

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI

KANSAS CITY DIVISION

VICTORY THROUGH JESUS SPORTS)	
MINISTRY FOUNDATION,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
LEE'S SUMMIT R-7 SCHOOL DISTRICT and)	
DAVID MCGEHEE, in his official capacity as)	
Superintendent of Schools,)	
)	
)	
Defendants.)	

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, PRELIMINARY
AND PERMANENT INJUNCTIVE RELIEF AND DAMAGES**

Plaintiff, VICTORY THROUGH JESUS SPORTS MINISTRY FOUNDATION (“Victory”), by and through counsel, files this civil action and respectfully requests this Court to issue injunctive relief, declaratory judgment and award damages for violations of the United States Constitution by Defendants, LEE’S SUMMIT R-7 SCHOOL DISTRICT (“the District”) and DAVID MCGEHEE, its Superintendent. In support thereof, Plaintiff states:

1. Victory seeks preliminary and permanent injunctive relief enjoining the Defendants from enforcing District Policy KI-AP, entitled “Public Solicitations/Advertising In District Facilities” (“the Policy”) against Victory and from violating Victory’s right to freedom of speech and equal protection as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

2. Victory also prays for a declaratory judgment determining the constitutionality of the Policy and the Defendants' actions in denying Victory the opportunity to exercise its constitutional rights and to declare the Policy, both on its face and as applied, unconstitutional as a direct violation of the First and Fourteenth Amendments to the United States Constitution.

3. Victory also seeks damages.

4. An actual controversy exists between the parties involving substantial constitutional issues, in that the challenged Policy, on its face and as applied, violates the United States Constitution and has infringed Victory's rights.

JURISDICTION AND VENUE

5. This action arises under the First and Fourteenth Amendments to the United States Constitution and is brought pursuant to 42 U.S.C. § 1983.

6. This Court has jurisdiction under, and by virtue of, 28 U.S.C. §§ 1331.

7. Venue is proper under 28 U.S.C. § 1391 (b). Each and all of the acts alleged herein were done by Defendants under the color and pretense of the statutes, ordinances, regulations, customs, policies, procedures, and law of the District and/or the State of Missouri.

8. This Court is authorized to grant declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, implemented through Fed. R. Civ. P. 57, and to issue injunctive relief under Fed. R. Civ. P. 65.

9. This Court is authorized to grant Victory's prayer for relief regarding costs, including a reasonable attorney's fee, under 42 U.S.C. § 1988.

PARTIES

10. Victory is a not-for-profit religious organization, incorporated in Kansas.

11. The District is the governing body for public schools in Lee's Summit, Missouri, with the authority to sue and be sued, and was at all times material acting within the course and scope of its authority and under color of law.

12. Defendant DAVID MCGEHEE is and was at all times relevant herein, Superintendent of Schools for the District, acting within the course and scope of his authority as Superintendent, under color of Missouri state law and consistent with the custom, policy, practice, and use of the Lee's Summit School District.

STATEMENT OF FACTS

13. Victory sponsors Victory Soccer Camp, a five day summer camp and athletic program for children that emphasizes discipline and focuses on equipping and encouraging children to live successful lives of integrity and good character.

14. The nondenominational Victory Soccer Camp is open to all boys and girls between the ages of five to twelve, regardless of religious background or lack of religious belief.

15. Attendees pay a one-time fee for attendance. Neither fees, nor tithes, nor collections or contributions are taken during camp, nor are commercial or fundraising activities permitted.

16. Victory Soccer Camps are designed only for elementary-age students and include soccer instruction, Bible lessons, testimonials of athletes, and gifts for participants.

17. Children are taught soccer skills, life skills, biblical principles, respect for authority, relationships, morals, and character development.

18. Victory Soccer Camps are conducted in the summer, when school is out.

19. Victory seeks to participate in the District's "Backpack Flyers for Students" program under District Policy KI-AP to distribute flyers to District students for its Victory Soccer Camp.

20. The forum of the District's Backpack Flyers is especially well-suited to Victory's need to distribute information in the spring to students and their parents in time to consider and register for its summer sports-related activities.

