objects to and is offended by the School District's school-sponsored prayers and promotion of religion, because the practices demean and exclude his religious beliefs, fail to respect others' beliefs and religions as mandated by his personal beliefs, reflect a disregard of the boundary between church and state that is necessary in a pluralistic society, and coercively expose him to publicly sponsored religious exercises. In addition, the religious environment at Medina Valley High School – and the retaliation he experienced after raising concerns with School District officials – caused Corwyn to suffer from stress, anxiety, insomnia, stomach cramps, and nausea.

24. [Redacted]

25. [Redacted]

26. [Redacted]

**B. The Defendant**

27. Plaintiffs bring this action against the Trustees of Medina Valley Independent School District, a corporate body that is amenable to suit under Texas law and that may sue – and be sued – in the name of Medina Valley Independent School District. *See* Tex. Educ. Code Ann. § 11.151(a); *San Antonio Indep. Sch. Dist. v. McKinney*, 936 S.W.2d 279,

283 (Tex. 1996) (“an independent school district is . . . amenable to suit in federal court under the Eleventh Amendment to the United States Constitution”).

28. The School District has “the primary responsibility for implementing the state’s system of public education” within its geographic borders. Tex. Educ. Code Ann. § 11.002. It thus has “the exclusive power and duty to govern and oversee the management of the public schools of the district,” including the authority to “adopt rules and bylaws necessary to carry out” those duties. *Id.* § 11.151(b), (d). This statutory authority enables the School District to institute and implement the school-sponsored prayer practices, policies, and customs that the Plaintiffs challenge in this case.

#### General Allegations

29. It is and has been the policy and custom of the School District to promote religion at school and school-sponsored activities and events. Religion has been promoted by those at all levels of the School District hierarchy, from the administration to the principal to coaches and teachers to school aides and employees. It has persisted for years, in a variety of curricular and extracurricular settings, and despite efforts by Plaintiffs and others to change these practices. It continues to this day, and absent the Court’s intervention it will proceed in the future.

#### **A. Religious Remarks During School Announcements**

30. [Redacted]

31. After the Pledge of Allegiance and the regular moment of silence, Principal Tyler often makes religious statements – such as asking for God’s blessing – over the



school's loudspeaker during the morning announcements. These statements, which have taken place up to several times a week, began when Mr. Tyler arrived as Medina Valley High School Principal in fall 2007 and continued through October 2008.

32. After Christa, Danny, and Corwyn Schultz complained to School District officials about Mr. Tyler's religious remarks, Mr. Tyler refrained from delivering them for just over a year. But Mr. Tyler resumed his religious remarks, with roughly the same frequency as before, in February 2010.

33. When Christa and Danny Schultz renewed their concerns about these religious remarks, Assistant Superintendent Chris Martinez stated that, "[a]fter consulting with our school district's legal representation, it was found that saying the word 'God' or the phrase 'God Bless Them' does not constitute an open prayer." Mr. Martinez later stated that Mr. Tyler has the "right as the principal to address the students in a way that he felt was appropriate."

34. Backed by the School District, Mr. Tyler's religious remarks have continued. For instance, on September 12, 2011, he introduced the moment of silence by asking students to "pray for our soldiers" and stated "God Bless America."

#### **B. Promotion of Religion in the Classroom and During the School Day.**

35. The promotion of religion continues throughout the school day. Students are often exposed to prayers and other religious communications from teachers and other staff. For instance, Plaintiffs have encountered the following remarks and practices:

36. During the 2006–07 school year, the teacher of Corwyn Schultz’s leadership class at Medina Valley Middle School repeatedly referenced religion as part of class assignments. Danny and Christa Schultz ultimately asked the school to transfer Corwyn out of the class because its religious content had become so pervasive.

37. During the 2007–08 school year, Corwyn Schultz was asked about his religion by Officer Sides, the school’s uniformed police officer. After learning that Corwyn was not a Christian, Officer Sides gave Corwyn a pamphlet containing information on why one should love Jesus. Indeed, Officer Sides had a stack of Christian pamphlets that could be seen in his office by students in the library, including Trevor Schultz.

