

throughout Mercer County. This program advances and endorses one religion, improperly entangles public schools in religious affairs, and violates the personal consciences of nonreligious and non-Christian parents and students.

2. Plaintiffs seek a declaration that the “Bible in the Schools” program violates the Establishment Clause of the First Amendment and Article III, Section 15 of the West Virginia Constitution, an injunction prohibiting Defendants from administering or participating in the “Bible in the Schools” program in the future, nominal damages, and recovery of attorney fees and costs under 42 U.S.C. §1988(b).

JURISDICTION AND VENUE

3. The claims for relief and the causes of action arise under the First Amendment to the Constitution of the United States, as applied to West Virginia by the Fourteenth Amendment, and under 42 U.S.C. § 1983.

4. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

5. This Court has authority to issue a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57. This Court has authority to provide injunctive relief and damages under 28 U.S.C. § 1343 and Fed. R. Civ. P. 65.

6. This Court has supplemental jurisdiction over state claims pursuant to 28 U.S.C. § 1367.

7. Venue is proper under 28 U.S.C. § 1391(b) because the events giving rise to the Plaintiffs' claims occurred within this judicial district.

THE PARTIES

8. Plaintiff Freedom From Religion Foundation ("FFRF") is a national 501(c)(3) educational nonprofit. FFRF has more than 27,000 members nationwide, including members in West Virginia. FFRF defends the constitutional principle of separation between state and church and educates the public about the views of non-theists. FFRF advocates on behalf of its members throughout the United States.

9. Plaintiff Jane Doe is a member of FFRF.

10. Jane Doe resides within Mercer County and is the parent of a child, Jamie Doe, who attends a Mercer County Schools elementary school.

11. Plaintiff Jamie Doe is currently a kindergarten student at an elementary school within Mercer County Schools that offers bible classes beginning in first grade.

12. Plaintiff Elizabeth Deal resides within Mercer County and is the parent of a child, Jessica Roe.

13. Plaintiff Jessica Roe attended elementary schools within Mercer County from 2012 to 2016.

14. Defendant Mercer County Board of Education is charged with controlling and managing public schools within Mercer County.

15. Defendant Mercer County Schools operates public schools in Mercer County, West Virginia.

16. Defendant Deborah S. Akers is the Superintendent of Mercer County Schools.

17. Defendant Rebecca Peery is the principal of Memorial Primary School, a school within Mercer County Schools.

FACTUAL ALLEGATIONS

Bible Class History

18. Bible classes have been taught in Mercer County Schools for over 75 years.

19. Between 1939 and 1985, the bible classes were designed, financed, administered, and staffed by a small group of Mercer County citizens unaffiliated with Mercer County Schools.

20. In 1985, the parents of eight Mercer County Schools' students filed complaints with the state Education Department regarding the bible classes.

21. In response to these complaints, the Mercer County School Board made changes to how the program was run.

22. Since 1986, the “Bible in the Schools” program has been administered by the Mercer County Board of Education.

23. The Mercer County Board of Education has taken on all responsibilities for the program except financing.

24. Financing for the Bible in the Schools program is provided by the “Bluefield Bible Study Fund, Inc.,” a 501(c)(3) corporation created to organize, form, and operate a fund to pay for the Mercer County Schools’ teachers of the bible, who teach to approximately 4,000 students.

25. The “Bible in the Schools” program is currently active in 15 elementary schools, one intermediate school, and three middle schools throughout Mercer County.

26. The Bible in the Schools program instills religious teachings in elementary and middle school students.

27. The Bible in the Schools classes are designed to teach central tenets of Christianity and to encourage students to follow Christian teachings.

Jane Doe and Jamie Doe

28. Plaintiff Jane Doe plans for Jamie Doe to continue to receive an elementary school education within Mercer County Schools.

29. Beginning in August, Jane Doe plans on Jamie Doe attending first grade at the same school Jamie Doe currently attends as a kindergartner.

