

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

DANIEL HARPER,

Plaintiff,

v.

1. JOHN MCARTHUR, in his official and individual capacities as President of Cameron University; **2. THOMAS R. RUSSELL**, in his official and individual capacities as Equal Opportunity Officer at Cameron University; **3. JENNIFER PRUCHNICKI**, in her official capacity as Director of Student Development at Cameron University,

Defendants.

Case No. CIV-14-495-L

COMPLAINT

Plaintiff Daniel Harper, by and through counsel, and for his Complaint against Defendants, hereby states as follows:

INTRODUCTION

1. “I like those amendments to the Constitution. They are foundations to democracy. But that’s all they are—foundations. You can’t live on them. You’ll freeze to death in the winter and burn up in summer.” This is what Defendant Thomas R. Russell, the Equal Opportunity Officer at Cameron University (“University”), said to Plaintiff Daniel Harper, a student at the University, just before Russell punished Mr. Harper for handing out a religious flyer on campus. A fellow student who disagreed with Mr. Harper’s flyer had filed a complaint of religious discrimination. The University, through the named defendants, then investigated and found Mr. Harper guilty of violating the University’s Expressive Activity Policy and Equal Opportunity Policy, which prohibit students from engaging in “offensive” and “discriminatory” speech, require students to join a student organization to hand out literature on campus, and then get prior

permission to distribute the literature. The University banned Mr. Harper from distributing his flyer in the future.

2. The cornerstone of higher education is the ability of students to participate in the “marketplace of ideas” on campus. That marketplace depends on free and vigorous debate between students—debate that is spontaneous, ubiquitous, and often anonymous—and is carried out through spoken word, flyers, signs, and displays.

3. This case arises from policies and practices of Cameron University (“University”) and public officials employed by the University that restrict the expressive rights of students. Instead of encouraging free discourse and debate on campus, the University enforces a speech code and punishes students when they offer a viewpoint that someone else finds offensive or discriminatory. The University enforced this speech code against Mr. Harper when it censored and punished him for handing out a flyer with his religious viewpoints on it after another student complained that he was offended by the content of the flyers.

4. The University also enforces a prior restraint on student speech by requiring students to join a student organization and then obtain a permit before they speak on campus through written communications. If a student wants to distribute a flyer on campus, the University requires the student to join a student organization, obtain prior permission from the Director of Student Development, and obtain a stamp of approval on the flyers. The University admonished Mr. Harper for distributing his flyer as an individual and failing to get prior approval and a stamp on his religious flyers. Through these permitting processes, the University retains unfettered discretion to determine whether students may speak at all. In so doing, it fails to protect students against content and viewpoint discrimination and fails to protect spontaneous and anonymous speech.

5. These University policies and practices chill protected speech and disable the ability of students to speak freely on campus about recent and unfolding events.

6. Defendants took these actions, which are content and viewpoint discrimination against Plaintiff's expression, because Plaintiff's expression prompted complaints, and because they wanted to pacify those offended by Plaintiff's expression. In so doing, Defendants violated Plaintiff's constitutional rights and caused irreparable injury to Plaintiff.

7. This action is premised on the United States Constitution concerning the denial of Plaintiff's fundamental rights to free speech, freedom from retaliation, free exercise of religion, equal protection, and due process.

8. The aforementioned policies and actions are challenged on their face and as applied to Plaintiff.

9. Defendants' policies and actions have deprived and will continue to deprive Plaintiff of his paramount rights and guarantees under the United States Constitution.

10. Each and every act of Defendants alleged herein was committed by Defendants, each and every one of them, under the color of state law and authority.

JURISDICTION AND VENUE

11. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

12. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

13. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

14. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343 and 51 Okla. Stat. § 256; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201-02 and 51 Okla. Stat. § 256; the requested injunctive relief pursuant to 28 U.S.C. § 1343 and Fed. R. Civ. P. 65; and costs and attorneys fees under 42 U.S.C. § 1988 and 51 Okla. Stat. § 256.

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the Defendants reside in this district and all of the acts described in this Complaint occurred in this district.

PLAINTIFF

16. Plaintiff Daniel Harper is a resident of the State of Oklahoma and a student at the University.

17. Mr. Harper is an honors student at the University. His academic achievements have earned him recognition on the Dean's list, the President's list, and Phi Eta Sigma, the nation's oldest honor society for first-year university students. He was invited to join the Phi Kappa Phi honor society. He currently maintains a 3.77 GPA.

18. Mr. Harper is a professing evangelical Christian with sincerely-held religious beliefs regarding morality, politics, social issues, and religion.

19. Mr. Harper believes the Bible is the word of God and, as a tenet of his faith, he shares his beliefs about Christianity (otherwise known as the "gospel") with others, particularly, his fellow students.

20. In an effort to comply with his duty to share the gospel, Mr. Harper looks for opportunities to speak with other students about his faith. In discussing his faith, Harper often distributes unobtrusive flyers that can easily be placed by a recipient in a purse or pocket. Mr. Harper also likes to share his faith through oral communication with people on campus.

21. Mr. Harper does not seek monetary gain with his expressive activity about Christianity. He does not try to sell products or services or ask for money. He merely wishes for others to be exposed to his Christian beliefs.

DEFENDANTS

22. Defendant John McArthur is, and was at all times relevant to this Complaint, the President of Cameron University, a public university organized and existing under the laws of the State of Oklahoma.

23. The University is governed by the University of Oklahoma Board of Regents.

24. The Board of Regents has designated the University President as the chief educational and administrative officer of the University and vested him with broad authority to develop policies and procedures for the conduct of internal affairs of the University not specifically addressed by and not inconsistent with Board of Regents' policy.

