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15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17 ISAAH MARTINEZ, a minor by and  
18 through his parents ALEX MARTINEZ and  
19 MYRNA MARTINEZ,

20 Plaintiffs,

21 vs.

22 WEST COVINA UNIFIED SCHOOL  
23 DISTRICT; GORDON PFITZER,  
24 individually and in his official capacity as  
25 an employee of West Covina Unified  
26 School District; SHERYL LESIKAR,  
27 individually and in her official capacity as  
28 an employee of West Covina Unified  
School District; and DOES 1 through 20,  
Inclusive,

Defendants.

Case No.: 2:14-cv-06996-ODW-FFM

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR PRELIMINARY  
INJUNCTION; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATIONS OF I.M. AND  
ROBERT H. TYLER; [PROPOSED]  
ORDER IN SUPPORT THEREOF**

Hearing:

Date: December 15, 2014

Time: 1:30 p.m.

Ctrm: 11

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 15, 2014, at 1:30 p.m., or as soon  
3 thereafter as counsel may be heard, in Department 11 of the above-entitled Court  
4 located 312 North Spring Street, Los Angeles, California, plaintiff, I. M., by and  
5 through his parents, Alex and Myrna Martinez (“I. M.” or “Plaintiff”), will move this  
6 Court for a preliminary injunction prohibiting the defendants, West Covina United  
7 School District, *et al.*, and its agents, and employees, from stopping Plaintiff from  
8 passing out candy canes to his classmates with the candy cane legend attached at his  
9 upcoming class Christmas party.

10 This Motion is being brought under Rule 65 of the Federal Rules of Civil  
11 Procedure and is based upon the complaint, notice of motion, the memorandum of  
12 points and authorities, declarations and exhibits attached thereto, all opposition and  
13 reply papers and oral argument of counsel at the hearing.

14  
15 Respectfully submitted,

16 TYLER & BURSCH, LLP  
17

18  
19 Dated: November 12, 2014

20 By: /s/ Robert H. Tyler  
21 Robert H. Tyler, Esq.  
22 Jennifer L. Bursch, Esq.  
23 James A. Long, Esq.  
24 Attorneys for Plaintiffs,  
25 **I. M.; ALEX MARTINEZ and**  
26 **MYRNA MARTINEZ**  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

“Jesus is not allowed in school.” That is what I. M., a first grader at Merced Elementary School was told by his teacher when he wanted to pass out candy canes at the class Christmas party last year. The offending candy canes each had the “Legend of the Candy Cane” attached, a religious message explaining that Christmas is meant to honor the birth of Jesus Christ. According to I. M.’s teacher, and the school’s principal, the religious message was not allowed to be passed out on school property. Therefore, the school gave I. M. the option to either not pass out the candy canes or remove the message from the candy canes. When I. M. explained that he wanted to pass out his candy canes, his teacher removed the messages and threw them in the trash.

I. M. informed his parents, who filed a formal complaint with the School District. The school district concluded that the decision to censor I. M.’s message was made in order to remain neutral to religion. I. M. wants to pass out candy canes at this year’s class Christmas party with the same Legend of the Candy Cane message attached. Since the West Covina School District has already found that the school’s actions were proper, I. M. is concerned that he will be prevented from distributing the Legend of the Candy Cane at this year’s Christmas Party. I. M. seeks a preliminary injunction requiring the school to allow him to distribute the candy canes with the attached Legend of the Candy Cane.

**II. FACTUAL BACKGROUND**

On or about December 11, 2013, I. M.’s sister, Alexandra Cantu, shared with I. M. the “Legend of the Candy Cane” (hereinafter the “Legend”) which states as follows:

A candy maker wanted to make a candy that would be a witness, so he made the CHRISTmas Candy Cane to incorporate several symbols for the birth, ministry, and death of Jesus Christ.

///

1 He began with a stick of pure white, hard candy. White, to symbolize  
2 the Virgin Birth, the sinless nature of Jesus, and hard to symbolize the Solid  
3 Rock, the foundation of the church, and firmness of the promises of God.

4 The candy maker made the candy in the form of a "J" to represent the  
5 precious name of Jesus, who came to earth as our savior. It also represents  
6 the staff of the "Good Shepherd" with which He reaches down into the  
7 ditches of the world to lift out the fallen lambs who, like all sheep, have  
8 gone astray.