38. Towards the end of the 2008–09 school year, teacher Nicol Houston prayed for Trevor Schultz’s class and read from the Bible. Ms. Houston had engaged in similar conduct with a prior year’s class as well.

39. During the 2009–10 school year, teacher Patti Maldonado assured Corwyn Schultz’s class, in response to a question about whether students could be disciplined for saying “Merry Christmas,” that she was a Christian.

40. In February 2010, Attendance Clerk Christine Willing told Corwyn that she would “pray for [him]” because he was wearing a President Obama t-shirt.

41. During the 2010–11 school year, Ms. Wolfshohl answered “loves you” after a student in Corwyn Schultz’s class said “Jesus, Jesus.”

42. In Corwyn Schultz’s class in March 2011, Ms. Griggs asked students to pray for her during her class because she was suffering from a headache.

43. [Redacted]

44. [Redacted]

45. [Redacted]

46. On information and belief, teachers have told students that they will “pray for you” and, when separating a male and female student engaging in a public display of affection, to “Make sure to leave a little room for Jesus between you.”

### **C. Display of Religious Icons and Texts at School.**

47. In addition to experiencing repeated prayers and religious remarks by School District officials and employees, students are also regularly confronted with religious displays, icons, and symbols around the school.

48. A cross greets students on the school’s front desk. Multiple teachers have crosses on the walls of their classrooms; at least one teacher has a cross on the wall behind her desk.

49. Also on display are many religious texts. A verse from the book of Matthew hangs on the filing cabinet in the nurse’s office, and is visible to students when they enter. Ms. Houston displays a Bible in her classroom.

50. Former Vice-Principal Turcato likewise displayed a sign in his office window, with the text facing a school hallway regularly used by students, quoting Proverbs 3:5, “Trust in the Lord with all your Heart.” *See Ex. 1.*

51. Religious icons are also displayed by School District administration. For instance, when Danny and Christa Schultz met with Assistant Superintendent Martinez

in winter or spring 2010, they saw a cross prominently displayed on his wall. That cross was still on display in summer 2011, when Mr. Martinez gave an interview to a television reporter about this case. *See* Ex. 2.

**D. Prayer at Extracurricular Activities, Awards Ceremonies, and Athletic Events**

52. The School District's promotion of religion continues during after-school activities.

53. *Pre-game Prayer Circles.* Coaches regularly lead members of the Medina Valley sports teams in group prayer. For instance, during Trevor Schultz's three years on the soccer team, Coach Nathan Payne chose a student to lead the team in the Lord's Prayer before every game; Coach Payne participated in the prayer circle as well.

54. The women's soccer coach similarly directs the team before each game to stand in a circle, join hands, and recite a prayer together; the team typically recites the Lord's Prayer; and the coach participates in the prayer circle.

55. [Redacted]

56. Coach Womack, who coaches the women's basketball team, asked the team to choose a regular pregame ritual. When a team member suggested a prayer circle during which the team would recite the Lord's Prayer, Coach Womack made participation in that ritual mandatory.

57. For at least the past four years, the volleyball team has formed a prayer circle and recited the Lord's Prayer before each game. Coaches Griggs and Houston often participate in these prayers.

58. *Fellowship of Christian Athletes.* The Medina Valley High School Fellowship of Christian Athletes is a religious club for students, but faculty and administration officials frequently participate in and sometimes lead its meetings or prayers.

59. Principal Tyler and Vice Principal Turcato have regularly attended Fellowship meetings. Principal Tyler led the students in prayer on at least one occasion; on another occasion, Vice Principal Turcato gave a speech describing his conversion to Christianity. Many coaches and teachers also regularly attend Fellowship meetings and participate in the prayers.

60. In the fall of 2006, Coach Payne encouraged members of the Medina Valley High School soccer team, including Trevor Schultz, to attend a Fellowship meeting. Coach Payne suggested that the team needed to make a “good showing” at the meeting. Trevor felt pressured to and did in fact attend the meeting; several faculty members attended as well and appeared to participate in the prayers.

