

DISTRICT COURT,
CITY AND COUNTY OF DENVER, COLORADO
1437 Bannock Street, Denver, CO 80202

FREEDOM FROM RELIGION FOUNDATION, INC.,
MIKE SMITH,
DAVID HABECKER,
TIMOTHY G. BAILEY and
JEFF BAYSINGER,

Plaintiffs,

v.

BILL RITTER, JR., in his official capacity as
GOVERNOR OF THE STATE OF COLORADO, and
THE STATE OF COLORADO,

Defendants.

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Case Number: 08CV9799

Courtroom: 19

**PLAINTIFFS' RESPONSES TO DEFENDANTS' PROPOSED
FINDINGS OF FACT IN SUPPORT OF SUMMARY JUDGMENT**

STIPULATED FACTS

1. Freedom From Religion Foundation ("FFRF") is a non-profit corporation headquartered in Wisconsin. FFRF is registered to do business in Colorado and is in good standing.

Response: No dispute.

2. Members of FFRF, including, the named Plaintiffs, are residents of Colorado and are Colorado taxpayers.

Response: No dispute.

3. Bill Ritter, Jr., who is named as a defendant in his official capacity, is the Governor of the State of Colorado.

Response: No dispute.

4. On April 2, 1952, the Committee on the Judiciary of the U.S. House of Representatives issued a Report to Accompany H.J. Res. 382 to create a National Day of Prayer.

Response: No dispute.

5. Public Law 324, a Joint Resolution, was approved on April 17, 1952. It provides: "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President shall set aside and proclaim a suitable day each year, other than a Sunday, as a National Day of Prayer, on which the people of the United States may turn to God in prayer and meditation in churches, in groups, and as individuals."

Response: No dispute.

6. Public Law 324 was signed by President Harry Truman on April 17, 1952.

Response: No dispute

7. S. 1378, "An act to provide for setting aside the first Thursday in May as the date on which the National Day of Prayer is celebrated," was approved by the Senate on May 5, 1988, and signed into law by President Ronald Reagan on May 9, 1988.

Response: No dispute

8. The NDP Task Force, led by Shirley Dobson, writes to each state governor on an annual basis requesting a prayer proclamation, while referencing the NDP Task Force annual theme and supporting scriptural reference.

Response: No dispute.

9. Letters written by the NDP Task Force to governors requesting honorary proclamations are signed by Shirley Dobson, who reviews such letters before signing them.

Response: No dispute.

10. Honorary proclamations recognizing the National Day of Prayer were issued by the Governor of Colorado for at least 2004-2009.

11. The honorary proclamations issued by the Governor of Colorado from 2004-2008 each acknowledged the NDP Task Force annual theme and/or scriptural reference.

Response: No dispute.

12. The honorary proclamation issued by the Governor of Colorado in 2009 did not acknowledge the NDP Task Force annual theme or scriptural reference.

13 Response: No dispute.

DEFENDANTS' STATEMENT OF UNDISPUTED FACTS

Process for Submission and Issuance of Honorary Proclamations

1. As a public service, the Governor of the State of Colorado issues various honorary proclamations, photos, and letters of congratulation or recognition upon request. (Ex. A, Bannister Aff. at ¶ 4).

Response: No dispute that the Governor issues proclamations upon request, which proclamations are formally issued through the Governor's Office. The proclamations are intended to appear general and to indicate the Governor's support for the party requesting the proclamation. (Bannister Dep. at 15, 32-33, 40-41, 53-54 and 67.)¹ Such proclamations are then used by the requesting party to indicate the Governor's support, such as by the National Day of Prayer Task Force. (Bannister Dep. at 33; Bolton Aff., Exs. 23-33.) The Governor does not restrict parties who request proclamations from using them to show support for their activity or cause. (Bannister Dep. at 17, 33-34 and 91.)

2. The Governor is typically not involved in acting on, reviewing, or responding to requests for honorary proclamations, letters, or photo requests. Instead, the Governor's communications staff is responsible for reviewing and responding to requests for honorary proclamations and letters as they are submitted by members of the general public. (*Id.* at ¶¶ 5, 13).

