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DOUGLAS H. CLARK, ESQ.
Nevada State Bar Number: 004566
DOUGLAS H. CLARK, P.C.
2595 South Torrey Pines Drive
Las Vegas, Nevada 89146-5136
Telephone: (702) 388-1333
Telecopier: (702) 388-9333
PARTICIPATING ATTORNEYS FOR
THE RUTHERFORD INSTITUTE,
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**BRITTANY McCOMB, and
MARIANNA McCOMB, a minor, by her
next friend, CONSTANCE J. McCOMB,**

Plaintiffs,

vs.

**GRETCHEN CREHAN, individually and
in her official capacity as Principal of
Foothill High School, Clark County
School District, a political subdivision of
the State of Nevada, ROY THOMPSON,
individually and in his official capacity as
Assistant Principal of Foothill High
School, Clark County School District, a
political subdivision of the State of
Nevada, CHRISTOPHER SEFCHECK,
individually and in his official capacity as
an employee of Foothill High School,
Clark County School District, a political
subdivision of
the State of Nevada, DOES 1 through
50, inclusive, and ROE
CORPORATIONS 51 through 100,
inclusive,**

Defendants.

Civil Action No.: _____

**COMPLAINT FOR DAMAGES
PURSUANT TO 42 U.S.C. §
1983 et seq., 42 U.S.C. § 2000a et
seq. and CLAIMS FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

1 4. That the Plaintiff, Marianna McComb (hereinafter referred to as “Marianna”), is
2 a minor and a resident of the County of Clark, State of Nevada, who at all times relevant to this
3 Complaint was a student at Foothill High School, a division of Clark County (Nevada) School
4 District, which is a political subdivision of the State of Nevada. Marianna expects to attend
5 Foothill High School until she graduates therefrom in June, 2008. Suit is brought on her behalf
6 by her next friend, parent and guardian, Constance J. McComb.

7 5. That Defendant Gretchen Crehan is and was at all times relevant to this
8 Complaint the duly appointed and acting Principal of Foothill High School, a division of the
9 Clark County (Nevada) School District, which is a political subdivision of the State of Nevada.
10 In all instances set forth in this Complaint, Defendant Crehan acted under color of the law of
11 the State of Nevada. Defendant Crehan is sued in this case in both her individual and official
12 capacities.

13 6. That Defendant Roy Thompson is and was at all times relevant to this Complaint
14 a duly appointed and acting Assistant Principal of Foothill High School, a division of the Clark
15 County (Nevada) School District, which is a political subdivision of the State of Nevada. In all
16 instances set forth in this Complaint, Defendant Thompson acted under color of the law of the
17 State of Nevada. Defendant Thompson is sued in this case in both his individual and official
18 capacities.

19 7. That Defendant Christopher Sefcheck is and was at all times relevant to this
20 Complaint an employee of Foothill High School, a division of the Clark County (Nevada)
21 School District, which is a political subdivision of the State of Nevada, and was the person
22 employed by the said school district, *inter alia*, to censor speech and control the microphone
23 and amplification system at Foothill High School’s 2006 graduation ceremony. In all instances
24 set forth in this Complaint, Defendant Sefcheck acted under color of the law of the State of
25 Nevada. Defendant Sefcheck is sued in this case in both his individual and official capacities.

26 8. That Defendants DOES 1 through 50, inclusive, and ROE CORPORATIONS 51
27 through 100, inclusive, are individuals and entities of unknown form whose names and
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1 capacities are unknown to the Plaintiffs who therefore sue said Defendants by the stated
2 fictitious names. The Plaintiffs are informed and believe, and thereon allege, that each of the
3 Defendants designated as DOE or ROE, are in some manner responsible in whole or in part for
4 the transactions and occurrences alleged herein and through their conduct caused damages to the
5 Plaintiffs as more fully set forth in the facts, circumstances and events described herein. The
6 Plaintiffs are further informed and believe, and thereon allege, that each of the Defendants
7 designated as DOE or ROE, acted in concert with the named Defendants and/or engaged in,
8 and/or intend to engage in, the conduct of the Defendants complained of herein. Plaintiffs are
9 further informed and believe, and thereon allege, that each of the Defendants designated as DOE
10 or ROE who receive actual notice of any injunctive order by personal service or otherwise,
11 and/or who, upon information and belief, are employees and/or agents of the Foothill High
12 School, a division of Clark County (Nevada) School District, which is a political subdivision of
13 the State of Nevada, all of whom act, acted or intend to act under color of law of the State of
14 Nevada and participate, participated and/or intend to participate with the named Defendants in
15 one or more of the unlawful actions described in this Complaint. Each of the Defendants
16 designated as DOE or ROE are sued in this case in both their individual and official capacities.
17 Plaintiffs will seek leave to amend this Complaint to insert the true names and capacities of
18 DOES 1 through 50, inclusive, and ROE CORPORATIONS 51 through 100, inclusive, when
19 Plaintiffs ascertain them.

