

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CHRISTA SCHULTZ , et al

Plaintiffs

vs.

**MEDINA VALLEY INDEPENDENT
SCHOOL DISTRICT**

Defendant

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CIVIL ACTION NO. 5:11-CV-422

**DEFENDANT'S SECOND MOTION TO DISMISS
FOR LACK OF SUBJECT-MATTER JURISDICTION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant Medina Valley Independent School District ("Medina Valley ISD," "MVISD," "School District" or "the District") and files its Second Motion to Dismiss for Lack of Subject-Matter Jurisdiction, and in support of such would show the following:

**I. STATEMENT OF THE CASE AND RELEVANT PROCEDURAL
BACKGROUND**

1. Plaintiffs Christa Schultz, Danny Schultz, Trevor Schultz, and Corwyn Schultz (hereinafter collectively referred to as "Plaintiffs") have sued Medina Valley Independent School District, alleging that the District has violated their First Amendment Constitutional rights. (Dkt. Nos. 1, 75). Specifically, Plaintiffs claim that the District has violated the Establishment Clause by permitting student speakers at graduation and football games to pray during their remarks. (Dkt. No. 75 at ¶¶3, 115.) Additionally, Plaintiffs allege that school employees have prayed with students at school, made religious remarks at school, and/or had crosses or other religious symbols in their classrooms in violation of the Establishment Clause. (*Id.*) Plaintiffs seek injunctive relief, declaratory relief, nominal damages, and attorneys' fees. (*Id.* at ¶¶119-124.)

Defendant asserts that Plaintiffs lack standing on all of their equitable claims and their nominal damage claims for which they lack injury in fact, as set out in more detail *infra*.

2. On September 6, 2011, Defendant filed its Rule 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction, asserting that the Schultz Plaintiffs lacked standing to pursue their claims for prospective, injunctive relief because no one in their family is currently a student in the District. (Dkt. No. 43). On November 2, 2011, the Court denied the Motion to Dismiss as *moot*, not specifically ruling on the merits of the Motion, but instead granting Plaintiffs' Motion to Amend their Complaint, in which they added a new plaintiff to the case. (Dkt. No. 71). The Court denied the Motion as moot, "because Defendant's Motion to Dismiss is based on the original complaint which has now been superceded." (*Id.*) In light of the fact that the Court has not yet considered Defendant's Motion to Dismiss on the merits, Pat Doe has withdrawn from the case,¹ and new discovery shows Plaintiffs lack standing on many of their claims, Defendant files this Second Motion to Dismiss and respectfully requests that the Court dismiss Plaintiffs' equitable claims, declaratory relief claims, and nominal damage claims for which they lack injury in fact, as set out *infra*, for lack of subject matter jurisdiction. Pursuant to Local Rule CV-7 (c), attached to this Second Motion to Dismiss and incorporated by reference for all purposes is Appendix: Defendant's Summary of Material Facts and its attached evidentiary exhibits.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

3. Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts "possess only that power authorized by Congress and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Id.* (internal citations omitted). A lawsuit must be therefore dismissed if

¹ Pat Doe withdrew from the case on December 5, 2011. (Dkt. No. 92).

“the court lacks the statutory or constitutional power to adjudicate the case.” *Home Builders Ass’n. of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). In considering a Rule 12(b)(1) motion, the “district court has the power to dismiss for lack of subject-matter jurisdiction on any one of three separate bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *Freeman v. United States*, 556 F.3d 326, 334 (5th Cir. 2009), *cert denied*, 130 S. Ct. 154 (2009).

4. When a Rule 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction is filed, the party seeking to litigate in federal court bears the burden of establishing jurisdiction. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001), *cert. denied*, 536 U.S. 960 (2002). The Fifth Circuit distinguishes between “facial” and “factual” attacks to subject-matter jurisdiction. *Patterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981). A facial attack is presented when no extrinsic evidence accompanies the Rule 12(b)(1) motion. *Id.* Under such circumstances, the district court is simply required to evaluate the sufficiency of the allegations in the complaint as they are presumed to be true and determine whether those allegations convey jurisdiction. *Id.* A factual attack occurs when a 12(b)(1) motion denies or controverts the plaintiff’s allegations of jurisdiction with the presentation of affidavits, testimony, or other evidentiary materials, requiring the plaintiff to prove the existence of the subject-matter jurisdiction by a preponderance of the evidence. *Id.*; *see also Irwin v. Veterans Admin.*, 874 F.2d 1092, 1096 (5th Cir. 1989), *aff’d. sub. nom.*, *Irwin v. Dep’t. of Veteran Affairs*, 498 U.S. 89 (1991). When a factual attack is made upon federal jurisdiction, no presumptive truthfulness attaches to the plaintiff’s jurisdictional allegations, and the district court is free to weigh the

evidence and satisfy itself as to the existence of its power to hear the case. *Evans v. Tubbe*, 657 F.2d 661, 663 (5th Cir. 1981). If there are any facts in dispute between the parties, the district court must likewise resolve those disputed facts without giving a presumption of truthfulness to a plaintiff's allegations. *Vantage Trailers, Inc. v. Beall Corp.*, 567 F.3d 745, 748 (5th Cir. 2009); *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981), *cert. denied*, 454 U.S. 897 (1981).

5. Plaintiffs bear the burden of proof to establish that a live case or controversy exists to convey Article III jurisdiction upon the Court. *Mississippi St. Democratic Party v. Barbour*, 529 F.3d 538, 545 (5th Cir. 2008). Article III jurisdiction "cannot be inferred argumentatively from averments in the pleadings," but rather must "affirmatively appear in the record;" "it is the burden of the party who seeks the exercise of jurisdiction in his favor clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." *Lujan*, 504 U.S. at 560; *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990). In the case at hand, as set out in more detail below, none of the Plaintiffs are students in the District. Therefore, the Court must dismiss Plaintiffs' equitable claims in this lawsuit for lack of subject-matter jurisdiction. Additionally, Plaintiffs allege constitutional violations by the District, many of which they did not personally experience or otherwise observe. As a result, the Court must dismiss Plaintiffs' claims for which no injury fact exists.

III. ARGUMENT AND AUTHORITIES

No case or controversy exists that would impart the Court with Article III jurisdiction.

6. Under Article III of the United States Constitution, a federal court cannot consider the merits of a case unless it presents an actual "case" or "controversy." U.S. CONST. ART. III, § 2; *Camreta v. Greene*, 113 S. Ct. 2020, 2028-2029 (2011). Litigants must demonstrate a "personal stake" in the suit. *Camreta*, 113 S. Ct. at 2028, *quoting Summers v. Earth Island Institute*, 555

U.S. 488 (2009). An actual, live case or controversy must exist at every stage in the judicial process. *Motient Corp. v. Dondero*, 529 F.3d 532, 537 (5th Cir. 2008). The limiting principles of the case or controversy requirements are standing, ripeness, and mootness. Article III requires that a party present a dispute ripe for judicial review, and have standing both at the commencement and throughout the duration of the litigation. *Camreta*, 113 S. Ct. at 2028; *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997); *Allen v. Wright*, 468 U.S. 737, 750 (1984). To establish Article III jurisdiction in this case, Plaintiffs must show that they present a case ripe for dispute and that they have standing. As set out below, Plaintiffs cannot meet this burden, requiring that their claims for equitable relief and their claims for which they have no injury-in-fact be dismissed for lack of jurisdiction.

A. Plaintiffs' claims for equitable or injunctive relief are moot.

7. Mootness is described as the doctrine of standing, set in a time frame: "The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *United States Parol Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980); *Pederson v. Louisiana St. Univ.*, 213 F.3d 858, 869 (5th Cir. 2000); *Motient Corp.*, 529 F.3d at 537. If a case has been rendered moot, a federal court has no constitutional authority to resolve the issues presented. *Environmental Conservation Org. v. City of Dallas*, 529 F.3d 519, 525-26 (5th Cir. 2008), *cert. denied*, 129 S. Ct. 418 (2008). A case becomes moot when there are no longer adverse parties with sufficient legal interests to maintain jurisdiction or when the parties lack a legally cognizable interest in the outcome. *In re Scruggs*, 392 F.3d 124, 128 (5th Cir. 2004).

8. As the Supreme Court has noted, "it is not enough that a dispute was very much alive when the suit was filed. . . . The parties must continue to have a personal stake in the outcome of

the lawsuit.” *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-78 (1990). Article III requires that the expression of judicial views be a *byproduct* of the need to actually decide the case in order to resolve a concrete controversy. *Alliance to End Repression v. City of Chicago*, 820 F.2d 873, 876 (7th Cir. 1987). The fact that a party may want to litigate to acquire a desired judicial opinion does not establish a real controversy; if this were enough to keep a case alive, an advisory opinion would be its own justification. *See id.* As the Seventh Circuit stated, “[d]efendants, like the courts, have an interest in peace; once there is no more dispute, there is no case. Both the parties and the courts may save the costs of litigation.” *Id.*

9. Justiciability must be analyzed separately on the issues of money damages and the propriety of equitable relief. *Pederson*, 213 F.3d at 874. Allegations of past exposure to illegal conduct are not, standing alone, sufficient to a present case or controversy bestowing continuing jurisdiction upon a court so as to preclude dismissal for mootness; equitable remedies are available only to counter a real and immediate threat the plaintiff will be wronged again. *Carter v. Orleans Parish Pub. Schs.*, 725 F.2d 261, 263 (5th Cir. 1984). “Federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them.” *Pederson*, 213 F.3d at 874.

10. In cases involving students suing their schools, the students’ graduation typically renders their case moot. *See Cole v. Oroville Union High Sch. District*, 228 F.3d 1092, 1098 (9th Cir. 2000), *cert. denied*, 532 U.S. 905 (2001); *Pederson*, 213 F.3d at 874; *Doe v. Madison Sch. District No. 321*, 177 F.3d 789, 798 (9th Cir. 1999); *see also Camreta*, 113 S. Ct. at 2034 (Plaintiff-student’s moving to another state, out of school’s attendance boundaries, and being months from her high school graduation rendered her case against her former school for Fourth Amendment violations moot). Indeed, the Fifth Circuit noted, “[a]s is so often the case in suits

for injunctive relief brought by students, graduation or impending graduation renders their claims for injunctive relief moot.” *Pederson*, 213 F.3d at 874; *see also Cole*, 328 F.3d at 1098 (“It is well-settled that once a student graduates, he no longer has a live case or controversy justifying declaratory and injunctive relief against a school’s action or policy.”) “When subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur,” there is no longer a live controversy. *Camreta*, 113 S. Ct. at 2034 (quoting *United States v. Concentrated Phosphate Export Assn., Inc.* 393 U.S. 199, 203 (1968)). Even if a school were to resume its alleged illegal activity, the plaintiff-students who have graduated would be unaffected since they no longer attend the school; therefore, injunctive and declaratory relief as to graduated students is rendered moot. *Pederson*, 213 F.3d at 874; *see Doe*, 177 F.3d at 798.

11. An exception to this mootness doctrine is the “capable of repetition, yet evading review” exception. *Cole*, 228 F.3d at 1098; *Doe*, 177 F.3d at 798. This exception only applies when (1) the challenged action is too short in duration to be fully litigated before cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again. *Cole*, 228 F.3d at 1098; *Doe*, 177 F.3d at 798. Students who have graduated often do not meet this exception. *See Cole*, 228 F.3d at 1098; *Doe*, 177 F.3d at 798. Although graduation prayer cases are “difficult to litigate fully, such challenges are not ‘so inherently limited in duration that the action will become moot before the completion of appellate review.’” Additionally, because students do not graduate from high school twice, the student will not be compelled to attend another graduation at his high school and thus has no reasonable expectation of being exposed to the same allegedly impermissible actions again. *Doe*, 177 F.3d at 798-99.

12. In *Doe v. Madison School District*, a case on point from the Ninth Circuit, two families sued the school district, bringing First Amendment challenges to the school district’s allowing

prayers at its graduation ceremonies. *Doe*, 177 F.3d at 792. However, one of the student-plaintiffs graduated from high school while the case was pending. *Id.* at 798. The court found that the student's graduation rendered his claims for equitable and declaratory relief moot and further held that no mootness exception applied. *Id.* Citing a litany of other cases that demonstrate graduation cases can be fully litigated, the court noted that although graduation prayer cases can be difficult to fully litigate, they are not inherently incapable of evading review. *Id.* Additionally, the court found that once a student graduates, he is no longer compelled to attend his high school's future graduation ceremonies. *Id.* at 798-99. Consequently, the court held that the graduated student's equitable relief and declaratory relief claims were moot. *Id.*

13. In *Pederson v. Louisiana State University*, the student-plaintiffs brought suit against the university under Title IX for alleged discrimination in intercollegiate athletic facilities and competitions, seeking declaratory, injunctive, and monetary relief. *Pederson*, 213 F.3d at 864. While the case was pending, some of the student-plaintiffs graduated. *Id.* at 874. The Fifth Circuit held that the graduated student-plaintiffs' claims for injunctive relief were rendered moot by their graduation. *Id.* Even if the university were to resume its alleged discriminatory activity, the student-plaintiffs would be unaffected, having graduated. *Id.* at 875.

14. Mere intention to attend future school events does not confer standing. Injuries that are speculative and may never occur are not appropriate for judicial review. See *United Transp. Union v. Foster*, 205 F.3d 851, 857 (5th Cir. 2000). A claim is not ripe for review if it "rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Staley v. Harris County, Tex.*, 485 F. 3d 305, 309 (5th Cir. 2007), *cert. denied*, 552 U.S. 1038 (2007); *United States v. Carmichael*, 343 F.3d 756, 761 (5th Cir. 2003), *cert. denied*, 540 U.S. 1136 (2004); *Texas v. United States*, 523 U.S. 296, 300 (1998). Indeed, a "bare statement of

intention is insufficient to escape mootness.” *Fox. v. Board of Trustees of the State of N.Y.*, 42 F.3d 135, 143 (2d Cir. 1994), *cert. denied*, 515 U.S. 1169 (1995). In *Fox*, the student-plaintiffs had graduated from the university during the pendency of their lawsuit, in which they were seeking an injunction against the university to permit them to engage in commercial sales demonstrations from the dorm rooms. *Id.* at 137-139. The graduated student-plaintiffs attempted to overcome the mootness caused by their graduation by proffering affidavits indicating they planned or intended to take additional courses at the university and expressing their intention to return to campus. *Id.* at 143. The Second Circuit held that the graduated students’ claims were moot due to their graduation and that their statement of intent to take more courses at the university was insufficient to overcome mootness. *Id.*

15. In the present case, Plaintiffs seek injunctive relief, requesting an injunction that prohibits the District from “presenting, sponsoring, encouraging, coercing, or inviting prayers at school or during school-sponsored activities and events,” prohibits the display of any cross or other religious icon, and requires the District to train its employees about legal restrictions concerning religious expression and retaliation. (Dkt. No. 75 at 33 ¶121). However, as set out in the Appendix: Evidentiary Summary of Material Facts, none of the Plaintiffs attends Medina Valley ISD schools. Both Plaintiff Trevor Schultz and Corwyn Schultz have graduated. Consequently, as established by Fifth Circuit and Ninth Circuit precedent, Plaintiffs’ claims for injunctive relief and declaratory relief are rendered moot. Because their equitable and declaratory relief claims are moot, the Court lacks subject matter jurisdiction and must dismiss Plaintiffs’ equitable and declaratory relief claims.²

² In *Does 1-7 v. Round Rock Independent School District*, the Court dismissed the equitable relief claims brought by student-plaintiffs, leaving only the issue of nominal damages. *Does 1-7*, 540 F.Supp.2d 735, 746 (W.D. Tex. 2007). However, the Court noted, “Nominal damages were not intended to thwart the doctrines of mootness and ripeness. . . . The Court is not inclined to give an advisory opinion so thinly veiled by the concept of nominal damages.” *Id.* at

B. Plaintiffs do not have standing.

16. Under Article III, a plaintiff must have standing to sue. *Raines v. Byrd*, 521 U.S. 811, 818 (1997). Standing requires a plaintiff to demonstrate that they have suffered: (i) an injury in fact; (ii) that is fairly traceable to the defendant's actions; and (iii) that will likely be redressed by a favorable decision. *Camreta*, 113 S. Ct. at 2028; *Lujan*, 504 U.S. at 560-61; *Public Citizen, Inc. v. Bomer*, 274 F.3d 212, 217 (5th Cir. 2001). The requirement to satisfy these Article III requirements is not optional; those who do not meet each element "may not litigate as suitors in the courts of the United States." *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 475-76 (1982).

1. Plaintiffs cannot manufacture standing for future, hypothetical claims

17. An injury in fact is an invasion of a legally protected interest which is concrete and particularized, and actual or imminent, not conjectural or hypothetical. *Lujan*, 504 U.S. at 560; *Association of Community Orgs. for Reform v. Fowler*, 178 F.3d 350, 358 (5th Cir. 1999). The Supreme Court has emphasized that the injury must be concrete in both a qualitative and temporal sense. *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). The alleged injury must be distinct and palpable, as opposed to merely abstract. *Warth v. Seldin*, 422 U.S. 490, 500, 95 S.Ct. 2197, 2206 (1975). An appearance or belief of future impropriety is insufficient to establish an injury in fact to convey standing. *Henderson v. Stalder*, 287 F.3d 374, 379 (5th Cir. 2002), *cert. denied*, 537 U.S. 1048 (2002). A threatened injury must be "certainly impending" to constitute an injury in fact. *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979).

18. In *Cole v. Oroville Union High School District*, the Ninth Circuit held that the students and parents who were suing the school to enjoin the school from prohibiting sectarian speeches

746-47. Although the Court allowed the case to proceed for the determination of nominal damages, the Court stated that it had "serious concerns that litigating the sole remaining issue of a few dollars in nominal damages is a poor use of time and resources. . . .," and strongly encouraged settlement. *Id.* at 750.

and prayers at future graduation ceremonies lacked standing because injury at future graduation ceremonies was highly “speculative.” *Cole*, 228 F.3d at 1100. To attain injunctive relief, plaintiffs must be able to demonstrate a real or immediate threat of an irreparable injury. *Id.* The type of speeches that may or may not be given at future graduations “depends upon the highly speculative assumption that a student seeking to give a sectarian speech or prayer will be chosen” as a speaker. *Id.* As a result of the speculative nature of the plaintiffs’ claims concerning future graduation prayers, the Court held that the student-plaintiffs and their families lacked standing to bring claims concerning future graduations. *Id.*

19. In the case at bar, to the extent Plaintiffs are seeking an injunction for alleged future constitutional violations, such as “prayers at school or during school-sponsored activities and events,” Plaintiffs do not have standing to bring such claims as such claims are conjectural and hypothetical at best. (See Dkt. No. 75 at 33 ¶121). Plaintiffs’ belief in future impropriety is insufficient to convey standing on that issue. See *Henderson*, 287 F.3d at 379. Plaintiffs do not have standing to bring claims for any hypothetical *future* alleged constitutional violations. As a result, this Court must dismiss Plaintiffs’ claims for equitable and declaratory relief.

20. Additionally, plaintiffs are not permitted to flagrantly attempt to manufacture standing when none exists. See *Alabama Freethought Ass’n v. Moore*, 893 F. Supp. 1522, 1536, 1536 n.26 (N.D. Ala. 1995) (holding plaintiff did not have standing to pursue Establishment Clause claims when plaintiff *voluntarily* attended jury organizing session in which judge began session with prayer and had Ten Commandments displayed); see also *Lujan*, 504 U.S. at 564-65 n.2 (finding plaintiff did not have standing due partly to fact that “acts necessary to make the injury happen are at least partly within the plaintiff’s own control.”) In *Alabama Freethought Association*, the court noted that one of the plaintiffs in the case voluntarily attended a jury

session so that she would be able to testify to what she observed the judge doing in the courtroom. 893 F. Supp. at 1527 n.13. The plaintiff in question did not go to that courtroom on a regular basis. *Id.* at 1528. The court found that a plaintiff's "voluntary exposure to defendant's conduct . . . does nothing to fulfill [standing] requirements." *Id.* at 1536. The court further commented:

This court cannot understand how voluntary exposure to purportedly offensive conduct can establish standing to obtain an injunction barring such conduct. To recognize standing in such circumstances would be to allow a plaintiff to "manufacture" her standing. Such a clever machination (or is it masochism), if recognized as legitimate, would make a mockery of the longstanding judicial interpretation of Article III's "case or controversy" requirement.

Id. at 1536 n.26 (citations omitted).

21. Here, as in *Alabama Freethought Association*, Danny and Christa have attempted to manufacture standing by voluntarily attending a football game for the sole purpose of videotaping a student's opening remarks. (See Appendix at ¶11.) They stayed only for the remarks and then immediately left, before the game had even started. In the last five years, they had attended pre-game ceremonies, at most, four to five times. *Id.* In fact, neither Danny nor Christa had attended any Medina Valley High School football game in the prior two school years, other than to pick Corwyn up at one game in 2009. *Id.* However, once Defendant's Motion to Dismiss was filed, pointing out Plaintiffs' lack of standing, Danny and Christa began alleging that they plan to go to football games and then show up at one – but only for the pre-game portion of the game to tape the student's remarks - when they hadn't been to a game in two years. *Id.* In fact, Christa couldn't even recall which teams were playing. (Ex. A3 at 77:2-5.) As in *Alabama Freethought Association*, Plaintiffs are attempting impermissibly to manufacture standing when none exists.