Response: Dispute any insinuation that proclamations issued by the Governor are not official actions of the Governor's Office. In fact, proclamations are issued with

¹ Bannister Deposition is attached to Bolton Affidavit as Exhibit 1.

the Official Seal of the Executive Branch of the State of Colorado and they are issued by staff with full consent and authorization. Proclamations are official documents issued by the Governor's Office. (Bannister Dep. at 13-14, 81-82.)

3. Honorary proclamation requests may be submitted via facsimile, by mail, or through the Governor's website, at www.colorado.gov/governor. (*Id.* at ¶ 6).

Response: No dispute.

4. The Governor's Office receives several hundred honorary proclamation requests every year. Nearly every proclamation that is requested is issued. (*Id.* at ¶ 7).

Response: Dispute any insinuation that multiple Day of Prayer proclamations are issued each year.

5. Honorary proclamation requests must be accompanied by draft language for the honorary proclamation. When a request is submitted, a member of the Governor's Press/Communications staff reviews it for content. (*Id.* at ¶ 8).

Response: Dispute that a fully drafted Colorado Day of Prayer proclamation accompanied requests by the National Day of Prayer Task Force. Each request that the Governor issue a Day of Prayer Proclamation, however, did include an annual theme and scriptural reference that Mrs. Shirley Dobson requested be included in each governor's proclamation. (Bolton Aff., Ex. 8.)

6. If the content of the requested honorary proclamation does not seem to be problematic, or if it is similar to an honorary proclamation approved and issued in a prior year, the governor's Press/Communications staff will typically process and issue it without further review. (*Id.* at ¶ 9).

Response: Dispute any insinuation that proclamations issued by the Governor's Office do not constitute official acts of the Governor's Office or that proclamations are issued by staff without consent and authorization of the Governor's Office. (Bannister Dep. at 13-14 and 81-82.)

7. If the content of the requested honorary proclamation appears problematic, the Governor's Press/Communications staff submits it to the Director of Communications. The Director of Communications approves or rejects it, sometimes after consultation with legal counsel. (*Id.* at ¶ 10).

Response: Dispute any insinuation that proclamations issued by the Governor's Office are issued by staff without consent and authorization. (Bannister Dep. at 13-14 and 81-82.)

8. Requested honorary proclamations are occasionally rejected, although this is rare. For example, in one instance, an individual submitted an online honorary proclamation request, the suggested language of which attested to the requesting individual's good moral character. After researching the issue, the Governor's Press/Communications staff determined that the individual in question had been charged and was awaiting trial for murder in New York City. The Governor's staff did not issue this honorary proclamation. (*Id.* at ¶ 11).

Response: No dispute.

9. Occasionally, the Governor's staff determines that a letter of congratulations or recognition is more appropriate than an honorary proclamation, and will thus send such a letter instead of issuing an honorary proclamation. (*Id.* at ¶ 12).

Response: No dispute. In fact, letters of congratulation or recognition are deemed more appropriate than a proclamation when intended to be personalized, whereas proclamations imply more general applicability, such as the designation of a Colorado Day of Prayer. (Bannister Dep. at 32-33, 40-41, 53-54 and 67.)

10. Some requested honorary proclamations are edited for content. For example, the Armenian National Committee of America annually submits an honorary proclamation request for Armenian Genocide Awareness Day. As submitted, this honorary proclamation typically contains controversial language and statements. The Governor's Press/Communications staff edits the suggested language for content before approving and issuing the honorary proclamation. (*Id.* at ¶ 13).

Response: No dispute.

11. Most honorary proclamations are not personally reviewed, approved, or signed by the Governor himself. Once accepted by Press/Communications Staff, honorary proclamations typically receive the Governor's signature by a device called an "auto-pen." (*Id.* at ¶ 14).

Response: Dispute the insinuation that proclamations issued by the Governor's Office do not constitute official actions of the Governor. Proclamations are issued by the Governor's Office with the Governor's consent and authorization. (Bannister Dep. at 13-14 and 81-82.)

12. After an honorary proclamation has been approved and signed, it is mailed directly to the individual or group who requested it. Alternatively, the requesting individual or a representative of the requesting group may elect to pick the

honorary proclamation up in person from the Governor's Office at the State Capitol.

(Id. at ¶ 15).

