United States District Court
for the
District of South Carolina
Spartanburg Division

Robert Moss, et al., Plaintiffs v. Spartanburg County School District No. 7, a South Carolina body politic and corporate Defendant	)	Civil Action No. 7:09-cv-1586:HMH

PLAINTIFFS' REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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Pl. Mem. Supp. - Memorandum in Support of Motion for Summary Judgment, Filed November 19, 2010, dkt. 71-1.

Def. Mem. Supp. - Defendant's Memorandum in Support of Defendant's Motion for Summary Judgment, filed November 19, 2010, dkt. 72-1.

Pl. Resp. - Response of Plaintiffs to Defendant's Motion for Summary Judgment. filed December 6, 2010, dkt. 78.

Def. Resp. – Memorandum in Response to Plaintiffs' Motion for Summary Judgment, filed December 6, 2010, dkt. 79.

STATEMENT OF UNDISPUTED MATERIAL FACTS

These are the material facts, in summary:[1]

The RTCA, enacted June 2006, allowed direct grant of academic credit. As far as appears, it is the first statute to so allow. SCBEST favored granting the credit indirectly through private Christian schools rather than directly from defendant. In June 2006 defendant's Chairman told SCBEST that he also favored this approach. In October SCBEST and Oakbrook entered into a contract, to which defendant was not a party, which provided that Oakbrook would transfer the SCBEST grades to defendant and recited that "[defendant] will provide that students can transfer elective credit." The circumstantial implication is here to be drawn that the Chairman and SCBEST were involved in a joint endeavor. *Pl. Mem. Supp.*, p. 4.

In January 2007 SCBEST met with defendant's Instructional Services Committee and told them about the Christian nature of its course and the transfer arrangement with Oakbrook. *Id.* Later in January, after publicly thanking an SCBEST teacher for his contribution, defendant passed a motion to formulate a Policy modeled on the RTCA and to utilize SCBEST to provide

[1] Defendant has moved to strike some of these facts. Motions to Strike, dkts. 81, 82, 83. Plaintiffs will respond to these motions in due course.

the released time classes. Defendant and SCBEST then worked "in concert" to develop the Policy, including defendant utilizing an extensive scenario prepared by SCBEST which stated that Oakbrook, an accredited Christian school, would approve the SCBEST teachers, review its curriculum, and transfer its grades. *Pl. Mem. Supp.*, p. 7.

Superintendent Tobin and SCBEST discussed how each would contact parents about the course. SCBEST requested names and addresses of parents, which defendant supplied. SCBEST mailed its letter to parents in February 2007. *Pl. Mem. Supp.*, p. 8.

At its first reading the Policy provided that defendant "may award' credits, as the RTCA allowed and as the January motion contemplated. At the March 2007 board meeting, however, defendant substituted that it mandatorily "will accept" credits. *Pl. Mem. Supp.*, pp. 8-9.

Defendant was unhappy with the SCBEST letter because it said that defendant had "recently granted SCBEST approval to begin offering this class for elective credit." This statement was in accord with the January motion and with the Policy as of its first reading, but it did not say that the grade would be accepted by transfer from Oakbrook. The Transfer Regulations would have prevented acceptance of a credit directly from unaccredited SCBEST. Defendant drafted a "Dear Parents" letter to correct the SCBEST letter, even though the SCBEST letter had accurately described the situation as of the time it had been sent. At the request of SCBEST defendant later agreed not to send this letter. *Pl. Mem. Supp.*, p. 9.

At the same time defendant's Chairman was formulating a letter to plaintiff Robert Moss, who had made known his displeasure with the Policy and with released time at defendant's March meeting. Grayson Hartgrove of SCBEST learned of his displeasure and drafted a letter for the Chairman and sent it to the Superintendent, who forwarded it to the Chairman "for your information as you formulate your letter." *Pl. Mem. Supp.*, p. 10.

Defendant then accepted SCBEST grades through Oakbrook and credited them to student GPAs. Within memory defendant had never accepted a grade from an unaccredited school through an accredited school. Defendant relied on Oakbrook to evaluate the SCBEST classes. Defendant knew Oakbrook was a Christian school. The SCBEST teacher is not an Oakbrook employee. SCBEST classes are not held at Oakbrook. SCBEST is not listed in the Oakbrook catalogue. There is no evidence that the existence of the relationship with SCBEST was brought to the attention of Oakbrook's accrediting agency. Oakbrook never observed what occurred on SCBEST's premises. *Pl. Mem. Supp.*, pp. 5, 11.