2. *Plaintiffs have no injury in fact on most of their claims for nominal damages for alleged past constitutional violations*

22. As set out in the Appendix: Evidentiary Summary of Material Facts, Plaintiffs have alleged many constitutional violations, many of which they did not personally experience or otherwise witness. However, the Supreme Court requires an injury in fact for standing, that is, an injury that is concrete and particularized, and actual or imminent. *Lujan*, 504 U.S. at 560; *Whitmore*, 495 U.S. at 155; *Fowler*, 178 F.3d at 358. Standing to bring Establishment Clause claims cannot be based on abstract knowledge that Constitutional violations may have occurred to others, but not to Plaintiffs personally. *See Doe v. Tangipahoa Parish Sch. Bd.*, 494 F.3d 494, 497 (5th Cir. 2007); *see also Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 474-75 (1982). The Plaintiffs must prove they were exposed to, and therefore injured by, alleged Constitutional violations. *Id.* Here, even assuming Plaintiffs' allegations as true, which Defendant denies, Plaintiffs admittedly were not exposed to and did not otherwise suffer actual injury from any of the following alleged violations:

- a. **Prayer at Board meetings.** (Dkt. No. 75 at ¶¶64-65). None of the Plaintiffs attended any School Board meetings. (Ex. A1 (Deposition of Corwyn Schultz) at 98:7-10; Ex. A3 (Deposition of Christa Schultz) at 102:19-21; Ex. A4 (Deposition of Danny Schultz) at 64:10-18; *see* Ex. B at 9-12 (Response to Interrogatory No. 9)(Plaintiffs' did not list any religious remarks at Board meetings in their discovery responses concerning all statements "religious in nature" by school officials or employees).
- b. **Prayer or religious remarks at Fellowship of Christian Athlete meetings or events.** (Dkt. No. 75 at ¶¶58-59). Plaintiffs Christa, Danny, and Corwyn Schultz did not attend any Fellowship of Christian Athlete ("FCA") meetings. (Ex. A1 at 97:9-

11; Ex. A3 at 103:15-17; Ex. A4 at 61 at 16-19.) Of the one to two FCA meetings that Plaintiff Trevor Schultz attended, he does not recall any school employee or official praying or otherwise giving religious remarks. (Ex. A2 at 37:13-25).

- c. **Scholarship or award ceremonies.** (Dkt. No. 75 at ¶¶2, 64). Plaintiff Corwyn Schultz did not attend any scholarship or award ceremonies at Medina Valley ISD. (Ex. A1: at 97:12-15). Plaintiffs Trevor and Danny Schultz indicated that they attended at least one scholarship and awards ceremony at Medina Valley High School, but neither recalls any religious remarks being made at that ceremony. (Ex. A2 at 53:4-7, 17-18; 54:13-15; A4 at 63:7-9; 64:2-4). Christa Schultz attended one awards ceremony at Medina Valley High School around 2007 in which she claims Mr. Toby Tyler, the then incoming principal of Medina Valley High School, gave remarks in which he may have mentioned the word “God,” but she cannot recall with certainty what Mr. Tyler may have said. (Ex. A3 at 48:4-13; 49:15-22; 50:4-16; 66:23-25).
- d. **Faculty Convocation meetings or faculty meetings.** Plaintiffs did not attend any Faculty Convocation meetings at Medina Valley ISD. (Ex. A3 at 102:22-23; Ex. A4 at 64:19-24; *see* Ex. B at 9-12 (Response to Interrogatory No. 9)).
- e. **New teacher luncheon.** (Dkt. No. 75 at ¶66). Although Plaintiffs’ allege constitutional violations of the Medina Valley Chamber of Commerce’s hosting a new teacher luncheon for both Medina Valley ISD teachers and a local religious school, Plaintiffs admit they have no personal knowledge concerning any Chamber of Commerce new teacher luncheon. (Ex. A1 at 175:7-12; Ex. A3 at 156:6-25, 157: 1; *see* Ex. B at 9-12(Response to Interrogatory No. 9)). Christa Shultz admitted that she

did not attend the new teacher luncheon. (Ex. A3 at 156:6-8).

- f. **National Honor Society events.** (Dkt. No. 75 at ¶64). Corwyn has never attended a National Honor Society event. (Ex. A1 at 174:5-7). When asked at their depositions and in written discovery about all of the alleged religious remarks or speech that Plaintiffs heard at school events whether by employees or students, no Plaintiff identified any National Honor Society event that they attended in which prayer or other religious remarks were made. (Ex. A1 at 55:5-13, 67:8-13, 79:3-16, 82:20-25, 83:1-3, 151:3-6; Ex. A2 at 40:20-24, 38:9-15; Ex. A3 at 68:21-25, 69:1; Ex. A4 at 75:1-4; Ex. B at 9-12 (Response to Interrogatory No. 9)).
- g. **Tennis, Volleyball, Basketball, Softball, Women's Soccer teams and games.** (Dkt. No. 75 at ¶¶54, 56, 57, 64). Neither Corwyn nor Trevor Schultz participated in MVISD tennis, volleyball, basketball, softball, or women's soccer teams. (Ex. A1 at 97:16-17; 173:17-22; Ex. A2 at 54: 19-22). Indeed, Trevor is the only Plaintiff to have participated in sports, and he only played on the boys' soccer team. (Ex. A2 at 54:19-22; A3 at 105:8-11). Corwyn did not witness any prayers at tennis, basketball or soccer games. (Ex. A1 at 170:1-3; 173:17-19; 174:1-4). Other than boys' soccer and football games, Trevor did not witness any prayers at other athletic events. (Ex. A2 at 38:9-15; 40:20-24). Christa Schultz saw the soccer team huddle together but did not hear what was said during the huddle and could not see whether an employee was participating with the students. (Ex. A3 at 104:3-25). Danny Schultz did not witness prayers by the soccer team. (Ex. A4 at 20:23-25, 21:1). Other than Trevor's personal experience with his own soccer team and the Plaintiffs' attendance at football games, no Plaintiff identified any sporting event that they attended in which

prayer or other religious remarks were made. (Ex. A1 at 55:5-13, 67:8-13, 79:3-16, 82:20-25, 83:1-3, 151:3-6; Ex. A2 at 40:20-24, 38:9-15; Ex. A3 at 68:21-25, 69:1; Ex. A4 at 75:1-4; Ex. B at 9-12 (Response to Interrogatory No. 9)).

- h. **Some staff comments.** (Dkt. No. 75 at ¶46). No Plaintiff witnessed or was present for the comments by school personnel as alleged in paragraph 46 of their First Amended Complaint: "Leave a little room for Jesus" or "[I'll] pray for you." (Ex. A1 at 137:20-25, 138:1-3; Ex. A3 at 129:8-22; Ex. A4 at 84:11-17; *see* Ex. A2 at 40:20-24, 38:9-15; Ex. B at 9-12 (Response to Interrogatory No. 9)).
- i. **Religious icons, symbols, or texts.** (Dkt. No. 75 at ¶¶47-51). The only religious icons, symbols, or texts observed by Christa Schultz were a cross and framed saying in Assistant Superintendent Chris Martinez' office and a cross at the front desk. (Ex. A3 at 39:19-25, 40:1, 41:25, 42:1-9). Danny Schultz only personally observed a cross in Mr. Martinez' office. (Ex. A4 at 43:11-25, 44:1-20, 44:24-25, 45:1-8, 86:8-25, 87:1-13). Danny and Christa did not observe the alleged icons or texts alleged in paragraphs 49 and 50 of the First Amended Complaint.
- j. **Football games.** (Dkt. No. 75 at ¶¶3, 13, 61-63). Plaintiffs Danny and Christa Schultz heard alleged religious comments or prayer at only three to four of the football games in the 2007-08 and 2008-2009 seasons since they were usually late to the games. (Ex. A3 at 50:23-25, 51:2-10, 52:17-25, 53:1-25; Ex. A4 at 65:1-7, 66:19-25, 67:3-11, 105:8-25, 106:1-3; 107:23-25, 108:1-4, 108:22-25, 109:1-13). Christa and Danny both indicated that they may have gone to one game in the Fall of 2009, but they arrived near half-time, after any student remarks. (Ex. A3 at 76:14-25, 77:1; Ex. A4 at 107:23-25, 108:1-4). Danny attended one football game in Fall 2006. (Ex.

A4 at 105:8-21). Although Christa and Danny Schultz attended a football game in the 2011-12 school year, as discussed *supra*, such brazen attempt to manufacture standing does not create standing.

- k. **Graduation.** (Dkt. No. 75 at ¶76). The only Medina Valley High School graduation ceremonies that the Plaintiffs attended were the ones held in 2008 and 2009. (Ex. B at 9, Response to Interrogatory No. 8.) Trevor Schultz also attended the 2011 graduation ceremony; however, as discussed *supra*, he is no longer a student and thus, does not have standing concerning the 2011 graduation. (*Id.*)
- l. **Mr. Tyler's morning announcements.** (Dkt. No. 75 at ¶3, 31, 34.) Christa and Danny Schultz never witnessed or otherwise observed Principal Toby Tyler making school announcements over the loudspeaker. (Ex. A3:68:21-25, 62:1; A4 at 21:2-4).

Because Plaintiffs do not have an actual injury from the above claims, this Court must dismiss those claims for lack of subject matter jurisdiction.

23. The only claims that Plaintiffs allege an actual, injury in fact, and thus, the only claims for which Plaintiffs have standing to bring in this suit are detailed below.

- a. Corwyn Schultz has alleged an injury on only the following claims:

1. The alleged religious remarks in Principal Toby Tyler's morning school announcements. (Dkt. No. 75 at ¶¶31-34).
2. The alleged comments made by school employees to him personally, as alleged in paragraphs 36, 37, 39, 40, 41, 42 of the First Amended Complaint.
3. The alleged religious icons and symbols that Corwyn reportedly saw himself. (Dkt. No. 75 at ¶¶48-50).
4. The alleged religious remarks at football games he attended during his four

years in high school. (Dkt. No. 75 at ¶63).

5. The alleged religious remarks at the 2008 and 2009 graduations. (Dkt. No. 75 at ¶¶81-82).

b. Trevor Schultz has alleged actual injury on only the following claims:

1. The alleged religious remarks in Principal Toby Tyler's morning school announcements. (Dkt. No. 75 at ¶31).
2. The alleged religious icons that he personally observed while a student. (Dkt. No. 75 at ¶¶48, 49). Trevor testified to only seeing a cross on teacher Ms. Griggs' desk, a Christian pamphlet in Officer Sides' office, a Bible verse and cross in the nurse's personal office, and a Bible behind teacher Nicole Houston's desk. (Ex. A2 at 41:12-21, 42:15-25, 43:1, 78:8-18, 99:17-25, 100:1-5, 101:5-9, 102:13-25, 103:1-2).
3. The alleged prayers of his soccer team and one teacher. (Dkt. No. 75 at ¶¶38, 53).
4. The alleged religious remarks at the football games he attended while in school. (Dkt. No. 75 at ¶61).
5. The alleged religious remarks at the 2008 and 2009 graduations. (Dkt. No. 75 at ¶¶81-82).

c. Christa Schultz has alleged actual injury on only the following claims:

1. The alleged religious remarks at the 2008 and 2009 graduations. (Dkt. No. 75 at ¶¶81-82).
2. The alleged religious remarks at the football game pre-game ceremonies that she attended, and according to her testimony, she attended only three to four

games in which she heard religious remarks in the 2007-08 and 2008-09 school years. (See Appendix at ¶11.)

3. The religious icons or symbols she alleges that she personally observed (which she testified were a cross and framed verse in Assistant Superintendent Chris Martinez' office and a cross on a desk in the front office.) (Dkt. No. 75 at ¶48, 51; Ex. A3 at 39:19-25, 40:1, 41:25, 42:1-9).

d. Danny Schultz has alleged injury on only the following claims:

1. The alleged religious remarks at the 2008 and 2009 graduations. (Dkt. No. 75 at ¶¶81-82).
2. The alleged religious remarks at the football pre-game ceremonies that he attended, which were one game in 2006 and three to four games in the 2007-08 and 2008-09 school years. (See Appendix ¶11).
3. The religious icon or symbol he alleges that he personally observed (which he testified was only a cross in Assistant Superintendent Chris Martinez' office). (Dkt. No. 75 at ¶51; Ex. A4 at 43:11-25, 44:1-20, 44:24-25, 45:1-8, 86:8-25, 87:1-13).

C. Plaintiffs cannot establish subject-matter jurisdiction before the Court under the Declaratory Judgment Act.

24. Regarding Plaintiffs' request for declaratory judgment, a federal court has the power to hear a declaratory judgment action *only* if the case is otherwise within its subject-matter jurisdiction and involves an actual controversy. See 28 U.S.C. § 2201(a); *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240 (1937). The availability of this declaratory relief however presupposes the existence of jurisdiction in the first place. *Schilling v. Rogers*, 363 U.S. 666, 677 (1960). The operation of the Declaratory Judgment Act is procedural only, and although it

may enlarge the range of available remedies, it does not extend the jurisdiction of federal courts.

Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671 (1950). In *Skelly Oil Co.*, The United States Supreme Court instructed:

When concerned as we are with the power of the inferior federal courts to entertain litigation within the restricted areas to which the Constitution and Acts of Congress confine them, ‘jurisdiction’ means the kinds of issues which give right of entrance to federal courts. Jurisdiction in this sense was not altered by the Declaratory Judgment Act. *Id.*

Thus, the “requirements of jurisdiction -- the limited subject matters which alone Congress had authorized the District Courts to adjudicate -- were not impliedly repealed or modified” by the Declaratory Judgment Act. *Skelly Oil Co.*, 339 U.S. at 672.

25. The Fifth Circuit has repeatedly held that the Declaratory Judgment Act is not an independent source of subject-matter jurisdiction. *In re B-727 Aircraft*, 272 F.3d 264, 270 (5th Cir. 2001); *Comstock Oil & Gas Inc. v. Alabama and Coushatta Indian Tribes of Texas*, 261 F.3d 567, 573 (5th Cir. 2001), *cert. denied*, 535 U.S. 971 (2002); *TTEA v. Ysleta del Sur Pueblo*, 181 F.3d 676, 681 (5th Cir. 1999); *Lawson v. Callahan*, 111 F.3d 403, 405 (5th Cir. 1997). Despite Plaintiffs’ request for declaratory relief, declaratory relief is only available when some other basis for jurisdiction is present. *Appling County v. Municipal Elec. Authority of Ga.*, 621 F.2d 1301, 1303 (5th Cir. 1980), *cert. denied*, 449 U.S. 1015 (1980); *Jones v. Alexander*, 609 F.2d 778, 781 (5th Cir. 1980), *cert. denied*, 449 U.S. 832 (1980).

26. Because this Court lacks subject matter jurisdiction over Plaintiffs’ claims for equitable relief, as set out above, this Court does not have jurisdiction over Plaintiffs’ requests for declaratory relief as they relate to those claims. Accordingly, this Court must dismiss Plaintiffs’ injunctive and declaratory relief claims for lack of subject matter jurisdiction.

IV. CONCLUSION

27. For all of the reasons set forth herein, MVIDS respectfully requests that the Court grant Defendant's Second Motion to Dismiss for Lack of Subject-Matter Jurisdiction, dismiss all of the Plaintiffs' equitable and declaratory relief claims as well as all the nominal damages claims that Plaintiffs did not have an actual injury in fact as detailed above, deny the Plaintiffs any and all relief they seek, render a take nothing judgment against Plaintiffs and grant to Defendant its reasonable and necessary attorneys' fees, costs of court, and any and all other relief to which it may be entitled. *See Does 1-7 v. Round Rock Indep. Sch. Dist.*, 540 F.Supp.2d 735 (W.D. Tex. 2007).

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Mr. Gregory M. Lipper
Americans United for Separation of Church & State
1301 K Street, NW, Ste. 850
Washington, DC 20005

/s/ D. Craig Wood
D. CRAIG WOOD

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CHRISTA SCHULTZ, et al

Plaintiffs,

v.

MEDINA VALLEY INDEPENDENT
SCHOOL DISTRICT,

Defendant.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 5:11-CV-422

APPENDIX:
DEFENDANT'S EVIDENTIARY SUMMARY OF MATERIAL FACTS
IN SUPPORT OF DEFENDANT'S SECOND MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION

1. The following items in this Appendix are incorporated by reference for all purposes into Defendant's Second Motion Dismiss for Lack of Subject Matter Jurisdiction and into this Appendix:

Exhibit A: Affidavit of Stacy Castillo, authenticating discovery Exhibits A1, A2, A3 and A4.

Exhibit A1: Deposition of Corwyn Schultz
Exhibit A2: Deposition of Trevor Schultz
Exhibit A3: Deposition of Christa Schultz
Exhibit A4: Deposition of Danny Schultz

Exhibit B: Plaintiff's Responses to Defendant's First Set of Interrogatories

2. As set out in Defendant's original Motion to Dismiss, Plaintiff Christa Schultz and Plaintiff Danny Schulz are not students at the District. (See Dkt. 43: Ex. A (Affidavit of Chris Martinez). Plaintiffs Trevor and Corwyn Schultz have both graduated from the District; neither are students at the District. (*Id.*)

3. None of the Plaintiffs have attended any School Board meetings. (Ex. A1 (Deposition of Corwyn Schultz) at 98:7-10; Ex. A3 (Deposition of Christa Schultz) at 102:19-21; Ex. A4 (Deposition of Danny Schultz) at 64:10-18).

4. Plaintiffs Christa, Danny, and Corwyn Schultz did not attend any Fellowship of Christian Athlete ("FCA") meetings. (Ex. A1 at 97:9-11; Ex. A3 at 103:15-17; Ex. A4 at 61 at 16-19). Of the one to two FCA meetings that Plaintiff Trevor Schultz attended, he does not recall any school employee or official praying or otherwise giving religious remarks. (Ex. A2 at 37:13-25.)

5. Plaintiff Corwyn Schultz did not attend any scholarship or award ceremonies at Medina Valley ISD. (Ex. A1 at 97:12-15). Plaintiffs Trevor and Danny Schultz indicated that they attended at least one scholarship and awards ceremony at Medina Valley High School, but neither recalls any religious remarks being made at that ceremony. (Ex. A2 at 53:4-7, 17-18; 54:13-15; A4 at 63:7-9; 64:2-4) Christa Schultz attended one awards ceremony at Medina Valley High School around 2007 in which she claims Mr. Toby Tyler, the then incoming principal of Medina Valley High School, gave remarks in which he may have mentioned the word "God," but she cannot recall with certainty what Mr. Tyler may have said. (Ex. A3 at 48:4-13; 49:15-22; 50:4-16; 66:23-25).

6. Plaintiffs did not attend any Faculty Convocation meetings at Medina Valley ISD. (Ex. A3 at 102:22-23; Ex. A4 at 64:19-24.) At their depositions and in their Interrogatory Responses, when asked to identify all religious remarks or statements made by school personnel or officials that they witnessed at the District, Plaintiffs never identified any staff meeting or faculty convocation. (Ex. B at 9-12 (Plaintiffs' Response to Interrogatory No. 9)).

7. Although Plaintiffs' allege constitutional violations of the Medina Valley Chamber of Commerce's hosting a new teacher luncheon for both Medina Valley ISD teachers and a local

religious school, Plaintiffs admit they have no personal knowledge concerning any Chamber of Commerce new teacher luncheon. (Ex. A1 at 175:7-12; Ex. A3 at 156:6-25, 157: 1; *see* Dkt. No. 75 at ¶66). Christa Shultz admitted that she did not attend the new teacher luncheon alleged in paragraph 66 of Plaintiffs' First Amended Complaint. (Ex. A3 at 156:6-8). Likewise, at their depositions and in their Interrogatory Responses, when asked to identify all religious remarks or statements made by school personnel or officials that they witnessed at the District, Plaintiffs never identified any staff luncheon or Chamber of Commerce luncheon or event. (Ex. B at 9-12, Response to Interrogatory No. 9).

8. Corwyn has never attended a National Honor Society event. (Ex. A1 at 174:5-7). No Plaintiff identified any National Honor Society event that they attended in which prayer or other religious remarks were made. (Ex. A1 at 55:5-13, 67:8-13, 79:3-16, 82:20-25, 83:1-3, 151:3-6; Ex. A2 at 40:20-24, 38:9-15; Ex. A3 at 68:21-25, 69:1; Ex. A4 at 75:1-4; Ex. B at 9-12 Response to Interrogatory No. 9).