9 The candy maker stained it with red stripes. He used the three small  
10 stripes to show the stripes of the scourging Jesus received by which we are  
11 healed. The large red stripe was for the blood shed by Jesus on the Cross so  
12 that we could have the promise of eternal life, if only we put our faith and  
13 trust in Him.

14 Unfortunately, the candy became known as a Candy Cane — a  
15 meaningless decoration seen at Christmas time. But the meaning is still there  
16 for those who "have eyes to see and ears to hear".

17 I pray that this symbol will again be used to witness to the Wonder of  
18 Jesus and His Great Love that came down at Christmas and remains the  
19 ultimate and dominant force in the universe today.

20 **(Declaration of Alexandra Cantu ¶¶ 3-5.)** After hearing about the Legend,  
21 I. M. told his sister that he wanted to pass out candy canes to his classmates with the  
22 Legend attached to share his belief about Christmas with his friends. **(Cantu Dec. ¶ 5;**  
23 **Declaration of I. M. ¶ 3.)** The next day, I. M. and his sister purchased candy canes,  
24 construction paper, and ribbon. **(Cantu Dec. ¶ 6; I. M. Dec. ¶ 5.)** That night they  
25 printed the Legend on regular paper and fastened the Legend to decorative red paper.  
26 They then fixed the Legend to each candy cane by a length of ribbon. **(Cantu Dec. ¶ 7;**  
27 **I. M. Dec. ¶ 5.)**

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1 On December 13, 2013, I. M. attempted to hand out candy canes to his fellow  
2 classmates at Merced Elementary School. (“Merced”) (**Cantu Dec. ¶ 8; I. M.**  
3 **Dec. ¶ 6.**) After requesting permission from his teacher, Valerie Lu (“Ms. Lu”) to pass  
4 out the candy canes with the message to his classmates, Ms. Lu told I. M. that she had  
5 to ask Merced principal, Gordon Pfitzer (“Mr. Pfitzer”) about whether I. M. could pass  
6 out the candy canes. (**I. M. Dec., ¶ 6**) On December 18, 2013, after being instructed by  
7 Mr. Pfitzer, Ms. Lu told I. M. that he could not pass out the candy canes because of the  
8 religious content of the Legend. She explained to I. M. that “Jesus is not allowed in  
9 school”. (**Cantu Dec. ¶ 9; I. M. Dec. ¶ 7.**) Ms. Lu told I. M. that the only way he  
10 would be allowed to pass out the candy canes would be if the religious message were  
11 removed. I. M. communicated that he still wanted to pass out the candy canes to his  
12 classmates. (**I. M. Dec. ¶ 7.**) Ms. Lu then ripped off the legend attached to each candy  
13 cane and threw them in the trash. (**I. M. Dec. ¶ 7.**)

14 When I. M. came home that day he recounted what happened at school and stated  
15 that he was afraid he was in trouble for trying to share the Legend with his friends.  
16 (**Cantu Dec. ¶ 9; I. M. Dec. ¶¶ 8-9.**) The next day, on December 19, 2013, I. M. and  
17 his sister Alexandra went to the school to speak with Ms. Lu about the candy canes.  
18 (**Cantu Dec. ¶ 10.**) Ms. Lu informed Alexandra that because of the religious content of  
19 the Legend attached to the candy canes, Ms. Lu needed to get permission from  
20 Mr. Pfitzer before I. M. could distribute the candy canes. (**Cantu Dec. ¶ 10.**) Ms. Lu  
21 also informed Alexandra that religious messages are not allowed to be distributed by the  
22 students on school grounds. (**Cantu Dec. ¶ 10.**) Based on that policy, Mr. Lu could not  
23 allow I. M. to distribute the candy canes to his friends. (**Cantu Dec. ¶ 10.**)

24 That evening, Alexandra asked I. M., if he wanted to distribute the candy canes at  
25 his class Christmas party the next day. (**Cantu Dec. ¶ 11; I. M. Dec. ¶ 9.**) I. M. stated  
26 that he still wanted to pass out his candy canes with the Legend attached. (**Cantu Dec.**  
27 **¶ 11; I. M. Dec. ¶ 9.**) I. M. and Alexandra spent the rest of that evening printing the