Response: Dispute any insinuation that proclamations are not otherwise published or publicized after they are issued by the Governor's Office. In fact, proclamations often are publicized as evidence of the Governor's support. (Bolton Aff., Exs. 23-33; Bannister Dep. at 70.) Parties receiving proclamations are not restricted from publishing them or otherwise using them to tout the Governor's support for a particular activity or cause. (Bannister Dep. at 17, 33-34 and 91.)

13. In most instances, an honorary proclamation approved by the Governor's Office is not published, promoted or accompanied by a press release. *(Id. at ¶ 16).*

Response: Dispute any insinuation that proclamations are not otherwise published or publicized by the requesting party. No restrictions are placed on the use of official proclamations issued by the Governor in regard to publishing or publicizing proclamations or otherwise indicating the Governor's support. (Bannister Dep. at 17, 33-34 and 91.)

14. Copies of honorary proclamations that have been approved and issued may be requested by members of the general public. *(Id. at ¶ 17).*

Response: No dispute.

15. No hard copies of previously-issued honorary proclamations are kept on file. To save time for anticipated future requests or in case a copy is requested by a member of the general public, Press/Communications staff does save digital copies of honorary proclamations on a staff member's office computer. That file is used as a

template for future requests. Specifically, when the new annual request is received, office staff retrieves the old file from the previous year, updates it with new dates and other specifics, and then saves the new file in place of the previous one. Thus, copies of an honorary proclamation that is requested on an annual basis are only available until the next year's proclamation has been drafted. (*Id.* at ¶ 18).

Response: No dispute.

16. Hard copies of issued proclamations are not sent to the state archives. (*Id.* at ¶ 19).

Response: Dispute any insinuation that proclamations are not published or publicized, including by the requesting party. No limitations or restrictions are placed upon the publication or publicizing of proclamations, which are used to indicate the Governor's support. (Bannister Dep. at 17, 33-34 and 91; Bolton Aff., Exs. 23-33.)

17. Computer files from the Owens administration were archived at the end of Governor Owens' term. Those archived computer files should contain records of honorary proclamations issued during the Owens administration, although older honorary proclamations may have been written over. (*Id.* at ¶ 19).

Response: No dispute.

Day of Prayer Proclamations

18. In 2007 and 2008, the Governor's Office received honorary proclamation requests for a "Colorado Day of Prayer." These requests have been made on an annual basis throughout the Owens and Ritter administrations. Because the suggested language

for the proclamations was similar to that which had been used in prior years, the requests were accepted and the proclamations issued. (*Id.* at ¶ 20).

Response: No dispute, except note that the 2007 and 2008 "Colorado Day of Prayer" Proclamations each included a specific annual theme and scriptural reference, as requested by the National Day of Prayer Task Force, by Shirley Dobson. (Bolton Aff., Exs. 5 and 6.)

19. As is the case with nearly every honorary proclamation request, regardless of its subject, the 2007 and 2008 honorary proclamations issued for a "Colorado Day of Prayer" followed the language suggested by their proponents. (*Id.* at ¶ 21).

Response: No dispute as to the use of the annual theme and scriptural reference requested by Mrs. Dobson.

19. In 2009, the Governor's Office issued an Honorary Proclamation for a "Colorado Day of Prayer." However, the Honorary Proclamation issued in 2009 did not follow the thematic suggestions contained in that year's form letter from the NDP Task Force requesting the Honorary Proclamation. (*Id.* at ¶ 22).

Response: No dispute, but note that the 2009 and 2010 "Colorado Day of Prayer" Proclamations did not include the NDP Task Force annual theme and scriptural reference only after the commencement of the present litigation.

20. In order to have its annual requests for honorary proclamations considered, the NDP Task Force is required to follow the procedures for requesting honorary proclamations outlined on the Governor's website. These procedures apply to

all groups or individuals who wish to request an honorary proclamation, letter of recognition or congratulations, or photograph from the Governor. (*Id.* at ¶ 26).

Response: Dispute insofar as the NDP Task Force letters requesting a "Colorado Day of Prayer" Proclamation do not include a full draft of proposed language. The requests do include an annual theme and an annual scriptural reference, which were included in the "Colorado Day of Prayer" Proclamations, at least from 2004-2008. (Bolton Aff., Ex. 8.)

21. The 2007 and 2008 honorary proclamation requests for a "Colorado Day of Prayer" were not submitted either to Governor Ritter or to the director of communications for approval. (*Id.* at ¶ 23).