9. Neither Corwyn nor Trevor Schultz participated in MVISD tennis, volleyball, or basketball teams. (Ex. A1 at 97:16-17; 173:17-22; Ex. A2 at 54: 19-22). Indeed, Trevor is the only Plaintiff to have participated in sports, and he only played on the soccer team. (Ex. A2 at 54:19-22; A3 at 105:8-11). Corwyn did not witness any prayers at tennis, basketball or soccer games. (Ex. A1 at 170:1-3; 173:17-19; 174:1-4.) Other than soccer and football games, Trevor did not witness any prayers at other athletic events. (Ex. A2 at 38:9-15; 40:20-24). Christa Schultz saw the soccer team huddle together but did not hear what was said during the huddle and could not see whether an employee was participating with the students. (Ex. A3 at 104:3-25). Danny Schultz did not witness prayers by the soccer team. (Ex. A4 at 20:23-25, 21:1).

10. No Plaintiff witnessed or was present for the alleged comments by school personnel in

paragraph 46 of their First Amended Complaint (Dkt. No. 75): “Leave a little room for Jesus” or “[I’ll] pray for you.” (Ex. A1 at 137:20-25, 138:1-3; Ex. A3 at 129:8-22; Ex. A4 at 84:11-17; *see* Ex. B at 9-12 (Plaintiffs’ Response to Interrogatory No. 9)). Only Plaintiff Corwyn Schultz witnessed an alleged February 10, 2010 comment by Christine Willing that she would “pray.” (Dkt. No. 75 at ¶ 40).

11. Plaintiffs Christa and Danny Schultz did not personally witness or observe any religious text or cross in a school classroom or a religious plaque in former Vice-Principal Fletcher Turcato’s office. (Ex. A3 at 39:19-25, 40:1, 41:25, 42:1-9; 47:2-4, Ex. A4 at 43:11-25, 44:1-20, 44:24-25, 45:1-8, 86:8-25, 87:1-13). The only religious symbol or icon that Danny Schultz observed was a cross in Assistant Superintendent Chris Martinez’ office. (Ex. A4 at 43:11-25, 44:1-20, 44:24-25, 45:1-8, 86:8-25, 87:1-13). The only religious symbol or icon that Christa Schultz observed was a cross and framed religious saying in Assistant Superintendent Chris Martinez’ office and a cross on a desk in the front office. (Ex. A3 at 39:19-25, 40:1, 41:25, 42:1-9).

12. The only football games that Plaintiffs attended were the following: Danny and Christa Schultz went to most, if not all, home games in 2007-08 and 2008-09 school years, when Corwyn played in the band, but allegedly heard prayer only at three to four of those games. (Ex. A3 at 50:23-25, 51:2-10, 52:17-25, 53:1-6; Ex. A4 at 65:1-7, 66:19-25, 67:3-11, 105:8-25, 106:1-3; 108:22-25, 109:1-13). For some of the games that Christa and Danny Schultz attended, they arrived late, after any student remarks occurred. (Ex. A3 at 53:16-25; A4 at 107:23-25, 108:1-4). Christa indicated she may have gone to one game in the Fall of 2009, but does not think she was there early enough to hear any student remarks. (Ex. A3 at 76:14-25, 77:1). Christa Schultz attended one football game in the 2011-12 school year, but only stayed for the

pre-game portion of the game, leaving immediately after the student's remarks were given. (Ex. A3 at 77:2-5). Indeed, Christa brought a video camera to the one 2011 football game she attended to record the student remarks. (Ex. A3 at 77:9-14). Danny attended one football game in Fall 2006. (Ex. A4 at 105:8-21). He also attended one game in Fall 2009, arriving after half-time to pick up his son. (Ex. A4 at 107:23-25, 108:1-4). Danny attended two games in the 2011 football season, one of which was with Christa where they videotaped the remarks and then left immediately after the student remarks. (Ex. A4 at 65:8-11; 126:20-25). Danny and Christa did not attend any football games during the 2010-11 football season. (Ex. A3 at 76:9-23; A4 at 68:20-25, 69:1-4).

13. The only Medina Valley High School graduation ceremonies that the Plaintiffs attended were the ones held in 2008 and 2009. (Ex. B at 9, Response to Interrogatory No. 8.) Trevor Schultz, who is no longer a resident in Medina Valley ISD, also attended the 2011 graduation ceremony. (*Id.*; Ex. A2 at 8:16-17.)

14. Christa and Danny Schultz never witnessed or otherwise observed Principal Toby Tyler making school announcements over the loudspeaker. (Ex. A3 at 47:14-17; Ex. A4 at 21:2-4).

AFFIDAVIT OF STACY TUER CASTILLO

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared STACY TUER CASTILLO known to me to be the person whose signature appears below, and having been by me duly sworn, the said STACY TUER CASTILLO stated on oath as follows:

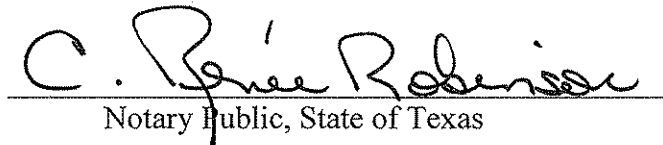
“My name is STACY TUER CASTILLO. I am over 18 years of age. I have never been convicted of a crime and I am personally competent to make this affidavit. I have personal knowledge of all facts stated in this affidavit, and they are true and correct.

I am an attorney of record for the Medina Valley Independent School District, in the lawsuit styled, *Christa Schultz et al v. Medina Valley Independent School District*, which is currently pending in the United States District Court for the Western District of Texas, San Antonio Division as Civil Action No. 5:11-cv-422. I have served in this capacity at all times relevant in this lawsuit. Attached hereto and labeled as Exhibit “A1” are true and correct copies of the deposition excerpts of Corwyn Schultz, whose deposition was taken on October 7, 2011. However, on page 175, lines 13-17 of Corwyn’s deposition, information designated by Plaintiffs’ counsel as “Highly Confidential” has been redacted pursuant the Court’s current Protective Order. Attached hereto and labeled as Exhibit “A2” are true and correct copies of the deposition excerpts of Trevor Schultz, whose deposition was taken on October 5, 2011; labeled as Exhibit “A3” are true and correct copies of the deposition excerpts of Christa Schultz, who deposition was taken on November 4, 2011; and labeled as Exhibit “A4” are true and correct copies of the deposition excerpts of Danny Schultz, whose deposition was taken on November 2, 2011. All of the foregoing are referred to and incorporated for all purposes in Defendants’ Evidentiary Summary of Material Facts in Support of Defendant’s Second Motion to Dismiss as well as Defendant’s Second Motion to Dismiss for Lack of Subject Matter Jurisdiction.

FURTHER AFFIANT SAYETH NOT."


STACY TUER CASTILLO

SUBSCRIBED AND SWORN TO BEFORE ME by the said STACY TUER CASTILLO
on this the 9th day of December, 2011, to certify which witness my hand and official
seal.


Notary Public, State of Texas



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

COPY

CHRISTA SCHULTZ, et al
Plaintiffs

*
*

VS.

*

CIVIL ACTION NO.
5:11-CV-422

MEDINA VALLEY INDEPENDENT
SCHOOL DISTRICT,
Defendant.

*
*
*

ORAL DEPOSITION

OF

CORWYN J.G. SCHULTZ

OCTOBER 7, 2011

EXHIBIT "A-1"

EDDIE MORRIS - COURT REPORTERS, INC.

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MS. STACY TUER CASTILLO

FOR THE DEFENDANT

CORWYN J.G. SCHULTZ

WITNESS

BECKY A. OLSON

CERTIFIED SHORTHAND
REPORTER

ORAL ANSWERS AND DEPOSITIONS of the
witness, CORWYN J.G. SCHULTZ, who resides in Rio
Medina, Medina County, Texas, in answer to questions
propounded to him in the above styled and numbered
cause, taken on behalf of the Defendant, before BECKY
A. OLSON, a Certified Shorthand Reporter in and for the
State of Texas, on October 7, 2011, in the offices of

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92 Trailcrest, San Antonio, Texas 78232

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C. SCHULTZ - BY MR. WOOD

11:52:32 1 religious speech that you found to be offensive in the
11:52:36 2 Medina Valley Independent School District; is that
11:52:36 3 correct?

11:52:38 4 A. Yes, sir.

11:52:38 5 Q. Okay. Describe for me if you will then what
11:52:41 6 instances you encountered some sort of religious speech
11:52:45 7 while you were a student at Medina Valley.

11:52:49 8 A. Every year I was there there were -- Mr. Tyler
11:52:52 9 had said something or had said religious speech over
11:52:57 10 the intercom. There have been teachers during class
11:53:03 11 that have said things.

11:53:10 12 Q. Anything else?

1:53:15 13 A. Not that comes to mind.

11:53:17 14 Q. Okay. Let's talk about Mr. Tyler first. You
11:53:19 15 said every year he had some sort of religious speech
11:53:23 16 over the intercom. Tell me what you recall occurring,
11:53:28 17 what it was that Mr. Tyler said.

11:53:31 18 A. It was always just -- just like -- unless it
11:53:38 19 was a said prayer, he would add little things into his
11:53:43 20 speech like "and there's only one good book", things of
11:53:48 21 that nature.

11:53:49 22 Q. Only one good book, do you recall when he said
11:53:52 23 that?

11:53:52 24 A. I think that was during my jun -- yeah, my
1:53:58 25 junior year.

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12:08:18 1 A. Yes, sir.

12:08:18 2 Q. And tell me when those situations occurred.

12:08:22 3 A. Throughout my school year there or my school

12:08:26 4 career.

12:08:28 5 Q. Teachers, counselors? Who particularly are you

12:08:35 6 talking about?

12:08:35 7 A. Teachers and administration.

12:08:37 8 Q. Okay. Let's talk about teachers first. What

12:08:40 9 teachers did you hear engage in some sort of religious

12:08:43 10 speech?

12:08:44 11 A. Mr. Riley, Ms. Wolfshohl, Ms. Maldonado.

12:08:59 12 Q. Anyone else?

2:09:01 13 A. That's all that's coming to my mind right now.

12:09:07 14 Q. Let's talk about Mr. Riley first. What

12:09:09 15 religious speech did you hear from Mr. Riley?

12:09:13 16 A. During -- the band was practicing. We were out

12:09:17 17 on the black tar and he was upon his podium and he

12:09:23 18 was -- I don't remember exactly what he said, but he

12:09:27 19 ended it with "and God bless this upcoming marching

12:09:31 20 season".

12:09:33 21 Q. Any other occurrences from Mr. Riley?

12:09:38 22 A. Not that I recall.

12:09:40 23 Q. Did you discuss that comment with Mr. Riley?

12:09:47 24 A. No, sir.

2:09:48 25 Q. What did you play in the band?

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12:23:51 1 Q. Any other administrators that you can think of?

12:24:01 2 A. No, sir.

12:24:03 3 Q. Any other teachers besides the three that you

12:24:06 4 just named who engaged in some type of religious

12:24:14 5 speech?

12:24:14 6 A. Not that I can recall.

12:24:15 7 Q. Okay. Any other school district employees at

12:24:20 8 all regardless of their classification?

12:24:22 9 A. Yes, sir.

12:24:23 10 Q. Who else -- what other school district

12:24:25 11 employees engaged in religious speech?

12:24:27 12 A. Ms. Willing.

12:24:30 13 Q. What was Ms. Willing's function?

12:24:33 14 A. She was the attendance clerk.

12:24:35 15 Q. All right. Anyone else?

12:24:38 16 A. Not that I can recall, no.

12:24:42 17 Q. And what was it that Ms. Willing said that you

12:24:46 18 found to be offensive?

12:24:47 19 A. She told me that she was going to pray for me.

12:24:52 20 Q. And when did that occur?

12:24:54 21 A. My junior year.

12:24:58 22 Q. What was the context when she made that comment

12:25:01 23 about you?

12:25:01 24 A. I was called in to the nurse's office to get my

12:25:05 25 eyesight and my hearing checked. I was waiting to be

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C. SCHULTZ - BY MR. WOOD

12:27:09 1 Q. And what did you tell Mr. Tyler with respect to
12:27:12 2 Ms. Willing's comment?

12:27:13 3 A. That Ms. Willing had just told me she was going
12:27:17 4 to pray for me, that I was upset by it.

12:27:22 5 Q. Did you ask that Mr. Tyler do anything in
12:27:26 6 response to your concerns?

12:27:28 7 A. I don't recall.

12:27:31 8 Q. Did you discuss that matter with your parents?

12:27:33 9 A. Yes, sir.

12:27:33 10 Q. And in that context did you all discuss your
12:27:39 11 notion of perhaps filing a lawsuit against the school
12:27:42 12 district?

12:27:43 13 MR. LIPPER: Object to the form.

12:27:44 14 A. No, sir.

12:27:45 15 Q. (BY MR. WOOD) All right. Besides Ms. Willing,
12:27:53 16 any other employees of any type that you can think of
12:27:56 17 that we haven't already discussed who made some sort of
12:27:59 18 speech that you found offensive?

12:28:01 19 A. Not that comes to mind, no.

12:28:10 20 Q. Have you been present at school district events
12:28:24 21 at which religious speech has been offered by students?

12:28:29 22 A. Yes, sir.

12:28:30 23 Q. And what events have you been present for?

12:28:33 24 A. Football games.

12:28:35 25 Q. Anything else?

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12:28:39 1 A. No.

12:28:43 2 Q. Have you attended any graduation ceremonies?

12:28:48 3 A. Yes, sir.

12:28:53 4 Q. I don't mean to clue you in. It's not my job.

12:28:58 5 Let's talk about -- anything besides football games and

12:29:02 6 graduation?

12:29:03 7 A. Not that comes to mind.

12:29:05 8 Q. Let's talk about football games. How many

12:29:07 9 football games have you attended while -- well, how

12:29:13 10 many Medina Valley football games have you attended?

12:29:16 11 A. Unless I was sick every one for my freshman and

12:29:21 12 sophomore year. My junior and senior year I would only

12:29:28 13 go if they were home games and I usually went to every

12:29:34 14 one. I probably missed like one or two.

12:29:39 15 Q. And how many of those games -- can you estimate

12:29:44 16 a number of total games that you might have attended?

12:29:48 17 A. Twenty to 40.

12:29:53 18 Q. And at how many of those games would you have

12:29:59 19 heard some sort of religious speech being offered by a

12:30:02 20 student?

12:30:03 21 A. Every home game. I don't recall all the away

12:30:07 22 games. Some of the away games, yes.

12:30:09 23 Q. And let's talk, first of all, about the home

12:30:14 24 games. You believe at every home game that some sort

12:30:21 25 of religious speech was offered?

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01:43:06 1 speech of a religious nature in any of those
01:43:09 2 organizations?
01:43:09 3 A. Band.
01:43:10 4 Q. Band. The comment by Mr. Riley about God bless
01:43:16 5 the upcoming season or whatever?
01:43:18 6 A. Yes, sir.
01:43:18 7 Q. Okay. None other than that then?
01:43:21 8 A. Not that I recall.
01:43:22 9 Q. Did you ever attend any meetings of the
01:43:30 10 Fellowship of Christian Athletes?
01:43:32 11 A. No, sir.
01:43:33 12 Q. Did you attend any scholarship or award
01:43:37 13 ceremonies while you were a student at Medina Valley
01:43:42 14 Independent School District?
01:43:42 15 A. No, sir.
01:43:43 16 Q. Did you play any sports?
01:43:46 17 A. No, sir.
01:43:47 18 Q. So, I take it you did not attend any sports
01:43:50 19 banquets either?
01:43:51 20 A. No, sir.
01:43:52 21 Q. Were you aware of an event called "meet at the
01:43:57 22 pole" that occurred at the school district?
01:43:58 23 A. Yes, sir.
01:43:58 24 Q. And what do you know about "meet at the pole"?
01:44:01 25 A. Not a whole lot, just that members of the

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01:44:06 1 student body meet at the flagpole at the front of the
01:44:10 2 school. I think it's an association with the FCA. I
01:44:15 3 don't know though.

01:44:16 4 Q. Did you ever attend one of those events?

01:44:18 5 A. I saw one of them happening as I pulled up to
01:44:21 6 school, but I did not attend it.

01:44:23 7 Q. Did you ever attend any meetings of the board
01:44:29 8 of trustees for Medina Valley Independent School
01:44:31 9 District?

01:44:31 10 A. No, sir.

01:44:34 11 Q. You know that Medina Valley Independent School
01:44:41 12 District had a student code of conduct?

01:44:42 13 A. Yes, sir.

01:44:43 14 Q. And were you given a student handbook that
01:44:46 15 contained that student code of conduct?

01:44:48 16 A. Yes, sir.

01:44:49 17 Q. And did that student code of conduct include
01:44:53 18 provisions relating to a dress code?

01:44:55 19 A. Yes, sir.

01:44:56 20 Q. Were you required to sign for receipt of the
01:45:00 21 student parent handbook?

01:45:02 22 A. Yes, sir.

01:45:03 23 Q. And you did that, did you not?

01:45:05 24 A. Yes, sir.

01:45:06 25 Q. And as I recall, you were actually written up

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03:00:58 1 item number 11; is that right?

03:00:59 2 A. Yes, sir.

03:01:00 3 Q. Let's look at item number 13 on page 3 of 5 as

03:01:13 4 titled at the top. "Teachers have told students that

03:01:16 5 they will 'pray for you'." Did you personally witness

03:01:22 6 that discussion?

03:01:24 7 A. Yes, sir.

03:01:25 8 Q. Okay. And between whom -- what parties did

03:01:31 9 those discussions take place when the teachers told the

03:01:34 10 students that they would pray for them?

03:01:35 11 A. Then they told me that they would pray for me.

03:01:37 12 Q. Which teachers told you that they would pray

03:01:39 13 for you?

03:01:39 14 A. Ms. Willing has.

03:01:42 15 Q. Was that in context of the Obama shirt?

03:01:45 16 A. Yes, sir.

03:01:45 17 Q. Was there any other instance in which

03:01:47 18 Ms. Willing told you she would pray for you?

03:01:50 19 A. Not that I can recall, no, sir.

03:01:52 20 Q. Are you aware of teachers telling any other

03:01:57 21 students that they would pray for them?

03:02:00 22 A. Not that comes to mind, no.

03:02:03 23 Q. You also say in paragraph 13, "When separating

03:02:07 24 a male and female student engaging in a public display

03:02:10 25 of affection, have asked them to, quote, 'Make sure to

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03:02:14 1 leave a little room for Jesus between you'". Were you
03:02:18 2 personally witness to that conversation?
03:02:20 3 A. No, sir. That was told to me by my friend.
03:02:22 4 Q. Would you take that to be a joke?
03:02:28 5 MR. LIPPER: Object to the form.
03:02:30 6 A. From my friend?
03:02:31 7 Q. (BY MR. WOOD) No. I'm asking you if a teacher
03:02:35 8 made this comment when a male and female student are
03:02:37 9 engaging in a public display of affection, in your
03:02:41 10 opinion would that be a joke?
03:02:42 11 A. Absolutely not. I don't think someone would
03:02:44 12 joke about their religion.
03:02:46 13 Q. Okay. On paragraph number 15 you say that
03:02:51 14 during the prayers at the 2009 graduation ceremony and
03:02:56 15 the football games to avoid hearing the prayers you
03:02:59 16 quietly sang to yourself or chanted "I hate this, this
03:03:04 17 isn't right". Is that what you did?
03:03:06 18 A. Yes, sir, but it wasn't always "I hate this" or
03:03:10 19 "this isn't right". That was just one occasion.
03:03:13 20 Q. You say in paragraph number 16 that you were
03:03:17 21 disciplined by your band section leader. Who was your
03:03:20 22 band section leader?
03:03:21 23 A. That could have either been Vincent De La Cruz,
03:03:25 24 Adrian -- I don't know his last name, or Carmen
03:03:28 25 McIntyre.

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03:21:21 1 MR. LIPPER: Object to the form.

03:21:22 2 A. Yes, sir.

03:21:23 3 Q. (BY MR. WOOD) What other events or situations

03:21:26 4 do you believe contribute to the environment of

03:21:29 5 pervasive religiosity?

03:21:31 6 A. I can't recall them all at this time.

03:21:34 7 Q. What was pervasive about these events?

03:21:42 8 MR. LIPPER: Object to the form.

03:21:44 9 A. Could you rephrase your question, please?

03:21:46 10 Q. (BY MR. WOOD) What was pervasive about these

03:21:48 11 events?

03:21:49 12 MR. LIPPER: Object to the form.

03:21:51 13 A. They just kept happening and happening time

03:21:59 14 after time.

03:22:01 15 Q. (BY MR. WOOD) At the end of paragraph number

03:22:03 16 16, "Upon information and belief, the prayers are

03:22:06 17 submitted to, and approved by, the Medina Valley High

03:22:10 18 School Principal before they are presented". Do you

03:22:12 19 have any personal knowledge about that?

03:22:14 20 A. I was told by the student council president

03:22:17 21 that's how it was done.

03:22:18 22 Q. And other than that information from the

03:22:20 23 student council president, do you have any other

03:22:23 24 knowledge that that's, in fact, the process?

