

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

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**PALMER HIGH SCHOOL GAY/STRAIGHT ALLIANCE,**  
an unincorporated voluntary association;  
**SARA THOMAS** by next friend **Jon Thomas**;  
**MAX OLKOWSKI-LAETZ** by next friend **Dorothea Olkowski**;  
**MEREDITH BELL** by next friend **Fawn Bell**;  
**ELIZABETH RODGERS** by next friend **Susan Rodgers**;  
**DEAN BLACK**, by next friend **Janice E. Black**;  
**HANNAH PURROY**, by next friend **Jill Lowenstein**; and  
**JAIME CATCHEN-DUNNE**, by next friend **Ruth Catchen-Dunne**,

**Plaintiffs,**

**-against-**

**COLORADO SPRINGS SCHOOL DISTRICT NO. 11**, a body corporate and political  
subdivision of the State of Colorado, and  
**PALMER HIGH SCHOOL**,

**Defendants.**

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

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Plaintiffs, PALMER HIGH SCHOOL GAY/STRAIGHT ALLIANCE, an unincorporated association; SARA THOMAS by next friend Jon Thomas; MAX OLKOWSKI-LAETZ by next friend Dorothea Olkowski; MEREDITH BELL by next friend Fawn Bell; ELIZABETH RODGERS by next friend Susan Rodgers; DEAN BLACK, by next friend Janice E. Black; HANNAH PURROY, by next friend Jill Lowenstein; and JAIME CATCHEN-DUNNE, by next friend Ruth Catchen-Dunne (“Plaintiffs”), through counsel, state as follows:

## **INTRODUCTORY STATEMENT**

1. The Plaintiffs, students at Palmer High School in Colorado Springs, Colorado, and founding members of the Palmer High School Gay Straight Alliance, seek by this lawsuit to require their high school to comply with the law. More than 50 high schools in Colorado, and many times this number nationally, have GSAs, almost all formed and recognized without litigation or controversy. The Palmer students have thoughtfully organized themselves, proceeded carefully and without fanfare, and respectfully sought recognition by the school authorities. They believe that a GSA at Palmer High School is important because it will permit all interested students, gay or straight, to have a safe and sanctioned forum for discussing difficult issues of importance to them. It will enhance their education and make Palmer High School a safer and better school.

2. To date, the school authorities have refused to recognize the students' group. The students' efforts are consistent with the stated goals of the high school and are sanctioned by federal law and the Constitution of the United States. This action seeks to vindicate their rights.

## **PRELIMINARY ALLEGATIONS**

3. Plaintiffs seek declaratory and injunctive relief against and damages from COLORADO SPRINGS SCHOOL DISTRICT NO. 11 and PALMER HIGH SCHOOL ("Defendants") to (a) remedy unlawful action by the Defendants that has prevented the Palmer High School Gay/Straight Alliance ("Palmer High GSA"), a student-initiated group, and its member students, from meeting at Palmer High School ("Palmer") and having access to this and other student group benefits, on the same terms and conditions as Defendants provide to other

recognized student groups; (b) to enjoin Defendants from further violating Plaintiffs' rights as specified in Paragraph 2 below, and (c) for damages for past violations of those rights.

4. This action seeks to redress violations of law: (a) the federal Equal Access Act, 20 U.S.C. § 4071, *et seq.* ("Equal Access Act"), which grants all noncurriculum related student groups equal access rights if a school recognizes any one noncurriculum related student group; (b) the First and Fourteenth Amendments to the United States Constitution, U.S. Const. amend. I and XIV, which guarantee students free speech, expression, and association rights, and prohibit Defendants from censoring student speech because of its content; and (c) the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, which requires Defendants to treat all recognized student groups equally, and not to discriminate among them on proscribed bases. The claims are brought under 42 U.S.C. § 1983.

#### **JURISDICTION AND VENUE**

5. Jurisdiction lies in this Court pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), 2201, and 2202.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) as the Defendants reside in this district and all of the events giving rise to the claims set forth in this Complaint occurred in this district.