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1 legend, and fixing the Legend to the candy canes with ribbon. (**Cantu Dec. ¶ 11; I. M.**  
2 **Dec. ¶ 10.**)

3 On December 20, 2013, the day of the class Christmas party, Alexandra called  
4 Mr. Pfitzer to ask whether I. M. would be permitted to distribute the candy canes with  
5 the Legend attached as a gift for the class Christmas party. (**Dec. of Cantu ¶ 13.**)  
6 Ms. Pfitzer consulted with Sheryl Lesikar at the West Covina School District, and  
7 reported back to Alexandra that neither he nor the school district would permit I. M. to  
8 pass out the candy canes with the Legend attached due to the Legend's religious  
9 content. (**Cantu Dec. ¶ 13.**)

10 While Alexandra was speaking with Mr. Pfitzer, I. M. was in class attending the  
11 class Christmas party. (**Cantu Dec. ¶ 12; I. M. Dec. ¶¶ 11-12.**) About 10-minutes  
12 before the end of school Mr. Pfitzer informed Alexandra that I. M. would be permitted  
13 to distribute the candy canes with the Legend attached off school grounds as students  
14 were leaving campus. (**Cantu Dec. ¶ 14.**) Alexandra quickly took I. M. off school  
15 grounds and waited for I. M.'s classmates to pass by. (**Cantu Dec. ¶ 14; I. M. Dec.**  
16 **¶¶ 13-14.**) Although I. M. was eventually able to give a few of his classmates the  
17 candy cane, he was unable to give his candy canes to his all of his classmates as he  
18 wanted. (**Cantu Dec. ¶ 14; I. M. Dec. ¶¶ 13-14.**)

19 When I. M. returned home, he showed his parents and sister the gifts that were  
20 exchanged during the class Christmas party. (**Cantu Dec. ¶ 15; I. M. Dec. ¶¶ 15.**)  
21 Apparently the School allowed his classmates to distribute secular Christmas messages,  
22 such as Santa Clause figures, penguins with Santa hats, etc. (**Cantu Dec. ¶ 15; I. M.**  
23 **Dec. ¶ 12.**) One gift in particular was a wrapped box, which I. M. opened in front of  
24 his parents and sister. (**Cantu Dec. ¶ 16.**) Inside the box was a chocolate candy cane.  
25 (**Cantu Dec. ¶ 16; I. M. Dec. ¶ 15.**) On the back of the box was a religious candy cane  
26 legend similar to the one I. M. wanted to distribute, which told the story of Jesus as the  
27 Good Shepherd. (**Cantu Dec. ¶ 16.**)

28 ///

1 **III. PROCEDURAL HISTORY**

2 On January 6, 2014, Advocates for Faith and Freedom logged a formal complaint  
3 on behalf of I. M. with Merced and the West Covina School District requesting that  
4 I. M. be permitted to distribute the candy canes with the attached Legend. (**Exhibit A,**  
5 **attached to the Declaration of Robert Tyler.**) Michael F. Seaman, Assistant  
6 Superintendent of Human Resources for the West Covina School District investigated  
7 the complaint and concluded that the school’s decision to censor I. M.’s candy canes  
8 was made in an effort to remain religiously neutral and that there was no intention to be  
9 hostile to I. M.’s religion. (**Exhibit C, attached to the Dec. of Tyler.**) But Mr. Seaman  
10 refused to allow I. M. to distribute his candy canes with the attached Legend. (**Id.**)

11 On March 7, 2014, Advocates for Faith and Freedom, on behalf of I. M.,  
12 appealed Mr. Seaman’s findings to the West Covina School Board, again requesting  
13 that I. M. be allowed to distribute his candy canes with the attached Legend.  
14 (**Exhibit D, attached to the Dec. of Tyler.**) On March 26, 2014, the West Covina  
15 School Board concluded that there was no violation of I. M.’s rights. (**Exhibit E,**  
16 **attached to the Dec. of Tyler.**) The School Board also concluded that per District  
17 Regulations, I. M. would only be permitted to distribute his candy canes before school,  
18 after school, or during lunch time, but not during the class Christmas party. (**Exhibit E.**)

19 On April 14, 2014, Advocates for Faith and Freedom, on behalf of I. M. appealed  
20 the School Board’s decision to the California Department of Education.  
21 (**Exhibits F & G.**) The California Department of Education has not responded to I. M.’s  
22 appeal. On September 8, 2014, I. M. (by and through his parents Alex and Myrna  
23 Martinez) filed this action against the WEST COVINA SCHOOL DISTRICT,  
24 GORDON PFITZER, and SHERYL LESIKAR. I. M. now seeks a preliminary  
25 injunction allowing him to distribute candy canes with the attached Legend at this  
26 year’s Christmas party.