20 **Factual Allegations**

21 **A. Brittany and Marianna McCombs' Matriculation at Foothill High School**

22 9. That Plaintiffs Brittany McComb and Marianna McCombs were enrolled at and
23 attended Foothill High School, located in Clark County, Nevada, during the 2005-2006 school
24 year, Brittany as a senior and Marianna as a sophomore.

25 10. That Foothill High School is a public secondary school located in Clark County,
26 Nevada, and is under the control and supervision of the Board of Trustees of the Clark County
27 School District and operated under authority delegated by the Trustees to Superintendents,
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1 Principals, administrators and other personnel. Upon information and belief, as of 2005, the
2 Clark County School District was the fifth (5th) largest school district in the United States.

3 11. That Foothill High School is a division of the Clark County School District, a
4 governmental entity created by and exercising powers under the laws of the State of Nevada,
5 specifically N.R.S. § 386.010, and is deemed a political subdivision of the State of Nevada
6 pursuant to N.R.S. § 386.010(2).

7 12. That based upon the number of credits she had earned, Brittany McComb was
8 scheduled to graduate and to receive a high school diploma from Foothill High School in June,
9 2006.

10 13. That Brittany did graduate and received her high school diploma at ceremonies
11 conducted by Foothill High School and the Clark County School District on June 15, 2006 at
12 the “Orleans Arena” located at “The Orleans Hotel & Casino” located in Las Vegas, Nevada.

13 14. That during her four (4) years at Foothill High School, Brittany excelled and
14 achieved a 4.7 grade-point average.

15 15. That Brittany’s academic performance qualified her, along with two (2) other
16 students, Janelle Oehler and Dallin Troud, as class valedictorians, signifying that they had
17 achieved the highest grade-point average in their high school class.

18 **B. The School’s Selection of Valedictory Speakers for Its**
19 **High School Graduation Ceremonies**

20 16. That Foothill High School has a custom, policy, and practice of inviting the
21 valedictorian(s) of each year’s graduating class to give a speech and address classmates, parents,
22 and others at its annual graduation ceremonies.

23 17. That the selection of a student or students to give the valedictory address at
24 graduation ceremonies is based solely on the neutral criteria used by the school system in
25 determining which student or students achieved the highest grade-point average during his or
26 her high school educational career.

27 18. That no other factors or criteria, such as content, skill of presentation, popularity,
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1 student vote, viewpoints, participation in extracurricular activities, or honors, are used by school
2 officials to determine who is selected to give the valedictory address(es) at graduation
3 ceremonies.

4 19. That once selected, valedictorians are asked to personally compose a speech,
5 address, or remarks they will give at graduation ceremonies.

6 20. That school and district officials do not ask or offer to prepare the speech,
7 address, or remarks that a valedictorian offers at graduation ceremonies.

8 21. That students at Foothill High School, their parents, and members of the public
9 recognize, know and understand that a valedictorian who gives a speech and address at
10 graduation ceremonies is chosen solely because of her or his academic achievement and is not
11 chosen as a spokesperson for Foothill High School or the Clark County School District.

12 22. That students at Foothill High School, their parents, and members of the public
13 recognize, know and understand that a valedictorian who gives a speech or address at graduation
14 ceremonies is speaking as a private individual and is reciting a speech or address personally
15 prepared by the Valedictorian.

16 23. That Section 9524 of the Elementary and Secondary Education Act ("ESEA") of
17 1965, as amended by the No Child Left Behind Act of 2001, requires the Secretary [of
18 Education] to issue guidance on constitutionally protected prayer in public elementary and
19 secondary schools. The Secretary of Education has previously issued such guidance as follows:

20 School officials may not mandate or organize prayer at graduation or
21 select speakers for such events in a manner that favors religious
22 speech such as prayer. Where students or other private graduation
23 speakers are selected on the basis of genuinely neutral, evenhanded
24 criteria and retain primary control over the content of their expression,
25 however, that expression is not attributable to the school and therefore
26 may not be restricted because of its religious (or anti-religious)
27 content. To avoid any mistaken perception that a school endorses
28 student or other private speech that is not in fact attributable to the
school, school officials may make appropriate, neutral disclaimers to
clarify that such speech (whether religious or nonreligious) is the
speaker's and not the school's.

