

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

Civil Action No. _____

FREEDOM FROM RELIGION FOUNDATION, INC.;
JOHN DOE;
DOECHILD, A MINOR CHILD;
JOHN ROE;
MARY ZOE;
ROECHILD-1; A MINOR CHILD; and
ROECHILD-2, A MINOR CHILD,

Plaintiffs,

v.

CHERRY CREEK SCHOOL DISTRICT; and
MONTE C. MOSES, SUPERINTENDENT OF SCHOOLS OF THE CHERRY CREEK SCHOOL
DISTRICT,

Defendants.

COMPLAINT

COME NOW the Plaintiffs, by and through their undersigned attorney, and file the following
Complaint.

I. JURISDICTION

_____1. The claims for relief and causes of action alleged herein arise under the First and
Fourteenth Amendments to the Constitution of the United States of America, and Articles IV,
Section 2 and Article IX, Section 8 of the Constitution of the State of Colorado. Declaratory and
injunctive relief are sought pursuant to 28 U.S.C. §2201 and §2202 and 42 U.S.C. §1983. This

Court has jurisdiction under 28 U.S.C. §1331 and 28 U.S.C. §1343(a)(3) and (4) and supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367(a).

II. VENUE

2. This action properly lies in the United States District Court for the District of Colorado pursuant to 28 U.S.C. §1391(b)(1) and (2) because all Defendants are found in this judicial district and because a substantial part of the events or omissions which are the basis for this action occurred and are occurring in this judicial district.

III. PARTIES

3. Plaintiff Freedom From Religion Foundation, Inc. (hereinafter the "Foundation") is a non-profit corporation existing under the laws of the State of Wisconsin and authorized to do business in the State of Colorado. One of the Foundation's primary objectives is to promote the constitutional principle of separation of church and state and to take action on infractions of that principle. The Foundation's membership, which numbers in excess of 10,000, is constituted primarily of atheists and agnostics who object to the public school system being used as a vehicle for the promotion of religion. Plaintiffs John Doe and Mary Zoe are members of the Foundation.

4. Plaintiff John Doe is a Citizen of the United States, of the State of Colorado, and is a resident of the Cherry Creek School District. He owns property in such District and pays taxes to support the Cherry Creek School District. This Plaintiff is a parent of DoeChild and has legal custody of that child.

5. Plaintiff DoeChild, a minor, is a citizen of the United States, of the State of Colorado, and is a resident of the Cherry Creek School District. He is the son of Plaintiff John Doe and is

enrolled in one of the Cherry Creek School District's public schools.

6. Plaintiff Mary Zoe is a citizen of the United States, of the State of Colorado, and is a resident of the Cherry Creek School District. She pays taxes to support the Cherry Creek School District. Plaintiff Mary Zoe is the mother and legal custodian of RoeChild-1, a minor, and RoeChild-2, a minor, who are enrolled in the Cherry Creek School District's public schools.

7. Plaintiff John Roe is a citizen of the United States and of the State of Colorado. He is the father of RoeChild-1 and RoeChild-2 and has joint legal custody of those children.

8. Defendant Cherry Creek School District is the governing body of public schools in metropolitan Denver, Colorado and exists pursuant to the laws of the State of Colorado. At all times pertinent hereto, it was and is operating within the scope of its authority and under color of state law.

9. Defendant Monte C. Moses is the Superintendent of Schools of the Cherry Creek School District. The Superintendent is, among other things, responsible for the day-to-day operation of the District's public schools, for carrying out the policies and programs of the District, and for insuring compliance with all pertinent legal requirements. At all times pertinent hereto, Defendant Monte C. Moses was and is operating within the scope of his authority and under color of state law.

IV. FACTS

10. Defendant Cherry Creek School District adopted, promoted, endorsed, approved, and publicized a program known as "40 Developmental Assets." The alleged purpose of this program is to "provide a positive approach to helping youth grow into responsible, confident, and healthy young people who are able to realize their full individual and academic potential." (Appendix A, p.

3). In widely disseminated messages, Defendant Superintendent Monte C. Moses has strongly

endorsed these Assets and urges parents to “put them to work in your family, your school, and your community.” (Appendix A, p. 2). Defendant Moses states that children who are “asset-rich” are “more likely to be successful academically, socially, and emotionally” than children who lack these assets. (Appendix A, p. 1). He asserts that negative risk-taking among children who are “asset-poor” can “kill you.” (Appendix A, p. 2). Parents are being trained to implement these Assets. (Appendix B).