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1 **IV. ARGUMENT**

2 **A. STANDARD FOR A PRELIMINARY INJUNCTION**

3 **1. The Plaintiff Has Standing to Request an Injunction**

4 To have standing to request a preliminary injunction a plaintiff must have  
5 suffered an injury in fact that is fairly traceable to the challenged conduct, and it must  
6 be likely that the injury would be properly redressed by a favorable decision. (*Buono v.*  
7 *Norton*, (9th Cir. 2004) 371 F.3d 543, 546.)

8 In this case, the Plaintiff, I. M. was precluded from passing out candy canes to his  
9 classmates on December 13 and 20, 2013, due to I. M.'s attachment of the candy cane  
10 legend, which contains a religious message. (**I. M. Dec., ¶¶ 6, 7, 12; Cantu Dec.**  
11 **¶¶ 8-9, 12-14.**) I. M. was only allowed to pass out the candy canes after I. M.'s teacher  
12 ripped off the candy cane legend from each candy cane and threw then into the trash.  
13 (**I. M. Dec., ¶ 7.**) The Christmas holiday is now approaching once again, and I. M.  
14 seeks to be able to pass out gifts to his class without fear of attaching messages that may  
15 have religious connotation that are consistent with Plaintiff's religious beliefs.

16 I. M.'s inability to pass out the candy canes with the candy cane Legend attached  
17 to them was a direct result of a decision by WCUSD employees, namely Pfitzer, and  
18 ultimately the WCUSD. (**I. M. Dec., ¶¶ 68; Cantu Dec. ¶¶ 10, 13-14; and**  
19 **Exs. C & E to Tyler Dec.**) Because Plaintiff has filed suit for a violation of I. M.'s  
20 Constitutional rights of free speech and religious practice, a decision in Plaintiff's favor  
21 would result in an Order directed at WCUSD and its employees that I. M.'s conduct is  
22 protected under the United States and California Constitutions. Therefore, the injury  
23 would properly be redressed by a favorable decision.

24 **2. A Preliminary Injunction is Justified in this Case**

25 A preliminary injunction is appropriate where a plaintiff demonstrates that they  
26 are likely to suffer an irreparable injury, where they are likely to succeed on the merits  
27 of their claims, and where a balancing of the equities favors the plaintiff. (*Winter v.*  
28 *Natural Resources Defense Council, Inc.*, (2008) 555 U.S. 7, 20)

1           **i. Plaintiff will Suffer Irreparable Harm**

2           The loss of First Amendment Freedoms, or even minimal periods of time,  
3 unquestionably constitutes irreparable injury. (*Elrod v. Burns*, (1976) 427 U.S. 347,  
4 373.) The Ninth Circuit has held that the mere question of a colorable First Amendment  
5 Claim is sufficient to show irreparable injury for the purposes of a preliminary  
6 injunction. (*Sammartano v. First Judicial Dist. Ct.*, (9th Cir. 2002) 303 F.3d 959, 973.)

7           In this case, a more thorough discussion of whether Plaintiff's claims are  
8 colorable will occur in the analysis of whether Plaintiff's claims are likely to succeed on  
9 the merits. For the purposes of this prong of the analysis, it is sufficient that the  
10 WCUSD, and its employees, precluded Plaintiff from passing out the candy cane legend  
11 multiple times in December of 2013, including a student party, at which other students  
12 were allowed to pass out gifts with secular messages. (**I. M. Dec.**, ¶¶ 11-12; **Cantu**  
13 **Dec.** ¶¶ 15-17.) Furthermore, Mr. Pftizer clearly indicated that students are not allowed  
14 to pass out religious messages on school property; and the School Board stated that  
15 students are not allowed to pass out religious materials in class, indicating g that the  
16 West Covina School District and Merced Elementary School have no intention of  
17 allowing Plaintiff to pass out the candy cane legend during the Christmas holiday party  
18 in December of 2014. (**Cantu Dec.** ¶ 14; **Exs. C & E to Tyler Dec.**) As analyzed  
19 below, because WCUSD's conduct raises a meritorious and colorable claim under the  
20 United States and California Constitutions, Plaintiff will suffer irreparable injury  
21 without Court intervention.