61. *Invocations at Football Games.* Prayers are delivered over the loudspeaker at all or nearly all Medina Valley High School football games. Every year, the School District selects the Student Council Vice-President to deliver this prayer.

62. For instance, Kallisyn Gouard, the 2010–11 Student Council Vice President, was told by School officials that delivering an Invocation at home football games was a part of her Student Council responsibilities. Ms. Gouard looked up the definition of “invocation” in the dictionary and determined that it required a prayer. As a result, Ms.

Gouard gave a Christian prayer before every home football game at Medina Valley High School during the 2010 season. *See* Ex. 3 (text of 2010 football-game prayers).

63. As a member of the marching band during fall 2007 and fall 2008, Corwyn Schultz was repeatedly required to stand at attention during the Invocation at Medina Valley High School home football games. If Corwyn refused, the band's student leaders forced him to do pushups or other physical tasks.

64. *Invocations at Other School Board Meetings and Other Administration-Sponsored Events.* Many other events have featured Invocations or other official prayers. The School District selects students to deliver prayers at National Honor Society events and scholarship ceremonies. Prayers have also taken place before softball and basketball games and have regularly taken place before public meetings of the School District's Board of Trustees.

65. Starting no later than January 2009 until at least May 2011, nearly every public meeting of the School District's Board of Trustees began with a prayer. Most of these prayers were delivered by Michael Nesbit, first as principal of the Medina Valley Middle School and then as the School District's Assistant Superintendent. Others were delivered by the School District's Superintendent James Stansberry.

66. Beginning in at least 2007 and continuing until at least 2010, the Medina Valley Chamber of Commerce held a New Teacher Luncheon for incoming teachers at Medina Valley Independent School District schools and nearby St. Louis Catholic School. *See* Ex. 4 (New Teacher Luncheon website). Superintendent James Stansberry and Assistant

Superintendent Chris Martinez spoke at the 2010 event; Mr. Martinez also led portions of the program. *Id.* A local pastor led attendees in a prayer. *Id.*

**E. Retaliation Against Those Who Express Concerns About the School District's Unlawful Promotion of Religion.**

67. In light of the religious environment created and condoned by the School District, most students are unlikely to express concerns to School District officials about the promotion of religion. When Corwyn Schultz tried to do so, retaliation was prompt.

68. In October 2008, Corwyn Schultz filed a complaint against Principal Tyler because of his ongoing practice of making religious statements during the morning announcements. After Corwyn did so, school officials referred him to a school counselor. When Christa and Danny Schultz asked why their son had been sent to counseling, they were told that both the reason for counseling and the identity of school official who made the referral, was "confidential." Had his parents not complained to the school, Corwyn would likely have been required to attend weekly counseling sessions as a result of his complaint against Mr. Tyler.

69. After Christa and Danny Schultz repeatedly complained to School District officials, Principal Tyler eventually apologized to Corwyn and, for a time, stopped making religious statements over the morning announcements.

70. That changed, however, when Corwyn expressed additional concerns about the promotion of religion at school. In early February of 2010, Attendance Clerk Christine Willing told Corwyn that she would "pray for [him]" because he was wearing a President Obama t-shirt.

71. When Corwyn complained to Mr. Tyler about Ms. Willing's remark, Mr. Tyler dismissed his concerns. Rather than try to learn what happened or address the situation, Mr. Tyler told Corwyn to return to his office only after highlighting the portion of the student handbook that Corwyn believed had been violated by Ms. Willing. Christa Schultz then contacted Mr. Tyler, and likewise received little assistance from him; she then contacted an Assistant Principal, who proved more responsive.

72. Within a few days of Corwyn's complaint, however, Mr. Tyler resumed delivering prayers and other Christian messages during school announcements.