Response: Dispute any insinuation that the 2007 and 2008 "Colorado Day of Prayer" Proclamations were not issued with the full consent and authorization of the Governor's Office. These proclamations were issued with consent and authorization, and they include the Governor's authorized signature and the Official Seal of the Executive Office of the State of Colorado. (Bannister Dep. at 13-14 and 81-82; Bolton Aff., Exs. 2-7.)

22. The 2007, 2008, and 2009 honorary proclamations for a "Colorado Day of Prayer" were signed by the "auto-pen" device and mailed to the requesting party without any involvement by the Governor. (*Id.* at ¶ 24).

Response: Dispute the insinuation that the 2007 and 2008 "Colorado Day of Prayer" Proclamations were not issued with the full consent and authorization of the Governor's Office. These proclamations were issued with consent and authorization and

they include the Governor's authorized signature and the Official Seal of the Executive Office of the State of Colorado. (Bannister Dep. at 13-14 and 81-82; Bolton Aff., Exs. 2-7.)

23. The Governor's Office did not issue a press release or otherwise publicize the "Colorado Day of Prayer" proclamations in 2007, 2008, or 2009. (*Id.* at ¶ 25).

Response: Dispute. For example, in 2007, the Governor appeared at a public National Day of Prayer celebration held at the Capitol by the NDP Task Force, where the Governor spoke and read the 2007 Proclamation to an assembled audience. (Bolton Aff., Ex. 11.)

24. The honorary proclamations issued by the Governor of Colorado from 2004-2008 acknowledged the federal designation of the Day of Prayer by Congress and the President, as well as the history and ubiquity of the National Day of Prayer. (*Id.* at ¶ 27).

Response: No dispute that the "Colorado Day of Prayer" Proclamations referenced the federal designation of the Day of Prayer by Congress and the President, but dispute that the Proclamations acknowledge "the history and ubiquity of the National Day of Prayer." (Bolton Aff., Exs. 2-7.) In fact, the affiant Mr. Bannister does not know what ubiquity means as used in his Affidavit. (Bannister Dep. at 49.)

25. The Plaintiffs use the term "dedication," "dedicated," and "dedicating," in the Complaint (at ¶¶ 1, 13, 52, and 53, respectively), referring to the 2007 and 2008 Colorado Day of Prayer events and to all Honorary Proclamations recognizing a Colorado Day of Prayer from 2004-2009. (Ex. B, *Plaintiff FFRF's Responses to*

Defendants First Set of Interrogatories and First Request for Production of Documents, Interrogatory Responses 1 and 2.) The Defendants have not used these terms in connection with the honorary proclamations.

Response: Dispute that the 2007 and 2008 "Colorado Day of Prayer" Proclamations do not constitute a dedication. For example, the 2007 Proclamation states as follows: "I, Bill Ritter, Jr., Governor of the State of Colorado, do hereby proclaim May 3, 2007, COLORADO DAY OF PRAYER in the State of Colorado." (Bolton Aff., Ex. 5.) Similarly, the 2008 Proclamation states as follows: "I, Bill Ritter, Jr., Governor of the State of Colorado, do hereby proclaim May 1, 2008, COLORADO DAY OF PRAYER in the State of Colorado." (Bolton Aff., Ex. 6.)

26. The individual Plaintiffs do not claim that Governor Ritter or the State of Colorado has prevented them from exercising their right to non-belief, or exerted any coercion in this regard. (Ex. B, *Interrogatory Response 3.*)

Response: The Plaintiffs do not claim that the defendants coercively prevented them from exercising their right to non-belief. They do contend that the annual declaration of a "Colorado Day of Prayer" gives the appearance of religious endorsement. (Bolton Aff., Exs. 95-97.)

27. The Plaintiffs have not produced any evidence to support the allegation in the Complaint that each honorary proclamation affected each plaintiff's political status in the State of Colorado. To the contrary, they have made only the following bald assertions, which lack any evidentiary support.

- a. “[A]nnual declarations of a “Colorado Day of Prayer” give the appearance of elevating and endorsing religion as a solution to social problems, while encouraging all persons to believe in God,” and
- b. The honorary proclamations at issue “giv[e] the appearance that belief is preferable and that believers have special access to government leaders, including the Governor.”