30. Jamie Doe's school is the most convenient school for Jamie Doe to attend.

31. Jane Doe is an atheist and wishes to raise her child, Jamie Doe, without religion.

32. As a parent of a Mercer County Schools student, Jane Doe has received information from the school system about its bible classes. Jane Doe does not wish for Jamie to participate in any school bible courses or to be ostracized by other students or staff because of Jamie's nonparticipation.

33. If the Bible in Schools program continues, Jamie Doe and Jane Doe face two untenable choices beginning in the first grade and continuing each year thereafter. Jamie will either be forced to attend bible indoctrination classes against the wishes and conscience of Jane Doe, or Jamie will be the only child or one of only a few children who do not participate. Jamie will therefore be made conspicuous by absence and essentially be identified as a non-Christian or nonbeliever, subjecting Jamie to the risk of ostracism from peers and even school staff.

Elizabeth Deal and Jessica Roe

34. Plaintiff Jessica Roe attended Memorial Primary School for kindergarten, first grade, and second grade from 2012 to 2015. While Jessica Roe

was enrolled, Defendants administered Bible in the Schools classes to Memorial Primary School students.

35. When Jessica Roe began first grade, Mercer County Schools sent home permission slips for the Bible in the Schools program. The permission slip did not include an option for parents to opt their children out of Bible in the Schools classes.

36. Based on the permission slip and nearly 100 percent participation in the bible classes, Elizabeth Deal felt pressure to enroll Jessica in the class.

37. Elizabeth identifies as agnostic. She wishes to educate Jessica about multiple religions so that Jessica can make her own religious choices. Elizabeth did not and does not want Jessica Roe to receive religious instruction from Jessica's public school.

38. Elizabeth did not want Jessica to attend Bible in the Schools classes so she did not return a signed permission slip.

39. In the beginning of her first grade school year, Jessica was placed in a coatroom area in the back of the classroom during the Bible in the Schools class. She could still hear what was said during the bible class.

40. Following a complaint by Elizabeth Deal to Memorial Primary School Principal Rebecca Peery, Jessica was removed from her first grade classroom during Bible in the Schools classes.

41. Principal Peery and Memorial Primary School did not have plans in place for how to handle students who did not participate in Bible in the Schools.

42. While in first and second grade, Principal Peery and Mercer County Schools failed to provide Jessica instruction or enrichment activities during Bible in the Schools classes. Jessica was placed in the library or in another classroom during bible classes. She most often read a book to herself.

43. Jessica Roe attended Bluefield Intermediate School for third grade during the 2015-16 school year. While Jessica Roe was enrolled, Mercer County Schools taught Bible in the Schools classes to Bluefield Intermediate School students.

44. During third grade at Bluefield Intermediate, Jessica was sent to the computer lab during bible classes. There, Jessica read books on her own and was not permitted to use the computers.

45. Jessica was harassed by other students for not participating in bible classes. Other students told her that she was going to hell and her parents were going to hell.

46. Because Jessica did not join her classmates during bible classes, she felt excluded.

47. Because Jessica was not participating in the Bible in the Schools classes with her classmates, Elizabeth Deal felt that she and Jessica were second-class citizens at the school.

48. Elizabeth removed Jessica from Mercer County Schools this school year to send Jessica to a neighboring school district. The Bible in the Schools program and the treatment Jessica received as a result of not participating in the bible classes were a major reason for her removal.

49. Jessica is currently a fourth grade student attending school in a neighboring school district.

50. Elizabeth incurred, and continues to incur, additional expenses in order to send Jessica to a school outside of Mercer County.

Bible Class Curriculum and Policies

51. On May 8, 2015, FFRF sent a freedom of information request to Mercer County Schools to obtain information regarding the “Bible in the Schools” program, as well as copies of certain course materials.

52. On August 26, 2016, FFRF received records related to the overall “Bible in the Schools” program.

53. Mercer County Schools requires that, at a minimum, bible teachers possess “a degree in Bible.”

54. Bible teachers within the school system provide instruction to multiple classrooms and travel between classrooms and schools.