25. The University's Board of Regents delegates to Defendant McArthur the responsibility for final policymaking authority concerning student free speech activities at the University.

26. Defendant McArthur is responsible for enactment and enforcement of University policies, including the Expressive Activity Policy and Equal Opportunity Policy, which contain the University's speech code and prior restraint policy, all challenged herein.

27. Defendant McArthur is ultimately responsible for the enforcement of University policies, including their application to Mr. Harper's speech.

28. Defendant McArthur possesses the authority and responsibility for coordination and approval of campus expression by students, employees, and third parties.

29. As president, Defendant McArthur has the final authority to review, approve, or reject requests to use campus facilities and grounds by students.

30. As president, Defendant McArthur has the final authority to review, approve, or modify decisions by the Equal Opportunity Officer to punish students for violating University policy.

31. Defendant McArthur personally discussed, decided, and approved how the University should handle the religious discrimination complaint lodged against Mr. Harper.

32. All changes in campus policy concerning student expression are made only with the prior approval of Defendant McArthur.

33. Defendant McArthur has not instructed the Defendants to change or alter the Expressive Activity Policy or Equal Opportunity Policy to comply with constitutional mandates.

34. Defendant McArthur is sued in his individual and official capacities.

35. Defendant Thomas R. Russell is, and was at all times relevant to this Complaint, the Equal Opportunity Officer at Cameron University, a public university organized and existing under the laws of the State of Oklahoma.

36. Defendant Russell, in consultation with and at the direction of Defendant McArthur, is responsible for enforcement of University policies, including the Expressive Activity Policy and Equal Opportunity Policy challenged herein, which he applied to silence Mr. Harper's speech.

37. Defendant Russell recommended, and Defendant McArthur approved, that the University punish Mr. Harper for handing out flyers that Defendants McArthur and Russell determined violated the Expressive Activity Policy and Equal Opportunity Policy.

38. Defendant Russell is sued in his individual and official capacities.

39. Defendant Jennifer Pruchnicki is, and was at all times relevant to this Complaint, Director of Student Development at Cameron University, a public university organized and existing under the laws of the State of Oklahoma.

40. Defendant Pruchnicki, in consultation with and with the approval of Defendant McArthur, is responsible for enforcement of University policies, including the Expressive Activity Policy challenged herein, which was applied to Mr. Harper's speech.

41. One of Defendant Pruchnicki's responsibilities is to apply the Expressive Activity Policy when reviewing and approving or disapproving of requests by students to engage in expressive activities on campus.

42. Defendant Russell told Mr. Harper to get prior approval from Defendant Pruchnicki to distribute flyers on campus.

43. Defendant Pruchnicki is sued both in her individual and official capacities.

FACTUAL BACKGROUND

44. Cameron University is a public university organized and existing under the laws of the State of Oklahoma, and receives funding from the State to operate.

45. The University's campus is composed of various publicly-accessible buildings and outdoor areas, including public streets, sidewalks, open-air quadrangles, and parks. A copy of the University's campus map is attached as Exhibit 1 to this Complaint.

46. The University's campus is approximately 160 acres, which is approximately 6,969,600 square feet of land.

47. The University's campus has many suitable streets, sidewalks, open-air quadrangles, parks, and open space where expressive activity will not interfere with or disturb the University's educational environment or access to buildings and sidewalks.

Defendants' Expressive Activity Policy and Equal Opportunity Policy

48. The University regulates student oral and written speech through an Expressive Activity Policy. A copy of the Expressive Activity Policy, as published in the Student Handbook, is attached as Exhibit 2 to this Complaint.

49. The Expressive Activity Policy applies to all events and activities organized by or sponsored by students and student organizations.

50. The advertising section of the Expressive Activity Policy prohibits speech "deemed offensive or in poor taste," including speech "derogatory to individuals or groups." Ex. 2 at 1.

51. The University and Defendants McArthur, Russell, and Pruchnicki define advertising to include all oral and written student speech.

52. Advertisements of a “questionable” nature, as interpreted by Defendant Pruchnicki, require the references of two local persons.

53. “Questionable” advertisements include “pregnancy referral” and “adoption services.”

54. The Expressive Activity Policy also includes a section on the distribution of pamphlets and written materials. Ex. 2 at 2.

55. The University permits student organizations to distribute in any open exterior campus space, pamphlets, booklets, brochures and other forms of written materials so long as they are not commercial solicitations or advertisements and are designed for informational purposes.

56. The Expressive Activity Policy was issued by Defendant McArthur or his predecessor, and he has the authority to modify or rescind the policy.

57. Defendant McArthur has delegated authority to enforce the Expressive Activity Policy to Defendant Pruchnicki.

58. Student organizations must receive prior approval from Defendant Pruchnicki before distributing written materials.

59. The Expressive Activity Policy does not state how far in advance student organizations must obtain approval from Defendant Pruchnicki to distribute written material.

60. Defendant Pruchnicki has the discretion to decide on a case-by-case basis how far in advance student organizations must seek approval to distribute written material.

61. If a student organization desires to immediately distribute flyers on campus and Defendant Pruchnicki is unavailable, then that student organization may not distribute its flyers until she returns and grants it permission to do so.

62. Student organizations must give Defendant Pruchnicki a copy of the written material for her to review before she will approve it for distribution.

63. According to Defendant Russell, Defendant Pruchnicki must place a University stamp of approval on written materials before a student organization can distribute them on campus.

64. It is Defendants' policy and practice to apply the Expressive Activity Policy to individual students who want to distribute literature to their peers on campus.

65. It is Defendants' policy and practice that only recognized student organizations may engage in literature distribution on campus; individual students who are not affiliated with a student organization may not do so, even if they seek prior approval from Defendant Pruchnicki.