(Ex. B, *Interrogatory Response 4.*)

Response: Dispute, including because the appearance of endorsement and access is supported by the Plaintiffs' perceptions. (Bolton Aff., Exs. 95-97.) In addition, the National Day of Prayer Task Force, by Mrs. Dobson, requests and publicizes such proclamations precisely because of the credibility they give to prayer. (Bolton Aff., Exs. 23-33.) In addition, published reports of Governor Ritter's own participation in Day of Prayer activities at the Capitol, including publicly reading the 2007 Proclamation at the Capitol, support the Plaintiffs' assertions. (Bolton Aff., Ex. 9.)

28. The individual Plaintiffs have not attended or participated in any Day of Prayer event in Colorado; nor have they been prevented from attending or participating in or acting at such event in any way they wished. (Ex. B, *Interrogatory Response 5.*)

Response: The Defendants' encouragement through annual proclamations that all citizens should actively participate in such events puts the Plaintiffs in the position of either violating their own freedom of conscience or being excluded from events touted by the Governor. (Bolton Aff., Exs. 95-97.) The Plaintiffs are put in the position of

being an outsider, at odds with the official dogma of religious belief. (Bolton Aff., Exs. 95-97.)

29. The Day of Prayer events held on the west steps of the State Capitol building are initiated, organized, and sponsored by private citizens. (Ex. C, *Affidavit of Rita Lambert*).

Response: The Defendants' annual "Colorado Day of Prayer" Proclamations provide the Governor's official support and credibility to such events. (Bolton Aff., Exs. 23-33.)

30. The Plaintiffs do not contend that the Governor or any other State official affected or took any other action with regard to the individual Plaintiffs' failure to attend any Day of Prayer event in Colorado. (Ex. B, *Interrogatory Response 6*.)

Response: The Plaintiffs do not contend that the Governor's annual proclamations of a "Colorado Day of Prayer" are accompanied by coerced belief or forced participation in prayer events, but there is an implicit expectation of such participation. The Plaintiffs further object that the annual proclamations give the appearance of religious endorsement. The Plaintiffs consider that such official encouragement to believe in God is inappropriate and non-believers should not be in the position of having to resist such overtures to pray. (Bolton Aff., Exs. 95-97.)

31. Plaintiffs have produced no evidence that they have been adversely affected by the issuance of honorary proclamations declaring a "Colorado Day of Prayer."

Response: The Plaintiffs do not contend that the Governor's annual proclamations of a "Colorado Day of Prayer" are accompanied by coerced belief or forced participation in prayer events, but there is an implicit expectation of such participation. The Plaintiffs further object that the annual proclamations give the appearance of religious endorsement. The Plaintiffs consider that such official encouragement to believe in God is inappropriate and non-believers should not be in the position of having to resist such overtures to pray. (Bolton Aff., Exs. 95-97.)

32. The Plaintiffs have produced no evidence demonstrating any affiliation, either formal or informal, between the NDP Task Force and the Governor or his staff.

Response: Dispute. The annual "Colorado Day of Prayer" Proclamations give the appearance of and they are touted by the National Day of Prayer Task Force as support by the Governor. (Bannister Dep. at 32-33.) The National Day of Prayer Task Force, moreover, is not restricted in any way from touting the Governor's proclamations as support. (Bannister Dep. at 17, 33-34 and 91.) In addition, the Governor has met with NDP Task Force organizers and has appeared and participated in their Day of Prayer activities at the Capitol. (Bolton Aff., Exs. 9 and 12.)

33. The Plaintiffs did not learn about or become exposed or subjected to the honorary proclamations by way of coercion, but instead became aware of them via media coverage. (Ex. B, *Interrogatory Response 7.*)

Response: No dispute that the Plaintiffs became aware of the Defendants' "Colorado Day of Prayer" Proclamations via media coverage. The proclamations are publicly touted by the NDP Task Force to give credibility to its organizing activities and

the proclamations are touted as official support. (Bolton Aff., Exs. 23-33; Bannister Dep. at 32-33.)