Essentially reflecting the guidance as promulgated by the Secretary of Education, Clark

1 County School District Regulation 6113.2(IV) expressly provides as follows:

2 School officials may not mandate or organize prayer at graduation or
3 other extracurricular activities or select speakers for such events in a
4 manner that favors religious speech such as prayer. Where students
5 or other private graduation speakers are selected on the basis of
6 genuinely neutral, evenhanded criteria and retain primary control over
7 the content of their expression, however, that expression is not
8 attributable to the school and, therefore, may not be restricted because
9 of its religious (or anti-religious) content. To avoid any mistaken
10 perception that a school endorses student or other private speech that
11 is not in fact attributable to the school, school officials may make
12 appropriate neutral disclaimers to clarify that such speech is not
13 school sponsored.

14 24. That Clark County School District Regulations also prohibit content-based
15 censorship of religious references in documents pertaining to American history or heritage (Reg.
16 6124.4), provide equal opportunity for presentation of the viewpoints of political candidates in
17 the schools (with equal access guarantees in presenting platforms to students) (Reg. 6124.3),
18 establish programs for the exhibition and staging of student artwork at convenient locations and
19 times to permit viewing by students (Reg. 6163), impose a mandatory period each day in class
20 for “individual meditation, prayer or reflection by students” (Reg. 6113.1), recognize Sunday
21 as a day free from the demands of educational pursuits (Reg. 6113.2), encourage assemblies and
22 public programs to widen and deepen student interest and recognize publicly worthwhile
23 achievements, with wide participation in such programs (Reg. 6130), and declare that student
24 initiated, non-school sponsored religious speech is acceptable in the public schools in the same
25 manner as other free speech” (Reg. 6113.2).

26 **C. The Selection of Brittany McComb**
27 **as Valedictorian and Graduation Speaker**

28 25. That in April, 2006, Brittany McComb was told by Defendant Thompson that she
was one of three students who had qualified as valedictorian for Foothill High School’s Class
of 2006.

26 26. That when he informed Brittany of her achievement, Defendant Thompson told
27 her that it was expected that she would give a speech or address at graduation ceremonies in
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1 June, 2006.

2 27. That Defendant Thompson, who along with Defendant Crehan, was in charge of
3 the planning and execution of the Foothill High School graduation ceremonies of June 15, 2006,
4 informed Brittany that she should prepare a speech or address that expressed her personal
5 thoughts about her experience at Foothill High School and communicated to her classmates a
6 message that was of importance to her.

7 28. That Brittany McComb was a devout Christian throughout her high school years
8 and before, and after a long period of personal struggle the most important part of her life
9 became her personal belief in Jesus Christ.

10 29. That Brittany's sincerely-held religious beliefs are an integral part of her life and
11 require her to tell the truth about her life.

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13 30. That in accordance with her sincerely-held religious beliefs, Brittany believes as
14 a matter of conscience that any important remarks she makes about her life and experiences must
15 include a reference to the role of God in her life and, in this regard, attributes her success in high
16 school to the filling of what she perceived as an otherwise empty void in her life with God and
17 His purposes and plan for her life.

18 31. That Marianna McComb shares the sincerely-held religious beliefs of Brittany
19 McComb.

20 **D. The Censorship of Brittany's Graduation Speech**

21 32. That in early May, 2006, Brittany prepared a speech to deliver at graduation
22 describing a sincere message of her experiences and the significant change in her ideas and
23 beliefs that became important to her in her years at Foothill High School.

24 33. That Brittany's speech, entitled "Filling that Void," referred to the emptiness she
25 experienced from accomplishments, achievements, and failures in her early high school years,
26 and the fulfillment and satisfaction she later came to experience in something greater than
27 herself, namely, in God, God's love, and Christ.

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1 34. That on or about May 3, 2006, Brittany gave a printed copy of the speech she had
2 written and desired to give at the graduation ceremonies to Defendant Thompson.

3 35. That approximately one (1) week later, Defendant Thompson informed the
4 Plaintiff that the speech would be submitted for review by an attorney for the Clark County
5 School District, Jon M. Okazaki, Esq. Attorney Okazaki is Assistant General Counsel for the
6 Clark County School District.

7 36. That Defendant Thompson informed Brittany that the review by attorney Okazaki
8 was being done because of the references to religion in her speech.

9 37. That Defendant Thompson told Brittany that he didn't know what would be kept
10 and what would be edited out, but attorney Okazaki would make those decisions.

11 38. That Defendant Crehan explained to Brittany that what was offensive to the Clark
12 County School District about the speech was the mention of Jesus Christ.

13 39. That soon thereafter, Brittany was called to a meeting with Defendants Crehan
14 and Thompson in Defendant Crehan's office.