55. Mercer County Schools provides written lessons to all itinerant bible teachers. Per Mercer County Schools policy, these lessons must be followed as given except for small wording changes and content revisions that have been approved at least two weeks before the lesson is taught.

56. There are approximately 70 to 90 visuals used in each lesson.

57. For example, Lesson 25, a copy of which is attached to this complaint as Exhibit 1, includes images of Jesus being whipped and tortured, Jesus' scarred body dragging a cross, Jesus being nailed to a cross, and Jesus ascending into heaven.

58. Learning goals for the bible curriculum include developing in the student a positive attitude towards biblical literature.

59. Learning objectives for the Old Testament curriculum include: knowing the biblical account of the beginning of the earth, mankind, civilization, nations, and languages, and the nature of early biblical man; knowing the promises to Abraham and the development of these promises through the families of Abraham, Isaac and Jacob; understanding the importance of the Ten Commandments and the tabernacle in the lives of the nation of Israel; and tracing

Israel's journeys through the wilderness and knowing the cause of the nation's failure.

60. Learning objectives for the New Testament curriculum include: understanding the circumstances and events prior to the birth of Jesus and their importance in relation to the preparation for Jesus' life; harmonizing the Matthew and Luke accounts of the birth of Jesus; analyzing and understanding the baptism and temptations of Jesus in relation to his work; knowing the purpose of the works of Jesus and the reactions of those who witnessed them; understanding the responses to Jesus by the people of his day; tracing and understanding the significance of the last week of Jesus' life on earth; reconstructing the events leading to the death of Jesus; harmonizing the four gospel accounts of the last days of Jesus; and formulating an overview of the effect of the last days of Jesus' life on the people of that time.

61. The bible classes are held weekly for 30 minutes in elementary schools and for 45 minutes in middle schools as a part of the regular school day.

62. Participation in the bible classes is said to be "voluntary" by Mercer County Schools. The overwhelming majority of students participate in bible classes.

63. Mercer County Schools policy requires reasonable alternatives for students who opt-out of the bible classes.

64. Upon information and belief, students at many schools have not been receiving alternative instruction.

Bible Class Lessons

65. In response to a freedom of information request, on September 12, 2016, FFRF received five of the approximately 75 lessons that are part of the curriculum.

66. The bible lessons involve reading students scripted interpretations of bible stories.

67. These bible lessons are similar to what a child might hear in a church's Sunday school.

Lesson 1 – Tucker

68. Lesson 1 of the bible class begins with a story that does not come from the bible.

69. Lesson 1 describes the point of this unrelated story: "It's usually a funny one, and it will show you how you can learn things from a lesson---things that will help you in your own life."

70. Lesson 1 prepares students for the type of moral teachings they will be receiving throughout the rest of their bible lessons.

71. Lesson 1 instructs students to listen to the directions and warnings that are given in the bible and to follow them in their own lives.

72. Lesson 1 says, “This year is so great. We will be studying about the life of Jesus, which is so exciting, and we will see the signs and warnings He gave to help the people.”

Lesson 2 – Beginnings

73. Lesson 2 of the bible class discusses Moses and the Hebrews as an introduction to teaching about Genesis.

74. Lesson 2 advocates for creationism and a belief that animals were created as stated in the bible rather than by natural processes. Lesson 2 states, “Moses was saying that when a dolphin had a little baby --- it didn’t have a baby octopus. It had a baby dolphin that was like itself. When a shark had a baby — it didn’t have a baby eagle or a baby sea turtle — the shark had a baby shark that was like itself.”

75. Creationism instruction in Lesson 2 includes having students imagine that human beings and dinosaurs existed at the same time. Lesson 2 says, “So picture Adam being able to crawl up on the back of a dinosaur! He and Eve could have their own personal water slide! Wouldn’t that be so wild!”