03:22:26 25 A. No, sir.

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03:46:25 1 Q. Did you witness any kind of religious speech or
03:46:28 2 prayer at those events?

03:46:29 3 A. No.

03:46:31 4 Q. All right. Now, Mr. Schultz, I'm going to
03:46:45 5 present what I hope to be the last exhibits and I'm
03:46:50 6 going to ask that Mr. Lipper acknowledge that we have
03:46:54 7 discussed this exhibit and we have agreed that I will
03:46:59 8 show you the unredacted version of Exhibit Number 44
03:47:05 9 which is marked -- if I can find it because I've lost
03:47:10 10 mine. Which is marked, "Highly Confidential-Outside
03:47:18 11 Counsel's Eyes Only".

03:47:21 12 MR. WOOD: Mr. Lipper, have we agreed that I'm
03:47:24 13 going to show the witness this document and ask him
03:47:26 14 questions about that?

03:47:27 15 MR. LIPPER: We have as long as I may have a
03:47:29 16 copy of it because what I have is redacted.

03:47:35 17 MR. WOOD: Let me give you a copy as well.

03:47:38 18 MR. LIPPER: I'd just like to clarify that
03:47:41 19 Mr. Wood is not going -- I believe you've agreed not to
03:47:44 20 ask Mr. Schultz if he can deduce the identity of any
03:47:48 21 plaintiff based on a specific paragraph that are
03:47:53 22 designated highly confidential.

03:47:54 23 MR. WOOD: I'm not going to ask him to deduce.
03:47:57 24 I'm going to ask him about the particulars that are set
03:48:00 25 forth in here, whether he is familiar with that set of

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03:52:13 1 Q. Did you ever recall him say God Bless America?

03:52:19 2 A. Not that I can recall.

03:52:24 3 Q. Were you ever present in a class in which

03:52:46 4 students were asked to raise their hands if they

03:52:50 5 believe in God?

03:52:51 6 A. No, sir.

03:52:52 7 Q. Were you ever present in a class during which a

03:52:58 8 teacher read Bible verses to the students?

03:53:00 9 A. No, sir.

03:53:00 10 Q. Were you ever present in a class during which

03:53:17 11 Coach Houston required students to watch a video of a

03:53:21 12 pastor giving a speech?

03:53:22 13 A. No, sir.

03:53:23 14 Q. Did you ever attend any of the events that the

03:54:00 15 tennis team participated in?

03:54:02 16 A. Could you repeat the question?

03:54:04 17 Q. Did you ever attend any of the events for the

03:54:09 18 tennis team?

03:54:09 19 A. No, sir.

03:54:10 20 Q. Did you ever attend any of the events for the

03:54:13 21 women's basketball team?

03:54:14 22 A. Yes, sir.

03:54:15 23 Q. Which events did you attend?

03:54:16 24 A. I attended a couple of their games, just once

03:54:21 25 or twice.

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03:54:22 1 Q. When you attended the women's basketball
03:54:25 2 events, did you ever see the team engage in some sort
03:54:28 3 of prayer circle?

03:54:30 4 A. No, sir.

03:54:31 5 Q. Have you ever attended any of the National
03:54:54 6 Honor Society events?

03:54:55 7 A. No, sir.

03:54:55 8 Q. And I believe you told me, but just so I don't
03:55:01 9 miss it, you also told me you had not attended any
03:55:04 10 public meetings of the board of trustees for the
03:55:07 11 district?

03:55:07 12 A. No, sir.

03:55:07 13 Q. I'm going to show you this document which is
03:55:38 14 marked as Deposition Exhibit Number 44 and ask you to
03:55:41 15 turn to page 11. Item number 36 says that during the
03:55:57 16 2006-2007 school year the teacher of your leadership
03:56:03 17 class at the middle school repeatedly referenced
03:56:07 18 religion as part of class assignments. Tell me what
03:56:10 19 you know about that.

03:56:11 20 A. I don't remember much about that except for
03:56:15 21 that they made me uncomfortable in the class to the
03:56:20 22 point where I just switched classes. I told my parents
03:56:25 23 and they had me moved into art class.

03:56:28 24 Q. Do you remember what kind of comments that she
03:56:31 25 made that were religious in nature?

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03:56:32 1 A. No, I do not.

03:56:33 2 Q. Who was the teacher in that middle school

03:56:42 3 class?

03:56:42 4 A. Ms. Ramirez.

03:56:46 5 Q. Do you remember her first name?

03:56:47 6 A. No, I do not.

03:56:48 7 Q. Look at the bottom of page 16. It talks about

03:56:55 8 beginning at least 2007 and continuing through at least

03:57:00 9 2010 the Medina Valley Chamber of Commerce held a new

03:57:04 10 teacher luncheon. Do you know anything about those new

03:57:07 11 teacher luncheons?

03:57:09 12 A. No, sir.

03:57:09 13 Q. [REDACTED]

03:58:03 14 [REDACTED]

03:58:06 15 [REDACTED]

03:59:36 16 A. [REDACTED]

03:59:41 17 [REDACTED]

03:59:42 18 Q. Did we already talk about him?

03:59:44 19 A. Yes, sir.

03:59:53 20 MR. WOOD: Can we take about a five-minute

03:59:55 21 break? I think we're about ready to wrap up.

04:00:04 22 (Recess taken from 4:00 until 4:10.)

04:10:05 23 Q. (BY MR. WOOD) I've just got a few more things

04:10:07 24 I need to tie up, Mr. Schultz. This cup that was used

04:10:11 25 as a hall pass, which class was that?

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

COPY

CHRISTA SCHULTZ, et al
Plaintiffs

*
*

VS.

* CIVIL ACTION NO.
5:11-CV-422

MEDINA VALLEY INDEPENDENT
SCHOOL DISTRICT,
Defendant.

*
*
*

ORAL DEPOSITION

OF

TREVOR R.C. SCHULTZ

OCTOBER 5, 2011

EXHIBIT "A-Z"

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MS. STACY TUER CASTILLO

FOR THE DEFENDANT

TREVOR R.C. SCHULTZ

WITNESS

BECKY A. OLSON

CERTIFIED SHORTHAND
REPORTER

ORAL ANSWERS AND DEPOSITIONS of the witness,
TREVOR R.C. SCHULTZ, who resides in San Antonio, Bexar
County, Texas, in answer to questions propounded to him
in the above styled and numbered cause, taken on behalf
of the Defendant, before BECKY A. OLSON, a Certified
Shorthand Reporter in and for the State of Texas, on
October 5, 2011, in the offices of Walsh, Anderson,

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09:34:04 1 Q. What did you contemplate -- before you attended
09:34:07 2 the FCA meeting, did you know what the nature of that
09:34:10 3 group was?

09:34:11 4 A. Yes, sir.

09:34:11 5 Q. And you knew that it was a group of athletes
09:34:15 6 who came together on the basis of their belief in
09:34:19 7 Christ?

09:34:19 8 A. Yes, sir.

09:34:20 9 Q. Did you believe that if you went to that
09:34:23 10 meeting you were likely to experience some sort of
09:34:27 11 prayer?

09:34:28 12 A. Yes, sir.

09:34:29 13 Q. How often did you attend one of these FCA
09:34:34 14 meetings?

09:34:34 15 A. I attended that one and then after that maybe
09:34:37 16 once or twice.

09:34:39 17 Q. Did you ever see the Medina Valley Independent
09:34:44 18 School District offer a prayer at one of these
09:34:46 19 meetings?

09:34:46 20 A. Not that I can remember.

09:34:47 21 MR. LIPPER: Object to the form.

09:34:49 22 Q. (BY MR. WOOD) Did you ever see or hear a
09:34:53 23 Medina Valley Independent School District employee
09:34:55 24 offer a prayer at one of those meetings?

09:34:58 25 A. Not that I recall.

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09:34:59 1 Q. To the best of your recollection then, were
09:35:01 2 those prayers at the FCA meetings offered or delivered
09:35:06 3 by a student?

09:35:06 4 A. I believe so, yes.

09:35:08 5 Q. Any other situations during which you were
09:35:14 6 exposed to prayer during your Medina Valley High School
09:35:17 7 experience?

09:35:17 8 A. Not that comes to mind at the moment.

09:35:20 9 Q. Now, besides -- just so that we can sum up, the
09:35:28 10 FCA meetings, Coach Houston's comments, Mr. Tyler's
09:35:32 11 comments and the prayers before soccer games, those are
09:35:37 12 the only prayers that you experienced while you were at
09:35:41 13 Medina Valley High School; is that correct?

09:35:43 14 A. No, sir. Football games as well as soccer
09:35:49 15 games and graduation.

09:35:52 16 Q. Let's talk about the football games. Were the
09:35:55 17 prayers at the football games offered by Medina Valley
09:36:01 18 employees?

09:36:02 19 A. No, sir.

09:36:04 20 Q. Were those prayers given by -- or delivered by
09:36:07 21 students?

09:36:08 22 A. Yes, sir.

09:36:08 23 Q. Do you know how the students who offered those
09:36:18 24 prayers were selected to give their speech at the
09:36:23 25 football games?

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09:37:40 1 graduation?

09:37:40 2 A. I do not remember their names.

09:37:41 3 Q. And you also said that you attended the 2011

09:37:46 4 graduation?

09:37:47 5 A. Yes, sir.

09:37:47 6 Q. And you experienced prayer at that graduation

09:37:49 7 as well?

09:37:50 8 A. Yes, sir.

09:37:50 9 Q. Do you know how the students were selected to

09:37:55 10 give speeches at the graduation ceremonies?

09:37:58 11 A. No, sir.

09:37:58 12 Q. Do you know what instructions, if any, those

09:38:03 13 students were given with respect to the content of

09:38:05 14 their speeches at graduation ceremonies?

09:38:07 15 A. No, sir.

09:38:08 16 Q. Do you know what instructions, if any, or

09:38:11 17 guidelines, if any, the students were given with

09:38:14 18 respect to giving speeches at football games?

09:38:17 19 A. No, sir.

09:38:17 20 Q. Have you described for me, Mr. Schultz, all the

09:38:23 21 instances in which you have experienced prayer while

09:38:26 22 you were -- or you did experience prayer while you were

09:38:28 23 at Medina Valley?

09:38:29 24 A. I believe so, yes.

09:38:30 25 Q. All right. Let's turn our attention then to

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09:38:33 1 the second area that you mentioned which is religious
09:38:38 2 icons or items. You said that was another basis upon
09:38:45 3 which you decided that -- or that you had been offended
09:38:49 4 while you were a student at Medina Valley; is that
09:38:49 5 correct?

09:38:52 6 A. Yes, sir.

09:38:52 7 Q. And tell me about those types of items or icons
09:38:57 8 that you experienced that you found to be offensive.

09:39:00 9 A. Throughout the school and the classrooms you
09:39:07 10 can find various crosses or little verses that are
09:39:10 11 framed and that's about the most of it.

09:39:16 12 Q. Let's talk about those things. You said
09:39:18 13 throughout the school. Let's talk about particular
09:39:22 14 locations. Where do you recall seeing crosses within
09:39:29 15 the Medina Valley High School?

09:39:31 16 A. The one that I specifically remember was in
09:39:35 17 Coach Griggs' classroom.

09:39:36 18 Q. Okay. Tell me about the cross that was present
09:39:40 19 in Coach Griggs' classroom.

09:39:41 20 A. It was just a little cross that was sitting on
09:39:44 21 her desk.

09:39:44 22 Q. About -- can you describe approximately how big
09:39:49 23 it was?

09:39:49 24 A. Maybe yea big.

09:39:50 25 Q. Say 6 to 8 inches?

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T. SCHULTZ - BY MR. WOOD

09:39:52 1 A. Yes, sir.

09:39:52 2 Q. And it was lying on her desk or standing on her

09:39:55 3 desk?

09:39:56 4 A. Standing.

09:39:58 5 Q. And did it have some sort of writing on it that

09:40:03 6 would have indicated to you that it was a Christian

09:40:05 7 cross?

09:40:05 8 A. Not that I remember.

09:40:07 9 Q. Did you ever ask Coach Griggs about -- or did

09:40:13 10 she ever -- did you ever ask her anything about that

09:40:15 11 cross?

09:40:15 12 A. No, sir.

09:40:16 13 Q. Did she ever speak to you about that cross?

09:40:18 14 A. No, sir.

09:40:19 15 Q. Any other crosses that you can recall besides

09:40:23 16 the one on Coach Griggs' desk?

09:40:26 17 A. Not that specifically comes to mind.

09:40:28 18 Q. Any other religious items that you encountered

09:40:32 19 while you were at Medina Valley Independent School

09:40:37 20 District?

09:40:37 21 A. Nothing else with a specific reference.

09:40:41 22 Q. So, you described that you had experienced

09:40:50 23 religious items or religious icons, but as you sit here

09:40:56 24 today the only single one that you can recall is the

09:40:58 25 cross on Coach Griggs' desk?

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09:41:01 1 A. Yes, sir.

09:41:01 2 Q. Did you make any kind of complaints about the

09:41:09 3 cross on Coach Griggs' desk?

09:41:11 4 A. No, sir.

09:41:12 5 Q. Did you ever make any type of complaint about

09:41:16 6 the prayers that you experienced while you were at

09:41:19 7 Medina Valley?

09:41:19 8 A. No, sir.

09:41:20 9 Q. When you attended the 2008 graduation, do you

09:41:33 10 recall who you sat with?

09:41:34 11 A. I believe I sat with my family and my

09:41:39 12 girlfriend's at the time family.

09:41:42 13 Q. A different girlfriend than Rachel?

09:41:45 14 A. Yes, sir.

09:41:45 15 Q. Who was your girlfriend at the time?

09:41:47 16 A. Sarah Braddy.

09:41:49 17 Q. And where do you recall that you all sat?

09:41:55 18 A. I don't remember. I think it was on the home

09:41:58 19 side, but I'm not sure.

09:42:00 20 Q. And you don't remember who the speakers were at

09:42:02 21 the ceremony?

09:42:03 22 A. No, sir.

09:42:03 23 Q. Do you remember any of the speakers at that

09:42:06 24 ceremony?

09:42:07 25 A. No, sir, I don't remember exactly who spoke.

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T. SCHULTZ - BY MR. WOOD

09:52:37 1 Q. Do you know whether or not your parents ever
09:52:40 2 attended an FCA meeting?

09:52:42 3 A. I don't believe they did, to my knowledge.

09:52:45 4 Q. I understand that the school district conducts
09:52:48 5 its scholarship and awards ceremonies. Did you ever
09:52:52 6 attend one of those?

09:52:52 7 A. Yes, I did.

09:52:53 8 Q. Do you know if your parents or Corwyn ever
09:52:58 9 attended one of those?

09:52:59 10 A. Yes.

09:53:00 11 Q. Tell me about that. Did your parents ever
09:53:03 12 attend the scholarship ceremony?

09:53:05 13 A. Yes, they attended when I got this silly award
09:53:11 14 that you get for having good grades.

09:53:13 15 Q. Was it only one time that you attended?

09:53:15 16 A. Yes.

09:53:16 17 Q. What year was that?

09:53:17 18 A. I believe that was my second year.

09:53:19 19 Q. And you completed your freshman year at Medina
09:53:32 20 Valley; is that correct?

09:53:33 21 A. Yes.

09:53:33 22 Q. And so when you say your second year, do you
09:53:37 23 mean your sophomore year?

09:53:39 24 A. It would have been a combination of sophomore
09:53:41 25 and junior.

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09:53:42 1 Q. Okay. And so when you say a combination, I'm
09:53:49 2 not sure that I understand why that was.

09:53:51 3 A. Because I was home schooled up until 10th
09:53:54 4 grade. I came in with -- behind in credits, so I had
09:53:58 5 to, you know, work hard and catch up so I could
09:54:02 6 graduate on time. So, a lot of my high school years I
09:54:07 7 had a combination of like freshman and sophomore,
09:54:10 8 first, second and third year.

09:54:12 9 Q. And to the best of your recollection, that was
09:54:16 10 the only instance in which your parents attended a
09:54:19 11 scholarship and awards ceremony as well?

09:54:22 12 A. Yes, sir.

09:54:22 13 Q. Were there any types of prayers or religious
09:54:26 14 remarks made at that ceremony?

09:54:28 15 A. I don't remember.

09:54:29 16 Q. Do you know how the speakers are selected for
09:54:36 17 the scholarship and awards ceremony?

09:54:37 18 A. No, sir.

09:54:38 19 Q. All right. And besides -- you already
09:54:42 20 mentioned the situation involving your soccer team.

09:54:44 21 Did you play any other sports?

09:54:46 22 A. No, sir.

09:54:47 23 Q. And with respect to the soccer coach, you never
09:54:55 24 heard Coach Payne offer a prayer?

09:54:58 25 MR. LIPPER: Object to the form.

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10:35:14 1 never had any experience with him.

10:35:15 2 Q. Officer Sides, do you know him?

10:35:18 3 A. Yes, sir.

10:35:18 4 Q. Do you have any information -- personal

10:35:21 5 information about what he might know about the

10:35:23 6 discussion or promotion of religion?

10:35:24 7 A. Yes, sir.

10:35:25 8 Q. What information might Officer Sides have about

10:35:28 9 that?

10:35:28 10 A. In his office there are a number of religious

10:35:35 11 pamphlets sitting on his desk facing outwards.

10:35:41 12 Q. Did you personally see these religious

10:35:45 13 pamphlets?

10:35:45 14 A. Yes, sir.

10:35:45 15 Q. Tell me what those religious pamphlets look

10:35:49 16 like.

10:35:49 17 A. They were small brochure type pamphlets with

10:35:54 18 happy Christian messages on the front of them.

10:35:58 19 Q. Happy Christian messages you said?

10:36:01 20 A. Yes, sir.

10:36:02 21 Q. Do you recall any of those happy Christian

10:36:04 22 messages that were contained on the front of these

10:36:07 23 brochures?

10:36:09 24 A. No, sir, I don't remember specifics.

10:36:11 25 Q. When do you recall seeing these brochures?

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11:09:02 1 member.

11:09:02 2 Q. Okay. So, based upon your testimony today,
11:09:06 3 that may be a student-led prayer rather than a faculty
11:09:13 4 member; is that accurate?

11:09:14 5 A. Yes, sir.

11:09:14 6 Q. On item b there it says, "Before most if not
11:09:25 7 all soccer games beginning in 2006 until approximately
11:09:30 8 2009, Coach Payne gathered the team in a circle and
11:09:32 9 directed a student to lead a Christian prayer". And I
11:09:35 10 believe your testimony today is that you never heard
11:09:39 11 Coach Payne direct a student to lead a Christian
11:09:43 12 prayer, but you heard him ask a student to kick us off
11:09:47 13 or lead us out; is that correct?

11:09:48 14 MR. LIPPER: Object to the form.

11:09:49 15 A. Yes, he directed a student to lead us and
11:09:53 16 resulting in a prayer.

11:09:54 17 Q. (BY MR. WOOD) All right. Over on page 12 in
11:10:26 18 response to interrogatory number 10, item number 1 it
11:10:31 19 says, "At various points during his time as a student
11:10:34 20 at Medina Valley High School, Trevor Schultz saw a
11:10:38 21 cross and a Bible verse displayed in the Nurse's
11:10:40 22 office". You haven't told me anything about that. Is
11:10:43 23 that statement accurate or is it inaccurate?

11:10:46 24 A. It's accurate. I forgot about the instance at
11:10:49 25 the nurse's office.

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11:10:50 1 Q. Okay. And you say -- so this says you saw a
11:10:53 2 cross in her office. Tell me about that.
11:10:55 3 A. As you walk in her door on her desk there's a
11:10:59 4 cross. I don't remember if it was sitting or laying
11:11:04 5 and on the other side of her desk was the Bible verse.
11:11:07 6 Q. All right. Let's talk about this. First of
11:11:09 7 all, you say this was in her office?
11:11:11 8 A. Yes.
11:11:11 9 Q. Is that the place where she sees students?
11:11:15 10 A. No, just in her personal office space.
11:11:18 11 Q. As far as the cross that was in her personal
11:11:22 12 office space, describe what that cross looked like.
11:11:26 13 A. Just probably wooden. It was brown. I don't
11:11:33 14 remember. It was a cross.
11:11:34 15 Q. Do you remember how big it was?
11:11:36 16 A. It wasn't too big. About the same size as the
11:11:39 17 other one.
11:11:40 18 Q. Six to 8 inches again?
11:11:41 19 A. Yes, sir.
11:11:42 20 Q. Was it on a stand or was it lying there or how
11:11:44 21 was it displayed?
11:11:46 22 A. I don't remember.
11:11:46 23 Q. Did it have any type of inscription on it?
11:11:49 24 A. Not that I recall.
11:11:50 25 Q. Did you ever discuss that cross with the nurse?

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11:11:54 1 A. No, sir.

11:11:54 2 Q. Did you ever complain to anybody about the

11:11:59 3 presence of the cross on her desk?

11:12:01 4 A. No, sir.

