



## **PARTIES**

4. Plaintiff Dan Kuhr, at all times relevant, was a 19 year-old senior enrolled at the Millard Learning Center in Omaha, Nebraska, and a resident of Omaha, Nebraska.
5. Plaintiff Cassie Kuhr, at all times relevant, was a 16 year-old junior enrolled at Millard South Public High School in Omaha, Nebraska and a resident of Omaha, Nebraska.
6. Plaintiff Nick Kuhr, at all times relevant, was a 14 year-old freshman enrolled at Millard South Public High School in Omaha, Nebraska and a resident of Omaha, Nebraska.
7. Defendant Millard Public School District addressed at, Don Stroh Administration Center, 506 South 147<sup>th</sup> Street, Omaha, NE 68137, is a duly organized school district of the State of Nebraska. The Millard Public School District is responsible for the operation of; *inter alia*, the Millard Learning Center and Millard South High School. The Millard Public School District is a proper party to this action.
8. Defendant Dr. Keith Lutz addressed at, Don Stroh Administration Center, 506 South 147<sup>th</sup> Street, Omaha, NE 68137, at all times relevant hereto, was the Superintendent of Millard Public School District and a resident of the State of Nebraska.

## **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

9. The Millard Public School District dress code states that “Student attire and grooming should be clean and neat. If a student’s attire and grooming is disruptive of or interferes with the educational process, constitutes a threat to the safety and health of the student or others, or is in violation of any governing law, it will not be permitted in school. Ideally, the decision regarding attire and grooming will be left to the good judgment and responsibility of the student and the student’s parents.”

10. In the summer of 2008, a Millard South High School student and member of the Millard South football team named Julius Robinson was murdered. Many reports indicate that gang members killed Robinson in retaliation for his refusal to join a gang.
11. Plaintiff Dan Kuhr had been friends with Julius Robinson since the seventh grade. He was shocked and grieved by his friend's death. He knew Julius' family and knew the family would face financial difficulties as they arranged Julius' funeral and burial. Plaintiff Dan Kuhr and his mother therefore decided to try to help kids cope with the tragedy and raise money for the family at the same time by rallying as a community. Plaintiff Dan Kuhr designed a t-shirt with the words "Julius RIP, 6-8-90, 6-15-08" (the dates of Julius' life) on the front, with two pictures of Julius and the number 33, which was his football jersey number for Millard South High School. On the back were the words "Only God Can Judge Me/Him Now." ("Me" was struck through and replaced with "Him.>"). Plaintiff Dan Kuhr and his mother also began organizing fundraising events. They held a car wash, a fish fry, and a raffle of donated items to raise money for Julius' funeral and burial. Plaintiff Dan Kuhr, through fundraising events and the sale of t-shirts raised and donated funds to Robinson's family approximately \$2,000.00, went toward the funeral and burial expenses.
12. On or about August 27, 2008, Plaintiff Nick Kuhr attended Millard South High School wearing the t-shirt designed by his brother. He had already worn the shirt to school no less than six times before.
13. On the morning of August 28, Plaintiff Nick Kuhr and approximately 18 other students were informed by representatives of Millard South High School that the t-shirt was inappropriate and they must change their shirt or face suspension.

14. Millard South High School Assistant Principal, Brad Millard, informed Plaintiff Nick Kuhr the shirt was inappropriate because the phrase “RIP” was gang slang. Mr. Millard made the statement even though he knew and was informed that Plaintiff Nick Kuhr had already worn the shirt several times before to school without incident and that other students’ shirts, notebooks and personal items bear memorial statements such as “RIP” for deceased family members and friends other than Julius Robinson. Mr. Millard refused to reconsider and claimed it was a different situation. Mr. Millard gave Plaintiff Nick Kuhr the option of changing his shirt or being suspended for one day. Plaintiff chose the latter option.
15. Also, on or about the same day of August 28, 2008, Millard South High School suspended Plaintiff Cassie Kuhr for one day because she wore her Julius Robinson commemorative t-shirt.
16. By August 30, 2008, Millard South High School gave three day suspensions to approximately 20 students for wearing the “Julius RIP” t-shirts. An unknown number of other students changed out of their “Julius RIP” t-shirts to avoid disciplinary sanctions.
17. On or about September 2, 2008, Plaintiff Nick Kuhr wore the shirt to school again. This time Millard South High School gave Plaintiff Nick Kuhr a three day suspension.
18. Also, on or about the same day of September 2, 2008, Plaintiff Cassie Kuhr wore her Julius commemorative t-shirt and also wrote “Julius RIP” on her arm in order to express her sorrow for Julius’ death. Millard South High School suspended Plaintiff Cassie Kuhr for three days.

