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12  
13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA

15 SACRAMENTO DIVISION

16 T. V., through next friend and mother  
17 HEATHER VICTOR,

18 Plaintiffs,

19 v.

20 DAN BEUKELMAN, Assistant Principal of  
21 Sierra High School; GREG LELAND, VICE-  
22 PRINCIPAL OF SIERRA HIGH SCHOOL,

23 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF, NOMINAL  
DAMAGES**

24 Plaintiff T.V., through her mother and next friend Heather Victor, by and through the  
25 undersigned counsel at the American Civil Liberties Union Foundation of Northern California,  
26 sues Defendant DAN BEUKELMAN, in his official and individual capacity as Assistant  
27 Principal of Sierra High School, and GREG LELAND, in his official and individual capacity as  
28 Vice Principal of Sierra High School, and alleges as follows:

**INTRODUCTION**

1  
2 1. This is a free-speech case on behalf of Plaintiff T.V. (“T.V.”), who is a sixteen  
3 year old student at Sierra High School (“Sierra High School”) in Manteca, California. Plaintiff  
4 brings this lawsuit against Defendant Dan Beukelman (“Beukelman”), who is the Assistant  
5 Principal of Sierra High School, and Defendant Greg Leland (“Leland”), who is the Vice  
6 Principal of Sierra High School.

7 2. At issue in this case is whether school officials may lawfully censor non-vulgar,  
8 peaceful expressions of a student’s sexual orientation and support for lesbian, gay, bisexual, and  
9 transgender (“LGBT”) rights at school. T.V. identifies as lesbian, and she wishes to wear a t-  
10 shirt to school that states in whole, “Nobody knows I’m a lesbian.” By wearing the shirt, T.V.is  
11 expressing, albeit ironically, that she is a lesbian, as well as her social and political viewpoint  
12 that there is nothing to be ashamed of being a LGBT person and that LGBT students should be  
13 proud of who they are.

14 3. Defendants have prohibited and continue to prohibit T.V. from wearing her t-shirt  
15 even though the right of students to freedom of expression, including expressions of LGBT  
16 rights and sexual orientation, has long been established under the law. Defendants have  
17 contended, without a reasonable basis, that T.V.’s t-shirt is disruptive to the education process, is  
18 “an open invitation to sex,” or is somehow “gang-related.”

19 4. Defendants’ censorship violates Plaintiff’s freedom of speech rights under the  
20 First Amendment of the United States Constitution, the California Constitution, and the  
21 California Education Code.

**I. JURISDICTION AND VENUE**

22  
23 5. Plaintiff brings this action pursuant to 42 U.S.C. §1983 for violation of civil rights  
24 under the First Amendment to the United States Constitution. Plaintiff also brings state claims  
25 for violation of Article I, Section 2 of the California Constitution and Sections 48907 and 48950  
26 of the California Education Code.

1           6.       This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C.  
2 § 1331 (federal question), § 1343(a)(3) (civil rights violation), § 2201 (declaratory relief), and  
3 § 1367 (supplemental jurisdiction over state law claims).

4           7.       Venue is proper in this judicial district and division pursuant to 28 U.S.C.  
5 § 1391(b) and E.D. Cal. Loc. R. 120(d). Based upon information and belief, the unlawful  
6 practices complained of and that give rise to the claims herein occurred within this district and  
7 division.

8   **II.    PARTIES**

9           8.       Plaintiff T.V. is a student at Sierra High School in Manteca, California. She is  
10 under the age of eighteen. She sues here by and through her next friend and mother, Heather  
11 Victor. As a student at Sierra High School, T.V. remains subject to the authority and directives  
12 of Defendants.

13           9.       Defendant Leland is the vice principal of Sierra High School. He is vested with  
14 the authority to discipline students at Sierra High School at his discretion and to enforce the  
15 policies of Sierra High School and the Manteca Unified School District. Sierra High School is  
16 within Manteca Unified School District. He is sued in his official and individual capacities.