Lesson 6 – The Ten Commandments

76. Lesson 6 teaches students a version of the Ten Commandments.

77. For example, Lesson 6 says, “The very first law or commandment, reads, ‘You shall have no other gods before me.’” Lesson 6 continues, “In other

words, God was telling His people, ‘You shall have no other god than the Lord God!’”

78. Lesson 6 attributes legal prohibitions in the United States on killing and stealing to the Ten Commandments from the bible. Lesson 6 says, “Do you realize many of these commandments have become part of the laws of our country? They have also become part of our school rules and our home rules! Tell me some. Right ---- no murder, no stealing, no lying.”

79. Lesson 6 endorses the Ten Commandments as something students should follow.

80. For example, Lesson 6 says, “If all of the Israelites had chosen to follow the Ten Commandments, think of how safe and happy they would have been. They would never have been afraid someone would go into their tents and steal something. They would never have been afraid someone was lying about them. They would never have been afraid that anyone would hurt them ---- or someone they loved.”

Lesson 25 - The Crucifixion and Resurrection of Jesus Christ

81. Lesson 25 of the bible class is on the crucifixion and resurrection of Jesus, which is the core narrative of Christianity.

82. A copy of Lesson 25 is attached to this Complaint as Exhibit 1.

83. This lesson teaches about Jesus and his death as a moral lesson and as a way of introducing students to the key tenets of the Christian religion.

84. The elementary school approach to teaching this lesson begins by relaying a story about a South American tribal chief who demands that whoever has been stealing the tribe's chickens must pay with their life. The thief turns out to be the chief's own mother and the chief chooses to pay for the crimes that she committed with his own life. This is used to introduce the story of Jesus' crucifixion.

85. This lesson includes proselytizing statements such as, "So the theme--or subject---of the whole rest of the bible is about how God would make a way so that people's sins could be forgiven and they could be friends with God again if they chose."

86. This lesson includes references to history books in an attempt to color the stories depicted in the bible as historical fact. For example, Lesson 25 says, "As history books tell us ---- what the Roman soldiers used to beat Jesus with was called a cat-of-nine tails."

87. This lesson includes details that are not present in biblical accounts. These details come from the person who created the lesson and not from any historical or literary source. For example, Lesson 25 says, "They put the nails in this part of the hands---the part of the hand we call the wrist."

88. A note for teachers included in this lesson instructs them to “bring in a bamboo reed as a visual aid so that students will understand what a reed is when you get to the part about Jesus being beaten and mocked.”

89. The overall purpose behind the lesson is to inculcate the biblical account of Jesus’ death and resurrection.

Defendants’ conduct

90. The Mercer County Board of Education is responsible for adopting policies that govern Mercer County Schools, including schools that Jamie Doe and Jessica Roe are attending or have attended.

91. The Mercer County Board of Education is responsible for employing teachers and providing in-service training to teachers and other personnel recommended by the Superintendent.

92. The Mercer County Board of Education is responsible for adopting learning texts or textbooks for each subject for a period of five years upon the recommendation of the Superintendent.

93. By policy and practice, the Mercer County Board of Education approved of the Bible in the Schools program for students in first through eighth grade.

94. The Mercer County Board of Education and Mercer County Schools employ itinerant Bible in the Schools teachers.

95. The Mercer County Board of Education and Mercer County Schools employ teachers who teach young children Christianity.

96. Deborah Akers has the primary duties of implementing Mercer County Schools' policies and programs, consistent with the rules and regulations promulgated by the West Virginia Department of Education, the laws and Constitution of the State of West Virginia, and the laws and Constitution of the United States of America.

97. Deborah Akers has created policies supporting and implementing the Bible in the Schools program for approximately 25 years.

98. In overseeing the Bible in the Schools program, Deborah Akers has coerced students into receiving religious instruction.

99. Rebecca Peery was responsible for school policies and managing instruction at Memorial Primary School while Jessica Roe was enrolled as a student there.

100. Rebecca Peery was aware of the religious content of the Bible in the Schools program while Jessica Roe was a Memorial Primary School student.