66. The Expressive Activity Policy contains no guidelines or standards to limit the discretion of Defendants McArthur or Pruchnicki or other University officials in approving, rejecting, or restricting requests by students to distribute written materials.

67. The Expressive Activity Policy contains no deadlines or timetables in which Defendants McArthur or Pruchnicki or other University officials must respond to a permit request.

68. The Expressive Activity Policy contains no options for Defendants McArthur or Pruchnicki or other University officials to waive the prior approval requirement when students want to speak spontaneously in response to recent or unfolding events.

69. The section on distribution of pamphlets and written materials also refers students to the Equal Opportunity Policy for more information about permitted speech.

70. The Equal Opportunity Policy is a policy of the University of Oklahoma Board of Regents.

71. The Equal Opportunity Policy states that the University "does not discriminate on the basis of race, color, national origin, sex, age, religion, political beliefs, disability, or status as a veteran in any of its policies, practices, or procedures. This includes but is not limited to admissions, employment, financial aid, and education

services.” A copy of the University of Oklahoma Board of Regents Policy Manual for Cameron University, which includes the Equal Opportunity Policy, is attached as Exhibit 3 to this Complaint.

72. Any faculty member, staff member, or student who believes that he or she has been discriminated or retaliated against may file a complaint under the Equal Opportunity Policy.

73. Defendants McArthur and Russell are responsible for enforcing the Equal Opportunity Policy at the University.

74. It is a violation of the University’s Code of Student Conduct to violate any published University policy, including the Expressive Activity Policy and Equal Opportunity Policy.

75. The Equal Opportunity Policy contains no guidelines or standards to limit the discretion of Defendants McArthur or Russell or other University officials in applying the policy to constitutionally protected expression.

76. The Expressive Activity Policy and the Equal Opportunity Policy allow Defendants McArthur, Russell, and Pruchnicki to evaluate and restrict written material based on the topic and message it contains, which is content and viewpoint discrimination.

Defendants’ Censorship of Mr. Harper’s Speech

77. A group called the World Mission Society regularly engages in religious speech activity at the University.

78. From time to time since the fall semester of 2013, Mr. Harper has spoken with people associated with the World Mission Society while on campus.

79. Through these conversations and his own independent research, Mr. Harper has learned about the beliefs of the group and he strenuously objects to their claims.

80. Mr. Harper desires to provide University students with a different perspective about the beliefs of the World Mission Society.

81. Specifically, Mr. Harper wants to express his orthodox Christian beliefs to students so that they can consider a different religious viewpoint and make their own independent choices about religious matters.

82. In February 2014, Mr. Harper distributed a flyer to his peers on campus. A copy of the flyer is attached as Exhibit 4 to this Complaint.

83. On February 20, 2014, Defendant Russell contacted Mr. Harper and introduced himself as the Equal Opportunity Officer at the University and the person responsible for investigating complaints dealing with discrimination and sexual harassment. A copy of Defendant Russell's February 20, 2014 email to Mr. Harper is attached as Exhibit 5 to this Complaint.

84. Defendant Russell said he had received a complaint that listed Mr. Harper as a respondent and he asked Mr. Harper to contact him to schedule a meeting.

85. On or about February 25, 2014, Mr. Harper met with Defendant Russell. Mr. Harper recorded the conversation.

86. Defendant Russell explained that a student affiliated with the World Mission Society was offended by Mr. Harper's flyer and filed a complaint of religious discrimination against Mr. Harper.

87. Mr. Harper explained how he has spoken with members of the World Mission Society, including the complainant, on many occasions on campus.

88. Mr. Harper explained that all of those conversations were peaceful and courteous.

89. Defendant Russell explained that because Mr. Harper was not part of a student organization and because his flyer did not have a stamp from Defendant Pruchnicki's office, Mr. Harper did not have permission to distribute the flyer. Defendant Russell explained that it is University policy that student organizations must receive prior approval and get a stamp from the Office of Student Development before they may distribute flyers on campus.

90. Defendant Russell said Mr. Harper's flyer could be libelous.

91. Defendant Russell told Mr. Harper not to distribute any more flyers, and not to distribute anything without the prior permission of Defendant Pruchnicki.

92. Defendant Russell told Mr. Harper to be cautious about what he says.

93. Defendant Russell said: "I like those amendments to the Constitution. They are foundations to democracy. But that's all they are, foundations. You can't live on them. You'll freeze to death in winter and burn up in summer."

94. Defendant Russell then explained that the University's policies are above those "amendments to the Constitution," and that Mr. Harper needed to follow University policy regardless of his First Amendment rights.

95. Defendant Russell then read through Mr. Harper's flyer and criticized several of the arguments Mr. Harper made in the flyer.

96. The meeting ended with Defendant Russell explaining that he needed to finish his investigation and then he would contact Mr. Harper with the results.

97. Defendant Russell said that he would speak with the other administrators at the University, including the lawyers for the University of Oklahoma Board of Regents.

98. Mr. Harper later received a letter dated February 28, 2014 from Defendant Russell. The letter is addressed to Mr. Harper and indicates a copy was sent to Defendant McArthur. A copy of the letter is attached as Exhibit 6 to this Complaint.

99. The letter states that by handing out the flyer Mr. Harper violated the University's Equal Opportunity Policy prohibiting religious discrimination.

100. The letter states that Mr. Harper agreed to stop distributing the flyer.

101. Mr. Harper desires to return to campus immediately and continue distributing his flyer, but fears arrest or further punishment by the University if he does so.

102. The letter states that Mr. Harper and the complainant will continue to be respectful to each other.

103. Mr. Harper has always treated the complainant with respect and courtesy.

104. The letter states that Mr. Harper was in violation of the Equal Opportunity Policy as promulgated in the Employee Handbook.