15 40. That at the meeting, the printed copy of the speech Brittany had written was
16 returned to her with substantial passages circled, crossed out and censored.

17 41. That the circled and crossed out portions constituting more than one-third of the
18 lines in the speech, were separately annotated with handwritten notes of presently unknown
19 origin, stating: "IDENTIFIES A PARTICULAR RELIGION," then "DEITIES," and then
20 "PROSELYTIZING." A copy of the printed version of the speech returned to Brittany is
21 attached hereto as Exhibit "1", which by this reference is incorporated herein and made a part
22 hereof.

23 42. That Brittany was told by Defendants Crehan and Thompson that she could not
24 deliver the speech she had written because of the religious references in the portions of the
25 speech that had been crossed out or marked through.

26 43. That Defendants Crehan and Thompson told Brittany to change the speech and
27 resubmit it to them for further review.

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1 44. That Defendants Crehan and Thompson gave Brittany the telephone number for
2 attorney Okazaki and explained that she could contact him and he would give the reasons why
3 the speech had to be cut up and approved.

4 45. That notwithstanding the illegal judgments and determinations made by the
5 Defendants, Brittany's speech was a simple rendition of the details of her important life
6 experiences during high school, that resulted in her moral fulfillment and her successful high
7 school career, and did not constitute unlawful religious proselytizing.

8 **E. Brittany's Remedial Efforts and Struggle Of Conscience**

9 46. That Brittany informed her parents, with whom she resided, of what had occurred
10 at the meeting with the Defendants and of the fact that she had been told that she could not give
11 the remarks that had been deleted from her speech.

12 47. That Brittany's mother, Constance J. McComb, called attorney Okazaki to
13 request an opportunity to speak about the Defendants' order that Brittany not give the deleted
14 portions of her "Filling that Void" speech.

15 48. That between the time she was informed of the Defendants' order and June 15,
16 2006, Constance J. McComb called the office of attorney Jon M. Okazaki approximately four
17 (4) times in order to arrange a meeting or discuss the matter with him, but attorney Okazaki
18 never returned her calls.

19 49. That between the time Brittany was informed of the Defendants' order and June
20 15, 2006, Brittany and her parents diligently attempted to meet with School District officials or
21 its attorney to discuss the order forbidding Brittany from giving the deleted portions of her
22 speech.

23 50. That at one point, Defendant Thompson told Constance J. McComb that the
24 School District's attorney did not meet with parents and that the McCombs would have to get
25 an attorney to speak with attorney Okazaki.

26 51. That based on Defendant Thompson's statement, the McCombs transmitted a
27 copy of the edited speech to Las Vegas attorney Theodore Parker, III, Esq., who advises the
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1 business run by Brittany's father, Michael J. McComb.

2 52. That attorney Parker also attempted to contact the School District or its attorney,
3 in writing and by telephone approximately three (3) times, about the matter, but was
4 unsuccessful in these attempts.

5 53. That during the last week of May 2006, Defendant Thompson began pressuring
6 Brittany about the speech issue and the redactions made by the Clark County School District
7 and/or attorney Okazaki.

8 54. That before the last day of classes, Defendant Thompson pulled Brittany aside
9 in the hall and said he needed to know right then about her plans for the speech because he
10 needed to send the final drafts in. Brittany responded she would let him know the next day
11 before school and he said "fine," but due to the immediate pressure and coercion to submit a
12 proposal about her speech, Brittany told Defendant Thompson later that day that she would give
13 the speech she had previously submitted without the passages that had been circled and crossed
14 out.

15 55. That Constance J. McComb called attorney Okazaki the fourth (4th) and final
16 time on Friday, June 9, 2006 and spoke with his secretary who stated that she didn't see any
17 messages that calls had been made. Constance J. McComb explained that both she and their
18 attorney had both called and left messages, wanting to make an appointment with attorney
19 Okazaki and that none of the calls had been returned. The secretary stated that attorney Okazaki
20 made his own appointments, and that she would talk with him and call Constance J. McComb
21 back in five (5) minutes. No such call was made.

22 **F. The Censorship At the Foothill High School Graduation Ceremony**

23 56. That on June 15, 2006, Brittany and her parents came to The Orleans, a privately-
24 owned arena and place of public accommodation, for the graduation ceremony.

25 57. That prior to the ceremony, Brittany was approached by Defendant Christopher
26 Sefcheck, a faculty member at Foothill High School, who informed her that he had been given
27 responsibility for controlling the microphone on stage to be used during the ceremony.
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1 58. That Defendant Sefcheck said he had a copy of the edited version of Brittany's
2 speech.