#### **PARTIES**

7. Plaintiff Palmer High GSA is an unincorporated voluntary association of students enrolled at Defendant Palmer, a secondary school located within and operated by Defendant Colorado Springs School District No. 11 ("District 11").

8. Plaintiff Sara Thomas is a student in her senior year at Palmer and a member of Palmer High GSA. She sues here through her next friend and parent Jon Thomas.

9. Plaintiff Max Olkowski-Laetz is a student in his senior year at Palmer and a member of Palmer High GSA. He sues here through his next friend and parent Dorothea Olkowski.

10. Plaintiff Meredith Bell is a student in her senior year at Palmer and a member of Palmer High GSA. She sues here through her next friend and parent Fawn Bell.

11. Plaintiff Elizabeth Rodgers is a student in her senior year at Palmer and a member of Palmer High GSA. She sues here through her next friend and parent Susan Rodgers.

12. Plaintiff Dean Black is a student in his freshman year at Palmer and a member of Palmer High GSA. He sues here through his next friend and parent Janice E. Black.

13. Plaintiff Hannah Purroy is a student in her junior year at Palmer and a member of Palmer High GSA. She sues here through her next friend and parent Jill Lowenstein.

14. Plaintiff Jaime Catchen-Dunne is a student in her junior year at Palmer and a member of Palmer High GSA. She sues here through her next friend and parent Ruth Catchen-Dunne.

15. Defendant District 11 is a statutorily created school district, body corporate, and political subdivision of the State of Colorado created and empowered by C.R.S. §§ 22-32-101 et seq. District 11 is governed by a Board of Education pursuant to C.R.S. § 22-32-103, and has the power to sue and be sued pursuant to C.R.S. § 22-32-101. District 11 is also a person within

the terms and meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant hereto.

16. Defendant Palmer High School is a high school located at 301 North Nevada Avenue in Colorado Springs, Colorado. Palmer is also a person within the terms and meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant hereto.

### **GENERAL ALLEGATIONS**

17. Paragraphs 1 through 16, above, are incorporated herein by reference as if set forth in full.

18. In January of 1999, a group of students requested official recognition of a gay/straight alliance student group at Palmer. Official recognition of the student group was denied. The Director of School Leadership stated that the student group could not be recognized because it was not curriculum related (notwithstanding the fact that, on information and belief, other noncurriculum related student groups existed). The then principal of Palmer High denied recognition.

19. In April of 1999, Mark Silverstein, ACLU Legal Director, sent a letter to the President of the District 11 Board of Education and the District 11 Superintendent of Schools seeking official recognition of the gay/straight alliance student group at Palmer.

20. In May of 1999, counsel for District 11 responded to Mr. Silverstein's letter stating that District 11 did not allow any noncurriculum student groups and therefore would not officially recognize the gay/straight alliance student group.

21. The student group that is the subject of this Complaint, Palmer High GSA, is a student-initiated organization at Palmer initially organized and formed in January, 2003, and reaffirmed during this school year.

22. The District 11 policy regarding student organizations states that:

Student organizations have an important place in the educational program because when properly organized and operated they:

1. Extend and reinforce the instructional program
2. Give students practice in democratic self-government
3. Build student morale and spirit of positive support for the schools
4. Honor outstanding student achievement
5. Provide wholesome social and recreational activities.

Palmer High GSA satisfies all of the requirements and conditions of the District 11 policy.

23. On January 24, 2003, Sara Thomas formally applied for official student group status for Palmer High GSA and its members by submitting an application to the then principal of Palmer, Ms. Jackie Provenzano. This was at least the second time that Palmer High School recognition of a GSA group was sought (see paragraph 18 above). Ms. Provenzano did not approve the application to make Palmer High GSA an official student group and, instead, suggested that Sara get involved with the Palmer anti-bullying policy. Palmer did not recognize the Palmer High GSA.