21. The Policy states, in relevant part:

Only flyers from the following groups/organizations will be approved for distribution [in the District's Backpack Flyers for Students Program]: Lee's Summit Educational Foundation, PTA, Lee's Summit Chamber of Commerce, Lee's Summit Symphony Orchestra, Lee's Summit Parks and Recreation, Greenwood Sports Association, Lee's Summit Cares, Longview College for Kids, D.A.R.E., Jackson County, LS Girls' Softball Association, LS Football Association, LS Soccer Association, LS Junior Basketball, Downtown Lee's Summit Main Street, each R-7 school, its Partners In Education¹ and its Booster Clubs.

A copy of the Policy is attached hereto as Exhibit A and incorporated herein.

22. Pursuant to the Policy, only organizations specifically named are granted permission to participate in the forum by distributing their literature to students via the Backpack Flyers For Students program. None of those organizations are religious in nature.

23. The only exception to the rule in the Policy is for "[c]ommunity youth organizations such as the Boy Scouts and Girls Scouts to make one-time distributions in the fall at the beginning of the school year."

24. Some of the sports organizations listed under the Policy are: Greenwood Sports Association, LS Girls' Softball Association, LS Football Association, LS Soccer Association, and LS Junior Basketball. Victory, a similar youth sports organization, is not listed under the Policy and has been denied similar access to the Backpack Flyers for Students Program in the spring.

25. Victory is similar to these sports organizations listed in the Policy but for its religious

¹ The Policy defines participants of the Partners In Education as "[b]usinesses that are formal business partners with a particular school, district program or the district as a whole"

content and viewpoint.

26. The District has created a designated public forum in its Backpack Flyers for Students Program.

27. Groups such as the LS Soccer Association and other sports organizations have been granted access to the District's literature distribution forum.

28. Upon information and belief, the District has permitted the LS Soccer Association to distribute its literature throughout the schools in the District.

29. Victory Soccer Camps address many of the same subjects addressed by LS Soccer Association, except that Victory addresses these subjects from a religious, and particularly a Christian, viewpoint.

30. On or about January 26, 2009, Goran Hunjak, President of Victory, sent Chris Eisenmerger, the District's Administrative Assistant for Elementary Education, a request for permission to have Victory's flyers distributed in the elementary schools of the District.

31. Administrative Assistant Eisenmerger told Mr. Hunjak that he was not permitted to distribute flyers under the Backpack Flyers For Student program in accordance with the Policy.

32. Counsel for Victory wrote a letter to the Defendants on February 20, 2009, stating that under the United States Constitution, Victory should be permitted to have its Victory Soccer Camp flyers distributed and that the District's policy should be changed to allow other sports programs such as Victory Soccer Camp access to the District's literature distribution forum on the same terms and conditions as those sports organizations currently permitted to distribute "Backpack Flyers." A copy of the letter is attached to the Complaint as Exhibit B and incorporated herein.

33. On March 11, 2009, counsel for Victory received a response from Michael F.

Delaney, Legal Counsel for the District, indicating that since Victory was not an organization specifically identified by the Policy as a group or organization that may submit literature for distribution in student backpacks, it would not be allowed to distribute literature in the same manner as Lee's Summit Soccer Association and other similarly situated groups. A copy of the response is attached as Exhibit C and incorporated herein.

34. The refusal by Defendants to allow Victory to distribute its literature on the same terms as LS Soccer Association also forced Victory to expend sums of money on direct mail advertising in an attempt to get its message to children to whom LS Soccer Association was given free access by the District, thus further damaging Victory as a result of Defendants' denial of its constitutional rights.

35. Victory plans to offer its Victory Sports Camp again in the summer of 2010 and desires to make it available to elementary-aged students of the District and further desires to utilize the District's Backpack Flyers for Students program in the spring of 2010 to disseminate information about its offering.

36. The Policy and actions of Defendants are clear, blatant and intentional violations of well-established law.

37. Defendants' denial of the request to distribute its literature violates Victory's constitutional rights.

38. The Policy is discriminatory because it allows Lee's Summit Soccer Association and similar organizations to enjoy privileges that have been denied to Victory.

39. Due to the District's unconstitutional Policy and actions, Victory has been irreparably harmed.

COUNT I
VIOLATION OF PLAINTIFF'S FREEDOM OF SPEECH
UNDER THE UNITED STATES CONSTITUTION

40. Victory hereby reiterates and adopts each and every allegation in the preceding paragraphs numbered 1 through 39.

41. The Free Speech Clause of the First Amendment to the United States Constitution, in conjunction with the Fourteenth Amendment, prohibits the District from abridging Victory's freedom of speech.