11:12:01 5 Q. You also said there was a Bible verse

11:12:07 6 displayed. Where was that displayed?

11:12:08 7 A. On the opposite end of the desk.

11:12:10 8 Q. Again, this would be in her personal office?

11:12:13 9 A. Yes, sir.

11:12:13 10 Q. And it would not have been in the area where

11:12:16 11 she was treating students?

11:12:17 12 A. Correct.

11:12:18 13 Q. And what was the Bible verse?

11:12:19 14 A. I don't remember what it was.

11:12:20 15 Q. How was it displayed? You said the Bible verse

11:12:24 16 was displayed.

11:12:25 17 A. It was facing away from her desk, so as the

11:12:29 18 student walked in it could be read.

11:12:31 19 Q. And again, let me clarify. Was this a plaque,

11:12:39 20 was it -- was it a poster, was it something that she

11:12:45 21 had written?

11:12:46 22 A. I believe it was a plaque or something similar,

11:12:51 23 not a poster or written.

11:12:53 24 Q. You believe it was a plaque?

11:12:55 25 A. Yeah.

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11:12:55 1 Q. And were you offended by that?

11:13:01 2 A. Not offended, but it didn't belong in the

11:13:05 3 school's nurse office.

11:13:07 4 Q. Were you offended by the Bible -- I mean excuse

11:13:12 5 me, the cross?

11:13:12 6 A. I wouldn't say offended, but more it made me

11:13:16 7 feel uncomfortable.

11:13:17 8 Q. And did you complain about the Bible verse -- I

11:13:21 9 think you already told me you didn't complain about the

11:13:24 10 cross, but did you complain about the Bible verse to

11:13:26 11 anyone?

11:13:26 12 A. No, sir.

11:13:26 13 Q. Over on the next page, page 13, item number 10

11:13:40 14 says that during the 2007-2008 school year Trevor saw a

11:13:46 15 Bible in Ms. Houston's class; is that accurate?

11:13:50 16 A. Accurate except for the year.

11:13:52 17 Q. What year was it?

11:13:54 18 A. That would have been my senior year, so '08-09.

11:13:58 19 Q. All right. That's one of the things that you

11:14:00 20 didn't mention. As we talked about this earlier you

11:14:03 21 had not mentioned the Bible in Ms. Houston's class.

11:14:05 22 A. I did.

11:14:05 23 Q. I'm sorry. And remind me where the Bible was

11:14:09 24 in Ms. Houston's class?

11:14:11 25 A. I believe it was behind her desk. I only ever

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11:14:16 1 saw it the one time when she pulled it out at the end
11:14:19 2 of the school year to read the prayer.

11:14:21 3 Q. Okay. So, that was the only time that you saw
11:14:23 4 the Bible?

11:14:24 5 A. Yes, sir.

11:14:24 6 Q. Okay. Based upon your personal knowledge, do
11:14:52 7 you have any -- do you know what information James
11:14:55 8 Stansberry might have with respect to the promotion or
11:14:59 9 discussion of religion at the school?

11:15:00 10 A. No, sir.

11:15:00 11 Q. Based upon your personal knowledge, do you have
11:15:12 12 any information as to what knowledge Mr. Chris Martinez
11:15:16 13 might have with respect to the discussion or promotion
11:15:19 14 of religion at the school?

11:15:20 15 A. No, sir.

11:15:20 16 Q. With respect to this reading from the Bible by
11:15:47 17 Coach Houston, I believe you said that that was during
11:15:50 18 your senior year; is that correct?

11:15:51 19 A. Yes, sir.

11:15:51 20 Q. And at what point in that year did that occur?

11:15:55 21 A. That would have been at some point during the
11:15:59 22 end of the semester.

11:16:00 23 Q. The end of your senior year?

11:16:02 24 A. Yes, sir.

11:16:02 25 Q. And you believe that she read from the Bible

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Medina Valley Independent School District

Christa Schultz
11/4/2011

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CHRISTA SCHULTZ and DANNY *
SCHULTZ, both individually *
And as parents and guardians *
Of minor child C.S, a *
Student in the Medina *
Valley Independent School *
District; C.S, a minor, *
Individually, by his next *
Best friends Christa *
Schultz; and TREVOR SCHULTZ, *
Individually *

VS.

CIVIL ACTION NO.
SA-11-CA-0422-FB

MEDINA VALLEY INDEPENDENT
SCHOOL DISTRICT

ORAL DEPOSITION

OF

CHRISTA SCHULTZ

NOVEMBER 4, 2011

EXHIBIT "A-3"

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Medina Valley Independent School District

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11/4/2011

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MS. STACY CASTILLO

FOR THE DEFENDANT

CHRISTA SCHULTZ

WITNESS

SHERYL J. HUFF

CERTIFIED SHORTHAND
REPORTER

DANNY SCHULTZ

OTHERS PRESENT

1 And with that, I'll allow Ms. Schultz to answer.

2 A. What do you mean by "external consequences"?

3 Q. (By Mr. Wood) Well, other than something that
4 would be imposed by, for instance, the Judge, if you
5 were found to have committed perjury, do you believe
6 that there are any, for instance, eternal consequences
7 that if you were to lie --

8 A. Eternal -- eternal consequences?

9 Q. Yes.

10 A. No. The consequences would be here and now,
11 and my conscience, it's unethical to lie.

12 Q. And distinguish for me, if you will, the
13 difference between it being unethical to lie and it
14 being a sin to lie.

15 MR. LIPPER: Object to the form.

16 A. It being a sin to lie is a form of external
17 morality and being unethical to lie is an internal
18 morality.

19 Q. (By Mr. Wood) Fair enough. All right. Let's
20 talk about some particulars of this actual case. If
21 you could tell me, have you ever seen any types of
22 religious objects or symbols that have been displayed
23 at -- on Medina Valley property?

24 A. Yes.

25 Q. And what have you seen?

1 A. A cross in Chris Martinez's office.

2 Q. When did you see that?

3 A. When I went to his office to visit him in --
4 I'm not even sure when it was -- it was 2000 -- perhaps
5 nine and ten.

6 Q. And are you certain that you witnessed that
7 object in person?

8 A. Yes.

9 Q. And you're certain that it was not a video that
10 you saw that -- or -- or a photograph that reflected
11 that cross?

12 MR. LIPPER: Object to the form. You can go
13 ahead.

14 A. I am certain, yes. He had a cross in his
15 office. There may have -- as well been some framed
16 verses or religious sayings of some kind.

17 Q. (By Mr. Wood) When you say there may have been
18 some framed verse -- verses or religious sayings --
19 "may have been" is -- is pretty generic. Do you recall
20 whether or not --

21 A. I recall --

22 Q. -- there were such items?

23 A. I recall seeing the religious objects, and I
24 believe there was something in a frame, as well. It
25 made me uncomfortable. It made me not certain that

1 Mr. Martinez and I were on the same page.

2 Q. Okay.

3 A. And I don't remember exactly what it was, but I
4 -- I do remember seeing it there.

5 MR. LIPPER: And, Ms. Schultz, let me just
6 remind you to let Mr. Wood finish his question --

7 THE WITNESS: Certainly.

8 MR. LIPPER: -- and give me a half a second to
9 object if I need to.

10 THE WITNESS: Certainly.

11 MR. LIPPER: No problem.

12 Q. (By Mr. Wood) And with respect to this framed
13 item, you don't have any recollection of the
14 particulars of it?

15 A. It was a -- it was a verse or -- or a saying
16 and not a photo.

17 Q. Where was that item?

18 A. On a shelf.

19 Q. Did you complain to Mr. Martinez about either
20 of those items, either the cross or the framed item?

21 A. I did not.

22 Q. Did you complain to anyone else about those
23 items?

24 A. I did not.

25 Q. Other than the cross and the framed verse, do

1 you remember any -- are there any other religious items
2 or symbols that you've seen displayed on District
3 property?

4 A. I believe in the front office.

5 Q. And when you say "the front office," is that
6 the front office of the administration building, the
7 front office of the high school?

8 A. Of the high school. A cross on the desk in
9 there.

10 Q. And would that have been a cross that was on a
11 -- displayed on a trophy?

12 A. No.

13 Q. What did this cross look like that you saw in
14 the front office of the high school?

15 A. Small on the desk.

16 Q. And by gesture, you're making reference to
17 something approximately --

18 A. A size -- I'm sorry -- approximately four or
19 five inches high.

20 Q. Four or five inches high? And what -- if you
21 can, describe -- what did that cross look like?

22 A. It was -- it was standing and had a base.

23 Q. Was there any type of writing or --

24 A. Not that I could see. I'm not in the office
25 very frequently, and I didn't get up close to it or

1 A. Correct.

2 Q. And you did not personally witness the item in
3 Mr. Turcato's office?

4 A. No.

5 Q. And you did not personally witness the hall
6 cup?

7 A. No.

8 Q. And were the photos taken of those latter two
9 items photos taken by your son?

10 A. Yes.

11 Q. And I believe those have been produced as
12 exhibits?

13 A. Yes.

14 Q. Have you ever been present for any type of
15 announcement made over the loud speaker at the high
16 school?

17 A. Not during the school day.

18 Q. Okay. And what about after -- after or before
19 the school day?

20 A. Not during -- not in the high school building.
21 Only at the -- like games over in the stadium or
22 something like that.

23 Q. Okay. So, we'll -- we'll get to games
24 separately.

25 A. Well, I've been to -- actually, yes, I have.

1 I've been to, like, performing arts night and things
2 like that, and there have been announcements made, but
3 not for the regular school day announcements, no.

4 Q. Okay. Setting aside for the moment the issue
5 of football games and graduation, have you ever been at
6 any other school-related event at which any type of
7 religious utterance was made?

8 A. Yes.

9 Q. Okay.

10 A. An awards ceremony in 2000 -- I want to say --
11 seven. I'm not entirely certain.

12 Q. And what type of an awards ceremony was this?

13 A. I believe it was an academic award ceremony.

14 Q. With whom did you attend that ceremony?

15 A. With my husband and my son, Trevor.

16 Q. What was the purpose of you attending the
17 ceremony?

18 A. To support one of Trevor's friends who was
19 getting an award.

20 Q. Who was that?

21 A. Sarah Braddy.

22 Q. Where did the award ceremony take place?

23 A. In the high school in the auditorium.

24 Q. Did anyone else attend besides yourself,
25 Trevor, and Danny? I mean with you.

1 A. Yes. I was going to say, "Well" -- no, not
2 with us.

3 Q. Okay. And where did you sit for that ceremony?

4 A. I don't recall. I sat in the folding chairs
5 that they have provided.

6 Q. Were you there for the entire ceremony?

7 A. I was.

8 Q. What type of religious utterance did you hear
9 at that ceremony?

10 A. Principal Tyler was the incoming principal for
11 the next school year, and he gave a speech that was --
12 I felt to be almost entirely about his religion and
13 almost nothing about education. It was surprising for
14 an incoming principal, I felt.

15 Q. What particularly do you recall that Mr. Tyler
16 may have said?

17 A. I don't recall any of his specific words.

18 Q. Did he pray?

19 A. Not that I'm aware of and that I recall.

20 Q. So, he was -- as a general recollection, you
21 recall that he was expressing his beliefs?

22 A. Yes.

23 Q. Are you certain that he was expressing his
24 beliefs or might he have been talking -- talking about,
25 for instance, his upbringing?

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1 A. I am certain he was expressing his beliefs.

2 Q. And did he articulate what those beliefs were?

3 A. I don't recall any specific words that he said.

4 Q. Did he make reference to a deity?

5 A. God, I believe.

6 Q. Are you certain about that?

7 A. I am not certain, but I am fairly certain.

8 Q. And you don't remember -- you believe that he
9 said "God" --

10 A. Yes.

11 Q. -- right? But you're not certain --

12 A. I am not certain.

13 Q. -- what -- what he may have said about God?

14 A. That's correct.

15 Q. Any other religious utterances at that event?

16 A. Not that I recall.

17 Q. Then, besides the awards ceremony -- and,
18 again, we're setting aside for the time being football
19 games and graduations -- have you been at any other
20 school-related events at which any type of religious
21 utterance was made?

22 A. Not that I recall.

23 Q. All right. On how many occasions have you
24 attended Medina Valley home games?

25 A. I attended all or nearly all of the home games

1 2000 -- Corrie's freshman and sophomore year.

2 Q. Okay. And, again, you'll have to help me with
3 the -- with the years because I'm not going to keep
4 track of those.

5 A. Neither am I. That would be 2007 and 2008
6 school year, the -- probably 2007-2008 and then the
7 2008-2009 school year.

8 Q. Okay. Let's -- so, you think you attended most
9 all of the games those two -- those two years?

10 A. Yes.

11 Q. Okay. Have you attended any football games
12 since then?

13 A. Yes.

14 Q. When was that?

15 A. I'm not certain which -- I believe that was --
16 there was at least one after Corrie was no longer in
17 the band that I attended, and then recently, in the
18 past few weeks.

19 Q. And would that have been the Champion football
20 game?

21 A. Yeah.

22 Q. Did that game occur on a Sunday?

23 A. That was a Friday. Actually, I'm -- it may
24 have been the game before that one.

25 Q. The Devine football game?

1 A. No. I don't remember playing Devine. What was
2 -- who was the next team?

3 Q. The next one after Champion, I believe, was
4 Uvalde.

5 A. I'm not certain.

6 Q. All right. Let's -- let's back up. You're not
7 certain who the opponent was?

8 A. That's correct.

9 Q. Okay. Let's first talk about the 2007-2008
10 school year. You said you attend -- believe you
11 attended most of the home football games. Do you
12 recall how many football games there -- home football
13 games there were that year?

14 A. I do not.

15 Q. Do you recall how many you attended?

16 A. I do not.

17 Q. At any of those football games that year, did
18 you hear any type of religious utterance?

19 A. Yes. There was a prayer before every game over
20 the announcements, the loud speaker.

21 Q. And you're certain every game that that
22 occurred?

23 A. I actually am not. There was announcements at
24 every game that I attended for the announcements prior
25 to the point where we stopped going for the

1 announcements and began showing up afterward.

2 Q. Okay. So, I need to know a number of instances
3 in which you were actually --

4 A. Probab --

5 Q. -- present that a prayer took --

6 A. Probably three or four.

7 MR. LIPPER: And, Ms. Schultz, let me remind
8 you again to let Mr. Wood finish his question.

9 THE WITNESS: Yes. I'm sorry.

10 Q. (By Mr. Wood) So, you believe that during the
11 2007-2008 school year that you were actually present
12 for a prayer?

13 A. Yes.

14 Q. Who delivered those prayers?

15 A. A student.

16 Q. And you said that some of the home games you
17 decided not to go because you didn't want to be exposed
18 to that?

19 A. No. Some of the home games we went after they
20 would have made those announcements.

21 Q. All right. That's what I meant.

22 A. Yes.

23 Q. So, you arrived after the announcements took
24 place?

25 A. Correct.

1 A. No.

2 Q. -- issue?

3 A. This was related to Mr. Tyler's religious
4 speech over the intercom.

5 Q. And do you recall what year that was?

6 A. 2008.

7 Q. And it -- what particular speech over the
8 intercom -- what was -- what was your concern?

9 A. It wasn't a particular, like, speech that was
10 given. It was the language that was used. Language,
11 for example, references to the Good Book, to our Lord,
12 things of a Christian-sounding nature.

13 Q. Some of the allegations in this case are that
14 Mr. Tyler has made comments like "God bless our sports
15 team."

16 A. Yes.

17 Q. Do you consider that to be a prayer?

18 A. I do.

19 Q. Do you consider it to be a prayer if someone
20 sneezes and someone else responds, "God bless you?"

21 A. It is, yes.

22 Q. If someone says, "God bless Texas," is that a
23 prayer?

24 A. Yes.

25 Q. When Corrie -- and, again, just for purposes of

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1 A. Yes.

2 Q. "God bless the United States"?

3 A. Depending on who's saying it, yeah.

4 Q. What about "God save the United States and this
5 honorable Court"?

6 A. Yes. Those are prayers.

7 Q. You were describing for me Mr. Tyler --

8 THE WITNESS: Pardon me.

9 Q. (By Mr. Wood) That's all right. You were
10 describing for me Mr. Tyler's speech at the scholarship
11 ceremony.

12 A. Uh-huh.

13 Q. Was this Sarah Braddy's senior year that you
14 attended that ceremony?

15 A. I believe so, yes.

16 Q. Okay. And it -- it was because of the fact
17 that she was a senior, she was receiving some sort of
18 award?

19 A. I believe so, yeah.

20 Q. Do you recall what time of year that took
21 place?

22 A. Near the end of the school year, I believe.

23 Q. And you don't recall the particulars of what
24 Mr. Tyler said?

25 A. I do not.

1 you?

2 MR. LIPPER: Object to the form.

3 A. Regardless of what the surrounding
4 circumstances were?

5 Q. (By Mr. Wood) Yes.

6 A. What does that mean?

7 Q. Well, I'm saying, is there -- is there any
8 context in which, for instance, Mr. Tyler could have
9 used the phrase, the "Good Book," over the
10 announcements or during the announcements that would
11 have been -- wouldn't -- would not have been offensive
12 to you?

13 A. No.

14 Q. Okay. So, every -- every use of the phrase,
15 the "Good Book" --

16 A. Is promoting religion over --

17 Q. -- is promoting religion if it's -- if it's --
18 if that phrase is used over a public announcement
19 system at the school?

20 A. Yes.

21 Q. And other than -- and -- and so, I think we've
22 clarified that other than that scholarship ceremony,
23 you -- the only other time that you've personally been
24 exposed to religious utterances was at football games
25 and graduations; is that correct?

1 A. I believe so.

2 Q. Okay. So, we were talking about particularly
3 the 2007-2008 year, and you said that you thought the
4 same student on three or four occasions offered a
5 prayer over the -- over the announcement system?

6 A. Yes.

7 Q. And you think that at least on one occasion,
8 the announcer asked the per -- people stand for the
9 National Anthem and an invocation?

10 A. Yes.

11 Q. Okay. And do you -- well -- okay. And then we
12 were talking about also the 2008-2009 school year, and
13 I believe that you said that you thought you attended
14 every home football game that year?

15 A. No. Every game -- if not every game -- almost
16 every game if not every game.

17 Q. Do you remember how many games you may have
18 attended that year?

19 A. I do not.

20 Q. Do you remember the opponents from any of those
21 games?

22 A. Dan watches the football games. I go to see
23 Corrie in the band.

24 Q. Okay.

25 A. He was in the marching band.

1 that's objectionable?

2 A. In that particular sentence, "Let us enjoy a
3 good game free from injury," correct. "Grant us a game
4 free from injury" is a prayer.

5 Q. Okay. And "Let us enjoy a game free of injury,
6 amen," turns it from what was not a prayer to what now
7 is prayer in your mind?

8 A. Correct.

9 Q. All right. And then I believe you said you
10 thought you'd attended at least one additional game
11 before the current year. Do you believe that was in
12 the 2009 -- the fall of 2009 or the fall of 2010?

13 A. One more game before the current year?

14 Q. I thought you told me that, in addition to the
15 home games in 2007 and the home games in 2008 --

16 A. I get you. Okay. I got you.

17 Q. I thought you told me you attended one
18 additional game?

19 A. I may have gone to -- I -- I believe I went to
20 a game with Dan in the following season.

21 Q. And so that would have been the 2000 -- fall of
22 2009?

23 A. Yes.

24 Q. Okay. And did you hear any type of religious
25 utterance at that game?

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1 A. I don't believe we got there early enough.

2 Q. Okay. And then you have attended one game this
3 year that's the fall of 2011, although you don't
4 remember which game it was?

5 A. That is correct.

6 Q. All right. And --

7 A. I think it was the game before the -- the big
8 game.

9 Q. And at that game you actually videotaped a
10 portion of the pre-game ceremonies; is that correct?

11 A. I did.

12 Q. Okay. And what was your purpose of videotaping
13 the pre-game ceremonies?

14 A. To make a record.

15 Q. Make a record of what, ma'am?

16 A. Of the prayer. It was announced that there was
17 going to be a prayer in plenty of sufficient time to
18 get a camera out and record it.

19 Q. And who announced that there would be a prayer?

20 A. The same person who was making the general
21 announcements for the game.

22 Q. The announcer -- the --

23 A. The announcer.

24 Q. -- football --

25 A. The announcer.

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1 administrators and then eventually up to the Board of
2 Trustees?

3 A. We looked into -- no, I was not aware of that.

4 Q. Okay.

5 A. I'm not sure that's entirely the case in this
6 situation.

7 Q. And I think -- did you tell me earlier you have
8 not been involved in any other lawsuits?

9 A. That's correct.

10 Q. Have you ever been involved in any type of
11 administrative complaints or grievances, anything like
12 that?

13 A. No. I -- the only -- no.

14 Q. Okay. And so, did you ever bring your concerns
15 regarding prayer either at football games or at
16 graduation to the attention of the Board of Trustees
17 for Medina Valley Independent School District?