24. After the January 24, 2003, meeting with Ms. Provenzano, Sara met with the coordinator of the anti-bullying policy, Ms. Hergert. Ms. Hergert stated that she wasn't sure that Palmer was ready to support a gay/straight alliance student group. Ms. Hergert, acting in her official capacity, suggested Sara speak with Marvin Adams, District 11 Director of Equal Opportunity Programs and Ombudservices. Palmer did not recognize the Palmer High GSA.

25. In a February 14, 2003, email to Sara, Mr. Adams, acting in his official capacity, advised Sara to “pursue this Palmer High GSA club as an after school activity . . . like Boy Scouts, etc.” Mr. Adams stated that, “I’ll be very direct with you and tell you that the District’s position on this issue has not changed. While I’m understanding your efforts I know that you’ll encounter resistance and little support unless you pursue this [Palmer High] GSA club as an after school activity.” Palmer did not recognize the Palmer High GSA.

26. On April 8, 2003, Mr. William R. Hochman, Chairman, Colorado Springs Chapter American Civil Liberties Union of Colorado (“ACLU”), sent a letter to Ms. Provenzano, in her capacity as principal of Palmer, identifying the violation of the Equal Access Act resulting from the denial of Palmer High GSA’s application to be a recognized student group. In that letter, Mr. Hochman pointed out that under the Equal Access Act, a school creates an open forum when it recognizes any noncurricular student clubs. The letter mentioned Palmer High’s chess club as an example of a noncurricular student club.

27. On May 6, 2003, Ms. Provenzano, in her capacity as principal of Palmer, sent a letter to Mr. William R. Hochman in response to his April 8, 2003, letter regarding Palmer High GSA. Ms. Provenzano explained that a student group may be considered related to the curriculum if the student group “extends and supports existing curriculum” and provides a “wholesome recreational opportunity.” Ms. Provenzano acknowledged in this letter that, “[c]hess is another club at Palmer,” and that Palmer “do[es] not offer it as a class, but as a club.” Palmer did not recognize the Palmer High GSA.

28. On May 13, 2003, Sara had another meeting with Ms. Provenzano, in her capacity as principal of Palmer, and submitted a further application for recognition of the Palmer High GSA. At that meeting, Ms. Provenzano stated that she would consider starting Palmer High GSA as a recognized student group if Sara could somehow link Palmer High GSA to the curriculum and one of the School Board policies and if the ACLU would “back off.” Palmer did not recognize the Palmer GSA.

29. On May 23, 2003, Sara submitted a third application for recognition of Palmer High GSA as a student group. Palmer did not recognize the Palmer High GSA.

30. On August 5, 2003, Mr. William R. Hochman sent a letter to Karin Reynolds, in her capacity as principal of Palmer. The letter asked Ms. Reynolds to recognize the Palmer High GSA as a student organization pursuant to the applications submitted to Ms. Provenzano the prior academic year.

31. On August 25, 2003, Mr. Stuart J. Lark, attorney for District 11, sent a letter to Mr. William Hochman in response to Mr. Hochman’s August 5, 2003, letter to Ms. Karin Reynolds. Mr. Lark stated that District 11’s policy is to not allow any noncurriculum student groups and that Palmer High GSA is a noncurriculum related group and will not be recognized. Palmer did not recognize the Palmer High GSA.

32. To date, after three formal applications for recognition of Palmer High GSA as a student group, and almost a year of respectful, appropriate requests, Palmer has not agreed to recognize Palmer High GSA as a student group.



33. The 2002-2003 Palmer Yearbook listed the following groups in the “Organizations” section: Senior Cabinet, Senior Council, Junior Council, Freshman Council, Sophomore Council, Mock Trial, Student Crime Stoppers, National Honor Society, Chess Club, Book Club, Forensics, Silent Terrors, B-9, Peer Counseling, Link Crew, Interact, MESA, PSCA, FBLA, French, Nuestra Gente, Ganas, Spanish, Foreign Exchange, Frisbee, Mountain Bike Club, Dance Team, Essadi, The Lever, Neumen, The Retrospect, Science Bowl, Science Olympiad, Sci-Fi, Knowledge Bowl, Improv, Masque and Sandal, Choir, Marching Band, Chamber Orchestra, Color Guard, Concert Choir, Symphonic Orchestra, Guitar, Jazz I and II, and German Club. On information and belief, one or more of these clubs is not directly related to the curriculum.