SCBEST has made promotional visits to defendant's classes. SCBEST has participated in defendant's registration. Defendant has on occasion administered discipline to students for their behavior at SCBEST. Defendant has allowed SCBEST students to be released during an elective period, changing the previous requirement that they be released only during study hall. Superintendent White has encouraged Drew Martin, interceded with administrators whom Martin feared having offended, advised Martin how to communicate with administrators, and expressed interest in "growing this program." Defendant has had many meetings with SCBEST, attended by many senior administrators. *Pl. Mem. Supp.*, pp. 11-17.

Defendant's high school has numerous symbolic acknowledgements of Christianity, such as Christian prayers. *Pl. Mem. Supp.*, p. 18.[2]

[2] In this regard, plaintiffs failed to attach the products of two website visits mentioned at *Pl. Mem. Supp.*, p. 18. Plaintiffs regret this omission. These results are attached. Ex. 1 hereto (Nat'l Center for Educ. Statistics, U.S. Department of Education, Private School Universe Survey 2008-09. http:::nces.ed.gov:surveys:pss) (last visited 12-14-2010) shows that in Spartanburg County Inman Christian Academy, Mountain View Christian Academy, Oakbrook Preparatory School, Spartanburg Christian Academy and Spartanburg Day School offer tenth, eleventh and twelfth grades. Ex. 2 hereto (http:::b27.cc.trincoll.edu:weblogs:AmericanReligionSurvey-ARIS:reports:part3c_geog.html)

Defendant frequently claims that plaintiffs have misrepresented the record. It particularly emphasizes claimed misstatements of the testimony of Steve Smith and Superintendent White. *Def. Resp*. pp. 3, 4. Plaintiffs will rebut these two charges in detail, and requests the Court to take these rebuttals as illustrative of the tenor of defendant's other claims of misrepresentation of the record.

As to White: Defendant says that "[o]ne of the primary objectives of Plaintiffs' memorandum is to persuade the Court that Dr. Thomas White and . . . Drew Martin were close friends." *Def. Resp.,* 3. Defendant then immediately quotes deposition remarks of plaintiffs' counsel squarely to the contrary. Counsel remarked that whether Martin and White were friends "doesn't have very much to do with the lawsuit, so let's leave that out." Then defendant goes on to say that plaintiffs nevertheless "spend pages of their memorandum trying to *imply* a close friendship . . ." (emphasis added), and for that reason "[p]laintiffs' characterization of the evidence cannot be trusted." *Id.* Defendant has confused close friendship, which has little or nothing to do with the suit, with close cooperation, which is centrally important. Plaintiffs have presented the facts about Dr. White's aid to Martin in negotiating the bureaucratic process and his remarks showing evident support for SCBEST (*e.g.,* "I am interested in growing this program."). These actions of White demonstrate the "close cooperation" which indicates promotion of religious education. *McCollum v. Board of Education,* 333 .S. 203, 209, 68 S. Ct. 461, 92 L. Ed 2d 649 (1948).

(last visited 12-14-2010) shows that in South Carolina in 2008 the population was 10% Catholic, 73% other Christians, 2% other religions, 10% no religion, and 4% don't know:refused to answer. There is no Jewish private school in Spartanburg County. Ex. 3 hereto (Melissa Moss dep.), at 90:5-7.

As to Steve Smith, the matter is equally clear. Plaintiffs have not misrepresented the facts. Plaintiffs stated that "Oakbrook has not informed its accrediting agency of its relationship with SCBEST. Ex. 10 (Smith Dep.) 18:22-19:7; Ex. 8 (Seay Dep.) 30:13-31:2." *Pl. Mem. Supp.* p. 5. Defendant says that this statement "materially misrepresents former Oakbrook School Director Steven Smith's testimony." *Def. Resp.,* at 4. Here is the actual testimony:

Nancy Seay, Oakbrook's 30(b)(6) witness, testified:

Q: (By plaintiffs' counsel) Have you ever disclosed to SCISA [Oakbrook's accrediting agency] that you have this relationship with SCBEST?

