

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**JOELLE SILVER,**

Plaintiff,

\_\_\_\_\_ -CV- \_\_\_\_\_

v.

**COMPLAINT**

**CHEEKTOWAGA CENTRAL SCHOOL DISTRICT;**  
**BRIAN J. GOULD**, in his official capacity as President,  
Board of Education, Cheektowaga Central School District;  
and **DENNIS KANE**, individually and in his official capacity  
as Superintendent of Schools, Cheektowaga Central School  
District,

Defendants.

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Plaintiff Joelle Silver, by and through her undersigned counsel, brings this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof alleges the following upon information and belief:

**INTRODUCTION**

1. This case seeks to protect and vindicate fundamental constitutional rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging Defendants' acts, policies, practices, and/or customs that, individually and collectively, deprived and continue to deprive Plaintiff of her fundamental constitutional rights.

2. Plaintiff seeks a declaration that Defendants violated her clearly established constitutional rights as set forth in this Complaint; a preliminary and permanent injunction enjoining the enforcement of Defendants' unconstitutional acts, policies, practices, and/or

customs, as set forth in this Complaint; and a judgment awarding nominal damages against all Defendants. Plaintiff also seeks an award of her reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law.

### **JURISDICTION AND VENUE**

3. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this court. Plaintiff's claim for damages are authorized under 42 U.S.C. § 1983.

5. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

### **PLAINTIFF**

6. Plaintiff Joelle Silver is an adult citizen of the United States and a public school teacher in the Cheektowaga Central School District (hereinafter "School District"). Plaintiff Silver is a Christian, and she has taught science classes in the School District for seven years. She currently teaches in the High School.

### **DEFENDANTS**

7. The School District is a public school district in Cheektowaga, New York. It is a municipal corporation and a unit of local government subject to the restrictions of the United States Constitution. The School District has a right to sue and be sued.

8. Defendant Brian J. Gould, at all times relevant herein, was the President of the Board of Education for the School District acting under color of state law. The Board of

Education is the governing body of the School District and is responsible for creating, adopting, and implementing its policies, practices, and/or customs, including the challenged policies, practices, and/or customs set forth in this Complaint. Defendant Gould is sued in his official capacity.

9. Defendant Dennis Kane, at all times relevant herein, was the Superintendent of Schools for the School District acting under color of state law. Defendant Kane is responsible for creating, adopting, and implementing School District policies, practices, and/or customs, including the challenged policies, practices, and/or customs set forth in this Complaint. Defendant Kane is sued both individually and in his official capacity.

#### STATEMENT OF FACTS

10. It has been “the unmistakable holding” of the United States Supreme Court for more than 50 years that neither “students [nor] teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Defendants’ content- and viewpoint-based restrictions on Plaintiff’s personal, non-curricula speech violate this well-established principle of law.

11. It is a fundamental constitutional principle that government in our democracy, local, state and national, must be neutral toward religion. It may not be hostile to any religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite.

12. The United States Constitution assures all religious believers, including Christians, that the government will not take official positions that condemn their religious beliefs or practices. Our Constitution affirmatively mandates accommodation, not merely

tolerance of all religions, and forbids hostility toward any. The First Amendment forbids an official purpose to disapprove of a particular religion, religious beliefs, or of religion in general.

13. Plaintiff is a devout Christian. Her Christian faith defines who she is as a person, and it guides all aspects of her life, both public and private.

14. Plaintiff does not cease being a Christian because she is employed by the School District.

15. As a Christian, Plaintiff is inspired by the Word of God, which guides her actions, including her actions as a public school teacher.

16. Pursuant to School District policy, practice, and/or custom, teachers, faculty, and administrators are permitted to display in their classrooms and offices various personal messages, including inspirational messages, and other items that reflect the individual teacher's personality, opinions, and values, as well as personal, non-curricular messages relating to matters of political, social, or other similar concerns.

17. Pursuant to School District policy, practice, and/or custom, the High School social worker for the School District displays inside and outside of her office, including on her office door, various non-curricula messages that promote the gay rights agenda, including a poster stating, "Acceptance Practiced Here," which is in the rainbow colors of the gay rights movement and contains the caption, "Brought to you by your GSA and Gay and Lesbian Youth Service of WNY." The social worker is also permitted to post on School District property the following: rainbow "Safe Space" decals that include the following website address: [www.glyswny.org](http://www.glyswny.org), which is the website for the Gay and Lesbian Youth Services of Western New York; a Gay, Lesbian and Straight Education Network (GLSEN) "Day of Silence" decal; a rainbow "Celebrate Diversity" bumper sticker; and a decal with the "equal" symbol of the Human Rights Campaign,

a pro-gay rights, anti-Christian activist organization, among other similar displays. Additionally, the social worker has been permitted to display and distribute pamphlets in her office that promote gay rights. All of the social worker's displays are available and visible to the students of the School District.