3 59. That Defendant Sefcheck told Brittany that he had been instructed that if anyone
4 should deviate from the speeches that had been submitted to Defendants Crehan and Thompson,
5 he had been instructed to cut off the microphone, thereby preventing the speaker from being
6 heard by the audience.

7 60. That at the time set forth in the ceremony program, Brittany rose from her seat
8 on stage to the podium and microphone to give her speech.

9 61. That Brittany had memorized the original version of "Filling that Void" and
10 decided, based on her conscience and constitutional right to free speech, to give the original
11 speech.

12 62. That when Brittany began delivering the first portion of the speech that had been
13 previously censored --- the point of speaking of God's love --- the microphone was cut off by
14 Defendant Sefcheck and she was prevented from being heard by the audience.

15 63. That as the audience booed the forced silencing of Brittany, Defendant Crehan
16 then approached Brittany and told her that the microphone would not be turned back on and
17 asked her to introduce the next speaker, thus indicating to Brittany that her speech was over. A
18 video copy of Brittany's speech is attached hereto as Exhibit "2", which by this reference is
19 incorporated herein and made a part hereof

20 64. That although Brittany earnestly desired to tell all her classmates about the
21 importance that religion played in her life at Foothill High School, and how the void in her early
22 high school years had been filled with a sense of purpose through the love of God and her faith
23 in Jesus Christ, she was prevented from doing so by the censorship and actions of the
24 Defendants, and each of them, all to Plaintiffs' damages.

25 65. That the Defendants' and each of their actions in the intentional censorship of
26 Brittany's speech, in subjecting her to verbal and mental pressure and coercion and forcing her
27 to agree to revise and rewrite her speech to eliminate her sincerely-held religious views, in
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1 making derogatory statements about her sincerely-held religious beliefs, and in publicly
2 humiliating her, and demeaning her speech, by “pulling the plug” on the amplification and
3 instructing her to cease giving the speech before an audience of her peers and their families, has
4 caused Brittany undue emotional and mental pain and duress for which she should be
5 compensated.

6 66. That the Defendants’ and each of their actions in the intentional censorship of
7 Brittany’s speech, in subjecting her to verbal and mental pressure and coercion and forcing her
8 to agree to revise and rewrite her speech to eliminate her sincerely-held religious views, in
9 making derogatory statements about her sincerely-held religious beliefs, and in publicly
10 humiliating her, and demeaning her speech, by “pulling the plug” on the amplification and
11 instructing her to cease giving the speech before an audience of her peers and their families, pose
12 a concrete threat to the constitutional rights of Marianna McComb and other students at Foothill
13 High School who may be similarly qualified and situated as Plaintiff and present a valedictory
14 speech at future Foothill High School graduation ceremonies containing reference to a particular
15 religion, a deity or other similar purportedly offensive combinations of words referring to
16 religion, and/or who will otherwise be deprived of hearing views similar to Brittany’s views at
17 future graduation ceremonies.

18 **First Cause of Action**

19 **Free Speech**

20 67. The Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
21 1-66 above as though set forth *in haec verba*.

22 68. That in all respects relevant to the matters set forth in this Complaint, the
23 Defendants acted under color of the law of the State of Nevada.

24 69. That by virtue of Plaintiff Brittany McComb’s status as class valedictorian, and
25 the policies and customs of Foothill High School, Clark County School District, the school
26 system created a limited forum in which she and the other Valedictorians were entitled to speak
27 in their own words at the June 15, 2006, Foothill High School graduation ceremony, and their
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1 speeches constituted expression protected by the First Amendment to the United States
2 Constitution and Article I, Section 9 of the Nevada Constitution.

3 70. That Plaintiff Brittany McComb’s speech was private speech entitled to full
4 protection under Clark County School District Regulation 6113.2(IV) and the First Amendment
5 to the United States Constitution and Article I, Section 9 of the Nevada Constitution.

6 71. That the Defendants, acting individually and/or jointly, deprived the Plaintiff
7 Brittany McComb of her right to free speech and expression under the First Amendment when
8 the Defendants censored her speech and ordered that she not give portions of the speech “Filling
9 that Void” that she had written.

10 72. That the Defendants, acting individually and/or jointly, deprived the Plaintiff
11 Brittany McComb of her right to free speech and expression under the First Amendment, and
12 Article I, Section 9 of the Nevada Constitution, when the Defendants ordered and/or caused the
13 stage microphone at the June 15, 2006 Foothill High School graduation ceremony to be cut off
14 while the said Plaintiff was addressing the audience at the ceremony.