A. I have not. I don't know what was done previously.[3]

Q. Is Oakbrook required by law to file certain reports probably annually but reports about its activities?

A. Yes.

Q. And who do you file those with?

A. I file them with the South Carolina Independent School Association office.

Q. And do any of those reports, to your knowledge, ever mention SCBEST?

A. It was not required information in the report that we send in the fall.

Q. So you didn't mention it?

A. No. (Ex. 8 to *Pl. Mem. Supp.* (Seay dep.), at 30:13-31:2)

Steve Smith testified:

Q. (By plaintiffs' counsel) Now, who accredited you?

A. The SCISA, the South Carolina Independent Schools Association. . . .

Q. Okay. Any other body accredit Oakbrook, to your knowledge?

A. No, not at that point.

[3] Smith was Head of Oakbrook prior to Seay.

Q. Okay. *Did you ever tell SCISA about SCBEST?*

A. *Not to my knowledge* . . . (emphasis added). (Ex. 10 to *Pl. Mem. Supp.* (Smith dep.) at 18:22-19:6).

This testimony bears out exactly what plaintiffs claimed for it: that Oakbrook has not informed its accrediting agency of its relationship with SCBEST.

Smith was then examined by defendant's counsel:

Q. Did you do anything to prevent SCISA from reviewing the SCBEST course?

A. No.

Q. Did you do anything to make sure that Oakbrook, or that SCISA did not see materials from Oakbrook?

A. No.

Q. Or from SCBEST?

A. No.

Q. And it's your understanding that materials from SCBEST were –

A. Would have been provided for their review. (Def. Ex. G (Smith dep.) at 49:9-19).

This is not competent testimony that materials were provided. It is in the subjunctive. It does not indicate any underlying basis in fact. It does not identify the materials. It does not identify the "understanding." Yet defendant says that this testimony means that "Oakbrook *submitted* SCBEST materials to SCISA . . ." (emphasis added). *Def. Resp.,* at 4. Defendant goes on to cite testimony that Smith believed that SCISA reviewed all the materials that Oakbrook submitted, but there is no showing that any SCBEST materials were submitted.

Defendant has accused plaintiffs without basis in fact. It is defendant who has mischaracterized the testimony.[4]

ARGUMENT

1(a). Plaintiffs have standing.

The individual plaintiffs have asserted two bases for their standing: that they are parents of a child who attends a public school that offers released time religious instruction and one of those children, and that they have also otherwise suffered injury-in-fact. *Pl. Mem. Supp.*, pp. 1-2, 19. Plaintiff FFRF has asserted that it has organizational standing. *Pl. Mem. Supp.,* pp. 2, 19. Plaintiffs have more fully briefed these matters at *Pl. Resp.,* pp. 1-9, which plaintiffs incorporate here by reference.[5]

[4] Defendant mentions several times that plaintiffs have not verified the authenticity of the deposition exhibits that plaintiffs have presented to the Court. *E.g., Def. Resp.*, p. 2. Plaintiffs believe this is not required. The custom is that counsel attached deposition exhibits, and unless opposing counsel objects they are considered authentic. Plaintiffs have nevertheless appended counsel's authentication. Ex. 4 hereto.

[5] Plaintiffs would not say more, except that defendant has moved to strike the affidavits which supply some of the factual basis for their claims to have standing. As a cautionary matter plaintiffs here add to the record from their depositions demonstrating their standing, as follows: Ex. 5 hereto (Robert Moss. Dep.), at 13:9; 29:13-23; 33:2-14; 40:20-41:21; 43:5-9; 43:24-44:10; 45:7-14; 47:15-51:7; 99:5-13; 109:2-6; Ex. 6 hereto (Dep. Ex. 158, ref. Robert Moss Dep., p. 29); Ex. 7 hereto (SPBG-00075-76, ref. Robert Moss. Dep., p. 41); Ex. 3 hereto (Melissa Moss dep.), at 37:14-39:4; Ex. 8 hereto (Plaintiff Tillett dep., vol. 1), at 6:2-10; 10:37; 11:22-12:8; 12:16-25; 16:7-15; 17:3-25; 18:22-19:9; 22: 10-13; 31:13-33:5; Ex. 9 hereto (Plaintiff Tillett dep., vol. 3), at 14:13-15:22; 27:22-29:8; 33:14-37:6; 40:12-41:1; 61:3-15; 72:2-73:11

If further proof is needed that FFRF's purpose is to protect the constitutional principle of separation of church and State, plaintiffs request that the Court judicially notice that purpose, as found in *Doe v. Porter,* 370 F. 3d 558, 562 (6th Cir. 2004) ("one of FFRF's central purposes is to challenge practices that violate the separation of church and state."). *See also FFRF, Inc. v. Bugher,* 249 F. 3d 606, 608 (7th Cir. 2001).