17           10.      Defendant Beukelman is the assistant principal of Sierra High School. He is  
18 vested with the authority to discipline students at Sierra High School at his discretion and to  
19 enforce the policies of Sierra High School and the Manteca Unified School District. Sierra High  
20 School is within Manteca Unified School District. He is sued in his official and individual  
21 capacities.

22           11.      Defendants Leland and Beukelman, at all times relevant hereto, were acting under  
23 color of law.

**III. STATEMENT OF FACTS**

12. On August 10, 2015, T.V. wore a shirt to school that states, in whole, “Nobody knows I’m a lesbian.” She received compliments from other students about her shirt.

13. At the beginning of third period, T.V.’s teacher noticed her t-shirt and without explaining why, he sent her to speak with Defendant Leland.

14. T.V. then met with Defendant Leland as directed. Defendant Leland instructed T.V. to change her shirt on the ground that she was not allowed to display her “sexuality” on clothing. T.V. declined to change her shirt and with her parents’ permission, she went home and missed the rest of the day’s classes.

15. The next day, August 11, T.V. asked to meet with Defendant Leland about his decision to censor her shirt. T.V. pointed out that nothing in the Manteca Unified School District dress code prohibited her t-shirt. Leland responded to T.V. that regardless of the dress code, she was not allowed to display her “personal choices and beliefs” on a shirt. He also claimed that her shirt violated the dress code because it was “disruptive” and could be “gang related.” When T.V. reiterated that there was no rule in the District dress code barring expression of “sexuality” on a shirt, Leland stated that it needed to be added. Leland then took T.V. to meet with Assistant Principal Dan Beukelman.

16. Defendant Beukelman told T.V. that the shirt was a violation of the Sierra High School dress code because it was “promoting sex” and “an open invitation to sex.” He added that her shirt would not be allowed at Sierra High School even though it might be allowed at other Manteca Unified School District schools.

17. The next day, August 12, Beukelman approached T. V., who was not wearing her shirt, and reiterated that her shirt was a violation of the dress code. He claimed that the shirt “promoted sexuality.” T.V. explained to Beukelman that sex and sexuality had different meanings. Beukelman told T.V. she was wrong and claimed that sexuality fell under the category of sex.

1           18.     On August 13, T.V. and her father attended a meeting at Sierra High School with  
2 Leland, Beukelman, and her teacher for the purpose of discussing whether T.V. would be  
3 allowed to wear her shirt. During this meeting, the Defendants reaffirmed that T.V. was not  
4 allowed to wear her “Nobody knows I’m a lesbian” shirt at school because it violated the dress  
5 code. Leland also stated that he told Principal Steve Clark about the decision to censor T.V. and  
6 that Clark had agreed with him.

7           19.     Nothing in the Sierra High or Manteca Unified School District student handbook  
8 prohibits Plaintiff’s t-shirt. Neither the school nor the District prohibits students from wearing t-  
9 shirts that have writing or expresses their “personal beliefs.” Indeed, students regularly wear t-  
10 shirts and other clothing expressing their religious beliefs, their support for sports teams, and  
11 their support of commercially available products, such as Captain Morgan’s Rum.

12           20.     T.V. desired and continues to desire to express her beliefs and viewpoints about  
13 LGBT sexual orientation and equal rights. But for Defendants’ unlawful censorship, T.V. would  
14 continue to express herself by wearing clothing, buttons, or stickers with the statement “Nobody  
15 knows I’m a lesbian” and other similar messages at school. Furthermore, as a result of  
16 Defendants’ censorship, T.V. has abstained and continues to abstain from expressing her beliefs  
17 and viewpoints about LGBT sexual orientation and equal rights using clothing with phrases like  
18 “Nobody knows I’m a lesbian.” Because the Sierra High School and Manteca Unified School  
19 District handbooks list willful defiance as grounds for suspension or expulsion, T.V. reasonably  
20 fears that she will be disciplined for violating Defendants’ unlawful directives or retaliated  
21 against for advocating for her free speech rights.