18. The social worker's displays are intended to create a "welcoming" environment for those who are gay, lesbian, bi-sexual, or transgendered (GLBT) and for those who promote and endorse such a lifestyle. However, the displays also create an environment of intolerance toward students who have religious objections to promoting the GLBT lifestyle or agenda.

19. The social worker is the faculty advisor for the School District's Gay-Straight Alliance (GSA) student club. The creation of GSA student clubs is a national project of GLSEN.

20. On June 22, 2012, Plaintiff received a "counseling letter" from Defendants that was signed by Defendant Kane. The "counseling letter" was made a permanent part of Plaintiff's employment file.

21. In the "counseling letter," Defendants directed Plaintiff to remove all items, including personal, non-curricula items, of a religious nature from her classroom; it directed Plaintiff to censor her personal, non-curricula speech so as not to express anything religious in nature while she was on School District property; and it pressured Plaintiff into terminating her service as the faculty advisor for the student Bible Study Club, which was formed pursuant to the Equal Access Act.

22. Defendants' "counseling letter" essentially cleansed Plaintiff's classroom, her speech, and her actions of anything religious.

23. Defendants' "counseling letter" stated the following: "Please be advised that your failure to follow any of the above directions will be considered insubordination, which could

lead to serious disciplinary consequences, including the termination of your employment.” The emphasis was in the original.

24. Defendants’ “counseling letter” directed Plaintiff to remove four small posters from her classroom that included the following messages: “Wash away all my iniquity and cleanse me from my sin. . . . Wash me and I will be whiter than snow. Psalm 51:2, 7”; “The Lord is my rock, and my fortress, and my deliverer; my god, my strength, and whom I will trust. Psalm 18:2”; “The heavens declare the glory of God; the skies proclaim the work of his hands. Psalm 19:1”; “Let them praise the name of the Lord, for His name alone is exalted, His splendor is above the earth and the heavens. Psalm 148:13.”

25. Defendants’ “counseling letter” directed Plaintiff to remove a poster from her classroom that included the following quotation, “Be on guard. Stand true to what you believe. Be courageous. Be strong. And everything you do must be done in love. 1 Corinthians 16:13-4” that was superimposed over an American flag and school books.

26. Defendants’ “counseling letter” directed Plaintiff to remove from her classroom a drawing “depicting three crosses on a hill” that Defendants concluded was “an obvious reference to the crucifixion of Jesus Christ at Calvary, in Jerusalem.”

27. Defendants’ “counseling letter” directed Plaintiff to remove from her classroom a posted quote from President Ronald Reagan which states: “Without God there is no virtue because there is no prompting of the conscience . . . without God there is a coarsening of the society; without God democracy will not and cannot long endure . . . If ever we forget that we are One Nation Under God, then we will be a Nation gone under.”

28. Defendants’ “counseling letter” censored Plaintiff’s personal, non-curricula speech because it was religious and expressed a religious viewpoint. Defendants did not require

other teachers, faculty, or administrators to remove personal, non-curricula items from their classrooms or offices nor did Defendants censor the personal, non-religious speech of other teachers, faculty, or administrators in a manner similar to how Defendants have censored Plaintiff's personal, religious speech.

29. When Plaintiff received Defendants' "counseling letter," she was the faculty advisor for the High School's student Bible Study Club, a student club that was formed pursuant to the Equal Access Act.

30. Defendants' "counseling letter" directed Plaintiff to remove from her classroom the Bible Study Club's "Prayer Request" box that was displayed by the student members of the club. The student club members decorated the box with various quotes, including the following: "Inspired Bible Club Prayer Requests"; "For where two or three have gathered in my name, I am in the midst. Matthew 18:20"; "And whatever you ask in prayer, you will receive, if you have faith. Matthew 21:22"; "Whatever you ask in my name, this I will do, that the father may be glorified in the son. If you ask me anything in my name, I will do it. John 14:13-14"; and "We have to pray with our eyes on God, not on the difficulties. Oswald Chambers."