42. The Policy, on its face and as applied, denies Victory the ability to communicate with the students in the District and their parents on the same basis as Lee's Summit Soccer Association or other similar sports organizations listed under the Policy.

43. The Policy, on its face and as applied, discriminates amongst similarly situated users of the limited access forum of Backpack Flyers for Students, impermissibly designating favored speakers for special access to the public forum.

44. The Policy, on its face and as applied, thereby discriminates on the basis of content and viewpoint.

45. The Policy, on its face and as applied, constitutes an unconstitutional prior restraint on speech.

46. There is no compelling government interest sufficient to justify Defendants' action in applying the Policy to Victory.

47. The Policy, on its face and as applied, is not the least restrictive means to accomplish any permissible government purpose sought to be served.

48. The Policy, on its face and as applied, is not a narrowly tailored restriction on free

speech.

49. The Policy, on its face and as applied, does not serve a significant government interest.

50. The Policy, on its face and as applied, does not leave open ample alternative channels of effective communication.

51. The Policy, on its face and as applied, is unreasonable, and imposes unjustifiable restrictions on constitutionally-protected speech.

52. The Policy, on its face and as applied, unconstitutionally chills and abridges the right of Victory to engage in free speech guaranteed by the First Amendment.

53. Victory has no adequate remedy at law to correct the continuing deprivation of its most cherished constitutional liberties.

54. As a direct and proximate result of the Defendants' continuing violations of Victory's First Amendment rights, Victory has in the past and will continue to suffer in the future direct and consequential damages, including but not limited to, the loss of the ability to exercise its constitutional rights.

WHEREFORE, Victory respectfully prays that the Court grant the relief set forth herein.

COUNT II
VIOLATION OF PLAINTIFF'S RIGHT TO EQUAL PROTECTION UNDER THE
UNITED STATES CONSTITUTION

55. Victory hereby reiterates and adopts each and every allegation in the preceding paragraphs numbered 1 through 39.

56. Victory's right to equal protection under the laws is protected by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

57. The Policy, on its face and as applied, is an unconstitutional abridgement of Victory's right to equal protection of the laws and is not facially neutral.

58. The Policy, on its face and as applied, is an unconstitutional abridgement of Victory's right to equal protection of the law because the District Policy treats Victory differently from other similarly situated groups.

59. The Policy, on its face and as applied, is not supported by a compelling governmental interest sufficient to justify its enactment.

60. The Policy, on its face and as applied, imposes irrational and unjustifiable restrictions on Victory.

61. The District, in violation of the Equal Protection Clause, has caused, and will continue to cause, Victory to suffer undue and actual hardship and irreparable injury.

62. Victory has no adequate remedy at law to correct the continuing deprivations of Victory's most cherished constitutional liberties.

63. As a direct and proximate result of the Defendants' continuing violations of Victory's First Amendment rights, Victory has in the past and will continue to suffer in the future direct and consequential damages, including but not limited to, the loss of the ability to exercise its constitutional rights.

WHEREFORE, Victory respectfully prays that the Court grant the relief set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Victory prays for judgment as follows:

A. That this Court issue preliminary and permanent injunctions, enjoining Defendants,

their officers, agents, employees and all other persons acting in active concert with them, from enforcing the Policy against Victory so that:

1. Defendants must allow Victory to have its literature distributed within the District on an equal basis with similarly situated sports groups that are permitted to distribute their literature; and
2. Defendants will not use the Policy in any manner whatsoever to infringe on Victory's constitutional rights.

B. That this Court render a declaratory judgment declaring the Policy unconstitutional both on its face and as applied to Victory, and declaring that Defendants, their officers, agents, employees and other persons acting in active concert with them, unlawfully obstructed Victory from exercising Victory's constitutionally-protected rights in that Defendants and their Policy prohibited Victory from accessing the District's Backpack Flyers for Students program to distribute its literature within the District on an equal basis with similarly situated sports groups that are permitted distribute their literature.

C. That this Court adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment.

D. That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order.

E. That this Court award Victory such damages as are just and appropriate.

F. That this Court award Victory the reasonable costs and expenses of this action, including attorney's fees, in accordance with 42 U.S.C. § 1988.