15 73. That the Defendants’ actions as set forth herein constituted impermissible
16 religious viewpoint discrimination and deprived the Plaintiff Brittany McComb of her right to
17 free speech and expression under the First Amendment, as the same is applied to the states
18 pursuant to the Fourteenth Amendment, and Article I, Section 9 of the Nevada Constitution.

19 74. That the Defendants’ actions in censoring and suppressing the expression and
20 speech of the Plaintiff Brittany McComb were not reasonable in light of the limited forum
21 created by Clark County School District Regulation 6113.2(IV) and the purposes of the
22 graduation ceremony and were contrary to that and other Clark County School District
23 Regulations.

24 75. That the Defendants’ actions in censoring and suppressing the expression and
25 speech of the Plaintiff Brittany McComb deprived Plaintiff Marianna McComb and other
26 students at Foothill High School of the right to hear Brittany McComb’s valedictory speech at
27 the 2006 Foothill High School graduation ceremony.

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1 81. That the Defendants' actions in censoring and preventing the Plaintiff Brittany
2 McComb from giving her speech or additional remarks at the Foothill High School graduation
3 ceremony on June 15, 2006 demonstrated a hostility to and bias against religion in violation of
4 the Establishment Clause of the First Amendment to the United States Constitution, as the same
5 is applied to the states pursuant to the Fourteenth Amendment.

6 82. That upon information and belief, Defendants will as a matter of practice and
7 custom censor, interfere with and prevent legitimate free expression by other students similarly
8 qualified and situated as Plaintiff Brittany McComb who present valedictory speeches at future
9 Foothill High School graduation ceremonies when such speeches contain references to a
10 particular religion, a deity or other similar purportedly offensive combinations of words referring
11 to religion and will, as a result, otherwise deprive Plaintiff Marianna McComb and/or students
12 similarly situated as Brittany McComb of their right to present, and/or to hear, such speech.

13 83. That the actions of the Defendants against the Plaintiff Brittany McComb
14 deprived her of her rights under the Establishment Clause of the First Amendment to the United
15 States Constitution, and threaten such rights of Plaintiff Marianna McComb, for which they are
16 entitled to relief under 42 U.S.C. § 1983.

17 **Third Cause of Action**

18 **Free Exercise Clause**

19 84. The Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
20 1-83 above as though set forth *in haec verba*.

21 85. That in all respects relevant to the matters set forth in this Complaint, the
22 Defendants acted under color of the law of the State of Nevada.

23 86. That by virtue of her status as class valedictorian, and the policies and customs
24 of Foothill High School, Clark County School District, the Defendants granted Plaintiff Brittany
25 McComb the benefit and position of speaking in her own words at the June 15, 2006, Foothill
26 High School graduation ceremony.

27 87. That the Defendants, acting individually and/or jointly, violated the Plaintiff
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1 Brittany McComb's rights of conscience and free exercise of religion under the First
2 Amendment when the Defendants censored her speech for its allegedly offensive words, and
3 threatened, pressured and coerced her to change her speech and attempted to compel her to give
4 a speech deemed acceptable to their perception of religious orthodoxy, all in violation of her
5 rights of conscience guaranteed by the Free Exercise Clause of the First Amendment to the
6 United States Constitution and Article I, Section 4 of the Nevada Constitution.

7 88. That the Defendants, acting individually and/or jointly, violated the Plaintiff
8 Brittany McComb's Free Exercise of religion under the First Amendment to the United States
9 Constitution, and Article I, Section 4 of the Nevada Constitution, when the Defendants subjected
10 her expression of religious conscience to public ridicule and humiliation by unnecessarily
11 censoring her speech and preventing her from giving her speech or additional remarks at the
12 Foothill High School graduation ceremony on June 15, 2006. The Defendants' actions as set
13 forth herein violated Plaintiff Brittany McComb's rights of conscience protected under the Free
14 Exercise Clause of the First Amendment to the United States Constitution, as the same is applied
15 to the states pursuant to the Fourteenth Amendment thereof, and Article I, Section 4 of the
16 Nevada Constitution.

17 89. That upon information and belief, Defendants will as a matter of practice and
18 custom censor, coerce and interfere with the legitimate right of conscience under the Free
19 Exercise Clause of other students similarly qualified and situated as Plaintiff Brittany McComb
20 who present valedictory speeches at future Foothill High School graduation ceremonies when
21 such speeches contain references to a particular religion, a deity or other similar purportedly
22 offensive combinations of words referring to religion, and may be expected to likewise deprive
23 Plaintiff Marianna McComb and/or students similarly situated as Brittany McComb of their
24 rights of conscience under the First Amendment and Article I, Section 4 of the Nevada
25 Constitution.