34. At the beginning of the 2003-2004 academic year, Palmer distributed a list of recognized student organizations which included: Band, Book Club, Bowling Club, B-9 Task Force, Cheerleaders, Chess Club, Color Guard, Dance/Drill Team, Debate/Forensics, Future Business Leaders of America, Flags, French Club, Frisbee Club, Ganas Project, Interact, Link Crew, Masque & Sandal, MESA, Mock Trial, Mountain Bike Club, Newspaper, Nuestra Gente, Numan, Unified Sports, Student Activists, Science Bowl, Science Olympiad, Silent Terrors, Spanish Club, Stage Craft, Student Organizations, Freshman Council, Vocal Music, and Yearbook. On information and belief, one or more of these clubs is not directly related to the curriculum.

35. On November 6, 2003, announcements were made for the following student groups to have their picture taken for the 2003-2004 Palmer Yearbook: Acapella Choir, Crime

Stoppers, Peer Counseling, Link Crew, Jazz Band, Guitar Club, MESA, Mock Trial, Forensics, Foreign Exchange, Sci-Fi Club, Ganas, Chamber Singers, French Club, Strategy Club, Masque and Sandal, Science Bowl, Knowledge Bowl, Marching Band, Jazz Choir, Book Club, Chess Club, International Relations Club, On the Table, Science Olympiad, Drive Smart, B-9, Mountain Bike Club, International Diversity Club, Interact, Numen, Silent Terrors, Spanish Club, and others. On information and belief, one or more of these clubs is not directly related to the curriculum.

36. On information and belief, at least one noncurriculum related student group existed at Palmer at the time Sara Thomas applied for recognition of Palmer High GSA as a student group at Palmer.

37. On information and belief, as of the filing of this Complaint, at least one noncurriculum related student group is officially recognized at Palmer.

38. Official student group status confers a number of benefits on student groups. Those benefits include rights to (a) be listed on the Palmer club list, (b) use the Palmer public address system, (c) meet on Palmer property, (d) post club-related information at Palmer, (e) use Palmer equipment and resources (including use of computers), and (f) be photographed and listed in the "Organizations" section of the Palmer Yearbook.

39. Sara Thomas formed Palmer High GSA in January 2003. Sara Thomas and the other founding members of the Palmer High School GSA executed the organization's charter in December, 2003. A Palmer High School faculty member has agreed to serve as faculty sponsor for the GSA if it is established at Palmer.

40. Membership in Palmer High GSA is open to all students at Palmer. Palmer High GSA has approximately 10 members. Many times that number of students have expressed interest in participating if the Palmer High GSA is recognized and established at Palmer.

41. On the first date on which Sara Thomas attempted to gain student group status for Palmer High GSA, and at all times after such date, Defendants engaged in an ongoing pattern of restricting activities and speech by Palmer High GSA's members. Such activities include but were not limited to:

- (a) Refusing to allow Palmer High GSA to meet on Palmer property on the same terms as it allows recognized school groups to meet;
- (b) Omitting Palmer High GSA from the 2002-2003 and 2003-2004 student club list;
- (c) Omitting Palmer High GSA from the "Organizations" section of the 2002-2003 Palmer Yearbook;
- (d) Refusing to allow Palmer High GSA to use the Palmer public address system;
- (e) Refusing to allow Palmer High GSA to post club-related information at Palmer; and
- (f) Refusing to allow Palmer High GSA to use Palmer equipment and resources, including use of computers.

42. Palmer High GSA and its members thus consistently have been deprived of benefits available to participants in other student-initiated groups.