22           **ii. Likelihood of Success on the Merits**

23           **a. Plaintiffs' Freedom of Speech Claims Under the Federal and**  
24           **California Constitutions**

25           In *Tinker v. Des Moines Independent Community School District*, (1969) 393  
26 U.S. 503, the United States Supreme Court held that students do not shed their  
27 Constitutional rights to freedom of speech or expression at the schoolhouse gate.  
28 Although Plaintiff acknowledges that a student's right of free speech is not co-extensive

1 with that of an adults, or even a child's in other settings, the student's speech must be  
2 evaluated in light of the special characteristics of the school environment. (*Id.* at 506)  
3 As the Fifth Circuit recently held in a case factually similar to the case at bar, "Tinker  
4 protects private student expression where there is no 'interference, actual or nascent,  
5 with the schools' work or collision with the rights of other students to be secure and to  
6 be let alone.'" (*Morgan v. Swanson*, (5th Cir. 2011) 659 F.3d 359, 386; citing to  
7 *Tinker, supra*, at 508.) The school may only suppress student speech if the speech will  
8 "materially and substantially disrupt the work and discipline of the school." *Morse v.*  
9 *Frederick*, (2007) 127 S.Ct. 2618, 2626 (citing *Tinker*, 89 S.Ct. 733, 740).)

10 In the context of a classroom Christmas party and gift exchange, the School  
11 District cannot argue that candy canes with religious messages will "substantially  
12 disrupt the work and discipline of the school." Moreover, as can be seen from the letters  
13 written by WCUSD's representatives, disruption was at no point a concern of the school  
14 district. To be sure, the only concern seemed to be remote possibility that I. M.'s  
15 message would be considered a school endorsement and/or the allowance of I. M.'s  
16 message would preclude the WCUSD from acting in a religiously neutral manner.  
17 (**Exs. C & E to Tyler Decl.**) To be sure, far from acting in a neutral manner, the  
18 WCUSD was acting with religious antagonism by precluding I. M. from passing out the  
19 candy cane legend, while at the same time allowing countless secular messages to be  
20 disbursed by and amongst the students. (**I. M. Dec. ¶ 12; Cantu Dec. ¶¶ 15-16.**)

21 **b. Plaintiffs' Establishment Clause Claim**

22 The United States Supreme Court has explained that the Constitution  
23 affirmatively mandates accommodation, not merely tolerance, of all religions, **and**  
24 **forbids hostility toward any.** (*Lynch v. Donnelly*, (1984) 465 U.S. 668, 673  
25 [Emphasis added].) The Ninth Circuit applies the traditional test set forth by the Court  
26 in *Lemon v. Kurtzman*, (1971) 403 U.S. 602 ), to determine when a District has acted  
27 with hostility toward religion (*Catholic League v. San Francisco*, (9th Cir. 2009) 567  
28 F.3d 595, 599) In order for governmental conduct to survive the *Lemon* test, the

1 conduct must, (1) have a secular purpose, (2) not have as its principal or primary effect  
2 the advancement or inhibition of religion, and (3) not foster an excessive governmental  
3 entanglement of religion.<sup>1</sup> (*Lemon, supra*, at 612-613.)