73. On February 18, 2010, Corwyn returned to Mr. Tyler's office, attempting again to address Ms. Willing's remark and also to express his concerns about the resumption of Mr. Tyler's religious announcements. As soon as he arrived, Mr. Tyler gave him Saturday detention for violating the dress code by having a hole in his jeans. This immediate detention was contrary to the School's policy, which provided that "[i]f the principal or designee determines that a student's dress or grooming violates the dress code, the student shall be given an opportunity to correct the problem at school" before receiving detention or suspension. After issuing the Saturday detention, Mr. Tyler stood close to Corwyn and yelled at him that he did not have "a law degree, a college degree, or even a high-school diploma." He then ordered Corwyn to leave his office.

74. After he learned about the retaliation against Corwyn, Danny Schultz attended a meeting with Mr. Tyler. At the meeting, Mr. Tyler compared Corwyn's complaints



about the promotion of religion at school to personal attacks – stating that, “when I’m cut, I bleed red.”

75. Mr. Tyler refused to rescind the Saturday detention or stop praying or delivering religious remarks over the loudspeaker. The Assistant Superintendent also refused to either undo the detention or end Mr. Tyler’s prayers and religious remarks, which persisted through Corwyn’s junior and senior years.

**F. Promotion of Religion at Graduation Ceremonies.**

76. As it does during the school day, at extracurricular practices and activities, and at football games and other public events, the School District promotes religion at the annual Medina Valley High School graduation ceremony.

77. [Redacted]

78. These graduation ceremonies bear the School District’s stamp. School officials select and make available the venue, provide the sound system through which remarks are delivered, determine the order of the events, and otherwise orchestrate the presentations. The School District plans the ceremony, conditions attendance at graduation on participation in multiple rehearsals, and this year even overruled the senior class’s choice of a graduation song.

79. The School District’s control extends to graduation speakers. Its policies limit the opportunity to “the top three academically ranked graduates, the class president, and student council officers.” The School District reviews and approves all student remarks. Before 2011, each year’s graduation program designated one student speech as

the "Invocation" and another as the "Benediction"; the original 2011 program bore the same designation, but on the eve of graduation the School District renamed these prayers as the "Opening Remarks" and "Closing Remarks." The School District provides the current year's speakers with the texts of the prior year's speeches, many of which were prayers. And during the presentation of the prayers, school officials stand and bow their heads.

80. After Christa and Danny Schultz expressed their concerns about the graduation format to Assistant Superintendent Martinez, the Assistant Superintendent reiterated the School District's control over and endorsement of the contents of graduation ceremonies:

While you may respectfully disagree with the format or religious portions of our district ceremonies, they are overseen and supported by our Board of Trustees. We have faith and belief that these elected officials represent the values and standards of our community. With that being said, there are no plans to change or sway from the current graduation format that has traditionally been used.

Ex. 5 (Email from C. Martinez to D. Schultz).

81. *The 2008 Graduation Ceremony.* Christa, Danny, Trevor, and Corwyn Schultz all attended the 2008 Medina Valley High School graduation ceremony to support a family friend. The ceremony featured an Invocation and a Benediction, both of which were prayers and both of which were listed in the program. The 2008 graduation ceremony also featured an explicitly Christian speech by the Principal, Mr. Tyler.

82. *The 2009 Graduation Ceremony.* Christa and Danny, along with Corwyn, attended the graduation of their son Trevor in 2009. As in 2008, the ceremony featured

an Invocation and Benediction; as in 2008, the Invocation and Benediction were listed in the program and consisted entirely of prayers. Ex. 6 (2009 graduation program).

83. The students who gave these prayers asked the audience to stand and pray. When Christa and Danny Schultz elected to remain seated during the prayer, other audience members glared and pointed at them and whispered to each other in attempt to determine which graduate Christa and Danny were related to. One person, who had been sitting near the Schultz family, moved several rows away.

84. In addition to the Invocation and Benediction, the graduation ceremony featured a speech by State Representative Tracey King, who on information and belief was invited to speak by the School District. Representative King's remarks were overtly Christian.