## **FIRST CLAIM FOR RELIEF**

### **(Violation of Statutory Equal Access Rights) (20 U.S.C. § 4071 et seq. and 42 U.S.C. § 1983)**

43. Paragraphs 1 through 42 above, are incorporated by reference as if set forth in full.

44. Defendants deprived Plaintiffs of rights, privileges, and immunities secured by the Equal Access Act and are liable to the Plaintiffs pursuant to 42 U.S.C. § 1983 in that:

- (a) Palmer is a public secondary school and receives federal financial assistance.
- (b) Palmer has a “limited open forum” pursuant to the Equal Access Act, 20 U.S.C. Section 4071, et seq., because Palmer allows at least one non-curricular student group to meet on school premises during noninstructional time.
- (c) Because Palmer maintains a “limited open forum,” Palmer may not deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within the “limited open forum” on the basis of the religious, political, philosophical, or other content of the speech at such meetings.
- (d) Defendants violated the Equal Access Act by refusing, on the basis of the religious, political, philosophical, or other content or viewpoint of the speech at Palmer High GSA, to allow the group to meet on Palmer property on the same terms as it allows recognized student groups to meet, and by refusing Palmer High GSA other benefits accorded to recognized student groups, such as use of the PA system, listing on the Palmer club list, posting information at Palmer, using Palmer equipment and resources (including use of computers), and listing in “organizations” section of the Palmer yearbook.
- (e) The student members of Palmer High GSA have suffered and continue to suffer injury as a result of the Defendants’ violation of the Equal Access Act, including, but not limited to injury caused by the fact that Palmer High GSA student members are not provided a forum to meet to discuss, to learn about, or to engage in activities relevant to gay and lesbian students and their heterosexual supporters, including (i) the achievements of gay and lesbian persons, (ii) the important social controversies involving gay and lesbian persons, and (iii) the effects of discrimination

based on sexual orientation, and (iv) making their school physically and emotionally safe for gay teenagers.

## **SECOND CLAIM FOR RELIEF**

### **(Freedom of Speech and of Association)**

#### **(First and Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983)**

45. Paragraphs 1 through 44 above, are incorporated by reference as if set forth in full.

46. Defendants deprived Plaintiffs of political speech, expression, and association rights, privileges, and immunities secured by the First Amendment of the United States Constitution and made applicable to the State (including public school boards) by way of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and are liable to the Plaintiffs pursuant to 42 U.S.C. § 1983 in that:

- (a) Plaintiff's speech, expression, and association activities are constitutionally protected under the First and Fourteenth Amendments to the United States Constitution.
- (b) Defendants have recognized a class of speakers including both noncurriculum related and curriculum related student groups, but have refused to recognize Palmer High GSA as either a curriculum related or noncurriculum related student group, based on the viewpoint and content of Plaintiff's speech.
- (c) Defendants have provided a forum for curriculum related student groups and for at least one noncurriculum related student group to speak, express, and associate by allowing such group to meet at Palmer during noninstructional time, but have refused to allow Palmer High GSA to meet on the same terms as the other recognized student group(s) based on the viewpoint and content of speech of Palmer High GSA.
- (d) Defendants have given curriculum related student groups and at least one noncurriculum related student group the right to (i) be listed on the Palmer club list, (ii) use the PA system, (iii) meet on Palmer property on the same terms as it allows recognized school groups to meet, (iv) post club-related information at Palmer, (v) use Palmer equipment and resources (including use of computers), and (vi) be listed and depicted on the page in the

“Organizations” section of the Palmer Yearbook, but has denied these benefits to Palmer High GSA based on the viewpoint and content of speech of Palmer High GSA.

- (e) Defendants required Palmer High GSA to seek alternative methods of associating and expressing their ideas, thereby burdening the rights of the student members of Palmer High GSA to exercise their political speech, expression, and association rights.
- (f) As a result thereof, the student members of Palmer High GSA have suffered and continue to suffer injury as a result of the Defendants’ violations of their First Amendment rights.