105. Mr. Harper is not an employee of the University.

106. The Equal Opportunity Policy in the Employee Handbook contains the same policies and procedures outlined by the University of Oklahoma Board of Regents in the Cameron University Policy Manual.

107. The Equal Opportunity Policy states that Defendant Russell can choose three different outcomes after investigating a complaint: (1) find there was a satisfactory resolution, (2) dismiss the complaint, or (3) make a finding of impropriety.

108. A finding of impropriety is the same as finding the accused guilty of the charges.

109. Mr. Harper was found guilty of impropriety and ordered to stop distributing his religious flyers.

110. Mr. Harper has stopped distributing his religious flyers on campus for fear of further punishment.

111. Mr. Harper contacted Defendant Russell on March 12, 2014, said he disagreed with the letter's findings, and wished to appeal the decision. A copy of Mr. Harper's email to Defendant Russell is attached as Exhibit 7 to this Complaint.

112. Defendant Russell responded by email the same day and offered to set up a meeting with Mr. Harper after spring break. Ex. 7.

113. On or about March 13, 2014, Mr. Harper met with Defendant Pruchnicki. Mr. Harper recorded the conversation.

114. Defendant Pruchnicki had a copy of the February 28 letter from Defendant Russell to Mr. Harper.

115. Defendant Pruchnicki told Mr. Harper that it is okay to have a viewpoint, but he needed to be respectful and ensure his viewpoint did not discriminate against other people.

116. Mr. Harper explained his beliefs about the World Mission Society and its expressive activities on campus.

117. Defendant Pruchnicki said she knew that Defendant Russell had spoken to Mr. Harper about the flyers and that Russell told Mr. Harper that the flyers must be approved through her office.

118. Defendant Pruchnicki gave Mr. Harper a copy of the Expressive Activity Policy.

119. Defendant Pruchnicki said any recognized student organization or group can distribute information on campus, but they need to go through the process outlined in the Expressive Activity Policy.

120. Defendant Pruchnicki said that Mr. Harper bypassed the process because he was an individual, but if he wanted to distribute flyers he needed to join or start a student organization and then get approval for the flyers from Defendant Pruchnicki.

121. Defendant Pruchnicki said she reviews flyers to make sure their content relates to events on campus.

122. Defendant Pruchnicki said if Mr. Harper did not want to join a group, then he could use Facebook to disseminate his message.

123. Facebook is not an adequate alternative for Mr. Harper to disseminate his message because it does not allow him to speak with people unless he is friends with them.

124. Defendant Pruchnicki said Mr. Harper's flyer could be interpreted as being about the belief system of the World Mission Society, and, thus, considered discriminatory under the University's policies.

125. Defendant Pruchnicki said “an outsider could read the flyer and find it discriminatory.”

126. Defendant Pruchnicki acknowledged that whether something is discriminatory is a grey area in the law. Someone might find the flyer okay, but another person might find it discriminatory.

127. Defendant Pruchnicki told Mr. Harper that the University tries to teach students tolerance, while at the same time defending the University’s decision to punish Mr. Harper for his religious flyer.

128. Mr. Harper asked if he can still warn people about the World Mission Society and if he could distribute his flyer.

129. Defendant Pruchnicki said, “No, because you’re not affiliated with an organization.”

130. Even if Mr. Harper was affiliated with an organization on campus, Defendants McArthur, Russell, and Pruchnicki would not allow him to distribute his flyer because they deemed it “discriminatory” and violate of the University’s Equal Opportunity Policy.

131. Defendant Pruchnicki admitted that the public can come onto the University’s campus and even go into buildings to have one-on-one conversations with people, but that anyone who wants to distribute a flyer must be affiliated with a campus organization.

132. On March 26, 2014, Mr. Harper met with Defendant Russell. Mr. Harper recorded the conversation.

133. Mr. Harper explained that he had a constitutional right to distribute the religious flyers on campus, even if other students were offended by them.

134. Defendant Russell explained that he had been in contact with Defendants McArthur and Pruchnicki about Mr. Harper’s flyers, the investigation, and the February 28 letter.

135. Defendant Russell said that Defendant McArthur asked Defendant Pruchnicki to meet with Mr. Harper about distributing flyers and to explain that process.

136. Defendant Russell said that Defendant McArthur sent Defendant Pruchnicki a copy of the February 28 letter to Mr. Harper.

137. Defendant Russell said that he discussed the investigation and process with Defendant McArthur, that he shared his twelve page report with Defendant McArthur, and that he and Defendant McArthur agreed with the results.

138. Defendant Russell's explanation of the investigation process and its conclusion indicated that Defendant McArthur was involved in all aspects of the decision to punish Mr. Harper for distributing his religious flyer that offended another student.

139. Defendant Russell also said that he thought Mr. Harper's flyer was slanderous and libelous.

140. Although the purpose of the meeting was for Mr. Harper to get Defendant Russell's help on appealing the findings of the February 28 letter, Defendant Russell then tried to dissuade Mr. Harper from filing an appeal.

141. Defendant Russell explained that if Mr. Harper appealed, the student who complained would be present and that student and the committee charged with overseeing the appeal would hear Mr. Harper's opinions about the World Mission Society. Defendant Russell warned Mr. Harper that if he appealed, Mr. Harper was setting himself up to be sued for slander and libel by the World Mission Society.

142. Defendant Russell said that both he and University of Oklahoma System legal department thought the flyer was libelous.

143. Defendant Russell said Mr. Harper should change his flyer and then get approval from Defendant Pruchnicki to distribute it.

144. Defendant Russell explained that all University students need permission to hand out flyers. He said: "All those federal laws are the foundations. Once you get the

foundation built to live in the house, you need framework and rooms, and that is the policies and procedures [of the University].”