18 A. No.

19 Q. Have you ever attend -- attended a board
20 meeting?

21 A. No.

22 Q. Have you ever attended a faculty convocation?

23 A. No.

24 Q. Have you ever attended any type of faculty
25 meetings?

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1 A. Parent-teacher, parent -- PTA.

2 Q. Okay. And did you hear any type of religious
3 speech at -- at those meetings?

4 A. Not that I recall.

5 Q. Are there any other instances in which you were
6 exposed to religious utterances that you haven't
7 described for me already today in your deposition?

8 A. I don't believe so. I think we've covered
9 everything.

10 Q. Do you know what the FCA is?

11 A. No.

12 Q. Have you ever heard of the organization
13 referred to as the "Fellowship of Christian Athletes"?

14 A. Yes.

15 Q. Have you ever attended a meeting of the
16 Fellowship of Christian Athletes?

17 A. No.

18 Q. Have you ever attended any type of sports
19 banquets at Medina Valley Independent School District?

20 A. I -- I don't think so.

21 Q. You mentioned the one award ceremony that you
22 attended in which Sarah Braddy received an award. Have
23 you ever attended any other type of award ceremonies?

24 A. No.

25 Q. Now, did -- did either of your sons play sports

1 at Medina Valley?

2 A. Yes.

3 Q. And in the context of those sporting events --
4 well, first of all, what -- with respect to Trevor,
5 what sports did he participate in?

6 A. Soccer.

7 Q. During Trevor's soccer games or practices, did
8 you ever observe any type of religious activity in
9 connection with those events?

10 A. Yes.

11 Q. And what did you witness?

12 A. I witnessed the players all gathered together
13 near the end of the field, and I mentioned to Dan that
14 they were having a huddle like football, and he said,
15 no, they were praying, and Trevor confirmed that.

16 Q. Okay. Do you -- you could not hear anything
17 that was said?

18 A. I could not.

19 Q. Were there any employees of Medina Valley
20 Independent School District who were participating in
21 that prayer by the players?

22 MR. LIPPER: Object to the form.

23 A. I was not close enough to tell whether the
24 coach was participating or not.

25 Q. (By Mr. Wood) Okay. Do you know what the

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1 meet-at-the-pole event is?

2 A. Meeting at the flag pole after school?

3 Q. Yeah. Well, I -- there's just an event
4 referred to as a "meet-at-the-pole" event.

5 A. I don't know exactly what that means.

6 Q. I should back up. I guess I --

7 A. Except just most vaguely.

8 Q. I jumped forward. Were there any other sports
9 that -- that your children participated in besides
10 Trevor's soccer participation?

11 A. No.

12 Q. Did you -- did you attend other sporting events
13 besides the football games and Trevor's soccer
14 participation?

15 A. No.

16 Q. Do you feel pretty confident, then, that you
17 have told me about all the religious utterances that
18 you would have been exposed to?

19 A. I believe so.

20 Q. Do you know who Fletcher Turcato is?

21 A. He was the vice principal.

22 Q. Did you have any interaction with Mr. Turcato?

23 A. I've spoken with him on the phone.

24 Q. And what kind of a -- what kind of a working
25 relationship did you have with Mr. Turcato? Did

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1 -- you -- you've never been personally present for when
2 Mr. Tyler has made any type of religious speaker during
3 announcements?

4 A. That is correct.

5 Q. That was poorly stated again. Any -- any type
6 of religious --

7 A. I --

8 Q. Yeah, I know. Thank goodness you're able to
9 read my mind. All right. On paragraph number --
10 number 16, you learn from your son, Corwyn, and his
11 friends that teachers have told students they will,
12 quote, "pray for you"?

13 A. Correct.

14 Q. You've not ever personally witnessed anything
15 like that; have you?

16 A. I have not.

17 Q. Okay. And then, you also learned that when
18 separating male and female student engaging in public
19 display of affection, that persons have asked to make
20 sure to leave a little room for Jesus between you?"
21 Where -- where did you obtain that information?

22 A. From my husband and my son.

23 Q. Do you consider that to be a religious remark?

24 A. Yes, I do.

25 Q. You don't consider that just to be a joke?

1 one that located this document from the internet and
2 printed it out?

3 A. I am not.

4 Q. Okay. Do you know who was?

5 A. I believe Danny found this on the internet.

6 Q. I take it you never attended any new teacher
7 luncheons; is that correct?

8 A. That is correct.

9 Q. And some questions have been asked about this
10 document. The title -- or the print above the pictures
11 on the first page says, "For the fourth consecutive
12 year, the Chamber" -- and I take it that's the Chamber
13 of Commerce --

14 MR. LIPPER: Object to the form.

15 Q. (By Mr. Wood) -- is that correct?

16 A. I don't know.

17 Q. You don't know -- "sponsored the new teacher
18 luncheon to welcome new teachers at Medina Valley ISD
19 and St. Louis Catholic School." Do you know whether or
20 not both -- the teachers from both of those
21 institutions were honored at the same luncheon?

22 A. I do not know.

23 Q. Do you know anything else about that luncheon
24 that's pertinent to this lawsuit?

25 MR. LIPPER: Object to the form.

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1 A. I do not.

2 Q. (By Mr. Wood) If you'll turn your attention to
3 Deposition Exhibit Number 8, these appear to be some
4 items of correspondence. The first page Bates stamped
5 Schultz 333, had you seen this item before?

6 A. Yes.

7 Q. And do you know who sent this item?

8 A. I do not. It came from a fake address.

9 Q. From a fake address?

10 A. Yes. Or it was unlisted. One of them was from
11 a fake address. This one, I believe, had no address.

12 Q. Okay. And then -- the next page, then, of
13 Deposition Exhibit Number 8 is Bates stamped Schultz
14 340, and have you seen that item before?

15 A. Yes.

16 Q. Do you know who Montgomery is?

17 A. I do not and I believe that is the one that is
18 a fake address. There's a -- there was a fake address
19 and then no address. This -- this was the fake
20 address. It's a real address. It comes from a library
21 or some public building. It's not an individual home
22 address.

23 Q. Okay. And -- and how do you know that?

24 A. I looked it up.

25 Q. Finally, looking at the last page of that

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

COPY

CHRISTA SCHULTZ, et al
Plaintiffs

*
*

VS.

*

CIVIL ACTION NO.
5:11-CV-422

MEDINA VALLEY INDEPENDENT
SCHOOL DISTRICT,
Defendant.

*
*
*

ORAL DEPOSITION

OF

DANIEL C. SCHULTZ

NOVEMBER 2, 2011

EXHIBIT "A-4"

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MS. STACY TUER CASTILLO

FOR THE DEFENDANT

DANIEL C. SCHULTZ

WITNESS

BECKY A. OLSON

CERTIFIED SHORTHAND
REPORTER

ORAL ANSWERS AND DEPOSITIONS of the witness,
DANIEL C. SCHULTZ, who resides in Rio Medina, Medina
County, Texas, in answer to questions propounded to him
in the above styled and numbered cause, taken on behalf
of the Defendant, before BECKY A. OLSON, a Certified
Shorthand Reporter in and for the State of Texas, on
November 2, 2011, in the offices of The Tower Life

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D. SCHULTZ - BY MR. WOOD

10:01:20 1 A. He's a friend of Corwyn's.

10:01:22 2 Q. Is he a current or former student?

10:01:24 3 A. Former.

10:01:24 4 Q. And what information -- when did your

10:01:27 5 conversation or conversations with Mr. Fly take place?

10:01:29 6 A. Over the summer.

10:01:31 7 Q. And what information did he provide you with

10:01:34 8 respect to the lawsuit?

10:01:35 9 A. None.

10:01:38 10 Q. What were your conversations with Mr. Fly then?

10:01:41 11 A. General this is what's going on.

10:01:46 12 Q. Before we move on let me just ask you about

10:01:56 13 these particular things. With respect to crosses on

10:02:00 14 teachers' walls, have you ever observed that yourself?

10:02:03 15 A. Not on a teacher's wall.

10:02:05 16 Q. What -- have you observed crosses on someone

10:02:09 17 else's wall?

10:02:09 18 A. Chris Martinez' wall.

10:02:10 19 Q. Any others?

10:02:11 20 A. No.

10:02:11 21 Q. Did you observe that personally or did you --

10:02:13 22 A. Yes.

10:02:13 23 Q. As far as prayers that may have taken place

10:02:17 24 with respect to the soccer team, were you ever present

10:02:20 25 to witness that?

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D. SCHULTZ - BY MR. WOOD

10:02:22 1 A. No.

10:02:23 2 Q. And have you ever been present when morning

10:02:26 3 announcements were given?

10:02:28 4 A. No.

10:02:29 5 Q. Have you ever been a party to a lawsuit before,

10:02:33 6 Mr. Schultz?

10:02:33 7 A. No.

10:02:34 8 Q. Have you ever been a party to a grievance or

10:02:36 9 some sort of administrative complaint?

10:02:39 10 MR. LIPPER: Object to the form.

10:02:43 11 A. No.

10:02:44 12 Q. (BY MR. WOOD) Have you ever had any type of

10:02:51 13 license or certification that has been suspended or

10:02:54 14 revoked?

10:02:55 15 A. No.

10:02:55 16 Q. Have you ever been arrested?

10:02:59 17 A. Yes.

10:03:00 18 Q. How many times have you been arrested?

10:03:03 19 A. Once.

10:03:03 20 Q. When was that?

10:03:05 21 A. 1989.

10:03:07 22 Q. Where did that arrest take place?

10:03:11 23 A. Izmir, Turkey.

10:03:12 24 Q. How do you spell Izmir?

10:03:14 25 A. I-Z-I-M-I-R.

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D. SCHULTZ - BY MR. WOOD

10:34:10 1 be, but I don't see it. If I see proof, then I --
10:34:14 2 whereas an atheist just says there is nothing.
10:34:17 3 Q. When you say you conducted research regarding
10:34:21 4 religions, how did you go about that?
10:34:23 5 A. I checked out books from the library.
10:34:26 6 Q. Do you recall when you undertook this research?
10:34:30 7 A. I believe we were in South Dakota.
10:34:38 8 Q. And did you pursue that research after you left
10:34:44 9 South Dakota as well?
10:34:45 10 A. No.
10:34:45 11 Q. All right. I'd like to talk to you about
10:34:51 12 Medina Valley now for a moment. Have you ever seen any
10:34:57 13 types of religious objects or religious symbols or
10:35:00 14 religious icons on school district property at Medina
10:35:06 15 Valley Independent School District?
10:35:06 16 MR. LIPPER: Object to the form.
10:35:08 17 A. Yes.
10:35:09 18 Q. (BY MR. WOOD) And what have you seen?
10:35:10 19 A. There was the cross in Mr. Martinez' office.
10:35:15 20 Also seen that on Utube.
10:35:19 21 Q. Anything else?
10:35:21 22 A. I have seen pictures of a cup that advertises a
10:35:31 23 local church in Castroville that was used as a hall
10:35:34 24 pass.
10:35:36 25 Q. Do you know who took that picture?

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D. SCHULTZ - BY MR. WOOD

10:35:39 1 A. I believe Corwyn did.

10:35:41 2 Q. And I take it that you don't know anything

10:35:45 3 about the circumstances as to who may have adopted that

10:35:52 4 cup, if you will, for use as a hall pass?

10:35:55 5 A. No, I don't.

10:35:56 6 Q. And besides the pictures of the cup and the

10:36:01 7 cross in Mr. Martinez' office, any other religious

10:36:04 8 symbols or icons?

10:36:06 9 A. I've seen a picture of the placard that had the

10:36:10 10 Psalms on it outside Mr. Turcato's window facing into

10:36:14 11 the student hallway.

10:36:15 12 Q. And did Corwyn likewise take that picture?

10:36:20 13 A. Yes.

10:36:20 14 Q. And you never observed the plaque yourself?

10:36:23 15 A. I did not see the plaque myself.

10:36:25 16 Q. Any others?

10:36:26 17 A. No.

10:36:27 18 Q. Have you ever seen any type of religious text

10:36:35 19 at Medina Valley Independent School District?

10:36:39 20 A. No.

10:36:41 21 Q. Have you ever heard any type of -- let me back

10:36:49 22 up. Any type of religious posters?

10:36:51 23 A. No.

10:36:52 24 Q. So, in summary you've seen a picture of

10:36:58 25 Mr. Turcato's plaque, you've actually witnessed

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D. SCHULTZ - BY MR. WOOD

10:37:02 1 Mr. Martinez' cross. And tell me about the
10:37:05 2 circumstances in which you witnessed Mr. Martinez'
10:37:08 3 cross.
10:37:09 4 MR. LIPPER: Object to the form.
10:37:11 5 A. We had a meeting with Mr. Martinez in his
10:37:14 6 office.
10:37:17 7 Q. (BY MR. WOOD) When was that?
10:37:18 8 A. I believe it was February 2010.
10:37:27 9 Q. And what was the purpose of that meeting?
10:37:30 10 A. To discuss Principal Tyler and the attendance
10:37:44 11 lady had made an offensive comment towards Corwyn,
10:37:53 12 Ms. Willing.
10:37:53 13 Q. Who else was present during the meeting besides
10:37:57 14 yourself and Mr. Martinez?
10:37:58 15 A. My wife, Christa.
10:38:00 16 Q. What did you do when you observed the cross?
10:38:06 17 A. Nothing.
10:38:09 18 Q. Did you express to Mr. Martinez that you found
10:38:14 19 that to be unsatisfactory in some way?
10:38:17 20 A. No.
10:38:17 21 Q. Did you complain to anyone else?
10:38:19 22 A. No.
10:38:19 23 Q. All right. So, other than the picture of
10:38:25 24 Mr. Turcato's plaque, the picture of the cup and
10:38:29 25 Mr. Martinez' cross, is it fair to say that you have

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D. SCHULTZ - BY MR. WOOD

11:06:47 1 Q. And did you have any conversations with that
11:06:50 2 person about why they were moving?
11:06:51 3 A. No.
11:06:52 4 Q. Did they make any kind of remarks to you about
11:06:55 5 why they were moving?
11:06:56 6 A. No.
11:06:56 7 Q. Do you know what FCA is?
11:07:09 8 A. Is that -- is that one of the student groups?
11:07:15 9 Q. Yes. Do you know what it is?
11:07:18 10 A. It's future Christian something.
11:07:28 11 Q. How about Fellowship of Christian Athletes?
11:07:30 12 A. That's it.
11:07:33 13 Q. I take it you were never a member of that
11:07:36 14 organization?
11:07:37 15 A. Correct.
11:07:37 16 Q. Did you ever attend any meetings of the
11:07:40 17 Fellowship of Christian Athletes in Medina Valley
11:07:44 18 Independent School District?
11:07:45 19 A. No.
11:07:45 20 Q. Do you know whether or not Corwyn ever attended
11:07:51 21 any meetings of the Fellowship of Christian Athletes?
11:07:54 22 A. I don't believe so.
11:07:55 23 Q. What about Trevor, did he ever attend any
11:07:57 24 meetings of the FCA?
11:07:59 25 A. He did.

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11:09:24 1 A. No.

11:09:26 2 Q. Did he indicate that they actually spoke?

11:09:30 3 A. No.

11:09:31 4 Q. The school holds scholarship and awards

11:09:39 5 ceremonies. Did you ever attend one of those?

11:09:42 6 A. Yes.

11:09:48 7 Q. When did you attend the scholarship and awards

11:09:51 8 ceremony?

11:09:52 9 A. It would have been 2008 or 2009.

11:10:01 10 Q. Where did it take place?

11:10:02 11 A. In the cafeteria/auditorium.

11:10:08 12 Q. And what was your reason for attending the

11:10:11 13 scholarship and awards ceremony?

11:10:13 14 A. I believe it was in support of Sarah Braddy.

11:10:16 15 Q. Who else attended that ceremony with you?

11:10:26 16 A. My wife, Christa, and Trevor. I don't recall

11:10:32 17 if Corwyn was there or not.

11:10:35 18 Q. How long did the ceremony last?

11:10:43 19 A. I don't recall.

11:10:44 20 Q. Do you know who the speakers were at that

11:10:48 21 ceremony?

11:10:48 22 A. I believe Mr. Tyler spoke at that. That's all

11:10:57 23 I remember.

11:10:58 24 Q. Did Mr. Tyler offer any type of religious

11:11:01 25 remarks?

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D. SCHULTZ - BY MR. WOOD

11:11:01 1 A. I don't recall.

11:11:02 2 Q. Did anyone offer any type of religious remarks,

11:11:06 3 to your recollection?

11:11:07 4 A. Not to my recollection.

11:11:09 5 Q. And you did not attend the 2010 or 2011

11:11:35 6 graduation ceremonies; is that correct?

11:11:37 7 A. Correct.

11:11:38 8 Q. Have you ever been in Officer Sides' office?

11:11:58 9 A. No.

11:11:58 10 Q. Have you ever attended a meeting of the board

11:12:04 11 of trustees?

11:12:04 12 A. No.

11:12:05 13 Q. Do you know whether or not your wife has ever

11:12:12 14 attended a meeting of the board of trustees?

11:12:14 15 A. She has not.

11:12:15 16 Q. Have either of your sons ever attended a

11:12:18 17 meeting of the board of trustees?

11:12:20 18 A. I don't believe so.

11:12:20 19 Q. Have you ever attended any type of faculty

11:12:27 20 convocation or meeting?

11:12:27 21 A. No.

11:12:28 22 Q. And what about new teacher orientation, have

11:12:33 23 you ever attended one of those?

11:12:34 24 A. No.

11:12:35 25 Q. Let's talk about football games for a moment.

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D. SCHULTZ - BY MR. WOOD

11:12:50 1 How often have you attended football games in Medina
11:12:54 2 Valley?
11:12:54 3 MR. LIPPER: Object to the form.
11:12:55 4 A. In 2008 and 2000 -- let me get my dates
11:13:07 5 straight. 2007 was Trevor's freshman year. I believe
11:13:16 6 I attended one game his freshman year. 2008-2009 I
11:13:25 7 went to all the home games.
11:13:33 8 Q. (BY MR. WOOD) Any others?
11:13:34 9 A. And this year I've attended two.
11:13:38 10 Q. In the 2011-2012?
11:13:42 11 A. Yes.
11:13:43 12 Q. And is that all the football games you've
11:13:49 13 attended?
11:13:50 14 A. Yes.
11:13:50 15 Q. Okay. So, during the 2007 school year you say
11:13:53 16 you attended one game. Do you remember which game it
11:14:00 17 was, who the opponent was?
11:14:01 18 A. I do not.
11:14:02 19 Q. Do you recall who attended that game with you?
11:14:07 20 A. It was Trevor and I.
11:14:16 21 Q. Did you hear any type of religious speech at
11:14:19 22 that game?
11:14:19 23 A. Yes.
11:14:20 24 Q. What was the context of the religious speech?
11:14:23 25 A. After the National Anthem there was I believe a

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D. SCHULTZ - BY MR. WOOD

11:14:28 1 member of the student council who asked us to remain
11:14:32 2 standing and gave a nondenominational prayer.

11:14:37 3 Q. When you say it was a nondenominational prayer,
11:14:41 4 do you remember what exactly he or she said?

11:14:44 5 A. No.

11:14:46 6 Q. And when you say a nondenominational prayer,
11:14:51 7 describe generally what it was that you recall about
11:14:53 8 that religious speech.

11:14:54 9 A. I recall that at the end of it it was either in
11:15:12 10 your name we pray or -- I guess it started with Lord
11:15:16 11 and then in your name we pray, amen.

11:15:21 12 Q. And do you remember if it was a male or female
11:15:24 13 speaker?

11:15:24 14 A. I do not.

11:15:25 15 Q. Did you complain about that to anyone?

11:15:28 16 A. No.

11:15:28 17 Q. Did you discuss that with Trevor?

11:15:32 18 A. No.

11:15:33 19 Q. Then you said that during the '08-'09 season
11:15:41 20 you attended all the home games?

11:15:43 21 A. Yes.

11:15:44 22 Q. Did someone else attend with you?

11:15:48 23 A. Christa would sometimes go. Well, no, I guess
11:15:53 24 -- Christa went to probably all of those because Corrie
11:15:57 25 was in the band, so we were there.

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11:15:59 1 Q. Anyone else?

11:16:02 2 A. Not that I recall.

11:16:04 3 Q. And did you observe any type of religious

11:16:10 4 remarks during those home games?

11:16:11 5 A. Yes.

11:16:12 6 Q. And on how many occasions?

11:16:16 7 A. I believe -- we didn't always arrive at the

11:16:23 8 start of the game, but I believe there were two

11:16:29 9 occasions -- two or three occasions both seasons that

11:16:31 10 we were at the start of the game and it was very much

11:16:34 11 the same as I've already described.

11:16:37 12 Q. On those two or three occasions, in each

11:16:44 13 instance was it at the beginning of the game?

11:16:46 14 A. Yes, it's always National Anthem -- kids are on

11:16:51 15 the field, National Anthem.