### **THIRD CLAIM FOR RELIEF**

#### **(Equal Protection of the Laws)**

#### **(Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983)**

47. Paragraphs 1 through 46 above, are incorporated by reference as if set forth in full.

48. Defendants deprived Plaintiffs of rights, privileges, and immunities secured by the Equal Protection clause of the Fourteenth Amendment of the United States Constitution and are liable to the Plaintiffs pursuant to 42 U.S.C. § 1983 in that:

- (a) In applying for recognition as a student group, Defendants required Palmer High GSA to take elaborate steps not required for other recognized student groups at Palmer (i.e., two formal applications, discussions with Palmer coordinator of antibullying policy and ombudservices representative, and requirement that ACLU un-involve itself).
- (b) Defendants refused to recognize Palmer High GSA as a student group based on the viewpoint and content of speech of Palmer High GSA.
- (c) Defendants have subjected Palmer High GSA to more stringent regulation and prohibition than other recognized student groups at Palmer by (i) refusing to allow Palmer High GSA to meet on Palmer property during noninstructional time on the same terms as other recognized student groups at Palmer, (ii) requiring Palmer High GSA to form a “community group” type of club, and (iii) refusing Palmer High GSA benefits bestowed upon other student groups, including (u) listing on the Palmer

club list, (v) use of the PA system, (w) meeting on Palmer property on the same terms as it allows recognized school groups to meet (x) posting club-related information at Palmer, (y) use of Palmer equipment and resources (including use of computers), and (z) be listed and depicted on a page in the “Organizations” section of the Palmer Yearbook.

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully request the following relief:

1. An order declaring (a) that Defendants operate a “limited open forum” under the Equal Access Act; (b) that the failure of Defendants to provide Palmer High GSA an opportunity to meet on Palmer property during noninstructional time and accord benefits given to other recognized student groups was unlawful under 28 U.S.C. § 1983 and the Equal Access Act; (c) that Plaintiffs are entitled to be recognized immediately as a student group and to access and use all Palmer facilities on a basis equal to other recognized student groups at Palmer; (d) that Defendants’ restrictions on Palmer High GSA’s political speech, expression, and association are unlawful under 28 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution; and (e) that Defendants’ actions in prohibiting Palmer High GSA from being a recognized student group, subjecting Palmer High GSA to requirements different than those used for other recognized student groups, and permitting a discriminatory and hostile environment for gay and lesbian students at Palmer, are unlawful under 28 U.S.C. § 1983 and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

2. An order for preliminary and permanent injunction restraining and enjoining Defendants and their directors, officers, agents, affiliates, subsidiaries, servants, employees, and all other persons or entities in active concert or privity or participation with them, from directly or indirectly preventing members of Palmer High GSA from (a) meeting on Palmer property on

the same terms as it allows recognized school groups to meet and (b) enjoying all benefits given to other recognized student groups at Palmer;

3. An order for mandatory injunction extending sanctioned student group status to Palmer High GSA and the rights and privileges of sanctioned student group status upon Palmer High GSA and its faculty sponsor;

4. An order directing Defendants to take such affirmative action necessary to eliminate its unlawful acts and constitutional violations and to ensure Plaintiffs' constitutional rights will no longer be infringed;

5. An award of damages to compensate Plaintiffs for injuries sustained because Palmer High GSA was not recognized as a student group at Palmer;

6. Interest on damages awarded;

7. An award to the Plaintiffs of their reasonable attorneys' fees and costs incurred in connection with this action from the Defendants, pursuant to 42 U.S.C. § 1988; and

8. An order granting such further and different relief as this Court may deem just and proper.



DATED this 12th day of December, 2003.

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Alfred T. McDonnell, Esq.  
ARNOLD & PORTER  
370 Seventeenth Street, Suite 4500  
Denver, Colorado 80202  
Phone: 303/863-1000  
Fax: 303/832-0428  
In cooperation with the  
American Civil Liberties Union Foundation  
of Colorado

Mark Silverstein, Legal Director  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION OF COLORADO  
400 Corona Street  
Denver, Colorado 80218  
Phone: 303/777-5482  
Fax: 303/777-1773

*Counsel for the Plaintiffs*