G. That this Court grant such other and further relief as it deems equitable and just under the circumstances.

Respectfully submitted,

/s/ Mathew D. Staver
Mathew D. Staver*
Florida Bar No. 0701092
LIBERTY COUNSEL
PO Box 540774
Orlando, FL 32854-0774
1055 Maitland Center Commons
Second Floor
Maitland, FL 32751
(800) 671-1776 Telephone
(614) 547-0350 Telephone
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Attorney for Plaintiff

/s/ Michael K. Whitehead
Stephen M. Crampton*
Mississippi Bar No. 9952
Matthew H. Krause*
Texas Bar No. 24060117
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Lynchburg, VA 24506-1108
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WHITEHEAD LAW FIRM
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Telephone: (816) 876-2600
Telefacsimile: (816) 221- 8763

Attorneys for Plaintiff

* Pro Hac Vice Motions Pending

VERIFICATION

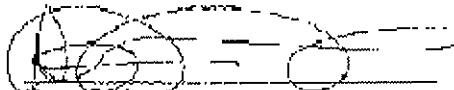
Under penalty of perjury, I declare that I have read the foregoing; that the facts alleged are true, to the best of my knowledge and belief. I understand that a false statement in this verification will subject me to penalties of perjury.



Garret Hingok, President
Victory Through Jesus Sports Ministries

Dated this 14th day of October, 2009.

The foregoing instrument was acknowledged before me this 14th day of October 2009, by Garret Hingok - Pastor who is personally known to me or who has produced KS 011 as identification or who took an oath/affirmed.



Danielle H. Nichols

My Commission expires 02/28/2012





FILE: KI-AP
Critical

PUBLIC SOLICITATIONS/ADVERTISING IN DISTRICT FACILITIES *(Procedures for Informational Flyers)*

R-7 Web Site Opportunities for Students

The Lee's Summit R-7 School District will be posting approved informational flyers from not-for-profit organizations on the district's website, located at www.leesummit.k12.mo.us. This information must be submitted electronically to the Office of Elementary Instruction, and, if approved, posted monthly on the district's website where parents can access it. Information must be submitted electronically to flyers@leesummit.k12.mo.us for posting during the month. Information must be in a Microsoft Word, Excel document, or .pdf file no larger than two 8 ½-inch-by-11-inch pages.

By posting this information on the website, organizations will have the opportunity to reach families of middle school and high school students as well as families of elementary students. Organizations will also be able to reach families without the expense of printing thousands of pre-sorted flyers. Principals will include information about the website in their monthly newsletters and a link will be added to the district and building electronic newsletters.

Organizations Approved for "Backpack" Flyers for Students

Flyers that have been approved will be sent home with students and/or posted on the district's website.

Only flyers from the following groups/organizations will be approved for distribution: Lee's Summit Educational Foundation, PTA, Lee's Summit Chamber of Commerce, Lee's Summit Symphony Orchestra, Lee's Summit Parks and Recreation, Greenwood Sports Association, Lee's Summit Cares, Longview College for Kids, D.A.R.E., Jackson County, LS Girls' Softball Association, LS Baseball Association, LS Football Association, LS Soccer Association, LS Junior Basketball, Downtown Lee's Summit Main Street, each R-7 school, its Partners In Education* and its Booster Clubs.

Flyers must be submitted for approval by e-mailing a Microsoft Word, Excel document or .pdf file no larger than two 8 ½-inch-by-11-inch pages to flyers@leesummit.k12.mo.us. All flyers approved for distribution to students **MUST** be accompanied by the official approval sheet from the Office of Elementary Instruction located at the Stansberry Leadership Center.

* Partners In Education is a district-sponsored program. Businesses that are formal business partners with a particular school, district program or the district as a whole, may seek approval for flyer distribution once per quarter. Flyers must be submitted for approval by emailing a Microsoft Word, Excel document or .pdf file no larger than two 8 ½-inch-by-11-inch pages to pieflyers@leesummit.k12.mo.us.

FILE: KI-AP
Critical

Exception for district wide backpack distribution: Community youth organizations such as Boy Scouts and Girls Scouts will be provided a one-time opportunity to distribute program flyers at the beginning of school on either the first or second backpack distribution date. These flyers must be approved at least six (6) days prior to distribution.