2(a). Defendant's grant of academic credit violates the Establishment Clause because its predominant purpose is to prefer religion in general and Christianity in particular.

Plaintiffs have argued that defendant has shown a predominately religious purpose by giving direct aid to SCBEST, and by the last-minute change to the Policy - which as interpreted by defendant effectively prevents all but Christian schools from offering released time religious instruction. *Pl. Mem. Supp.*, pp. 24-26. Defendant has responded by raising issues as to (1) whether it is constitutional for public schools to recognize private school credits for religious instruction, *Def. Resp.,* p. 11; (2) whether plaintiffs are invoking the purposes of SCBEST and Oakbrook rather than those of defendant, *id.,* p. 13; (3) whether plaintiffs are improperly relying on the personal motivations of defendant's officials, *id*., pp. 13-15; (4) whether defendant aided SCBEST, *id*., pp. 15-18; and (5) whether the last-minute change was only for ease of policy implementation and to indicate that course content would not be evaluated, *id.,* pp. 19-20.

2(a)(1). Whether it is constitutional for public schools to recognize private school credits for religious instruction.

There is no record support for defendant's several assertions that other public schools recognize private school credit for religious instruction. Defendant cites no authority on the issue. This issue is not presented by this case.

2(a)(2). Whether plaintiffs are invoking the purposes of SCBEST and Oakbrook rather than those of defendant.

Defendant claims that plaintiffs are attributing Oakbrook's purposes to defendant. Oakbrook's purpose in entering the arrangement with SCBEST was "to do something to support the Christian community." *Pl. Mem. Supp.,* p. 11. This is an understandable result of Chairman Hurst's preference that SCBEST arrange to transfer its grades through Oakbrook, *Pl. Mem. Supp.*, p. 11, and further supports plaintiffs' contention that defendant purposely selected a

Christian school to oversee the SCBEST curriculum, *id.* Defendant has admitted that it permitted Oakbrook to conduct its substantive review of the SCBEST course, *Def. Mem. Supp.*, pp. 29-30, and it knows that the SCBEST course is religious instruction, not Bible history. *Pl. Mem. Supp.*, p. 6. The fact of Oakbrook's motive also tends to corroborate plaintiffs' claim that defendant's purpose is to favor Christianity, since Chairman Hurst helped select Oakbrook.

2(a)(3). Whether plaintiffs are relying on the personal motivations of defendant's officials.

Defendant argues that plaintiffs have not shown the official action required by *Monell v. Dept. Social Services,* 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978), but instead have shown only the private intentions of defendant's officials. *Monell* held that a municipality could not be held liable under 42 U.S.C. 1983 in *respondeat superior,* but only for its own actions as shown by, for example, its "implement[ing] or execut[ing] a policy statement . . . or decision officially adopted and promulgated by its officers." 436 U.S. at 690. That is an exact description of what plaintiffs have shown here. Plaintiffs challenge defendant's implementation and execution of its official Policy. Plaintiffs rely on the actions of defendant's officials, not on their motivations, to show this implementation. Whether Superintendent White and Drew Martin are friends is not pertinent, but actions that White took to aid SCBEST and statements he made in that effort are the "readily discoverable fact" that proves purpose. *McCreary County v. ACLU,* 546 U.S. 844, 862, 125 S. Ct. 2722, 162 L. Ed. 2d 729 (2005). Defendant has confused intent with purpose, confused friendship with cooperation. Plaintiffs have proven purpose by facts and their reasonable inferences, not by speculations about secret intent. For example, Superintendent White's emails reveal his conduct that aided SCBEST. His Declaration (dkt. 79, Ex. H) about why he suspected that Martin was wroth with him, by contrast, concerns a matter of

personal friendship (or lack thereof) that is not relevant. The objective observer cannot read his mind, but may observe his actions and hear his statements and draw reasonable conclusions from them.