145. The University’s enforcement of the Expressive Activity Policy against Mr. Harper burdens his speech for multiple reasons.

146. Mr. Harper’s speech is frustrated because he cannot engage in any written expression at the University until he first obtains a prior approval from the University.

147. Mr. Harper wants to engage in speech containing religious messages while on campus without having to obtain prior approval from University administrators.

148. Specifically, Mr. Harper wants to distribute his religious flyer about the World Mission Society informing fellow students about his religious message.

149. The prior approval requirement, in and of itself, is unduly burdensome as it requires advance notice to Defendant Pruchnicki.

150. The prior approval requirement means that Mr. Harper may not engage in spontaneous or anonymous speech on campus.

151. It is repugnant to Mr. Harper that he, as a student, must secure governmental permission to engage in written expression when he feels convicted by religious faith to speak on campus.

152. Mr. Harper also likes to spread his message in reaction to current events.

153. Mr. Harper and all University students require the ability to speak spontaneously in reaction to news. And yet, the University’s Expressive Activity Policy prohibits such spontaneous speech because it forces students to obtain permission prior to speaking.

154. The University’s enforcement of the Equal Opportunity Policy against Mr. Harper burdens his speech for multiple reasons.

155. Mr. Harper cannot engage in any oral or written expression at the University if it offends another person or if another person believes it to be discriminatory.

156. It is unclear to Mr. Harper what exactly is offensive or discriminatory to other people.

157. The University's enforcement of the Equal Opportunity Policy creates a speech code that Defendants McArthur, Russell, and Pruchnicki and other University officials use to censor student speech.

158. The Equal Opportunity Policy does not contain any guidelines or criteria to assist Defendants McArthur, Russell, and Pruchnicki or other University officials in enforcing the speech code.

159. The Equal Opportunity Policy grants Defendants McArthur, Russell, and Pruchnicki and other University officials unbridled discretion to apply the policy, as they did when they punished Mr. Harper for distributing a religious flyer critical of another student's and group's ideas, which is content and viewpoint discrimination.

160. Mr. Harper is bound to comply with the terms of the University's Expressive Activity Policy and Equal Opportunity Policy at all times on campus.

161. Mr. Harper currently is not engaging in oral and written speech on religious topics on campus due to the University's Expressive Activity Policy and Equal Opportunity Policy.

162. Mr. Harper is chilled in his ability to discuss religious topics on campus due to the University's Expressive Activity Policy and Equal Opportunity Policy.

163. If not for the University's Expressive Activity Policy and the Equal Opportunity Policy, and the actions of Defendants, Mr. Harper would immediately return to the open areas of the University campus to convey his religious viewpoints.

164. Specifically, Mr. Harper would distribute his flyer about the World Mission Society. He refrains from doing so for fear of arrest or punishment under the University's Expressive Activity Policy and Equal Opportunity Policy.

165. The fear of arrest or further punishment severely limits Mr. Harper's constitutionally-protected expression on campus.

ALLEGATIONS OF LAW

166. At all times relevant to this Complaint, each and all of the acts alleged herein were attributed to the Defendants who acted under color of a statute, regulation, custom, or usage of the State of Oklahoma.

167. Defendants knew or should have known that by punishing Mr. Harper's religious expression because it offended others and disallowing his written expression on campus without it obtaining prior permission the University is violating Mr. Harper's constitutional rights.

168. Mr. Harper is suffering irreparable harm from the policy and practice of Defendants.

169. Mr. Harper has no adequate or speedy remedy at law to correct or redress the deprivation of his rights by Defendants.

170. Unless the conduct of Defendants is enjoined, Mr. Harper will continue to suffer irreparable injury.

FIRST CAUSE OF ACTION

Violation of Plaintiff's First Amendment Right to Freedom of Speech

171. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–170 of this Complaint.

172. The First Amendment's Free Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits content and viewpoint discrimination in public forums.

173. Speech, including oral and written expression, is entitled to comprehensive protection under the First Amendment.

174. Religious speech is fully protected by the First Amendment.

175. The First Amendment rights of free speech and press extend to campuses of state colleges.

176. The sidewalks and open spaces of the University campus are designated public fora—if not traditional public fora—for speech and expressive activities by students enrolled at the University.

177. A public university's ability to restrict speech—particularly student speech—in a public forum is limited.

178. The First Amendment's Free Speech Clause prohibits content and viewpoint discrimination against religious expression.

179. Defendants Expressive Activity Policy and Equal Opportunity Policy regulate speech based on listeners' reactions, that is whether a third party finds the speech offensive or discriminatory, and based on content and viewpoint.

180. Defendants' Expressive Activity Policy regulates speech based on whether it is "offensive," "in poor taste," "derogatory," or "questionable," which is content and viewpoint discrimination.

181. Defendants are engaging in content and viewpoint discrimination by placing even greater restrictions on student speech if it refers to pregnancy referrals and adoption services.

182. Defendants applied the Expressive Activity Policy and Equal Opportunity Policy to Plaintiff's speech because of the topic and message it contained, which is content and viewpoint discrimination.

183. Under the First Amendment's Free Speech Clause, a prior restraint on citizens' expression is presumptively unconstitutional, unless it (1) does not delegate overly broad licensing discretion to a government official, (2) contains only content and viewpoint neutral reasonable time, place, and manner restrictions, (3) is narrowly tailored to serve a significant governmental interest, and (4) leaves open ample alternative means for communication.

184. Unbridled discretion to discriminate against speech based on its content or viewpoint violates the First Amendment regardless of whether that discretion has ever been unconstitutionally applied in practice.

185. Defendants' Expressive Activity Policy and their practice of restricting student speech unless it receives prior approval violate the First Amendment facially and as applied because they are a prior restraint on speech in areas of campus that are traditional or designated public fora for University students.