31. Defendants' "counseling letter" directed Plaintiff to remove small sticky notes that she placed on her desk that contained inspirational Bible quotes and religious messages, including the following:

- "I will remain confident of this: I will see the goodness of the Lord in the land of the living. Wait for the Lord; be strong and take heart and wait for the Lord!" Psalm 27: 13-14.
- "For the company of the godless is barren, and fire consumes the tents of the corrupt. They conceive mischief and bring forth iniquity, and their mind prepares deception." Job 15:34-34.

- “So let us seize and hold fast and retain without wavering the hope we cherish and confess, and our acknowledgement of it, for He who promised it is reliable (sure) and faithful to His word.” Hebrews 10:23.
- “Lord, when we are wrong make us willing to change, and when we are right make us easy to live with.” (quoting Scottish Clergyman, Peter Marshall).

32. Plaintiff’s small “sticky notes” containing the inspirational quotes are personal, non-curricular items that she discreetly displayed on her desk. Pursuant to School District policy, practice, and/or custom, Defendants permit other teachers, faculty, and administrators of the School District to display personal, non-curricular messages and items of a personal nature on their desks, including non-religious inspirational quotes. Defendants’ restriction on Plaintiff’s inspirational speech was viewpoint-based.

33. Defendants’ “counseling letter” directed Plaintiff to remove a “humorous poster” from her classroom that depicted an antique telephone and contained the following script: “It’s for you . . . GOOD MORNING, THIS IS GOD . . . I WILL BE HANDLING ALL YOUR PROBLEMS TODAY. I WILL NOT NEED YOUR HELP, SO HAVE A GOOD DAY.”

34. Defendants’ “counseling letter” stated, “I am therefore directing you to immediately remove all of the afore-described posters, notes, artwork, prayer box, etc., so that anyone visiting or attending your class in the future will not see any religious messages or content attached to or otherwise placed on public property of the District.”

35. Defendants’ “counseling letter” stated, “If you need to be able to occasionally glance at inspirational Bible verses between classes during the course of the day, I suggest that you keep such material in a discreet folder that only you will have access to. You may keep such a folder in a drawer of your desk, so long as you take precautions not to share it or disclose its content to your students or their parents or guardians.” (emphasis added).



36. Defendants' "counseling letter" stated, "Except for wearing religious jewelry, such as a cross, I am also directing you to refrain from all other forms of communication with students during the school day (whether verbal, email, texting, written, etc.) that would conflict with your duty to show complete neutrality toward religion and to refrain from promoting religion or entangling yourself in religious matters." (emphasis added).

37. Defendants' "counseling letter" referenced School District Policy 8271 and stated, "[Y]ou may not use District projectors, smart boards, copiers, printers, computers, email program, etc., for communicating or relaying any religious messages and materials that are intended or could be perceived to be proselytizing."

38. Defendants do not prohibit other School District teachers, faculty, or administrators from using "District projectors, smart boards, copiers, printers, computers, email program, etc., for communicating or relaying" non-religious, non-curricular messages, including non-religious viewpoints on non-curricular subject matter. Consequently, Policy 8271, as applied to Plaintiff's speech, is a viewpoint-based restriction.

39. Defendants' "counseling letter" stated, "I am also concerned that you are not up to the task of monitoring the High School student's Bible Study Club, in compliance with District Policy and Regulation," referencing Policy 7410 and Regulation 7410R.1 and 7410R.2. The "counseling letter" continued, "Consequently, if you choose to continue monitoring the Bible Study Club next school year, you must carefully re-examine Policy 7410 and Regulation 7410R.1 and 7410R.2, so that you can better protect that club from being disciplined and possibly banned. Under no circumstances should you participate in the club's meetings or activities. Likewise, under no circumstances should you permit any club activities that could be interpreted as being promoted or sponsored by yourself, or the larger District for which you work."

40. Defendants permit the GSA faculty advisor, who is also the faculty advisor for the “Challenge Club,” to promote the annual “Day of Silence,” which is a national event sponsored by GLSEN, as well as other activities of the GSA that promote gay rights. During the “Day of Silence,” students wear signs during the school day and they do not talk for the entire day. In fact, Defendants permit the student participants in the “Day of Silence” to remain silent during actual class time without suffering any adverse consequences for failing to participate in class or answer questions from their teachers. Consequently, Defendants allow other School District teachers, faculty, and administrators to “permit . . . club activities that could be interpreted as being promoted or sponsored by” the teacher, faculty member, or administrator, “or the larger District for which [they] work.” Defendants’ restriction on Plaintiff’s and the Bible Study Club’s expressive activities is viewpoint-based.

41. None of Plaintiff’s expressive activities have caused, nor would they cause, a material and substantial disruption in the High School or the School District in general.