2(a)(4). Whether defendant aided SCBEST.

Defendant argues that three items of plaintiffs' proof are either not materially probative, (item 4(A), below), or are not supported by the record (4(B), (C)). *Def. Resp.,* pp. 16-19.

2(a)(4)(A). Defendant's denial of requests from SCBEST. Defendant is correct that on two occasions it denied requests by SCBEST. This is admissible evidence, though of limited materiality. Defendant did refuse to list SCBEST on its registration form, for an unknown reason but perhaps to avoid unconstitutional entanglement. Defendant also refused to grant honors credit to the SCBEST course. This was done because honors credit may be granted only for a third or higher level of a course. Ex. 10 hereto (White dep.), at 61:24-63:24.[6] This denial of SCBEST's request appears to be a routine application of an administrative rule, of little materiality as to defendant's purposes in aiding SCBEST.

2(a)(4)(B). The names and addresses of parents. Defendant argues that there is no direct evidence that it gave the names and addresses of parents to SCBEST. *Def. Resp.,* p. 18. Plaintiffs contend, and defendant does not appear to resist, that there is ample circumstantial evidence that it did so. SCBEST needed the information; defendant had the information; they discussed how they could each communicate with parents; and SCBEST got the information. Defendant does not deny that it gave them the information. *Pl. Mem. Supp.*, p. 8.

> Q: (By plaintiffs' counsel) So it's the substance of your knowledge that Defendant believes that Defendant supplied the names and addresses to SCBEST?

[6] Superintendent White relied on Oakbrook to determine that the SCBEST course did not qualify for honors credit. *Id.*

A. (Supt. White) I just can't prove that. I don't know that we did.

Ex. 10 hereto (White dep.), at 29:15-18.

Defendant next argues that even if the names and addresses were supplied, that is not probative of defendant's intent. *Def. Resp.*, p. 18. Defendant again confuses intent with purpose. In fact the information was supplied. This is proof of how the relationship between defendant and SCBEST worked, and is proof of purpose. *McCreary County, supra.*

2(a)(4)(C). The "Dear Parents" draft letter. Defendant argues that there is no evidence that the "Dear Parents" letter was not sent, or if it was sent, that sending was not due to defendant acceding to SCBEST's request. *Def. Resp.,* p. 19. Plaintiff Robert Moss testified that he never received such a letter. Ex. 5 hereto (Robert Moss dep.), at 29:13-18; Ex. 36 to *Pl. Mem. Supp.* (Dep. Ex. 158). That is evidence that it was not sent, since he as a parent would have been a recipient. SCBEST requested that it not be sent and Dr. Tobin promptly agreed not to send it. *Pl. Mem. Supp.*, p. 9. Defendant has not offered any evidence that it did send the letter, and it controls the files that would contain such proof.

2(a)(5). The purpose of the last-minute change. Defendant argues that the only purposes for the last-minute change were ease of implementation and to indicate that defendant would not be evaluating SCBEST course content. *Def. Resp.,* pp. 19-20. It is difficult to see how a change from "may award" to "will accept" has anything to do with course content. In any event, Director of Secondary Education McDaniel, on whom defendant relies to state its reasons for the Policy, testified that a purpose of the change was to prevent acceptance of credits from unaccredited schools.

> Q: . . . what you're telling me is that your understanding of the meaning of the change was that the release time religious education in any event, SCBEST or anybody else . . .

A. Anybody else.

Q. had to come through an accredited outside institution?

A. Yes. One that we could accept in terms of transfer credit.

Ex. 11 hereto (McDaniel dep.) at 32:9-18. This purpose fits neatly into the chain of events that resulted that only Christian released time courses could be offered. *Pl. Mem. Supp.*, p. 25.[7]

2(b). Defendant's grant of academic credit violates the Establishment Clause because its primary effect is to aid religion.