4 Contrary to WCUSD's claims in its correspondence, the intent of the school  
5 clearly was not religious neutrality; it was religious suppression. In each of the letters  
6 sent by the WCUSD, it was made clear that it was *because of* the religious message that  
7 I. M. was precluded from handing out the candy canes. (**Exs. C & E to Tyler Dec.;**  
8 **Cantu Dec. ¶¶ 10, 13.**) Unlike the defendant in the *Walz ex rel. Walz v. Egg Harbor*  
9 *Twp. Bd. Of Educ.*, (3rd Cir. 2003) 342 F.3d 271, which is cited in the WCUSD's  
10 March 26, 2014, letter (**Ex. E to Tyler Dec.**), there was no policy of *true* neutrality  
11 prior to the disbursal of gifts in the classroom that would have precluded *any* viewpoint  
12 from being expressed, whether secular or religious. In that case, messages of *any kind*  
13 were discouraged *before* the distribution of gifts. (*Id.* at 273)

14 Furthermore, as the Court in the Third Circuit recognized, First Amendment  
15 rights when analyzed with respect to elementary school students must be analyzed in  
16 the context of the students' ages. There is an inverse relationship between the age of  
17 the student and the degree of control a school may exercise over the student. (*Sch. Dist.*  
18 *v. Schempp*, (1963) 374 U.S. 203, 290-291.) While I. M. is admittedly a young student  
19 at Merced, the student in *Walz* was pre-kindergarten. (*Id.* at 280-281) was  
20 pre-kindergarten. The difference between I. M. and the plaintiff in *Walz* was pre-  
21 kindergarten may seem minor, but the difference between a seven-year-old and a child  
22 in pre-school cannot be understated. In fact, the age of seven is commonly referred to as  
23 the "age of reason".

24 Finally, there is no evidence in this case that the WCUSD's refusal to allow  
25 Plaintiff to pass out the candy cane legend was the result of a *legitimate* concern  
26 regarding the schools entanglement to religion. Plaintiff sought to pass out the candy  
27

28 <sup>1</sup> Because it is acknowledged that this element is not relevant here, Plaintiff will only  
analyze the first two elements.

1 canes during a pre-designated time for the sharing of Christmas gifts amongst the  
2 students at Merced. **(I. M. Decl., ¶ 12.)** It is simply not reasonable to believe that  
3 anyone accepting a gift from a student during a Christmas party, or any other time for  
4 that matter, would believe the gift had any connection with the school itself.  
5 Furthermore, the WCUSD fails to cite to any evidence of such issues in its  
6 correspondence to Plaintiff's counsel. **(Exs. C & E to Tyler Dec.)**

7 **c. Plaintiffs' California Education Code Claim**

8 California Education Code, Section 48907(a) requires:

9 Pupils of the public schools, including charter schools, **shall**  
10 have the right to exercise freedom of speech and of the press  
11 including, but not limited to, the use of bulletin boards, the  
12 **distribution of printed materials** or petitions, the wearing of  
13 buttons, badges, and other insignia, and the right of expression  
14 in official publications, whether or not the publications or other  
15 means of expression are supported financially by the school or  
16 by use of school facilities, except that expression shall be  
17 prohibited which is obscene, libelous, or slanderous. Also  
18 prohibited shall be material that so incites pupils as to create a  
clear and present danger of the commission of unlawful acts on  
school premises or the violation of lawful school regulations, or  
the substantial disruption of the orderly operation of the school.

[Emphasis added]

19 The plain language of the statute guarantees student free speech rights in public schools  
20 mandates that a school may not prohibit student speech simply because it presents  
21 controversial ideas and opponents of the speech are likely to cause disruption; schools  
22 may only prohibit speech that incites disruption, either because it specifically calls for a  
23 disturbance or because the manner of expression, as opposed to the content of the ideas,  
24 is so inflammatory that the speech itself provokes the disturbance. (*Smith v. Novato*  
25 *United School Dist.*, (2007) 150 Cal.App.4th 1439, 1457.)

26 In the case at bar, it is clear that the California Legislature set limits on the  
27 freedoms it was outlining in Section 48907(a) by excluding from protection expression  
28 that is obscene, libelous, slanderous, likely to incite unlawful acts, and/or expression

1 that is disruptive to the orderly operation of the school. Nowhere in this limiting  
2 language does the Legislature list religious expression. Furthermore, the statute actually  
3 broadens the protections of the First Amendment by protecting speech even where it  
4 may have been expressed in a medium financially supported by the school, or  
5 conducted by the use of school facilities. Again, through the entire course of this  
6 dispute, the WCUSD **never** listed I. M.'s conduct as disruptive, obscene, or likely to  
7 cause a disturbance. **(Exs. C & E to Tyler Dec.)** Therefore, I. M.'s conduct falls  
8 squarely into the purview of Section 48907(a), and is not removed by the WCUSD's  
9 unfounded and unsupported claims of a fear of a lack of neutrality within the school.  
10 Because of this, Plaintiff is likely to prevail on the merits of its Education Code claim.