85. *The Schultz Family Challenges the Promotion of Religion at the 2011 Graduation Ceremony.* After unsuccessfully attempting—for over a year—to persuade the School District to design a more inclusive program for the 2011 graduation, the Schultz family received confirmation from the School District, in late May 2011, that Corwyn's graduation ceremony would feature prayers. On May 26, 2011, the Schultz family filed this lawsuit and sought, along with other retrospective and prospective relief, a preliminary injunction against prayers at the June 4, 2011 graduation ceremony.

86. In response to the lawsuit, the School District made clear to its employees that the School District endorsed the years-long practice of including prayers at graduation: “[T]raditionally, our student speakers have chosen to speak words that greatly reflect

our community standards, beliefs and values. We are proud of them and the words they have spoken for the past 50 years.” Ex. 7 (Email from C. Martinez to MVISD District Staff).

87. On June 1, 2011, this Court issued a preliminary injunction and temporary restraining order preventing any student speaker at the scheduled June 4, 2011 graduation ceremony from leading the audience in prayer. The injunction specifically allowed student speakers to make statements about their own religious beliefs.

88. Reaction to this Court’s ruling was fierce. Local residents vowed to disrupt the graduation ceremony by praying loudly. See Jack Dennis, *Students to Pray at Medina Graduation Despite Judge’s Ruling Citizens Say*, Examiner.com (June 1, 2011), <http://www.examiner.com/military-families-in-san-antonio/students-to-pray-at-medina-graduation-despite-judge-s-ruling-citizens-say>. A Kansas religious group announced that it would bus protestors to the ceremony. See *Perry Against Judge’s Prayer Ruling*, KCENTV.com (June 3, 2011 5:41 p.m.) <http://www.kcentv.com/story/14836684/perry-against-judges-prayer-ruling>. The group America Guarding Against Political Extortion (“AGAPE”) – which describes itself as “very, very Christian” – held a rally outside of the 2011 graduation ceremony; its members were greeted and thanked for their efforts by the Superintendent’s wife. Ann Work, *Local Group Blasts Judge*, Times Record News (June 19, 2011) <http://m.timesrecordnews.com/news/2011/jun/19/local-group-blasts-judge/>.

89. At the graduation rehearsal held on June 1, 2011, Assistant Superintendent Chris Martinez read this Court's order aloud to students and parents. After doing so, he bowed his head, said a prayer, and made the sign of the cross – all in full view of the entire senior class.

90. On June 3, 2011, following the School District's appeal, the U.S. Court of Appeals for the Fifth Circuit overturned this Court's order, pointing to the "incomplete factual record at this preliminary injunction stage." *Schultz v. Medina Valley Independent School District*, No. 11-50486 (5th Cir. June 3, 2011). As a result, the School District proceeded with its plans to present multiple prayers at the next day's ceremony.

91. *The 2011 Graduation Ceremony*. The School District-designated participants did not hold back. Prayers came from multiple students and the invited member of the state legislature. Prayers and religious messages were so prevalent that the ceremony "resembled a revival as much as a small town graduation." Craig Kapitan, *Medina Valley Graduates Hear Prayers Aplenty*, (June 4, 2011, 11:54 p.m.) <http://www.mysanantonio.com/news/education/article/Medina-Valley-graduates-hear-prayers-aplenty-1410195.php>.

92. Brooke Petty had been selected by the School District to deliver the Invocation; after the lawsuit was filed, the School District renamed the Invocation as the "Opening Remarks." Despite the name change, her remarks – which had been reviewed and approved by the School District – consisted entirely of an extended prayer:

Those who wish will you please pray with me. Dear Lord, as we begin this evening's graduation ceremony, we want to give you the glory. We

are so very thankful that you have given us this time to celebrate. We know that we would not be here without your blessing. We ask your blessing on all whom have contributed to making this evening possible. Those who have encouraged, taught, nurtured and prayed for us, that we could be at this place today. We give thanks for our proud parents, and grandparents. We give thanks for our teachers and coaches, four our school administrators, and for our faithful friends and family. Strengthen our faith lord, so that in adversity we can remain true to you. We ask that you guide us all in the paths of love, peace, kindness, and self control. We pray that these graduates will go out into this world loving their neighbors and working towards the good of all. In your name we pray. Amen.