101. Pursuant to Mercer County Board of Education Policy I-45, teachers are required to develop lesson plans for each subject they are responsible for teaching and they are directed to submit those plans to the school principal for review.

102. Policy I-45 directs school administrators to review and comment on lesson plans at least once every three months or more often as required by state policy.

103. Upon information and belief, Rebecca Peery has either approved of lessons related to the Bible in the Schools program or failed to review such lessons.

104. Following a complaint about Bible in the Schools by Elizabeth Deal, Rebecca Peery allowed the Bible in the Schools program to continue.

105. The Bible in the Schools program at Memorial Primary School under the leadership of Rebecca Peery forced Jessica Roe to be removed from the classroom and her classmates.

106. Mercer County Schools, Deborah Akers, and school principals, such as Rebecca Peery, worked in concert to implement and administer religious instruction to students.

CAUSES OF ACTION

107. Plaintiffs incorporate by reference every numbered paragraph above as if fully restated herein.

108. By administering bible instruction in the classroom to students in elementary and middle schools, Defendants and their agents or employees violate the Establishment Clause of the First Amendment, which is incorporated to the states by the Fourteenth Amendment to the United States Constitution.

109. This religious instruction also violates Article III, Section 15 of the West Virginia Constitution.

110. Defendants' policies, customs, and actions, as described herein, have no legitimate secular purpose, and instead have the purpose to advance Christianity.

111. Defendants' policies, customs, and actions have the effect of advancing and endorsing Christianity over all other religions and religion in general over nonreligion.

112. Defendants' actions improperly entangle the state in religious matters and beliefs.

113. Forcing Jane Doe to choose between putting her child in a bible class or subjecting her child to the risk of ostracism by opting out of the program will violate rights of conscience of Jane and Jamie Doe and therefore their First Amendment rights.

114. Defendants violated Jessica Roe and Elizabeth Deal's rights of conscience and their First Amendment rights by subjecting Jessica to a bible class and corresponding removal of her from her classmates during the school day

115. Defendants' practice violates longstanding United States Supreme Court precedent, including *McCullum v. Board of Education*, 333 U.S. 203 (1948).

116. The Defendants' bible classes encroach on the parental rights of Jane Doe and Elizabeth Deal. Jane Doe feels coerced by her government into subjecting her child to religious indoctrination and raising her child in a specific set of religious beliefs to which Jane Doe does not adhere. Elizabeth Doe felt coerced into sending her child to a religious class that she found objectionable.

117. Defendants' actions as described herein are acts and conduct performed under color of law within the meaning of 42 U.S.C. § 1983.

118. Defendants' unconstitutional acts described, if allowed to continue, will irreparably harm Plaintiffs.

119. Defendants' conduct, as described herein, unless enjoined, will cause, a deprivation of constitutional rights in violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request:

A. That this Court declare that Defendants' conduct as described herein violates the First and Fourteenth Amendments to the United States Constitution;

B. That this Court declare that Defendants' conduct as described herein violates Article III, Section 15 of the West Virginia Constitution.

C. That this Court permanently enjoin Defendants, in their official capacity, and their successors in office, and all their respective agents, employees,

and others in active concert with them from organizing, administering, or otherwise endorsing bible classes for Mercer County Schools' students in grades kindergarten through eighth grade;

D. That this Court award nominal damages to Plaintiffs Elizabeth Deal and Jessica Roe;

E. That this Court award Plaintiffs reasonable attorney fees and court costs incurred in prosecuting this action under 42 U.S.C. § 1988 and Fed. R. Civ. P. 54(d);

F. That this Court grant such additional relief, legal or equitable, as the Court deems appropriate.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2017, the foregoing **AMENDED COMPLAINT** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic case filing system and constitutes service of this filing under Rule 5(b)(2)(E) of the Federal Rules of Civil Procedure. Parties may access this filing through the Court's ECF system.

/s/ Marcus B. Schneider, Esquire
Marcus B. Schneider, Esquire