Plaintiffs argued previously that defendant directly and indirectly aided SCBEST by giving it names and addresses, not sending the "Dear Parents" letter that would have embarrassed SCBEST, and like events. *Pl. Mem. Supp.*, pp. 21-22. Defendant describes this argument as being that "District officials showed favoritism." *Def. Resp.,* p. 21. Having set up the straw man of favoritism, defendant knocks him over by stating that there is no evidence that others were treated worse than SCBEST. But, there is no rule that favoritism or comparative evidence must be shown to demonstrate that the government has aided religion. "Neither [a State not the Federal Government] can pass laws which *aid one religion, aid all religions*, or prefer one religion over another." *Everson v. Bd. of Education,* 330 U.S. 1, 15-16, 67 S. Ct. 504, 91 L. Ed. 2d 711 (1947) (emphasis added). If defendant directly aided SCBEST by granting pensions to its teachers, no comparative evidence would be required to show a constitutional

[7] Defendant invokes facts about the coverage and practices of accreditation agencies, relying on D. Ex. G-12 and G-13. *Def. Resp.,* p. 20. Plaintiffs object. These exhibits have not been presented at any deposition or otherwise authenticated. Plaintiffs also object to D. Exs.G-10 and G-11 for the same reason.

violation. Defendant cites no cases that favoritism need be shown and there are none. C*f., Larkin v. Grendel's Den,* 459 U.S. 116, 103 S. Ct. 505, 74 L. Ed. 2d 297 (1982), where zoning power was delegated to both schools and churches but the court did not mention schools in its analysis of religious effect. 459 U.S. at 125-26.

Defendant then faults plaintiffs for failing to show that Melissa Moss or plaintiff Tillett's child have been academically disadvantaged by defendant's factoring of SCBEST grades into GPAs. *Def. Resp.*, p. 26. The jury is still out on plaintiff Tillett's child, who has not yet graduated; but plaintiffs have never sought to prove academic disadvantage. The Third Amended Complaint, dkt. 57 ¶ 11, alleges only that students are "subject to" both academic advantage and disadvantage because SCBEST grades are factored into GPA. This potential harm is sufficient to show the unlawful effect of the practice. *See, e.g.*, *Committee for Public Educ. v. Nyquist,* 413 U.S. 756, 783, 93 S. Ct. 2955, 37 L. Ed. 2d 948 (1973**)** ("By reimbursing parents for a portion of this tuition bill, the State seeks to relieve their financial burdens sufficiently to assure that they continue to have the option to send their children to religion-oriented classes.") The potential GPA enhancement is an inducement to some to attend released time religious instruction. It is also a possibility inherent in the unchecked power that SCBEST has been given to award grades for religious reasons.

> We can assume that churches would act in good faith in their exercise of the . . . power . . . Yet § 16C does not by its terms require that churches' power be used in a religiously neutral way. 'The potential for conflict inheres in the situation.'" (citation omitted).

Larkin, 459 U.S. at 125.

2(c). Defendant's grant of academic credit violates the Establishment Clause because it allows a religious organization to exercise governmental power.

The only proof that this aspect of the case requires is that SCBEST is a religious organization and that it has been given an unrestrained power to perform a governmental function. *Larkin v. Grendel's Den, supra.* Defendant claims that plaintiffs have the "premise that only a public school may give academic grades," *Def. Resp.*, p. 28.[8] Plaintiffs' premise is quite different. It is that a public school may not grant to a religious institution the unrestrained power to award public school grades.

Defendant attempts to distinguish *Larkin* because it involved the delegation of legislative power. *Larkin* did not restrict its analysis to legislative functions, but instead considered the issue to be whether "significant *governmental* authority" (emphasis added) was vested in a religious organization. 459 U.S. at 126. The Court later characterized *Larkin* as holding that government "may not delegate a *governmental* power to a religious institution." *Allegheny County v. ACLU,* 492 U.S. 573, 590,109 S. Ct. 3086, 106 L. Ed. 2d 472 (1989) (emphasis supplied).

Defendant closes with what is presumably a key point to it: the claim that applying *Larkin* to this case will impact upon the nationwide practice of public school acceptance of private school credits for religious instruction, a matter about which there is no proof in the record. *Def. Resp.,* p. 29**.** This question is not presented.

[8] Defendant claims at this point in its argument that Wofford is a religious institution. *Def. Resp.,* p. 28. Plaintiffs object. This fact is not in the record.

CONCLUSION

Upon the reasoning and authority cited, the Court should grant plaintiffs' summary judgment motion.

Respectfully submitted, December 16, 2010.

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