93. During this prayer, all attending School District administrators and a majority of the majority of the audience stood. The prayer was greeted by shouts of "Amen" as well as loud cheering and applause from the audience.

94. Class President Alicia Guerin then delivered her speech, concluding with the refrain "God Bless America. God Bless Texas. And God Bless the Class of 2011."

95. At the conclusion of his remarks, salutatorian David Wurzbach introduced the valedictorian, Angela Hildenbrand. Wurzbach told the audience that Hildenbrand "walks in Christ, and her heart is as pure as it was when she was walking through the halls of St. Louis [Catholic School] with me back in the day."

96. At the conclusion of her remarks, Hildenbrand asked the audience to stand as she delivered a lengthy prayer:

Lord I thank you so much for the blessing of this day. And I just thank you for the amazing group of people that you surrounded me with. God I thank you for the support of our whole entire community though this case hearing and also for Erin and all of the people at the Liberty Institute and my parents who've helped get me through the last couple of days. Lord I just thank you so much for your presence in our lives through these eighteen years, and I just praise you for your incredible faithfulness

through all adversity and all joy. God I thank you for the men and women who have given their lives helping to give us and protect the freedom we have today, and I ask you to please keep your hand of guidance on all of them past, present, and future military. God I thank you just so much for the freedom to be here today, and most of all I thank you for loving us first.

God, I ask that you please keep each of us safe and well, as we all go our separate ways, and I can't wait to see where you'll be leading each of us. I ask that you ask us all to remember where we come from, and to know where we stand.

God I thank you for the gift of your Son and for the forgiveness that surpasses all understanding, and most of all I think you for your great love for us, and our great nation and where we are free. And it's in Jesus' name I pray. Amen.

The crowd responded by shouting "Amen."

97. A few days before the ceremony, Hildenbrand had attempted to intervene in this case before the U.S. Court of Appeals for the Fifth Circuit and argued that she had a First Amendment right to pray in her graduation speech. She did not tell the Fifth Circuit, however, that the final draft of her speech – which had already been submitted to and approved by the School District – contained no prayer. Indeed, Hildenbrand's purported desire to deliver a prayer at graduation came only *after* this Court had prohibited the School District from allowing prayers at graduation. This was a flagrant attempt to manufacture standing – which she otherwise would have lacked – for the purpose of intervening in the case at the eleventh hour.

98. The School District knew that Hildenbrand's stated desire to present a prayer was a ruse, because the School District had previously approved the final draft of Hildenbrand's prayer-free remarks. But the School District neither prohibited

Hildenbrand from modifying her remarks post-approval nor alerted the Fifth Circuit that Hildenbrand's supposed interest in the case was manufactured.

99. Following Hildenbrand's speech and prayer, the audience heard a religion-heavy speech from State Representative John Garza, who had been invited to speak by the Superintendent. Among many other references to religion generally and Christianity specifically, Representative Garza thanked the Superintendent for "his stand that he's chosen to take to defend our rights as citizens and as a community to exercise and declare our belief in faith and prayer"; told the audience that, "I see his [God's] very government established in here, in you, his people," and observed that, "It's almost humorous that we were almost mandated today not to pray, by our own courts. The Judge of all judges commands us to pray."

100. Kallisyn Gouard was selected to deliver the Benediction, which the School District renamed as "Closing Remarks" a few days before graduation. Gouard understood that by selecting her to deliver the Benediction, the School District wanted her to deliver a prayer. Likewise, Gouard saw no significance in the decision to rename the Benediction as "Closing Remarks": she believed that the latter was simply another name for the former.

101. Like the Invocation-turned-Opening, the Benediction-turned-Closing was submitted to and approved by the School District. And like the Invocation-turned-Opening, the Benediction-turned-Closing consisted entirely of a prayer:

Those who wish, please pray with me. Dear heavenly father, thank you for bringing all of us here tonight with our family and friends. We thank



you for the many blessings you have given us during the past 18 years and the many blessings to come. As we look forward to our future, we ask you for your guidance and love, to lead and protect us. Second Corinthians, chapter 12, verse 9 and 10 says "he said to me, my grace is sufficient for you, for my power is made perfect in weakness, so I will boast all the more gladly of my weaknesses, so that the power of Christ may dwell in me. Therefore, I am content with weaknesses, insults, hardships, persecutions, and calamities for the sake of Christ. Forever, when I am weak, I am strong."