19. On or about September 5, 2008, Plaintiffs' mother met with Curtis Case, Principal of Millard South High School and Heidi Weaver, Assistant Principal of Millard South High School, to discuss their refusal to let Plaintiffs wear the Julius Robinson t-shirts.
20. At that meeting, the Millard South representatives told the Plaintiffs' mother that the primary reason for not allowing students to wear clothing expressing grief for the death of Julius Robinson was because it was gang related. She was told that Julius Robinson himself must have been a gang member or he would not have been murdered by a gang, and that in the same way the school would repress gang symbols, the school would not allow the shirts with the phrase "RIP." When Plaintiffs' mother pressed for more information, the Millard South representatives told her that the school sought to protect Plaintiffs from other students who might act out against Plaintiffs for being friends with the deceased, that gang members might target Plaintiffs as future crime victims.
21. Plaintiffs' mother inquired if the students revised the t-shirt to simply say "Julius Robinson: In Loving Memory." The school officials present at the meeting told her such a shirt would also not be allowed. The meeting ended with no resolution.
22. Plaintiff Dan Kuhr wore his "Julius RIP" t-shirt to school on eight or nine occasions without any difficulty or questioning by the Millard Learning Center teachers or administrators. After his brother Nick's suspension from Millard South, though, Angie Mercer, Principal of the Millard Learning Center, informed Plaintiff Dan Kuhr that he could not wear the t-shirt any longer.
23. Plaintiff Dan Kuhr graduated, but Plaintiffs Cassie and Nick Kuhr are still students in the Millard Public School District. Plaintiffs Cassie and Nick Kuhr wish to continue wearing their shirts commemorating their friend's death. They also wish to continue raising

money for Julius Robinson's family, which could not afford the funeral and burial expenses. Plaintiffs Cassie and Nick Kuhr cannot sell t-shirts, bracelets or key chains in memory of Julius Robinson to students who attend schools of the Millard Public School District because those students have been intimidated by the Defendants.

24. There have been no incidents of violence against a student wearing any mention of Julius Robinson at either the Millard Learning Center or Millard South High School at any time.

### **COUNT I**

25. Paragraphs 1-24 are incorporated by reference as if fully set forth herein.
26. The actions of Defendants, as described herein, have denied and infringed upon the right to freedom of speech guaranteed to Plaintiffs by the First and Fourteenth Amendments of the United States Constitution.
27. The actions of Defendants, as described herein, were taken under color of state law in direct violation of Plaintiffs' constitutional rights, and are therefore actionable under 42 U.S.C. § 1983.
28. As a direct result of Defendants' actions, Plaintiffs have suffered direct and immediate violation of their fundamental rights guaranteed by the United States Constitution and is therefore entitled to injunctive and declaratory relief, and attorney fees, pursuant to Federal Rules of Civil Procedure 57 and 65, to redress, remedy, and prevent irreparable harm and future violations of their rights and the rights of others.

### **CLAIM FOR RELIEF**

29. Plaintiffs respectfully seek a judgment in their favor, including temporary and permanent injunctive relief and a declaration that the actions of Defendants as described herein were and are unconstitutional, illegal, void, and that the same were in contravention of

Plaintiffs' constitutional rights. Plaintiffs further ask for judgment that Defendants reimburse Plaintiffs for reasonable attorneys' fees, expenses, and costs associated with the maintenance of this action, pursuant to 42 U.S.C. § 1988, and all such further relief as the Court may deem just and proper.

**JURY DEMAND AND DESIGNATION OF PLACE OF TRIAL**

30. Plaintiffs respectfully request a trial by jury on all issues so triable.
31. Plaintiffs designate Omaha, Nebraska as place of trial.

DATED this 9<sup>th</sup> day of October 2009

DAN KUHR, CASSIE KUHR, and NICK KUHR, by and through their mother and next friend, JEANNE KUHR, Plaintiffs

BY:           /s/ W. Craig Howell, #20086  
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