R-7 Web Site Distribution Opportunities for Staff Only

The Lee's Summit R-7 School District will post approved informational flyers from area businesses and organizations on the district's web site located at www.leesummit.k12.mo.us. This information will be available only to R-7 employees. Information must be submitted electronically to the Educational Foundation Office and, if approved, will be posted on the district's web site where staff members have access to it 24 hours per day. Information must be submitted electronically to staffoffers@leesummit.k12.mo.us. Submitted information must be in a Microsoft Word or .pdf format no larger than two 8 ½ by 11 inch pages. Approved information will be posted within one (1) week. As a reminder to staff, a listing of current web site postings will be periodically provided through the R- 7 Messenger publication.

Distribution of Building-Specific Flyers for Staff

If a business/organization wishes to provide an offer or discount to selected R-7 sites, the information must be submitted electronically to staffoffers@leesummit.k12.mo.us for approval. If approved, the offer or discount may be distributed to the selected sites, but will NOT be posted electronically. All information approved for distribution to individual buildings MUST be accompanied by the official approval sheet from the Foundation Office located at the Stansberry Leadership Center. For more information, contact 986-1015.

Other

- ▶ Due to the large volume of requests received on a weekly basis, only requests from local businesses, organizations, Partners In Education members or offers that are educational in nature will be accepted for review.
- ▶ The Lee's Summit R-7 School District reserves the right to deny requests that contain unacceptable content, are seen as a conflict of interest or are in conflict with the district's mission and values.
- ▶ Businesses/Organizations are encouraged to accept the R-7 Staff ID Badge as an acceptable way for R-7 employees to take advantage of offers and discounts. Any offer that encourages the use of printing coupons, etc. by using district resources will be prohibited.

* * * * *


FILE: KI-AP
Critical

Note: The reader is encouraged to review policies and/or forms for related information in this administrative area.

Implemented: 07/17/2008

Revised: 09/18/2008; 01/06/2009

Reorganized School District No. 7 Jackson Co., Lee's Summit, Missouri



LIBERTY COUNSEL

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Orlando, FL 32854-0774
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www.LC.org

1015 Fifteenth St. N.W., Ste. 1100
Washington, DC 20005
Telephone: 202•289•1776
Facsimile: 202•216•9656

Post Office Box 11108
Lynchburg, VA 24506-1108
Telephone: 434•592•7000
Facsimile: 434•592•7700
liberty@LC.org

Reply to: Virginia

February 20, 2009

**Via Regular U.S. Mail and
Facsimile (816) 986-1165**

Dr. David McGehee, Superintendent
Lee's Summit R-7 School District
301 N.E. Tudor Road
Lee's Summit, MO 64086

Re: Unconstitutional Policy Restricting Victory Soccer Camp Flyer Distribution

Dear Dr. McGehee:

Liberty Counsel represents Victory Through Jesus Ministry Foundation, a non-profit organization that runs the Victory Soccer Camp program. Liberty Counsel is a civil liberties, legal defense and education organization with an emphasis on religious liberties issues. We have had particular success in representing organizations like Victory through Jesus Ministry Foundation in the public school setting. We are writing to request prompt distribution of the Victory Soccer Camp flyer and that the District's policy be changed to allow athletic programs such as Victory Soccer Camp access to the District's literature distribution on the same terms and conditions as those organizations currently permitted to distribute "Backpack Flyers."

Victory Soccer Camp is a youth athletic program that values discipline and also focuses on equipping and encouraging children to live successful lives of integrity and good character by utilizing Bible stories and the testimonials of athletes. Victory Soccer Camp is a five day summer camp specifically geared towards children ages five to twelve. Victory Through Jesus Sports Ministry Foundation provides these camps throughout Kansas, Missouri, and New Jersey.

As I understand it, on January 26, 2009, Goran Hunjak, President of Victory Through Jesus Sports Ministry Foundation, sent Chris Eisenmenger an e-mail requesting

Superintendent McGehee
February 20, 2009
Page 2

permission to have flyers distributed in the elementary schools of Lee's Summit R-7 School District. Mr. Eisenmenger responded, stating that the flyer would be posted on the District's web site but that it could not be distributed to students in the schools according to the "Public Solicitations/Advertising In District Facilities" policy, even though that policy permits other organizations that offer purely secular athletic programs in the area, such as Lee's Summit Soccer Association, to distribute their flyers.