11. One of the Developmental Assets is Asset 19 which states as follows: “**Religious Community** – Young person spends one or more hours per week in activities in a religious institution.” This Asset is prominently posted in Cherry Creek public schools alongside the photo of a young child with her hands clasped as though in prayer under the title “Faith Community.” (Appendix C).

CLAIM FOR RELIEF

12. The adoption, promotion, endorsement, approval, and publicizing of Developmental Asset 19 by Defendants as stated above constitute an establishment of religion in violation of the First Amendment to the Constitution of the United States as applied to state and local governments by the Fourteenth Amendment. Such activities violate the following rights of Plaintiffs in that they:

- a. Show favoritism toward religion and religious institutions,
- b. Create an excessive entanglement with religion,
- c. Have the principal effect of advancing religion,
- d. Have no valid secular purpose,
- e. Turn Plaintiffs into outsiders based solely on religion,

- f. Place the Cherry Creek School District's imprimatur upon religious institutions which teach dogma with which Plaintiffs disagree,
- g. Spend Plaintiffs' tax dollars in promoting religious institutions with which Plaintiffs disagree, and
- h. Promote the idea that attendance at religious institutions is essential to good citizenship, an idea which is offensive to Plaintiffs.

13. The adoption, promotion, endorsement, approval, and publicizing of Developmental Asset 19 by Defendants conflict with numerous published opinions of the United States Supreme Court which has a tradition of protecting children in public schools from religious proselytizing. See *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000) (student-led prayer at sporting events); *Lee v. Weisman*, 505 U.S. 577 (1992) (graduation prayer); *Edwards v. Aguillard*, 482 U.S. 578 (1987) (creation science); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (moment of silence/prayer); *Stone v. Graham*, 449 U.S. 39 (1980) (posting Ten Commandments); *Epperson v. Arkansas*, 393 U.S. 97 (1968) (forbidding the teaching of evolution); *School Dist. of Abington Township v. Schempp*, 374 U.S. 203 (1963) (bible reading); and *McCullum v. Board of Education*, 333 U.S. 203 (1948) (religious instruction).

14. Defendants' policies, acts, and practices as stated above also violate Article IX, Section 8 of the Colorado Constitution which prohibits the teaching of sectarian tenets or doctrines. A public school which recommends that students attend a religious institution is *per se* engaged in sectarian instruction.

15. As a result of Defendants' policies, acts, and practices, Plaintiffs have suffered and are

continuing to suffer because they are deprived of their constitutional right to a public school education free from religion and religious influence.

16. The Defendants are continuing to implement the policies, acts, and practices complained of herein. (See Appendix D).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request the following relief and judgment:

A. That this Court issue a Declaratory Judgment declaring that Defendants, Defendants' officers, agents, employees, and other persons acting in concert with them violated Plaintiffs' constitutionally protected rights by adopting, promoting, endorsing, approving, and/or publicizing Developmental Asset 19 or any other program recommending or suggesting that students attend or engage in activities in religious institutions.

B. That this Court enjoin the parties identified in Paragraph A hereof from adopting, promoting, endorsing, approving, and/or publicizing Developmental Asset 19 or any other program recommending or suggesting that students attend or engage in activities in religious institutions.

C. That this Court order the Defendants to take remedial action including, but not limited to, retraction of its adoption, promotion, endorsement, approval, and publicizing of Developmental Asset 19 employing the same channels of communication as were previously employed in promoting and publicizing such Asset and that such retraction state that such acts, policies, and practices were unconstitutional.

D. That Plaintiffs be awarded costs and attorneys' fees pursuant to 42 U.S.C. §1988.

E. That this Court grant such other and further relief as it deems proper.

Respectfully submitted,

s/ Robert R. Tiernan

Robert R. Tiernan

3165 S. Waxberry Way

Denver, CO 80231

Telephone: (303) 671-2490

FAX: (303) 743-7810

E-mail: jwells1960@netzero.com

Attorney for the Plaintiffs

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Plaintiff Freedom From Religion Foundation, Inc.'s address:

304 W. Washington Avenue

Madison, WI 53703