186. Defendants' Expressive Activity Policy and their practice of allowing only student organizations to register expressive activities with University officials violate the First Amendment facially and as applied because they permit popular speech and silence unpopular speech by prohibiting students who are not affiliated with a student organization from engaging in any expressive activities on campus.

187. Defendants' Expressive Activity Policy and their practice of restricting student speech unless it receives prior approval violate the First Amendment facially and as applied because they grant University officials unbridled discretion to discriminate against speech based on its content or viewpoint.

188. Defendants' Expressive Activity Policy and associated practices that require students to obtain approval to distribute literature is an unconstitutional "time," "place," and "manner" restriction that violates Plaintiff's and other students' right to freedom of speech and expression.

189. Defendants' Expressive Activity Policy and their practice of allowing only student organizations to register expressive activities with University officials are unconstitutional "time," "place," and "manner" restrictions that violate Plaintiff's and other students' right to freedom of speech and expression because they prohibit students who are not affiliated with a student organization from engaging in any expressive activities on campus

190. Defendants' Expressive Activity Policy and associated practices provide no guidelines or standards to limit the discretion of University officials in granting, denying, or restricting requests by students to engage in expressive activity.

191. Defendants' Expressive Activity Policy and associated practices give Defendants unbridled discretionary power to limit student speech in advance of such expression on campus and to do so based on the content and viewpoint of the speech.

192. These grants of unbridled discretion to University officials violate the First Amendment because they create a system in which speech is reviewed without any standards, thus giving students no way to prove that a denial or restriction of their speech was based on unconstitutional considerations.

193. The First Amendment's prohibition against content and viewpoint discrimination requires Defendants to provide adequate safeguards to protect against the improper exclusion or restriction of student speech based on its content or viewpoint.

194. Because Defendants have failed to establish neutral criteria governing the granting, denial, or restriction of student speech, there is a substantial risk that University officials will engage in content and viewpoint discrimination when addressing applications to distribute literature.

195. Defendants exercised the unbridled discretion granted them under the Expressive Activity Policy when they told Plaintiff that he must get prior approval to hand out his religious flyer on campus.

196. Defendants' Expressive Activity Policy and associated practices do not contain any definite time period in which University officials must grant or deny students' requests to distribute literature.

197. The First Amendment protects the right to spontaneous and anonymous speech in public forums.

198. Defendants' Expressive Activity Policy and associated practices that require prior approval to speak prohibit anonymous expression.

199. Defendants' Expressive Activity Policy and associated practices that require prior approval to speak prohibit spontaneous expression.

200. Defendants' Expressive Activity Policy and associated practices are neither reasonable nor valid time, place, and manner restrictions on speech because they are not content-neutral, they are not narrowly tailored to serve a significant government interest, and they do not leave open ample alternative channels of communication.

201. Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices are also overbroad because they prohibit and restrict protected expression.

202. Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices unconstitutionally censor or restrict all private speech on campus.

203. Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices prohibit speech that is "offensive," "in poor taste," "derogatory," "questionable," and "discriminatory," without definition, condition speech on the subjective reactions of listeners, and fail to require any threshold showing of severity or pervasiveness before restricting speech.

204. The overbreadth of Defendants' policies and related practices chills the speech of Plaintiff and students not before the Court who seek to engage in private expression in the open, outdoor areas of campus.

205. Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices chill, deter, and restrict Plaintiff from freely expressing his religious beliefs.

206. Defendants' Expressive Activity Policy and associated practices violate Plaintiff's right to free speech as guaranteed by the First Amendment to the United States Constitution.

207. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer, economic injury and irreparable harm. He is entitled to an award of monetary damages and equitable relief.

208. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a declaration that Defendants violated his First Amendment right to freedom of speech and an injunction against Defendants' policy and actions. Additionally, Plaintiff is entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

SECOND CAUSE OF ACTION
Violation of Plaintiff's First Amendment Right to
Free Exercise of Religion

209. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–170 of this Complaint.

210. The First Amendment's Free Exercise Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits the government from enacting policies that are not neutral or generally applicable and prohibits the government from favoring one religious denomination over another.

211. A policy that appears neutral and generally applicable on its face violates the First Amendment if, in practice, the policy is not applied neutrally or generally, allows for exemptions, or targets a belief or faith-based practice. A policy that is applied in this manner violates the First Amendment unless it advances a compelling state interest and is narrowly tailored to that interest.

212. Defendants apply their Expressive Activity Policy and Equal Opportunity Policy in ways that target private religious expression for special disabilities, which violates Plaintiff's First Amendment right to free exercise of religion.

213. Plaintiff desires to share his religious views and materials with his peers on campus based on his sincerely-held religious beliefs.

214. Defendants applied the Expressive Activity Policy and Equal Opportunity Policy to prohibit Plaintiff from sharing his religious views on campus, but allowed other people to share their religious views on campus, including the people who Plaintiff wishes to respond to with his own messages.

215. In practice, Defendants' Expressive Activity Policy and Equal Opportunity Policy are riddled with exemptions and Defendants enforce it to target and restrict Plaintiff's religiously-motivated activity.

216. Defendants' Expressive Activity Policy and Equal Opportunity Policy and practice substantially burdens Plaintiff's free exercise of religion by conditioning his ability to practice his faith and speak on foregoing his free exercise rights.

217. Defendants' Expressive Activity Policy and Equal Opportunity Policy and practice constitute the imposition of special disabilities on Plaintiff due to his religion and his intent to engage in private religious activity and expression.

218. Defendants' Expressive Activity Policy and Equal Opportunity Policy and practice of banning Plaintiff's religious speech on campus selectively imposes a burden on religious expression and practice based on the religious nature of the expression and practice and singles out his expression and practice for discriminatory treatment.