26 90. That the actions of the Defendants violate the Plaintiffs' rights under the First
27 Amendment and Article I, Section 4 of the Nevada Constitution, and the Plaintiffs are entitled
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1 to relief under 42 U.S.C. § 1983 for the deprivation of their rights caused by the Defendants
2 acting under color of state law.

3 **Fourth Cause of Action**

4 **Equal Protection of the Law**

5 91. The Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
6 1-90 above as though set forth *in haec verba*.

7 92. That in all respects relevant to the matters set forth in this Complaint, the
8 Defendants acted under color of the law of the State of Nevada.

9 93. That Plaintiff Brittany McComb, by virtue of her status as class valedictorian and
10 the policies and customs of Foothill High School, was qualified and entitled to give an address
11 at the June 15, 2006 graduation ceremony for Foothill High School, and her address constituted
12 expression protected by the First Amendment to the United States Constitution.

13 94. That the Defendants' actions censoring and preventing the Plaintiff Brittany
14 McComb from giving the speech "Filling that Void" or additional remarks at the Foothill High
15 School graduation ceremony on June 15, 2006, while permitting others to speak at the ceremony
16 without censorship or inhibition, constituted intentional, invidious discrimination against the
17 Plaintiff Brittany McComb because of her exercise of First Amendment rights and deprived the
18 Plaintiff of Equal Protection of the law guaranteed by the Fourteenth Amendment to the United
19 States Constitution.

20 95. That the Defendants' actions censoring and preventing the Plaintiff Brittany
21 McComb from giving the speech "Filling that Void" or additional remarks at the Foothill High
22 School graduation ceremony were not reasonable in light of Clark County School District
23 Regulation 6113.2(IV) and the purposes of the graduation ceremony and were contrary to that
24 and other Clark County School District Regulations that permit unrestrained equal access for
25 speech with political, artistic or other content favored by the Defendants and the school system,
26 and, as applied by the Defendants to Plaintiff Brittany McComb, resulted in arbitrary, capricious,
27 and irrational content discrimination among different forms of social, economic, philosophical,
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1 political and religious speech that deprived the Plaintiff Brittany McComb of equal protection
2 of the law guaranteed by the Fourteenth Amendment to the United States Constitution.

3 96. That upon information and belief, Defendants will as a matter of practice and
4 custom censor, interfere with and discriminate between and among the free expression of other
5 students similarly qualified and situated as Plaintiff who present valedictory speeches at future
6 Foothill High School graduation ceremonies when such speeches contain references to a
7 particular religion, a deity or other similar purportedly offensive combinations of words referring
8 to religion, and may be expected to likewise deprive Plaintiff Marianna McComb and/or
9 students similarly situated as Brittany McComb of their right to Equal Protection of the law
10 pursuant to the Fourteenth Amendment.

11 97. That the Plaintiffs are entitled to relief under 42 U.S.C. § 1983 for the deprivation
12 of her right to equal protection of the law caused by the Defendants acting under color of state
13 law.

14 **Fifth Cause of Action**

15 **Title II, Civil Rights Act of 1964 - 42 U.S.C. sec. 2000a et seq.**

16 98. The Plaintiffs re-allege and incorporate by reference the allegations in paragraphs
17 1-97 above as though set forth *in haec verba*.

18 99. That in all respects relevant to the matters set forth in this Complaint, the
19 Defendants acted under color of the law of the State of Nevada.

20 100. That Plaintiffs are persons as defined under Title II of the Civil Rights Act of
21 1964, 42 U.S.C. sec. 2000a et seq. (“Title II”).

22 101. That the 2006 Foothill High School graduation ceremony was held at the Orleans
23 Arena, a 9,000 seat arena which is part of the privately-owned, 1886-room Orleans Hotel &
24 Casino located at 4500 West Tropicana Boulevard, Las Vegas, Nevada (the “Arena”).

25 102. That the Arena is a place of public accommodation under section 2000a(b)(3) of
26 Title II, specifically a “theater, concert hall, sports arena, stadium or other place of exhibition
27 or entertainment,” within the meaning of Title II where concerts, athletic events, convocations,
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1 entertainment events and other events are routinely held.

2 103. That upon information and belief the Clark County School District rented the
3 Arena from its owner to hold the Foothill High School graduation ceremony on June 16, 2006.

4 104. That upon information and belief, the Defendants were in charge of all or part of
5 the program and/or facilities at the Arena during the graduation.

6 105. That the Arena and its operations affect commerce under Title II.

7 106. That arenas similar to the Arena have been found by the courts to be places of
8 public accommodation under Title II.