We have overcome so much in our lives, we just ask that you walk with us as we continue into this pivotal part in our lives. As we came together as a class and community tonight, please watch over everyone here, and those who could not be with us, and lead us all on your path. We are all so grateful for all the opportunities that we have been given, and help us to make the most of every chance that we have. Lord, help us all to remain diligent in our faith, and have courage to stand up when no one else will, and the strength to carry on even when all the odds are stacked against us. We ask you to protect everyone on our journeys home. In Jesus' name we pray.

102. As with the other prayers, the audience greeted this prayer cheering, applause, and enthusiastic shouts of "amen."

#### **G. The School District's Purported Concern with Student Expression.**

103. After the Plaintiffs brought this lawsuit in May 2011, the School District began to argue that Plaintiffs were seeking to interfere with student expression. Among other things, the School District has invoked its student-expression policy, which purports to require the School District to select student speakers by lottery after soliciting volunteers.

104. Many of the School District's practices, of course, involve remarks by School District officials and employees, not by students. Even as to students, however, the School District handpicks the student speakers who deliver prayers. On information

and belief, few students – including students actually selected to speak at events – have heard of the School District soliciting or randomly choosing among volunteer speakers.

105. At football games, for instance, the opening remarks for the entire season are delivered by just one student – a member of the student council selected by the School District. And far from allowing the student to choose the topic of presentation, the School District tells the selected student to deliver the Invocation. The student selected to deliver the 2010 Invocation at football games looked up the term in the dictionary and concluded that the School District was asking her to deliver a prayer before each game. At the 2011 senior awards ceremony, the School District likewise selected the opening student speaker and designated his remarks as the Invocation. Ex. 8 (2011 senior awards program).

106. The School District similarly directed the content of certain graduation speeches by officially naming them Invocation and Benediction. Although in 2011 the District changed the names to “opening remarks” and “closing remarks,” this change came at the eleventh hour – after the student remarks had been drafted and approved by the District – and only after the Schultz family filed suit. And students, including the student who was selected to deliver the Benediction, recognized that “opening remarks” and “closing remarks” were merely Invocation and Benediction by another name.

107. Whatever they were called, the Invocation-turned-Opening and Benediction-turned-Closing were guided by the School District in a manner that invited prayers. For

instance, under the School District's policy, graduation speeches must "relate[] to the purpose of the graduation ceremony and to the purpose of marking the opening and closing of the event; honoring the occasion, the participants, and those in attendance; bringing the audience to order; and focusing the audience on the purpose of the event." And the School District distributes, to each year's speakers, copies of the previous year's remarks, many if not most of which contain prayers.

108. The School District reviews student graduation speeches in advance, and students are permitted to deliver only remarks that the District approved. The School District itself recognizes the impact of this procedure: "*A student is not using his or her own words* when the student is reading or performing from an approved script, is delivering a message that has been approved in advance or otherwise supervised by school officials, or is making brief introductions or announcements." Medina Valley Independent School District policy on Student Expression, Policy # 163908, FNA (local) (emphasis added).

109. The School District also typically omitted the disclaimer required by its own policies. "[A]t each event in which a student shall deliver an introduction, a disclaimer shall be stated in written or oral form, or both." *Id.* The School District never issued a written or oral disclaimer at football games, or at any other awards or athletic ceremonies in which prayers were delivered by students. Nor did the School District do so at graduations, until this year's ceremony, and then only in response to the Schultz family's lawsuit. Even when the School District added a disclaimer in 2011 – after this

lawsuit highlighted that the required disclaimers were missing – it did so grudgingly. The Superintendent, who read the disclaimer, announced that there was a “little statement” that he “ha[d] to make.”