219. Defendants' interpretation and application of the Expressive Activity Policy and Equal Opportunity Policy chills Plaintiff's freedom of religious expression and exercise, both of which are fundamental rights guaranteed to Plaintiff by the First Amendment.

220. These special disabilities placed on Plaintiff by Defendants are neither neutral nor generally applicable.

221. Defendants' Expressive Activity Policy and Equal Opportunity Policy are not neutral in practice because they target religious speech and permit Defendants to arbitrarily decide what speech is permitted under the policies and what speech is not.

222. Defendants' Expressive Activity Policy and Equal Opportunity Policy are not generally applicable in practice because they grant Defendants unbridled discretion, enforced by a policy of individualized assessment, to censor Plaintiff's religious expression while permitting other students to speak and distribute literature.

223. Defendants' Expressive Activity Policy and Equal Opportunity Policy and practice cannot be justified by a compelling state interest and are not narrowly tailored to advance any such interest.

224. Defendants' Expressive Activity Policy and Equal Opportunity Policy and practice violate Plaintiffs' right to free exercise of religion as guaranteed by the First Amendment to the United States Constitution.

225. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer irreparable harm. He is entitled to an award of monetary damages and equitable relief.

226. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a declaration that Defendants violated his First Amendment right to free exercise of religion and an injunction against Defendants' policy and actions. Additionally, Plaintiff is entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

THIRD CAUSE OF ACTION

Violation of Plaintiff's First Amendment Rights Under the Establishment Clause

227. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–170 of this Complaint.

228. The First Amendment's Establishment Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits the government from creating policies or practices that lack a secular purpose, advance or inhibit religion, endorse religion, excessively entangle the government with religion, or prefer some religions over others.

229. A government policy or practice may not prefer some denominations or sects over others.

230. Defendants applied the Expressive Activity Policy and Equal Opportunity Policy to restrict Plaintiff's religious expression while allowing the religious expression of other students to continue unrestrained.

231. Defendants applied the Expressive Activity Policy and Equal Opportunity Policy in a way that preferred some religious denominations and sects over others.

232. Defendants' application of the Expressive Activity Policy and Equal Opportunity Policy advanced some religious and theological views and inhibited others.

233. Defendants' application of the Expressive Activity Policy and Equal Opportunity Policy expressed hostility towards Plaintiff's religious beliefs by declaring that Plaintiff's viewpoints on religion were discriminatory, slanderous, and libelous.

234. Defendants' application of the Expressive Activity Policy and Equal Opportunity Policy excessively entangled the government with religion by telling students and the community that the University believes some religious and theological viewpoints are entitled to more constitutional protection than others and by declaring that Plaintiff's viewpoints on religion were slanderous and libelous.

235. Defendants' application of the Expressive Activity Policy and Equal Opportunity Policy made Plaintiff feel like an outsider to the University's beliefs.

236. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer, economic injury and irreparable harm. He is entitled to an award of monetary damages and equitable relief.

237. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a declaration that Defendants violated his First Amendment right to be free from government hostility to his religion and an injunction against Defendants' policy and actions. Additionally, Plaintiff is entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees

FOURTH CAUSE OF ACTION
Violation of Plaintiff's Fourteenth Amendment Right to
Due Process of Law

238. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–170 of this Complaint.

239. The Fourteenth Amendment to the United States Constitution guarantees Plaintiff the right to due process of law and prohibits Defendants from promulgating and employing vague standards that allow for viewpoint discrimination in Defendants' handling of Plaintiff's speech.

240. The government may not regulate speech based on policies that deny speakers fair notice of the standard of conduct to which they are held accountable.

241. The government may not regulate speech based on policies that permit arbitrary, discriminatory, and overzealous enforcement.

242. The government may not regulate speech based on policies that cause persons of common intelligence to guess at their meaning and differ as to their application.

243. The government may not regulate speech based on policies that chill the exercise of First Amendment rights.

244. Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices contain no criteria to guide administrators when deciding whether speech is "offensive," "in poor taste," "derogatory," "questionable," or "discriminatory."

245. Defendants McArthur, Russell, and Pruchnicki and other University officials reviewed, without any guidelines or standards, Plaintiff's religious flyer.

246. Defendants McArthur, Russell, and Pruchnicki and other University officials applied the Expressive Activity Policy and Equal Opportunity Policy to Plaintiff's speech in a way that chilled his ability to exercise his First Amendment freedoms.

247. Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices are impermissibly vague and ambiguous and are thus incapable of providing meaningful guidance to Defendants.

248. The lack of criteria, factors, or standards in Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices renders these policies and practices unconstitutionally vague and in violation of Plaintiff's right to due process of law under the Fourteenth Amendment.

249. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer irreparable harm. He is entitled to an award of monetary damages and equitable relief.

250. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a declaration that Defendants violated his Fourteenth Amendment right to due process of law and an injunction against Defendants' policy and actions. Additionally, Plaintiff is entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

Violation of Plaintiff's Fourteenth Amendment Right to Equal Protection of the Law

251. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–170 of this Complaint.

252. The Fourteenth Amendment to the United States Constitution guarantees Plaintiff the equal protection of the laws, which prohibits Defendants from treating Plaintiff differently than similarly situated students.

253. The government may not treat someone disparately as compared to similarly situated persons when such disparate treatment burdens a fundamental right, targets a suspect class, or has no rational basis.

254. Plaintiff is similarly situated to other students at the University.

255. Defendants allowed other students to speak freely about their religious views when they prohibited Plaintiff from doing the same.

256. Defendants allowed students associated with the World Mission Society to speak freely, while at the same time they prohibited Plaintiff from speaking freely.