11:16:52 16 Q. Were those -- were those remarks made on each

11:16:59 17 of those two or three occasions by students?

11:17:01 18 A. Yes.

11:17:01 19 Q. And do you recall any of the particulars

11:17:04 20 regarding what they may have said?

11:17:06 21 A. No, other than in your name we pray at the end

11:17:12 22 and amen.

11:17:13 23 Q. Do you remember who the speakers were on those

11:17:15 24 two or three occasions on which religious remarks were

11:17:19 25 made?

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11:17:19 1 A. I believe they were student council members. I
11:17:23 2 don't remember if it was the same person.
11:17:25 3 Q. Do you know if they were male or female or was
11:17:27 4 it a mix?
11:17:28 5 A. I don't remember.
11:17:28 6 Q. Did any school officials offer any type of
11:17:38 7 religious remarks during the football games?
11:17:40 8 A. Not that I recall.
11:17:41 9 Q. And would that same answer be true for the '07
11:17:45 10 game that you attended; did any school officials offer
11:17:49 11 any religious remarks at that event?
11:17:54 12 A. It would be the same answer. I don't recall.
11:17:56 13 Q. And then this current year, the '11 and '12
11:17:58 14 season -- so you did not attend any football games
11:18:01 15 during the '09-'10 or the '10-'11 school years; is that
11:18:01 16 correct?
11:18:08 17 A. It would have been one -- there was one
11:18:11 18 football season we didn't attend any and that would
11:18:14 19 have been the '09-'10 year.
11:18:20 20 Q. Did you attend any during the '10-'11 school
11:18:23 21 year?
11:18:24 22 A. I'm sorry, I've got my dates mixed up. No, we
11:18:30 23 did not go to any of the '10-'11 year.
11:18:34 24 Q. So, it sounds to me like you missed two years
11:18:42 25 there, '09-'10 and '10-'11?

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11:18:44 1 A. Correct.

11:18:45 2 Q. All right. So, no games at all during that

11:18:48 3 period of time, correct?

11:18:50 4 A. Correct.

11:18:50 5 Q. Okay. And so during the current school year

11:18:54 6 you've attended two games. Do you remember the

11:18:57 7 opponents during those two games?

11:18:59 8 A. Boerne Champion and Uvalde.

11:19:03 9 Q. And did anyone attend the Boerne Champion game

11:19:14 10 with you?

11:19:14 11 A. Christa did.

11:19:15 12 Q. And did anyone attend the Uvalde game with you?

11:19:21 13 A. No.

11:19:21 14 Q. When you attended the Boerne game, were there

11:19:29 15 any type of religious remarks made during that game?

11:19:31 16 A. Yes.

11:19:32 17 Q. And by whom were those religious remarks made?

11:19:36 18 A. I believe it was Jana Bippert.

11:19:41 19 Q. And is Jana Bippert a student?

11:19:43 20 A. Yes.

11:19:46 21 Q. And what were her remarks?

11:19:48 22 A. A nondenominational prayer.

11:19:56 23 Q. Do you remember any of the substance of what

11:19:59 24 she said?

11:20:00 25 A. Remember our troops, especially those overseas.

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11:25:56 1 Q. So, football games and graduations are the only
11:26:06 2 instances in which you experienced religious speech, is
11:26:09 3 that correct, personally?

11:26:10 4 A. Yes.

11:26:12 5 Q. Do you know if the school district has a
11:26:17 6 student/parent handbook?

11:26:19 7 A. Yes, they do.

11:26:21 8 Q. And did you receive a copy of that?

11:26:22 9 A. Yes, I did.

11:26:23 10 Q. And did you sign for receipt of the
11:26:26 11 student/parent handbook?

11:26:27 12 A. Yes.

11:26:27 13 Q. Do you know whether or not the student/parent
11:26:30 14 handbook contains a dress code?

11:26:32 15 A. It does.

11:26:33 16 Q. Do you know whether or not that dress code
11:26:37 17 indicates that students may not have rips in their
11:26:39 18 jeans?

11:26:39 19 A. That is correct.

11:26:53 20 MR. WOOD: Let's go off the record if we may
11:26:53 21 for a moment.

11:34:08 22 (Recess taken from 11:26 until 11:34.)

11:34:08 23 Q. (BY MR. WOOD) I'm handing you what's been
11:34:10 24 marked as Deposition Exhibit Number 1 with copy to
11:34:14 25 counsel and this is the complaint and some attachments

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D. SCHULTZ - BY MR. WOOD

11:46:59 1 Q. Have you spoken to Ms. Willing about that?

11:47:03 2 A. No. Christa contacted Mr. Tyler, was referred

11:47:10 3 to Mr. McHazlett. I had a series of e-mail

11:47:16 4 correspondence with Mr. Turcato about the incident.

11:47:21 5 Q. Okay. We'll get to that in a moment.

11:47:24 6 MR. WOOD: I'm going to object as

11:47:26 7 nonresponsive.

11:47:26 8 Q. (BY MR. WOOD) My particular question is have

11:47:28 9 you spoken to Ms. Willing about it?

11:47:29 10 A. I have not.

11:47:30 11 Q. And then the remainder of paragraph number 19

11:47:34 12 says, "When separating a male and female student

11:47:36 13 engaging in a public display of affection, the remark

11:47:39 14 was made 'to make sure leave a little room for Jesus

11:47:41 15 between you'". Do you have any personal knowledge

11:47:43 16 about that situation?

11:47:44 17 A. I do not.

11:47:45 18 Q. Do you consider that to be a religious remark?

11:47:48 19 A. Yes.

11:47:48 20 Q. Do you believe that that endorses religion

11:47:53 21 somehow?

11:47:53 22 A. Yes.

11:47:54 23 Q. If we can, I'd like to take a look at some of

11:48:28 24 the e-mails now.

11:48:32 25 MR. WOOD: I'm going to note for the record

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D. SCHULTZ - BY MR. WOOD

11:49:57 1 Q. (BY MR. WOOD) You'll have to answer orally.

11:49:59 2 A. I have no knowledge other than from counsel.

11:50:01 3 Q. Again, I won't ask you to reveal the contents

11:50:04 4 of any information you received from your attorney, but

11:50:09 5 separate and apart from that, do you have knowledge as

11:50:12 6 to who Pat Doe is?

11:50:13 7 A. No.

11:50:13 8 Q. On the first page of Deposition Exhibit Number

11:50:30 9 2, paragraph number 1 alleges that for years the

11:50:34 10 district has unlawfully promoted religion generally and

11:50:39 11 Christianity specifically at school and

11:50:42 12 school-sponsored events -- activities and events.

11:50:51 13 You've described for me religious remarks made at two

11:50:54 14 graduation ceremonies and some religious remarks made

11:50:58 15 at football games. Other than that, do you have any

11:51:02 16 personal knowledge of other instances in which the

11:51:05 17 school may have promoted religion generally, and again,

11:51:09 18 I'm talking about your personal knowledge?

11:51:10 19 A. The pictures I've seen that we already

11:51:12 20 discussed, the cross in Mr. Martinez' office.

11:51:17 21 Q. And the pictures will be the picture of the

11:51:20 22 cup?

11:51:20 23 A. The cup and the Psalm that was on the window

11:51:24 24 facing out.

11:51:25 25 Q. But you personally did not see Mr. Turcato's

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11:51:28 1 plaque?

11:51:28 2 A. No.

11:51:29 3 Q. And you personally did not see the cup?

11:51:31 4 A. Correct.

11:51:32 5 Q. And so as far as you personally having observed

11:51:36 6 or been a part, we're talking two graduation ceremonies

11:51:42 7 and some football games; is that correct?

11:51:43 8 A. Correct.

11:51:44 9 Q. And nothing besides that?

11:51:47 10 A. Correct.

11:51:48 11 Q. I'm sorry, and the cross that you observed.

11:51:52 12 Anything besides that?

11:51:53 13 A. No, sir.

11:51:53 14 Q. The allegation is made in paragraph 2 that

11:51:59 15 religion has been promoted by individuals at all levels

11:52:03 16 of the school district's hierarchy from top

11:52:06 17 administrators. What knowledge do you have -- what

11:52:08 18 personal knowledge do you have about religion being

11:52:11 19 promoted by a top administrator?

11:52:13 20 A. I have no personal knowledge.

11:52:14 21 Q. With respect to personal knowledge about the

11:52:19 22 principal promoting religion, what personal knowledge

11:52:21 23 do you have of that?

11:52:23 24 A. From hearing him speak at the graduation.

11:52:27 25 Q. 2008?

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12:20:17 1 A. No, it's not. I had forgotten -- there were
12:20:23 2 games -- Corwyn would stay after school. He did not
12:20:26 3 drive and so dad, can you come pick me up at the
12:20:30 4 football game and so at those games I would go pick him
12:20:34 5 up quite often. I'd go at half time because you could
12:20:37 6 get in free and stay for the end of the game and then
12:20:41 7 take Corwyn home.

12:20:42 8 Q. And so is it fair to say that of the fall 2007
12:20:48 9 games only one game do you recall having heard some
12:20:51 10 sort of religious speech?

12:20:53 11 A. Okay. I've got to make sure I have my dates
12:20:58 12 right now. I can tell you Trevor's freshman year I
12:21:01 13 went to one game. Trevor graduated in 2009, but he
12:21:09 14 only -- he came in as a sophomore, so that would have
12:21:14 15 been 2006. Corwyn's freshman year he was in the band.
12:21:19 16 I attended all those games. Corwyn's sophomore year he
12:21:24 17 was in the band. I attended all those games, so in
12:21:27 18 2007-2008 I attended all the home games. 2006,
12:21:32 19 Trevor's freshman year, I attended one. In 2009 I
12:21:37 20 attended approximately half of them picking Trevor up
12:21:38 21 -- or Corwyn up.

12:21:39 22 Q. All right. As you can imagine we're now going
12:21:45 23 to need to go back and look at these because -- and I
12:21:47 24 understand about confusion of dates, but when you said
12:21:50 25 you only attended one game, that was actually making

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12:21:54 1 reference to the 2006 school year; is that correct?

12:21:57 2 A. Yes, that's correct. Trevor's freshman year I

12:22:00 3 attended one game.

12:22:01 4 Q. All right. And did you hear any religious

12:22:04 5 speech at that game?

12:22:05 6 A. Yes.

12:22:06 7 Q. And by whom was that speech given?

12:22:09 8 A. It was by a student.

12:22:10 9 Q. And do you recall any of the particulars

12:22:15 10 regarding that student speech?

12:22:18 11 A. I do not.

12:22:20 12 Q. Do you know who the student was?

12:22:22 13 A. I do not.

12:22:23 14 Q. And do you know how the student was selected?

12:22:27 15 A. I do not.

12:22:28 16 Q. So, now it looks like that the 2007-2008 season

12:22:37 17 you attended all the home games?

12:22:39 18 A. That is correct.

12:22:40 19 Q. At how many of those games -- previously you

12:22:45 20 had described that on two or three occasions you had

12:22:48 21 heard students engage in religious speeches. Is that

12:22:52 22 the season in which that was true?

12:22:54 23 A. Yes, sir.

12:22:54 24 Q. And you don't have any recollection of who

12:22:56 25 those students were?

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12:22:57 1 A. Correct.

12:22:58 2 Q. You don't have any recollection of the

12:22:59 3 particulars of their speeches?

12:23:01 4 A. Correct.

12:23:01 5 Q. And you don't have any personal knowledge about

12:23:04 6 how they were selected?

12:23:05 7 A. Correct.

12:23:05 8 Q. All right. And then the '08-'09 year, did you

12:23:11 9 also attend all the home games that year?

12:23:13 10 A. Yes.

12:23:14 11 Q. And during how many of those games did you hear

12:23:19 12 any type of religious speech?

12:23:21 13 A. It would have been two or three.

12:23:23 14 Q. Do you have any recollection of who the

12:23:28 15 speakers were?

12:23:29 16 A. I do not. They were students.

12:23:30 17 Q. Do you recall any of the particulars of the

12:23:32 18 speeches that they gave?

12:23:33 19 A. I do not.

12:23:33 20 Q. And do you know anything about how they were

12:23:36 21 selected?

12:23:36 22 A. I do not.

12:23:37 23 Q. The '09-'10 school year you didn't attend any?

12:23:45 24 A. I did -- that was the -- I did go to -- that

12:23:47 25 was the part I forgot. I did go to pick up Corwyn.

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12:23:50 1 Usually I'd arrive at half time.

12:23:52 2 Q. Did you hear any religious speech at any of the
12:23:56 3 games that you attended during the '09-'10 year?

12:23:56 4 A. I did not.

12:23:57 5 Q. And during '11-'12 you said you've attended two
12:24:02 6 games?

12:24:02 7 A. Correct.

12:24:03 8 Q. Have you attended any of the away games?

12:24:07 9 A. No.

12:24:08 10 Q. Paragraph 14 says, "At all of the home football
12:24:15 11 games that I attended in fall 2007, 2008, and 2009, the
12:24:21 12 pregame ceremonies included a prayer delivered over the
12:24:24 13 public-address announcement by a student". That's not
12:24:28 14 accurate, is it?

12:24:29 15 MR. LIPPER: Object to the form.

12:24:30 16 A. Correct.

12:24:31 17 Q. (BY MR. WOOD) Would your recollection today be
12:24:37 18 the accurate description of your personal knowledge
12:24:39 19 about those games?

12:24:42 20 A. At all the games that I was present for pregame
12:24:46 21 ceremonies there was a prayer.

12:24:49 22 Q. Well, now let's clear that up because during
12:24:54 23 2007-2008 you said you attended all home games, but you
12:24:59 24 only had two or three occasions where you heard some
12:25:03 25 religious remarks; is that an accurate summary of your

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12:25:06 1 testimony?

12:25:06 2 A. That is correct.

12:25:07 3 Q. All right. And was there something -- did you

12:25:11 4 miss the pregame ceremonies for the remainder of those?

12:25:13 5 A. Correct.

12:25:15 6 Q. And then 2008-2009 you said you attended all

12:25:19 7 home games and again, you said there would have been

12:25:22 8 two or three games at which you heard religious,

12:25:25 9 remarks?

12:25:25 10 A. Correct.

12:25:25 11 Q. And did you miss the remaining -- the opening

12:25:28 12 for the remaining --

12:25:30 13 A. Yes.

12:25:30 14 Q. -- home games. I'll show you what's marked

12:25:38 15 Deposition Exhibit 6, a copy to counsel. On paragraph

12:25:54 16 number 4 it's alleged that your wife and you both spoke

12:26:01 17 with the Medina Valley High School counseling

12:26:04 18 department. Do you know with whom your wife spoke?

12:26:08 19 A. I do not.

12:26:09 20 Q. Who did you speak with?

12:26:10 21 A. I don't recall.

12:26:12 22 Q. Did Corwyn end up attending any counseling

12:26:24 23 sessions?

12:26:25 24 A. One.

12:26:25 25 Q. And do you know with whom he attended that

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02:19:31 1 vehicle. The Bush's Chicken restaurant actually had
02:19:35 2 something on their board, their display board that
02:19:40 3 normally has their specials. I don't remember exactly
02:19:45 4 what it said. Corrie told me about it. I did not see
02:19:48 5 it, but I thought that was a little overboard, also.
02:19:53 6 Q. (BY MR. WOOD) I'm going to show you what's
02:19:55 7 being marked as Deposition Exhibit Number 12, a copy to
02:19:59 8 counsel. Do you know who took that photograph?
02:20:02 9 A. Christa did.
02:20:03 10 Q. And when was this photograph taken?
02:20:06 11 A. That was at the football game against Boerne
02:20:09 12 Champion early October. I don't know the exact date.
02:20:13 13 Q. For what purpose did Christa take this picture?
02:20:16 14 MR. LIPPER: Object to the form.
02:20:18 15 A. I don't know.
02:20:19 16 Q. (BY MR. WOOD) Were you present with her when
02:20:22 17 she took it?
02:20:22 18 A. I was. I pointed out that that was
02:20:24 19 Mr. Stansberry and she took a picture.
02:20:26 20 Q. Did you attend the entire game or did you only
02:20:30 21 attend a portion of the game?
02:20:31 22 A. We only attended a portion of the game.
02:20:33 23 Q. Isn't it true that you only attended the
02:20:36 24 opening ceremonies?
02:20:37 25 A. Yes.

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

Christa Schultz, et al.,

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

Plaintiffs' Objections and Responses to Defendant's First Set of Interrogatories

Plaintiffs submit the following objections and responses to Defendant's First Set of Interrogatories.

General Objections

1. Plaintiffs object to Defendant's Interrogatories to the extent that they are unduly burdensome, request documents not in the Plaintiffs' possession, custody, or control, or are not reasonably calculated to lead to the discovery of admissible evidence.
2. Plaintiffs object to Defendant's Interrogatories to the extent that they ask for information or documents protected by the attorney-client privilege, work-product doctrine, or any other privilege.
3. Plaintiffs object to Defendant's Interrogatories to the extent that they constitute premature contention interrogatories which ask Plaintiffs prematurely to identify legal claims or theories.

EXHIBIT "B"

4. These responses to Defendant's First Set of Interrogatories are based on information known to the Plaintiffs at this time. Plaintiffs reserve the right to supplement their responses to the extent they become aware of additional information.

Responses

Interrogatory No. 1:

Identify each person answering these Interrogatories, supplying information, or assisting in any way with the preparation of the answers to these Interrogatories.

Response:

Plaintiffs object to the extent that this Interrogatory seeks information protected by the attorney-client privilege and the work-product doctrine. Subject to, and without waiving the preceding objections, Plaintiffs respond that Plaintiffs and their counsel were involved in the preparation of these responses.

Interrogatory No. 2:

Identify all documents or tangible items reviewed, consulted, examined, referred to or utilized in any way whatsoever in the preparation of the answers to these Interrogatories.

Response:

Plaintiffs object to the extent that this Interrogatory seeks information protected by the attorney-client privilege and the work-product doctrine. Subject to, and without waiving the preceding objections, Plaintiffs respond that any non-privileged documents or tangible items consulted in preparing these responses will be included in Plaintiffs' response to Defendant's request for production number 1.

Interrogatory No. 3:

Identify all persons who you believe to have knowledge of or information about any relevant facts and identify the issues upon or about which you believe they have knowledge or information.

This list is not limited to the fact witnesses who will testify at trial, but necessarily includes each such fact witness. The District will object to testimony by any fact witness called by you that is not identified in your original or supplementary responses to this Interrogatory.

Response:

Plaintiffs object to the extent this Interrogatory calls for information protected by the attorney-client privilege or the work-product doctrine. Subject to and without waiving these objections, and in addition to the people identified in Plaintiffs' Initial Disclosures and Defendant's Initial Disclosures, Plaintiffs identify the following individuals:

a. *David Wurzbach* is a 2011 graduate of Medina Valley High School and may have information about Defendant's policies, practices, and customs with respect to the discussion or promotion of religion at Medina Valley High School and school-sponsored activities and events, including graduation ceremonies. Mr. Wurzbach's phone number is (210) 355-2018. Mr. Wurzbach's address is unknown.

b. *Dan Hill* is a guidance counselor at Medina Valley High School and may have information about Defendant's policies, practices, and customs with respect to the promotion of religion at Medina Valley High School and school-sponsored activities and events, including graduation ceremonies. Mr. Hill's address and phone number are unknown.

c. *Julie Center* is a guidance counselor at Medina Valley High School and may have information about Defendant's policies, practices, and customs with respect to the promotion of religion at Medina Valley High School and school-sponsored activities and events, including graduation ceremonies. Ms. Center's address and phone number are unknown.

d. *Alicia Guerin* is a 2011 graduate of Medina Valley High School and may have information about Defendant's policies, practices, and customs with respect to the discussion or promotion of religion at Medina Valley High School and school-sponsored activities and events, including graduation ceremonies. Ms. Guerin's phone number and address are unknown.

e. *Anna Johnson* is a current employee at Medina Valley High School and may have information about the 2011 graduation ceremony, as well as Defendant's policies, practices, and customs with respect to the promotion of religion at Medina Valley High School and school-sponsored activities and events. Ms. Johnson's address and phone number are unknown.

f. *Michael Nesbit* is an Assistant Superintendent for the Medina Valley Independent School District and may have information about Defendant's policies, practices, and customs with respect to the promotion of religion at Medina Valley High School and school-sponsored activities and events, including meetings of the Medina Valley Independent School District Board of Trustees. Mr. Nesbit's address and phone number are unknown.

g. *Mason Englemeyer* may have information about the 2011 Medina Valley High School graduation ceremony. Mr. Englemeyer's phone number is (210) 364-9019; his address is unknown.

h. *Andreas Laven* may have information about the 2011 Medina Valley High School graduation ceremony. Mr. Laven's phone number is (210) 422-1359; his address is unknown.

i. *Alicia Ramirez* is a reporter for the Medina Valley Times and may have information about meetings of the Medina Valley Independent School District Board of Trustees. Ms. Ramirez's phone number is (210) 692-3844; her address is unknown.