110. For similar reasons, the School District has failed to comply with the Texas Religious Viewpoint Antidiscrimination Act, Tex. Educ. Code Ann. §§ 25.151 et. seq. Among other things, the School District has failed to comply with the Act’s disclaimer provisions, *id.* § 25.152(b), and the School District’s limitations on the content of student speeches exceed those contemplated by the Act, *id.* § 25.152(a)(3) (2011).

111. In short, the School District’s purported concern with student expression is a creature of litigation, not an actual policy or practice. Moreover, the religious environment created and condoned by the School District not only informs how a reasonable observer would perceive prayers delivered by students at school events, but also increases the likelihood that students will deliver prayers in the first place.

#### **Claim for Relief: Violation of First Amendment**

112. Paragraphs 1 through 111 above are incorporated as if fully set forth here.

113. The First Amendment to the United States Constitution provides, in relevant part, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech.”

114. The First Amendment applies with full force and effect to the acts of local public-school officials through the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

115. As part of its policy and custom, the Medina Valley Independent School District has violated and continues to violate Plaintiffs' rights under the Establishment Clause. The primary purpose of the conduct described above has been, and continues to be, to promote and advance religion. The School District's course of conduct has had and continues to have the effect of advancing and endorsing religion. To the extent that the School District's conduct involves school officials in drafting, editing, or revising prayers, the School District's conduct excessively entangles government with religion. And the School District's conduct coercively exposes students, teachers, parents, and others to unwanted religious activity and expression.

116. The School District's customs and policies have also violated the fundamental constitutional right of parents to control the religious upbringing of their own children, free from governmental intrusion or interference.

117. In light of these violations, Plaintiffs are entitled to remedies under 42 U.S.C. § 1983. Through the conduct described above, Defendants have harmed Plaintiffs, are continuing to harm Plaintiffs, and will inflict future harm upon Plaintiffs, who are therefore entitled to the remedies set forth in the Prayer for Relief below.

Prayer for Relief

118. Paragraphs 1 through 117 above are incorporated as if fully set forth here.

**A. Declaratory Judgment**

119. An actual controversy exists between the parties as to whether Defendant's conduct has violated and continues to violate the First Amendment. Accordingly,

Plaintiffs respectfully request a declaratory judgment that the School District has violated, and is continuing to violate, the U.S. Constitution by engaging in the following course of conduct: presenting, sponsoring, encouraging, inviting, or coercing prayers at school and school-sponsored activities and events; displaying and permitting the display of crosses and other religious icons; and retaliating against students who complain about the unlawful promotion of religion or who decline to participate in religious prayers, practices, or rituals.

**B. Permanent Injunction**

120. Plaintiffs have no adequate remedy at law. Defendant's violations of the First Amendment to the U.S. Constitution have inflicted, and will continue to inflict, irreparable harm upon Plaintiffs.

121. Plaintiffs therefore respectfully request a permanent injunction that (1) prohibits the School District and its officials from presenting, sponsoring, encouraging, coercing or inviting prayers at school or during school-sponsored activities and events; (2) prohibits the School District from displaying crosses and the other types of religious icons described above in ¶¶ 48-51 at Medina Valley High School; and (3) requires the School District to train its employees about legal restrictions on the display of crosses and religious icons, promotion of religion as part of academic instruction, and retaliation against students who complain about the improper promotion of religion or who decline to participate in prayers or other religious practices or rituals.

**C. Nominal Damages**

122. Plaintiffs request nominal damages of one dollar to each Plaintiff against the Defendant for the harm that Plaintiffs have suffered due to the School District's past violations of the First Amendment and the violations that continue or occur after the filing of this Complaint.

**D. Attorneys' Fees and Costs**

123. Plaintiffs request an order awarding them the costs of this action, including attorneys' fees, under 42 U.S.C. § 1988 and 28 U.S.C. § 2412.

**E. Other Relief**

124. Plaintiffs request any other relief that the Court deems just and proper.

Respectfully submitted,

/s/ Gregory M. Lipper

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