257. Defendants treated Plaintiff disparately when compared to similarly situated students by denying Plaintiff the ability to speak freely about his religious views.

258. Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices violate various fundamental rights of Plaintiff, such as his freedoms of speech and religious exercise and due process of law.

259. When government regulations, like Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices challenged herein, infringe on fundamental rights, discriminatory intent is presumed.

260. Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices have also been applied to discriminate intentionally against Plaintiff's rights to freedom of speech, freedom of religious exercise, and due process of law.

261. Defendants lack a rational or compelling state interest for such disparate treatment of Plaintiff.

262. Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices are not narrowly tailored as applied to Plaintiff because Plaintiff's speech does not implicate any of the interests Defendants' might have.

263. Defendants have applied the Expressive Activity Policy and Equal Opportunity Policy and associated practices to Plaintiff in a discriminatory and unequal manner, allowing other students to speak freely when Defendants say Plaintiff cannot do the same, in violation of Plaintiff's right to equal protection of the laws under the Fourteenth Amendment.

264. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer, economic injury and irreparable harm. He is entitled to an award of monetary damages and equitable relief.

265. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a declaration that Defendants violated his Fourteenth Amendment right to equal protection of law and an injunction against Defendants' policy and actions. Additionally, Plaintiff is entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

SIXTH CAUSE OF ACTION
Violation of Plaintiff's Right to Free Exercise of Religion Under the
Oklahoma Religious Freedom Act

266. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1–170 of this Complaint.

267. Defendants' policies, procedures, and actions are subject to the Oklahoma Religious Freedom Act, 51 Okl. Stat. §§ 251–258.

268. The Oklahoma Religious Freedom Act prohibits the government from substantially burdening a person's free exercise of religion, even if the burden results from a rule of general applicability, unless the government demonstrates that application

of the burden is essential to further a compelling state interest and the least restrictive means of furthering that compelling state interest.

269. Defendants apply their Expressive Activity Policy and Equal Opportunity Policy in ways that target private religious expression for special disabilities, which violates Plaintiff's right to free exercise of religion.

270. Plaintiff desires to share his religious views and materials with his peers on campus based on his sincerely-held religious beliefs.

271. Defendants applied the Expressive Activity Policy and Equal Opportunity Policy to prohibit Plaintiff from sharing his religious views on campus, but allowed other people to share their religious views on campus, including the people who Plaintiff wishes to respond to with his own messages.

272. Defendants' Expressive Activity Policy and Equal Opportunity Policy and practice substantially burdens Plaintiff's free exercise of religion by conditioning his ability to practice his faith and speak on foregoing his free exercise rights.

273. Defendants' Expressive Activity Policy and Equal Opportunity Policy and practice substantially burdens Plaintiff's free exercise of religion by prohibiting Plaintiff from sharing his religious views anywhere on campus without first obtaining prior approval from University officials.

274. Defendants' Expressive Activity Policy and Equal Opportunity Policy and practice substantially burdens Plaintiff's free exercise of religion by prohibiting Plaintiff from sharing religious views that Defendants deem "offensive," "in poor taste," "derogatory," "questionable," or "discriminatory."

275. Defendants' Expressive Activity Policy and Equal Opportunity Policy and practice cannot be justified by a compelling state interest and are not the least restrictive means of advancing that interest.

276. Defendants' Expressive Activity Policy and Equal Opportunity Policy and practice violate Plaintiffs' right to free exercise of religion as guaranteed by the Oklahoma Religious Freedom Act.

277. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer and irreparable harm. He is entitled to an award of monetary damages and equitable relief.

278. Pursuant to 51 Okla. Stat. § 256, Plaintiff is entitled to a declaration that Defendants violated his right to free exercise of religion. Additionally, Plaintiff is entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants and provide Plaintiff with the following relief:

- (A) A declaratory judgment that Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices, facially and as-applied, violate Plaintiff's rights under the First Amendment;
- (B) A declaratory judgment that Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices, facially and as-applied, violate Plaintiff's rights under the Fourteenth Amendment;
- (C) A declaratory judgment that Defendants' Expressive Activity Policy and Equal Opportunity Policy and associated practices, facially and as-applied, violate Plaintiff's rights under the Oklahoma Religious Freedom Act;
- (D) A declaratory judgment that Defendants' restriction, censorship, and punishment of Plaintiff due to his distribution of a religious flyer violated Plaintiff's rights under the First and Fourteenth Amendments and Oklahoma law;

- (E) A preliminary and permanent injunction prohibiting Defendants, their agents, officials, servants, employees, and any other persons acting in their behalf from enforcing the Expressive Activity Policy and Equal Opportunity Policy and associated practices challenged in this Complaint;
- (F) An order directing the Defendants to remove the February 28, 2014 letter of findings from all of Plaintiff's student records maintained by the University;
- (G) Compensatory and nominal damages for the violation of Plaintiff's First and Fourteenth Amendment rights and Oklahoma law;
- (H) Plaintiff's reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988 and 51 Okla. Stat. § 256; and
- (I) All other further relief to which Plaintiff may be entitled.

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Respectfully submitted this _____ day of May, 2014,

/s/ Brently C. Olsson

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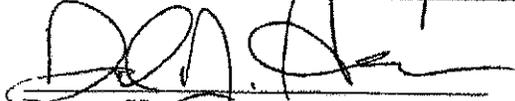
*Application for *pro hac vice* admission to be filed.

ATTORNEYS FOR PLAINTIFF

DECLARATION UNDER PENALTY OF PERJURY

I, DANIEL HARPER, a citizen of the United States and a resident of the State of Oklahoma, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 2nd day of May, 2014, at Apache, Oklahoma.


DANIEL HARPER