The U.S. Supreme Court has ruled that organizations that are similar must be granted equal access to public school facilities under the First Amendment. *Good News Club v. Milford Central School*, 533 U.S. 98 (2001). This includes the right to have literature distributed on the same terms and conditions as other similar organizations. In *Child Evangelism Fellowship v. Montgomery County*, 373 F.3d 589 (4th Cir. 2004), the Fourth Circuit Court of Appeals specifically held that a Good News Club could not be excluded from access to a flyer distribution program afforded to other groups such as the Boy Scouts. Both programs dealt with character development but Good News Clubs did so from a Christian perspective. Your District's policy permits certain pre-selected and listed sports associations and non-profit organizations to distribute their flyers directly to students via backpacks but offers no opportunity for similar sports programs to have equal access. Denying Victory Soccer Camp the ability to distribute flyers while permitting another soccer organization to do so violates Victory Through Jesus Sports Ministry Foundation's constitutional rights.

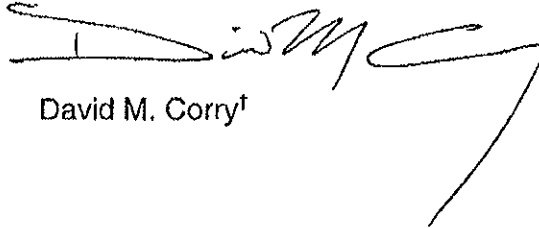
Liberty Counsel stands ready to defend the legal rights of Victory Through Jesus Ministry Foundation. The District's policy has unnecessarily exposed the District to liability. We write to demand that you take immediate steps on behalf of the District to reverse that position. We are asking you to respond to this letter in writing within thirty (30) days with assurances that Victory Soccer Camp may distribute its flyers on the same terms as Lee's Summit Soccer Association and other non-profit organizations with offerings of interest to the District's students. The letter must also state that the District's policy has been amended to ensure backpack distribution is available to similarly situated entities without regard to

Superintendent McGehee
February 20, 2009
Page 3

viewpoint. If I do not receive such a response, we will conclude that the denial articulated by Mr. Eisenmenger accurately represents the final position of the School District.

Sincerely,

LIBERTY COUNSEL



David M. Corry[†]

DMC:mdc
Enclosure

cc: Chris Eisenmenger, Administrative Assistant, Elementary Education
chris.eisenmenger@leesummit.k12.mo.us

Gene Brixey, President, School Board
R7board@leesummit.k12.mo.us

Michael Dodig, Vice President, School Board
R7board@leesummit.k12.mo.us

Manne Magady, Member, School Board
R7board@leesummit.k12.mo.us

Jeff Tindle Member, School Board
R7board@leesummit.k12.mo.us

Patti Buie, Member, School Board
R7board@leesummit.k12.mo.us

Jon Plaas, Member, School Board
R7board@leesummit.k12.mo.us

Jack Wiley, Member, School Board
R7board@leesummit.k12.mo.us

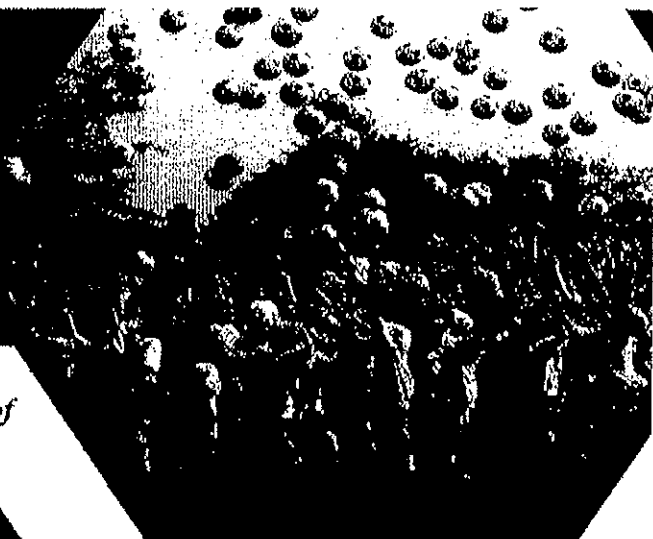
Goran Hunjak, President, Victory Through Jesus Sports Ministry Foundation

[†] Licensed in Florida

VICTORY SOCCER CAMP

BEYOND THE GOAL

Victory Soccer Camp focuses on the local community, equipping and encouraging children to live a successful life of integrity, and good character qualities.