Interrogatory No. 4:

If you or anyone acting on your behalf has obtained statements, declarations or admission in any form from any individual pertaining to the facts of this lawsuit, please identify each individual making such statement, declaration and/or admission. Please note that this Interrogatory seeks only the identity of persons, and not the context of any statements you may claim to be privileged or protected from discovery.

Response:

Plaintiffs object on the grounds that the Interrogatory asks for information protected by the attorney-client privilege and the work-product doctrine.

Interrogatory No. 5:

If you are seeking an award of any sum of money, whether by damages or otherwise, state the full amount of money you seek (whether as actual, special, consequential, exemplary or punitive damages) and describe the manner in which the amount was calculated.

Your description should include each element of damage or component of recovery that you seek, the amount sought for each element or component, and the manner in which each element or component of the calculation was determined.

Response:

Each Plaintiff seeks nominal damages of \$1.00. In addition, if Plaintiffs prevail in this case within the meaning of 42 U.S.C. § 1988, they will seek reimbursement for attorneys' fees and costs reasonably incurred. Documentation of those fees and costs will be submitted as part of Plaintiffs' fee petition.

Interrogatory No. 6

If you have been a named party to any litigation or administrative proceeding of any kind, either prior to or subsequent to the date of the incident that is made the basis of this suit, please state the style, cause number, court, county, and state of such suit and identify (as that term is defined herein) your attorney(s).

Response:

Plaintiffs object on the grounds that the Interrogatory is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 7

Identify any and all communications, including verbal, electronic, or written communications, between Plaintiffs and Defendant (including Defendant's employees, agents, officials, or trustees) relevant to this lawsuit, including but not limited to any communications concerning religious speech, expression, or viewpoints, graduation ceremonies, or school announcements.

Response:

Plaintiffs object that the phrase "relevant to this lawsuit" is unduly vague and requires Plaintiffs to draw a legal conclusion. Subject to, and without waiving the preceding objection, Plaintiffs identify the following communications that related to the

promotion of or discussion about religion in school or at school-sponsored activities and events:

- a. During fall 2006, Danny and Christa Schultz communicated with officials at the Medina Valley Middle School about religious statements made by the teacher of Corwyn Schultz's leadership class.
- b. Officer Sides and Corwyn Schultz had a conversation, likely during the 2007-08 school year, in which Officer Sides asked Corwyn about his religion and gave him a religious pamphlet.
- c. Between 2007 and 2009, Corwyn Schultz and student leaders of the band had a series of conversations about the requirement that Corwyn stand during prayers at Medina Valley High School football games.
- d. In October 2008, Corwyn Schultz had an oral conversation with Toby Tyler regarding Mr. Tyler's practice of delivering prayers and religious messages over the loudspeaker. Throughout October 2008, Danny and Christa Schultz communicated orally and in writing about Mr. Tyler's prayers and religious messages with Toby Tyler, James Stansberry, Fletcher Turcato, and Dwight McHazlett.
- e. After Corwyn Schultz expressed concerns in October 2008 about Mr. Tyler's religious speech over the loudspeaker, Corwyn was assigned to a counseling session with an unknown school official. Danny and Christa Schultz subsequently had a phone conversation about the counseling assignment with an unknown School District official.

f. During the 2010–11 school year, Corwyn Schultz had a discussion with Ms. Roessler about a prayer for a teacher that Toby Tyler was delivering over the loudspeaker.

g. During the fall of 2009, Corwyn Schultz had a series of communications with Patti Maldonado concerning schoolwork of his that had been lost. In November 2009, Danny Schultz communicated over email with Fletcher Turcato about Ms. Maldonado and Corwyn's missing work; at least one such email from Mr. Turcato contained a religious reference.

h. During the 2009–10 school year, Corwyn Schultz and Patti Maldonado had a conversation about Ms. Maldonado's statement, in response to a student's question about whether students would get in trouble for saying "Merry Christmas," that she was a Christian.

i. In February 2010, Ms. Willing told Corwyn Schultz that she would "pray" for him because he was wearing a President Obama t-shirt.

j. Between February 2010 and June 2011, Corwyn Schultz periodically spoke to Toby Tyler about Mr. Tyler's practice of delivering prayers and religious messages over the loudspeaker.

k. Starting in February 2010, Corwyn, Danny, and Christa Schultz had a series of discussions in person, over the phone, and over email, with Toby Tyler, James Stansberry, and/or Chris Martinez about the incident with Ms. Willing, Mr. Tyler's delivery of prayers and religious messages over the loudspeaker, the retaliation against Corwyn Schultz for expressing concerns about the incident with Ms. Willing and Mr.

Tyler's prayers and religious messages, and the inclusion of prayers at Medina Valley High School graduation ceremonies.

l. In fall 2010, Corwyn Schultz had a conversation with Fletcher Turcato about a religious display in Mr. Turcato's office.

m. In April and May 2011, Corwyn Schultz had a series of conversations with Toby Tyler, and a conversation with Holly Haby, about the inclusion of prayer at the 2011 graduation ceremony.

Interrogatory No. 8

Identify all Medina Valley Independent School District graduation ceremonies each Plaintiff has attended, including location, date and time.

Response:

All four Plaintiffs attended the 2008 and 2009 Medina Valley High School graduation ceremonies. Trevor Schultz also attended the 2011 Medina Valley High School graduation ceremony. All graduation ceremonies were held at Medina Valley High School.

Interrogatory No. 9

Identify any and all written or oral statements made to any of the Plaintiffs or in Plaintiffs' presence by Medina Valley Independent School District officials or employees that were religious in nature, including who was present at the time of the statement, who made the statement, to whom the statement was directed, the content of the statement, the location of the speaker, the location of the Plaintiff, and the date and time the statement was made.

Response:

Plaintiffs were present for the following written and oral statements that were religious in nature:

- a. In fall or winter of the 2006–07 school year, Coach Payne encouraged members of the soccer team to attend that day’s meeting of the Fellowship of Christian Athletes. Trevor Schultz was present for Coach Payne’s statement. Trevor Schultz was also present at that day’s meeting of the Fellowship of Christian Athletes when a faculty member led the meeting in a Christian prayer.
- b. Before most if not all soccer games beginning in 2006 until approximately 2009, Coach Payne gathered the team in a circle and directed a student to lead a Christian prayer. Trevor Schultz was present as a member of the team for most of these prayers.
- c. During the 2007–2008 school year, Officer Sides asked Corwyn Schultz about his religious beliefs and then gave him a Christian brochure.
- d. Toby Tyler delivered prayers and religious remarks over the Medina Valley High School loudspeaker from fall 2007 until approximately October 2008. Trevor Schultz and Corwyn Schultz were present in school for most if not all of these announcements.
- e. At the 2008 Medina Valley High School graduation ceremony, Toby Tyler delivered Christian remarks. All four Plaintiffs were present.
- f. Towards the end of the 2008–09 school year, Nicol Houston prayed for the class and read from the Bible. Trevor Schultz was present in class for this statement.

g. During summer 2008, Messrs. Galvez and Riley made religious statements at band camp. Corwyn Schultz was present.

h. In fall 2009, Danny Schultz received one or more emails from Fletcher Turcato that was signed "God Bless."

i. During the 2009-10 school year, in response to a student's question about whether students would get in trouble for saying "Merry Christmas," Patti Maldonado responded that she was a Christian. Corwyn Schultz was a student in Ms. Maldonado's class when she made this statement.

j. On or about February 10, 2010, Christine Willing told Corwyn Schultz that she would "pray for [him]" because he was wearing a President Obama t-shirt.

k. Toby Tyler delivered prayers and religious remarks over the Medina Valley High School loudspeaker from February 2010 until at least June 2011. Corwyn Schultz was present for most if not all of these announcements.

l. During the 2010-2011 school year, Ms. Wolfshohl answered "loves you" after a student said "Jesus, Jesus." Corwyn Schultz was a student in Ms. Wolfshohl's class when she made this statement.

m. During a class in approximately March 2011, Ms. Griggs asked the class to pray for her because she was suffering from a headache. Corwyn Schultz was present as a student in that class.

n. At a graduation rehearsal held at Medina Valley High School in late May or early June 2011, Chris Martinez prayed and made the sign of the cross, in front of the senior

class, after reading the order issued by the District Court in this case. Corwyn Schultz was present for this communication.

Interrogatory No. 10:

Identify any and all tangible religious items that Plaintiffs believe were controlled or owned by Medina District Independent School District, its officials or employees and that were present on Medina District Independent School District's property, identifying the item, the location of the item, the date Plaintiffs viewed the item, and which Plaintiff viewed the item.

Response: Plaintiffs object that the phrase "controlled or owned" is vague, ambiguous and calls for the legal conclusion. Subject to, and without waiving these objections, Plaintiffs have seen the following tangible religious items at Medina Valley High School or in School District offices:

1. At various points during his time as a student at Medina Valley High School, Trevor Schultz saw a cross and a Bible verse displayed in the Nurse's office. Corwyn Schultz saw a cross and Bible verse displayed in the Nurse's office during the 2010-2011 school year.
2. At various points during his time as a student at Medina Valley High School, Corwyn Schultz saw a cross on display behind the front desk.
3. During the 2007-08 school year, Trevor Schultz saw a cross in Ms. Griggs's classroom. During the 2010-11 school year, Corwyn Schultz also saw a cross in Ms. Griggs's classroom.
4. During the 2010-11 school year, Corwyn Schultz saw a cross in Ms. English's classroom.

5. During the 2009–10 school year, Corwyn Schultz saw a cross behind the desk in Ms. Maldonado’s classroom.

6. During the 2008–09 school year, Corwyn Schultz saw a cross in Mr. Wolfshohl’s classroom.

7. During the 2010–11 school year, Corwyn Schultz saw a cup bearing a religious message that was used as a hall pass by Coach Herb.

8. At various points during the 2008–09 academic year, Corwyn Schultz saw a cross in Ms. Hecker’s classroom.

9. During the 2009–10 academic year, Corwyn Schultz saw a Christmas display in Ms. Maldonado’s classroom.

10. During the 2007–08 school year, Trevor Schultz saw a bible in Ms. Houston’s classroom.

11. During the fall semester of 2010, Corwyn Schultz saw, from the hallway, a sign containing Bible verse in the window in Fletcher Turcato’s office.

12. During one or more meetings with Chris Martinez in February or March 2010, Christa and Danny Schultz observed a cross displayed on the wall of Mr. Martinez’s office.

13. At various points during the 2006–07 and/or 2007–08 school years, Trevor Schultz saw Christian-related brochures on the desk of Offices Sides’s office in the school library.

Interrogatory No. 11

Identify any and all written or oral statements made at the graduation ceremonies identified in Interrogatory No. 8 that Plaintiffs found constitutionally offensive, including who made the statement, to whom the statement was directed, the content of the statement, the location of the speaker, the location of the Plaintiff, and the date and time the statement was made.

Answer:

Plaintiffs object on the grounds that this is a premature contention interrogatory and that the phrase "constitutionally offensive" is vague, ambiguous, and calls for a legal conclusion. Subject to, and without waiving these objections, Plaintiffs have witnessed the following speeches containing religious statements at Medina Valley High School graduation ceremonies:

1. At the 2008 Medina Valley High School graduation ceremony, all Plaintiffs were present for an Invocation, a Benediction, and a speech from Principal Tyler that contained Christian messages.

2. At the 2009 Medina Valley High School graduation ceremony, all Plaintiffs were present for an Invocation, a Benediction, and a religious-oriented speech from an invited state legislator.

3. At the 2011 Medina Valley High School graduation ceremony, Trevor Schultz was present for the Opening Remarks, the Closing Remarks, the Valedictorian's Speech, the Salutatorian's Speech, the speech by Alicia Guerin, and the speech by Representative John Garza. Each of these speeches contained prayers and/or religious messages.

/s/ Gregory M. Lipper

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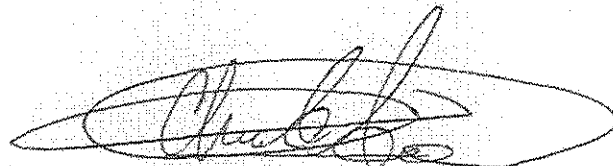
October 3, 2011

Counsel for Plaintiffs

Verification

I, Christa Schultz, certify under penalty of perjury that the answer's set forth in Plaintiffs Responses and Objections to Defendants First Set of Interrogatories, dated October 3, 2011, are true and correct to the best of my knowledge.

This Verification was executed on October 3, 2011, at Rio Medina, Texas.



Christa Schultz

Certificate of Service

On October 3, 2011, I served by email a copy of Plaintiffs' Objections and Responses to Defendant's Interrogatories, on the following:

D. Craig Wood (cwood@sa.wabsa.com)
Stacy Tuer Castillo (scastillo@sa.wabsa.com)
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GALLEGOS & GREEN, P.C.
100 NE Loop 410, Suite 900
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(210) 979-6633

/s/ Gregory M. Lipper

Gregory M. Lipper

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

CHRISTA SCHULTZ, et al

Plaintiffs,

v.

MEDINA VALLEY INDEPENDENT
SCHOOL DISTRICT,

Defendant.

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CIVIL ACTION NO. 5:11-CV422

**ORDER GRANTING DEFENDANT'S SECOND MOTION TO
DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION**

Be it remembered that on this day came to be considered Defendant's Second Motion to Dismiss for Lack of Subject-Matter Jurisdiction filed by Defendant. After considering said pleadings and other documents on file in this cause, and the arguments of the parties, the Court makes the following findings:

- (1) Plaintiffs' claims for equitable relief are moot;
- (2) Plaintiffs' claims for declaratory judgment are moot;
- (3) Plaintiffs lack standing regarding their equitable and declaratory claims for relief;
- (4) No actual or live controversy required under Article III of the U.S. Constitution exists, and therefore, this Court lacks subject matter jurisdiction over all of Plaintiffs' injunctive or equitable claims for relief and claims for declaratory relief.
- (5) Additionally, having no injury in fact, Plaintiffs lack standing on the following of their claims:

- a. Any alleged prayer at Board meetings. (Dkt. No. 75 at ¶¶64-65).
- b. Any alleged prayer or religious remarks at Fellowship of Christian Athlete meetings or events. (Dkt. No. 75 at ¶¶58-59).
- c. Any alleged prayer at scholarship or award ceremonies. (Dkt. No. 75 at ¶¶2, 64).
- d. Any alleged prayer at faculty Convocation meetings or faculty meetings. (Dkt. No. 75 at ¶52).
- e. Any alleged prayer at new teacher luncheons. (Dkt. No. 75 at ¶66).
- f. Any alleged prayer at National Honor Society events. (Dkt. No. 75 at ¶64).
- g. Any alleged prayer at Tennis, Volleyball, Basketball, Softball, Women's Soccer teams and/or games. (Dkt. No. 75 at ¶¶54, 56, 57, 64). Plaintiffs Danny, Christa, and Corwyn also lack standing on any claims for prayers at boys' soccer games or practices.
- h. The alleged staff comments of "leave room for Jesus" or "I'll pray for you" that Plaintiffs did not personally witness. (Dkt. No. 75 at ¶46).
- i. Any alleged religious icons, symbols, or texts that Plaintiffs did not personally observe or witness. (Dkt. No. 75 at ¶¶47-51). Specifically, Christa, Trevor and Danny Schultz do not have standing for any claims regarding Mr. Turcato's alleged plaque. Christa and Danny Schultz do not have standing on any claims regarding crosses, Bibles, or religious texts in classrooms or the nurse's office.
- j. Any alleged prayer or religious remarks at football games at which Plaintiffs did not actually witness religious remarks or prayers. (Dkt. No. 75 at ¶¶3, 13, 61-63). Plaintiffs Danny and Christa Schultz lack standing on the 2011 football pre-game ceremony they attended.
- k. Any alleged prayer or religious remarks at any graduation ceremony other than the 2008 and 2009 ceremonies. (Dkt. No. 75 at ¶76).
- l. Plaintiffs Christa and Danny Schultz lack standing concerning Mr. Tyler's alleged religious remarks during school morning announcements. (Dkt. No. 75 at ¶3, 31, 34.)

The Court is, therefore, of the opinion that the Defendant's Second Motion to Dismiss is well taken and should be granted.

It is therefore ORDERED, ADJUDGED AND DECREED that Defendant's Second Motion to Dismiss for Lack of Subject Matter Jurisdiction is hereby, GRANTED. Plaintiffs' claims for injunctive, equitable relief and declaratory relief are DISMISSED for lack of subject matter jurisdiction. The following claims made by Plaintiff are DISMISSED for lack of subject matter jurisdiction:

- a. Any alleged prayer at Board meetings. (Dkt. No. 75 at ¶¶64-65).
- b. Any alleged prayer or religious remarks at Fellowship of Christian Athlete meetings or events. (Dkt. No. 75 at ¶¶58-59).
- c. Any alleged prayer at scholarship or award ceremonies. (Dkt. No. 75 at ¶¶2, 64).
- d. Any alleged prayer at Faculty Convocation meetings or faculty meetings. (Dkt. No. 75 at ¶52).
- e. Any alleged prayer at new teacher luncheons. (Dkt. No. 75 at ¶66).
- f. Any alleged prayer at National Honor Society events. (Dkt. No. 75 at ¶64).
- g. Any alleged prayer at Tennis, Volleyball, Basketball, Softball, Women's Soccer teams and/or games, as well as Plaintiffs Danny, Christa, and Corwyn Schultz's claims regarding prayer at boys' soccer games or practices. (Dkt. No. 75 at ¶¶54, 56, 57, 64).
- h. Alleged staff comments of "leave room for Jesus" or "I'll pray for you" that Plaintiffs did not personally witness. (Dkt. No. 75 at ¶46).
- i. Any alleged religious icons, symbols, or texts that Plaintiffs did not personally observe or witness. (Dkt. No. 75 at ¶¶47-51). Specifically, Christa, Trevor and Danny Schultz do not have standing for any claims regarding Mr. Turcato's alleged plaque. Christa and Danny Schultz do not have standing on any claims regarding crosses, Bibles, or religious texts in classrooms or the nurse's office.
- j. Any alleged prayer or religious remarks at football games at which Plaintiffs did not actually witness religious remarks or prayers as well as those occurring at any 2011 football game. (Dkt. No. 75 at ¶¶3, 13, 61-63).

- k. Any alleged prayer or religious remarks at any graduation ceremony other than the 2008 and 2009 ceremonies. (Dkt. No. 75 at ¶76).
- l. Any claim by Plaintiffs Christa and Danny Schultz concerning any alleged prayer or religious remark by Mr. Tyler during school morning announcements. (Dkt. No. 75 at ¶3, 31, 34.)

The only remaining claims for Corwyn Schultz in this suit are the following:

1. The alleged religious remarks in Principal Toby Tyler's morning school announcements. (Dkt. No. 75 at ¶¶31-34).
2. The alleged comments made by school employees to him personally, as alleged in paragraphs 36, 37, 39, 40, 41, 42 of the First Amended Complaint.
3. The alleged religious icons and symbols that Corwyn reportedly saw himself. (Dkt. No. 75 at ¶¶48-50).
4. The alleged religious remarks at football games he attended during his four years in high school. (Dkt. No. 75 at ¶63).
5. The alleged religious remarks at the 2008 and 2009 graduations. (Dkt. No. 75 at ¶¶81-82).

The only remaining claims for Trevor Schultz in this suit are the following:

1. The alleged religious remarks in Principal Toby Tyler's morning school announcements. (Dkt. No. 75 at ¶31).
2. The alleged religious icons that he personally observed while a student. (Dkt. No. 75 at ¶¶48, 49).
3. The alleged prayers of his soccer team and one teacher. (Dkt. No. 75 at ¶¶38, 53).
4. The alleged religious remarks at the football games he attended while in school. (Dkt. No. 75 at ¶61).
5. The alleged religious remarks at the 2008 and 2009 graduations. (Dkt. No. 75 at ¶¶81-82).

The only remaining claims for Christa Schultz in this suit are the following:

1. The alleged religious remarks at the 2008 and 2009 graduations. (Dkt. No. 75 at ¶¶81-82).

2. The alleged religious remarks at the football game pre-game ceremonies that she attended – the three to four games in the 2007-08 and 2008-09 school years. (Dkt. No. 75 at ¶61).
3. The religious icons or symbols she alleges that she personally observed (a cross and framed verse in Assistant Superintendent Chris Martinez' office and a cross on a desk in the front office.) (Dkt. No. 75 at ¶48, 51).

The only remaining claims for Danny Schultz in this suit are the following:

1. The alleged religious remarks at the 2008 and 2009 graduations. (Dkt. No. 75 at ¶¶81-82).
2. The alleged religious remarks at the football pre-game ceremonies that he attended - one game in 2006 and three to four games in the 2007-08 and 2008-09 school years. (Dkt. No. 75 at ¶61).
3. The religious icon or symbol he alleges that he personally observed (a cross in Assistant Superintendent Chris Martinez' office). (Dkt. No. 75 at ¶51).

SIGNED on this the _____ day of _____, 2011.

UNITED STATES DISTRICT JUDGE