11 **iii. Balancing of the Equities and the Public Interest Heavily Favors**  
12 **Plaintiff**

13 A balancing of the equities and analysis of the public interest favors the Plaintiff  
14 in this case because of the Constitutional implications. As stated above, the violation of  
15 one's Constitutional freedoms, even for a minimal amount of time, is considered by the  
16 Courts to constitute irreparable injury. (*Elrod, supra*, at 373)

17 Because the WCUSD has given every indication that it will again preclude I. M.  
18 from passing out the candy cane legend at his school's holiday party under the guise of  
19 neutrality **(Exs. C & E to Tyler Decl.)**, I. M.'s constitutional rights will be violated  
20 again this year. Conversely, the school has given no legally viable reason for  
21 suppression of the speech, such as disruption, profanity, or vulgarity, or evidence that  
22 the schools conduct would be seen as advocating a particular religion. (*Id.*) Therefore,  
23 the WCUSD would endure no hardship whatsoever in allowing I. M. to pass out the  
24 candy cane legend this year especially at a time designated for exchanging gifts with  
25 classmates, where I. M. will endure suppression of his Constitutional rights. Because of  
26 this, the equities favors the Plaintiff.

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1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiffs would respectfully request that their request  
3 for a preliminary injunction be GRANTED.

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Respectfully submitted,  
  
TYLER & BURSCH, LLP

Dated: November 12, 2014

By: /s/ Robert H. Tyler  
Robert H. Tyler, Esq.  
Jennifer L. Bursch, Esq.  
James A. Long, Esq.  
Attorneys for Plaintiffs,  
**I. M.; ALEX MARTINEZ and  
MYRNA MARTINEZ**

**PROOF OF SERVICE**

*Martinez v. West Covina Unified School District, et al.*

U. S. District Court, Central District of California, Case No.: 2:14-cv-06996-ODW-FFM

I am employed in the county of Riverside, State of California. I am over the age of 18 and not a party to the within action. My business address is 24910 Las Brisas Road, Suite 110, Murrieta, California 92562.

On November 12, 2014, I caused to be served the foregoing documents described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF I.M. AND ROBERT H. TYLER; [PROPOSED] ORDER IN SUPPORT THEREOF** on the following interested parties in this action:

**[See attached Mailing List.]**

**BY MAIL**

An envelope was I deposited such envelope in the mail at or near Murrieta, California.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at or near Murrieta, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on November 12, 2014 at Murrieta, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

  
Joy A. Lloyd

**Mailing List**

*Martinez v. West Covina Unified School District, et al.*

U. S. District Court, Central District of California, Case No.: 2:14-cv-06996-ODW-FFM

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|---|--|--------------------------|
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9 | Aaron V. O'Donnell<br>Marlon C. Wadlington<br>Atkinson Adelson, Loya, Ruud & Romo<br>12800 Center Court Drive, Suite 300<br>Cerritos, California 90703<br>Tel: (562) 653-3200<br>Fax: (562) 653-3333<br>aodonnell@aalrr.com<br>mwadlington@aalrr.com | Attorneys for Defendants |
|---|--|--------------------------|

|                            |   |           |
|----------------------------|---|-----------|
| 10<br>11<br>12<br>13<br>14 | West Covina Unified School District<br>Attn: Debra Kaplan, Superintendent of<br>Schools<br>1717 W. Merced Avenue<br>West Covina, California 91790 | Defendant |
|----------------------------|---|-----------|

|                |  |           |
|----------------|--|-----------|
| 15<br>16<br>17 | Gordon Pfitzer<br>Merced Elementary School<br>1545 E. Merced Avenue<br>West Covina, California 91791 | Defendant |
|----------------|--|-----------|

|                      |   |           |
|----------------------|---|-----------|
| 18<br>19<br>20<br>21 | Sheryl Lesikar<br>West Covina Unified School District<br>1717 W. Merced Avenue<br>West Covina, California 91790 | Defendant |
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