22           21.     The expression at issue is protected speech. It is neither substantially disruptive  
23 nor inappropriate for a school setting nor “gang-related.” Indeed, California law requires that  
24 public high schools teach about inclusion and respect of lesbian, gay, bisexual, and transgender  
25 students in history and social studies curriculum, under the Fair Accurate Inclusive and  
26 Respectful Education Act. S.B. 48, 2011-2012 (Cal. 2011). Moreover, Defendants have no  
27  
28

1 evidence, nor could they, that being a lesbian constitutes membership in a gang, or that merely  
2 identifying oneself as a lesbian constitutes an invitation to sex or promoting sexuality.

3 22. Defendants' censorship impermissibly infringes and constitutes an impermissible  
4 chill on Plaintiff's freedom of speech.

5 23. Unless restrained by this Court, Plaintiff will continue to be subject to punishment  
6 for her lawful exercise of her First Amendment and state constitutional rights, and her rights  
7 under the California Education Code to express her views regarding sexual orientation and  
8 LGBT rights. Plaintiff has been and will continue to be irreparably harmed by the Defendants'  
9 denial of her fundamental constitutional rights.

10 24. Plaintiff has no adequate remedy at law because the denial of Plaintiff's  
11 fundamental constitutional rights and state rights cannot be remedied fully and adequately  
12 through legal relief.

13 **FIRST CLAIM FOR RELIEF**

14 **Violation of First Amendment, as applied to the states under the Fourteenth Amendment  
15 (Against All Defendants 42 U.S.C. § 1983)**

16 25. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs  
17 in this Complaint.

18 26. Defendants deprived, and are continuing to deprive, Plaintiff of the rights secured  
19 to her by the United States Constitution.

20 27. By instructing T.V. that she is prohibited from wearing non-vulgar clothing  
21 expressing messages about sexual orientation, such as "Nobody knows I'm a lesbian,"  
22 Defendants violated, and are continuing to violate, Plaintiff's right to free speech and expression,  
23 and in particular her right to political expression, as guaranteed by the First Amendment and the  
24 Fourteenth Amendment to the U.S. Constitution.

25 28. Defendants' actions are, in whole or in part, unlawfully motivated by their  
26 disagreement with the Plaintiff's viewpoint concerning sexual orientation, or out of anti-gay  
27 animus, and therefore their actions also constitute unlawful viewpoint discrimination.

1           29.     In depriving Plaintiff of these rights, Defendants acted under color of state law.  
2 This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C.  
3 § 1983.

4                                       **SECOND CLAIM FOR RELIEF**

5                                       **Violation of Article I, Section 2(a) of California State Constitution**  
6                                       **(Against All Defendants)**

7           30.     Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs  
8 in this Complaint.

9           31.     Defendants deprived, and are continuing to deprive, Plaintiff of the rights secured  
10 to her by the California Constitution.

11           32.     Defendants' above-described conduct violated Plaintiff's right to freedom of  
12 speech under Article I, Section 2 of the California Constitution.

13                                       **THIRD CLAIM FOR RELIEF**

14                                       **Violation of Section 48907 of California Education Code**  
15                                       **(Against All Defendants)**

16           33.     Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs  
17 in this Complaint.

18           34.     Section 48907 of the Education Code states in relevant part, that public school  
19 students "shall have the right to exercise freedom of speech and of the press *including, but not*  
20 *limited to*, the use of bulletin boards, the distribution of printed materials or petitions, *the*  
21 *wearing of buttons, badges, and other insignia*, and the right of expression in official  
22 publications, whether or not the publications *or other means of expression* are supported  
23 financially by the school or by use of school facilities, except that expression shall be prohibited  
24 which is obscene, libelous, or slanderous. Also prohibited shall be material that so incites pupils  
25 as to create a clear and present danger of the commission of unlawful acts on school premises or  
26 the violation of lawful school regulations, or the substantial disruption of the orderly operation of  
27 the school." Defendants deprived, and are continuing to deprive, Plaintiff of the rights secured to  
28 her by the Education Code of California.