9 107. That in such places of public accommodation all persons are entitled under Title
10 II sec. 2000a(a) "to the full and equal enjoyment of the goods, services, facilities, privileges,
11 advantages, and accommodations of [that] place of public accommodation ... without
12 discrimination or segregation on the ground of ... religion."

13 108. That section 2000a(a) has been broadly construed by the courts to include the
14 right to attend events held in places of public accommodation without discrimination on the
15 basis of religion.

16 109. That moreover, section 2000a-2 of Title II provides that no person shall either (a)
17 deprive or attempt to deprive any person of any right under section 2000a, (b) threaten or coerce
18 any person with the purpose of interfering with a section 2000a right, or (c) punish or attempt
19 to punish any person for exercising or attempting to exercise a section 2000a right.

20 110. That the Defendants' actions in censoring and preventing the Plaintiff Brittany
21 McComb from giving the speech "Filling that Void" or additional remarks at the Foothill High
22 School graduation ceremony on June 15, 2006, while permitting others equally qualified and
23 situated to speak at the ceremony without censorship or inhibition, constituted intentional,
24 invidious discrimination against the Plaintiff Brittany McComb on account of religion in
25 violation of Title II.

26 111. That the actions of the Defendants alleged herein were deliberately, intentionally,
27 willfully, purposefully and knowingly done in violation of federally-protected rights and because
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1 of Plaintiffs' religion.

2 112. That Defendants either knew or showed a negligent or reckless disregard for the
3 matter of whether their conduct violated federal rights.

4 113. That Plaintiffs' religion makes a difference in all actions adverse to them and was
5 and is a determinative, motivating or substantial factor in all actions adverse to them, though not
6 necessarily the sole factor.

7 114. That Plaintiff Marianna McComb and students similarly situated are threatened
8 with irreparable injury under 42 U.S.C. sec. 2000a-3(a) which authorizes permanent or
9 temporary injunctive relief or a restraining order on a showing that a defendant under Title II is
10 "about to engage in any act or practice prohibited by section 2000a-2 of [that] title."

11 115. That the conduct of the Defendants and those acting in concert with them violate
12 rights protected by Title II, sections 2000a(a) and 2000a-2(a), (b) and (c).

13 116. That upon information and belief, the State of Nevada has no state law, nor is
14 there any local law or ordinance which prohibits the religiously discriminatory practices
15 complained of herein and establishing or authorizing a state or local authority to grant or seek
16 the relief prayed for herein.

17 **WHEREFORE**, Plaintiffs pray for judgment against the Defendants, jointly and
18 severally, as follows:

19 (1) that judgment be entered finding and concluding that the Defendants deprived
20 the Plaintiffs of their rights under the First and Fourteenth Amendments to the
21 United States Constitution;

22 (2) that a declaratory judgment be entered declaring that the Defendants' practice
23 and custom of censoring religious speech be declared a violation of Plaintiffs'
24 statutory rights under Title II, sections 2000a(a) and 2000a-2(a), (b) and (c), and
25 also the statutory rights of others who are similarly situated;

26 (3) that this Honorable Court enjoin the Defendants from censoring and/or
27 interfering on the basis of religious content with future graduation speeches at
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Foothill High School in a manner that would violate the rights to Free Speech, Free Exercise of Religion, the Establishment Clause and/or the Equal Protection Clause of students at Foothill High School, including without limitation, Plaintiff Marianna McComb;

(4) that this Court award Plaintiff compensatory damages in an amount to be determined at trial;

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- (5) that this Court order Defendants to pay Plaintiffs' attorney's fees pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 2000a-3(b), together with costs of this litigation; and,
- (6) that this Court grant such other and further relief as the Court may deem just and proper in the premises.

DATED this 12th day of July, 2006.

DOUGLAS H. CLARK, P.C.

/s/Douglas H. Clark, Esq.
DOUGLAS H. CLARK, ESQ.
Nevada State Bar Number: 004566
2595 South Torrey Pines Drive
Las Vegas, Nevada 89146-5136
Telephone: (702) 388-1333
Telecopier: (702) 388-9333

OF COUNSEL:
James J. Knicely, Esq.
Knicely & Associates, P. C.
487 McLaws Circle, Suite 2
Williamsburg, Virginia 23185
Telephone: (757) 253-0026
Telecopier: (757) 253-5825
PARTICIPATING ATTORNEYS FOR
THE RUTHERFORD INSTITUTE,
Attorneys for Plaintiffs

The Law Offices of
DOUGLAS H. CLARK, P.C.
2595 South Torrey Pines Drive
Las Vegas, NV 89146-5136
Telephone: (702) 388-1333
Facsimile: (702) 388-9333