Victory Soccer Camp is for Boys & Girls ages 5-12

- What if there was a way your child could play soccer in a nurturing yet skillfull environment that not only teaches vital soccer skills, but also develops growth and excellence combining leadership and life skills? That's what Victory Soccer Camp is all about.
- We provide professional quality soccer instruction in a fun and exciting environment. Children will learn to combine excellence in sports with a relationship with others.
- Being an athlete is not required. Our camp is designed for students with various levels of athletic ability.

EACH CAMP FEATURES:

Professional Quality Soccer Instructions, Dribbling, Passing, Receiving, Shooting, Foot Work, Juggling, Ball Control, Coordination, Preparation and Agility, Mini Games, Scrimmages, Skill Drills, character teaching halftime, FUN FUN FUN!!

WHAT YOU RECEIVE

- Soccer Ball for every camper
- Camp T-Shirt for every camper
- Surprise Giveaway for every camper
- 3 Hours for 5 Days of Great Fun and a Learning environment that your child will never forget.

REGISTER ONLINE:

www.victoryinsoccer.org

ADULTS: \$75

Goran Hurjak

Goran was born in Croatia, Europe. He played 19 years of professional outdoor and indoor soccer in Europe and the United States. He has also coached a professional team for 4 years. Goran enjoyed a long professional career achieving many awards: seven times voted All Star; numerous times MVP and Offensive Player of the Year; member of the US Indoor National Team; honored to represent the United States in the 1996 Indoor World Cup in Spain; one of only 10 players in history to score 1,000 points; one of 16 players to score over 500 professional goals. Goran played in 18 different countries in the world. Goran also played locally for KC Wizards and KC Comets.



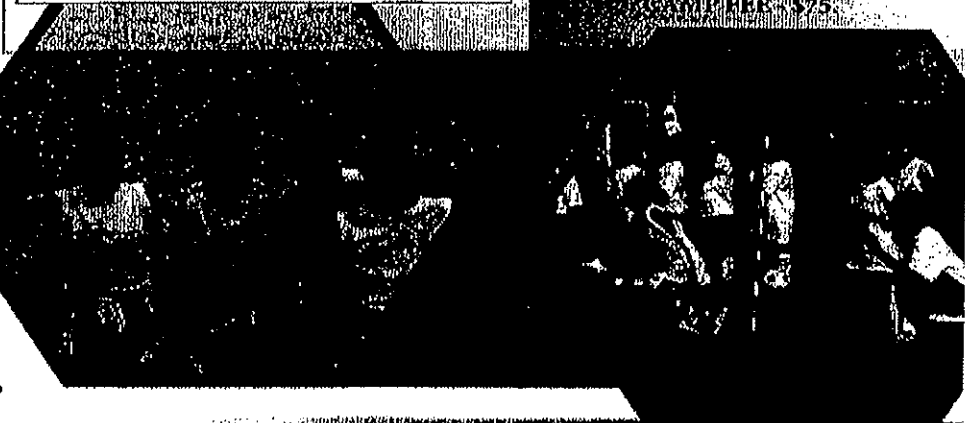
Goran enjoys working with youth. He feels compelled to pass his soccer knowledge and talents to all ages to help them improve their skill level, gain confidence, and develop a positive self image. Goran enjoys sharing professional disciplines and his testimony that encourages children to live a life of good character and lead by example.

SCHEDULE:

LEE'S SUMMIT

JUNE 29th - JULY 3rd
9:00 AM - NOON

Pleasant Lee Middle School
630 S.W. Persels Road
Lee's Summit, MO 64081



VICTORY'S SOCCER

913-284-7700



MICHAEL F. DELANEY
DIRECT DIAL: (913) 327-5177
mdelaney@spencerfane.com

File No. 2773500-2

March 11, 2009

David M. Corry, Esq.
Liberty Counsel
1015 Fifteenth St. N.W.
Suite 1100
Washington, DC 20005

Re: Flyer Distribution Request

I represent the Lee's Summit School District ("District") and have reviewed your February 20, 2009 letter on behalf of Victory Through Jesus Ministry Foundation ("Victory") to Superintendent David McGehee and the Board of Education. The letter relates to the District administrative procedure governing distribution of literature to students from non-school groups. The District has thoughtfully considered your concerns and this letter is drafted in response to those concerns. Any future communications regarding this matter should be directed to my attention.