1           35.     The statement, “Nobody knows I’m a lesbian,” on Plaintiff’s shirt is an expression  
2 of Plaintiff’s views. This expression was not vulgar or obscene, and it did not cause a  
3 disturbance. Plaintiff’s expression is fully protected by this provision.

4           36.     By prohibiting Plaintiff from wearing her shirt, Defendants violated Plaintiff’s  
5 right of freedom of expression under Education Code § 48907.

6                                   **FIFTH CLAIM FOR RELIEF**  
7                                   **Violation of Section 48950 of California Education Code**  
8                                   **(Against All Defendants)**

9           37.     Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs  
10 in this Complaint.

11           38.     Section 48950 of the Education Code states in relevant part, “A school district  
12 operating one or more high schools . . . shall not make or enforce a rule subjecting a high school  
13 pupil to disciplinary sanctions solely on the basis of conduct that is speech or other  
14 communication that, when engaged in outside of the campus, is protected from governmental  
15 restriction by the First Amendment to the United States Constitution or Section 2 of Article I of  
16 the California Constitution.” Defendants deprived, and are continuing to deprive, Plaintiff of the  
17 rights secured to her by the Education Code of California.

18           39.     The discipline policies of both Manteca Unified School District and Sierra High  
19 School permit Defendants to expel or suspend Plaintiff if she “willfully defie[s]” their unlawful  
20 directive to not wear her “Nobody knows I’m a lesbian” shirt at school again, even though her  
21 shirt displays a protected expression of her sexual orientation and her social and political  
22 viewpoints.

23           40.     Because Defendants’ unlawful rule subjects Plaintiff to disciplinary sanctions for  
24 engaging in her right of freedom of expression, Defendants violated Education Code § 48950.  
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**PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully requests the following relief:

41. An order declaring that the Defendants violated the Plaintiff’s rights protected under the First Amendment of the United States Constitution, the California state Constitution, and California Education Code §§ 48907 and 48950.

42. An order declaring that the Defendants engaged in unlawful viewpoint discrimination in violation of the First Amendment of the United States Constitution, the California state Constitution, and California Education Code §§ 48907 and 48950.

43. An order preliminarily and then permanently enjoining Defendants and their employees and all other persons or entities in active concert or privity or participation with them, from restraining, prohibiting, or suppressing the Plaintiff or any other student within Manteca Unified School District from wearing a shirt, button, or sticker that states “Nobody knows I’m a lesbian,” or similar expressions of LGBT sexual orientation or LGBT equal rights, pursuant to reasonable time, place, and manner restrictions;

44. An order directing Defendants to take such affirmative steps necessary to remediate the past restraints to Plaintiff’s expression through the statement on her shirt, including, but not limited to notifying in writing and training the Sierra High School student body and school officials within the Manteca Unified School District that all students are permitted to wear a shirt, button, or sticker that states “Nobody knows I’m a lesbian,” or similar expressions of LGBT sexual orientation or LGBT equal rights, pursuant to reasonable time, place, and manner restrictions;

45. An order enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants, employees and all other persons or entities in active concert or privity or participation with them, from taking retaliatory action against Plaintiff or her parents for bringing this lawsuit or for advocating for her free speech rights;

46. An entry of judgment for Plaintiff for nominal damages of \$1 against Defendants in their individual capacities;

1           47.     An award to Plaintiff of reasonable attorneys' fees and costs incurred in  
2 connection with this action from Defendants;

3           48.     Retain jurisdiction of this matter to enforce the terms of the Court's orders; and

4           49.     An order granting such further and different relief as this Court may deem just  
5 and proper or that is necessary to make the Plaintiff whole.

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8           Dated: October 16, 2015

AMERICAN CIVIL LIBERTIES FOUNDATION OF  
NORTHERN CALIFORNIA, INC.

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12           By:           /s/ Christine P. Sun            
13                           Attorneys for Plaintiffs,

14           T.V., through Next Friend and Mother,  
15           HEATHER VICTOR