42. Defendants have no legitimate pedagogical basis for their restrictions on Plaintiff’s private, non-curricula expressive activities, nor do their restrictions promote any legitimate pedagogical interest.

43. Defendants’ restrictions are overtly hostile toward religion, and Defendants’ actions convey an impermissible, government-sponsored message of disapproval of and hostility toward the Christian religion. As a result, Defendants’ actions send a clear message to Plaintiff that she is an outsider, not a full member of the political and school community because she is a Christian.

44. Defendants’ restrictions have had a chilling effect on Plaintiff’s personal, non-curricular speech. As a result of Defendants’ restrictions, Plaintiff is unable to discuss her faith

or discuss other subject matter from her Christian point of view while on School District property. Indeed, as a result of Defendants' draconian restrictions, Plaintiff must keep her faith hidden at all times.

### **FIRST CLAIM FOR RELIEF**

#### **(Violation of Freedom of Speech under the First Amendment)**

45. Plaintiff hereby incorporates by reference all stated paragraphs.

46. By reason of the aforementioned policies, practices, customs, acts, and omissions, engaged in under color of state law, Defendants have imposed multiple content- and viewpoint-based restrictions on Plaintiff's private, non-curricular speech which, individually and collectively, violate the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

47. Defendants' order to Plaintiff that she must refrain from all forms of religious-based communications, which includes personal, non-curricula communications, during the school day is an egregious violation of the First Amendment.

48. Defendants' restrictions are overbroad in violation of the First Amendment.

49. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of her constitutional rights, entitling her to declaratory and injunctive relief and nominal damages.

### **SECOND CLAIM FOR RELIEF**

#### **(Violation of the Establishment Clause of the First Amendment)**

50. Plaintiff hereby incorporates by reference all stated paragraphs.

51. By reason of the aforementioned policies, practices, customs, acts, and omissions, engaged in under color of state law, Defendants have violated the Establishment Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

52. Defendants' restrictions, which prohibit Plaintiff from engaging in religious speech or speech with religious content, including personal, non-curricula speech, while on School District property, lack a valid secular purpose, have the primary effect of inhibiting religion, and create an excessive entanglement with religion in violation of the Establishment Clause.

53. Defendants' policies, practices, customs, acts, and omissions, engaged in under color of state law, convey an impermissible, government-sponsored message of disapproval of and hostility toward the Christian religion. As a result, Defendants' actions send a clear message to Plaintiff that she is an outsider, not a full member of the political and school community because she is a Christian and an accompanying message that those who disfavor the Christian religion are insiders, favored members of the political and school community in violation of the Establishment Clause.

54. As a direct and proximate result of Defendants' violation of the Establishment Clause of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of her constitutional rights, entitling her to declaratory and injunctive relief and nominal damages.

### **THIRD CLAIM FOR RELIEF**

#### **(Violation of the Equal Protection Clause of the Fourteenth Amendment)**

55. Plaintiff hereby incorporates by reference all stated paragraphs.

56. By reason of the aforementioned policies, practices, customs, acts, and omissions, engaged in under color of state law, Defendants have unconstitutionally deprived Plaintiff of the equal protection of the law guaranteed under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, in that Defendants, through their acts, policies, practices, and/or customs, targeted religion and religious speech for discriminatory treatment in violation of the Equal Protection Clause of the Fourteenth Amendment.

57. By reason of the aforementioned policies, practices, customs, acts, and omissions, engaged in under color of state law, Defendants have prevented Plaintiff from expressing a religious message in a forum in which personal, non-curricula speech of School District teachers, faculty, and administrators is permitted because Defendants found Plaintiff's religious views and viewpoint unacceptable in violation of the Equal Protection Clause of the Fourteenth Amendment.

58. As a direct and proximate result of Defendants' violation of the Equal Protection Clause of the Fourteenth Amendment, Plaintiff has suffered irreparable harm, including the loss of her constitutional rights, entitling her to declaratory and injunctive relief and nominal damages.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff asks this court:

A) to declare that Defendants violated Plaintiff's fundamental constitutional rights as set forth in this Complaint;

B) to permanently enjoin Defendants' unconstitutional restrictions on Plaintiff's fundamental rights as set forth in this Complaint;

C) to permanently remove the "counseling letter" from Plaintiff's employment file;

- D) to award Plaintiff nominal damages against all Defendants;
- E) to award Plaintiff her reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;
- F) to grant such other and further relief as this court should find just and proper.

Respectfully submitted,

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