Your letter asserts that the District's administrative procedure regarding the distribution of literature to students violates the First Amendment to the U. S. Constitution. Specifically, your letter claims that the District's KI-AP administrative procedure "permits certain pre-selected and listed sports associations and non-profit organizations" to distribute flyers but denies Victory Through Jesus Ministry Foundation the opportunity to distribute flyers promoting its soccer camp, denying the group "equal access to public school facilities." Your letter also acknowledges that the District (1) offered to publicize the program on the District's website in accordance with the same administrative procedure, and (2) allows all community youth organizations "such as Boy Scouts and Girl Scouts" a one-time opportunity to distribute flyers in backpacks at the beginning of school. It appears that Victory made its request in January 2009, well after the opportunity for distribution at the start of the school year.

Your letter states, "The U. S. Supreme Court has ruled that organizations that are similar must be granted equal access to public school facilities under the First Amendment" and cites *Good News Club v. Milford Central School*, 533 U. S. 98 (2001) for this proposition. The actual holding in *Good News Club* specifically notes that public institutions may be justified in reserving their fora, or opportunities for speech, for certain groups or for the discussion of certain topics, citing previous Supreme Court rulings. See *Rosenberg v. Rectors & Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995); *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U. S. 384 (1993). The Supreme Court ruled that in establishing restrictions, state institutions "must not discriminate on the

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(816) 474-8100 www.spencerfane.com Fax (816) 474-3216 OP 145274.1



March 11, 2009

Page 2

basis of viewpoint...and the restrictions 'must be reasonable in light of the purpose served by the forum.'" *Good News Club*, 533 U. S. 98, 106-107.

The relevant part of this administrative procedure states as follows:

Only flyers from the following groups/organizations will be approved for distribution: Lee's Summit Educational Foundation, PTA, Lee's Summit Chamber of Commerce, Lee's Summit Symphony Orchestra, Lee's Summit Parks and Recreation, Greenwood Sports Association, Lee's Summit Cares, Longview College for Kids, D.A.R.E., Jackson County, LS Girls Softball Association, LS Baseball Association, LS Football Association, Lee' Summit Soccer Association, LS Junior Basketball, Downtown Lee's Summit Main Street, each R-7 school, its Partners in Education and its Booster Clubs.

This procedure does not prohibit groups with a religious focus or that incorporate religious topics or themes into their activities from distributing literature to students based on that religious viewpoint. The procedure does not exclude such groups from a general category (i.e., soccer clubs or sports clubs) identified in the procedure that are permitted to submit literature for distribution in student backpacks. Your letter does not assert otherwise.

Rather, the District has identified a number of specific community groups in the procedure who may submit literature for distribution in student backpacks. There is no reference to the viewpoint of these organizations or any indication as to whether they have a particular viewpoint. The Lee's Summit Soccer Association is the only soccer organization and one of several sport associations specifically identified in the procedure; however, the policy would exclude all other soccer or sport associations from submitting literature for distribution in student backpacks, including groups without any religious affiliation or viewpoint. The case cited in your letter, *Child Evangelism Fellowship v. Montgomery County*, 373 F.3d 589 (4th cir. 2004), involved a group that was specifically excluded from a literature distribution opportunity based on concerns about proselytizing or the religious nature of the organization. The Court found that these concerns constituted viewpoint discrimination. Such is not the case here because Victory's soccer camp is excluded along with other sporting organizations with no religious focus or affiliation. Absent any viewpoint discrimination, the District has the right to establish reasonable restrictions as established in *Good News Club*. This procedure is reasonable and thus the District has no plans to change it at this time.

There is no factual or legal basis for the claim that the District discriminated against Victory in violation of the First Amendment by its adoption or enforcement of the KI-AP procedure. The District renews its offer to publish information about the soccer camp on its website in accordance with the procedure. Alternatively, the District invites the group to submit its literature for review



March 11, 2009

Page 3

and inclusion in student backpacks for the start of the 2009-2010 school year in accordance with the procedure.

Please do not hesitate to contact me if you would like to discuss this matter in more detail.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael F. Delaney", is written over a horizontal line.

Michael F. Delaney

MFD/krr