34. There is no item in the State budget or any expenditure of tax monies relating to the issuance of the honorary proclamations complained of, except to the extent that the Governor's attendance at a Day of Prayer event involved the use of paid State personnel, i.e. the Governor and his security. (Ex. B, *Interrogatory Response 8.*)

Response: No dispute.

35. The allegation that the Governor is aligned or associated with Reign Down USA is based on an internet report that Governor Ritter proclaimed April 26, 2008, to be a Day of Prayer in Colorado, in conjunction with an event sponsored by Reign Down USA. (Ex. B, *Interrogatory Response 9.*)

Response: No dispute.

36. The allegation that the language in the honorary proclamations at issue constitutes "exhortations to pray" is based on the Plaintiffs' declared belief that all of the language in the honorary proclamations encourages all citizens to actively pray. Specifically, the Plaintiffs allege that the language that "Americans will unite in prayer for our Nation, our State, our leaders and our people" is an exhortation to pray. (Ex. B, *Interrogatory Response 10.*)

Response: No dispute that the "Colorado Day of Prayer" Proclamations constitute encouragement to citizens to actively pray, which is precisely how the NDP Task Force touts such proclamations in order to promote their religious organizing activities. (Bolton Aff., Exs. 23-33 and 60-61.)

37. The allegation that the Governor made "related pronouncements endorsing prayer" is based solely on his alleged attendance at privately organized and sponsored Day of Prayer events at the Capitol in 2007 and 2008 and a prayer luncheon event in 2008. (Ex. B, *Interrogatory Response 11.*)

Response: No dispute.

38. The allegation that there were approximately 70 events held in Colorado in May 2009 is based on an article in the Rocky Mountain News dated May 4, 2007; in any event, none of the individual Plaintiffs attended such events and were not coerced to do so. (Ex. B, *Interrogatory Response 12.*)

Response: No dispute that Plaintiffs were not coerced to attend "Colorado Day of Prayer" activities, but the proclamations have the effect of treating non-believers as outsiders for not attending such events. (Bolton Aff., Exs. 95-97.)

39. The allegation concerning contacts between the governor and the NDP Task Force is based solely on the fact that Shirley Dobson, as chair of the NDP task force, writes to each governor, including the Governor of Colorado, requesting the issuance of a Day of Prayer proclamation; that such honorary proclamations have been issued since 2004; and that the 2004-2008 honorary proclamations included the annual theme and/or biblical reference suggested by the NDP Task Force. (Ex. B, *Interrogatory Response 13.*)

Response: Dispute, including because Governor Ritter actually met with NDP Task Force organizers prior to the 2007 "Colorado Day of Prayer," and he has

attended and actively participated in NDP Task Force Day of Prayer activities. (Bolton Aff., Exs. 9 and 12.)

40. The 2009 honorary proclamation did not include the NDP Task theme and/or biblical reference. (Ex. B, *Interrogatory Responses 13 and 14.*)

Response: No dispute that the 2009 "Colorado Day of Prayer" Proclamation did not include the NDP Task Force theme and/or biblical reference, but only after the filing of the present lawsuit in October, 2008.

41. The governors of all 50 states issued honorary proclamations or otherwise acknowledged (e.g., by letter) days of prayer in 2007, 2008, and 2009. Many of these proclamations, letters, or similar acknowledgments made reference to the theme and/or supporting scripture suggested by the NDP Task Force in its annual form letter. (*Background Statement of NDP History and NDP Task Force Involvement*, Ex. D, ¶¶ 110-112).

Response: No dispute.

42. The Plaintiffs' evidence supporting the allegation that the governor has "embraced" the NDP Task Force and/or Focus on the Family is as follows:

- a. The governor included the NDP Task Force annual theme and/or supporting scriptural reference in the 2004-2008 proclamations as requested by Shirley Dobson's form letter. (Ex. C, *Interrogatory Response 17*);
- b. The governor spoke briefly at an event hosted by the NDP task force on the National Day of Prayer in 2007. (Ex. C, *Interrogatory Response 21*).

Response: No dispute.

43. The Plaintiffs' evidence supporting the allegation that the governor has worked, or is currently working, "hand-in-glove" with the NDP Task Force and/or Focus on the Family is that the honorary proclamations issued in 2004-2008 incorporated the NDP Task Force annual theme and/or supporting scriptural reference as suggested in the form letters submitted by Shirley Dobson. (Ex. C, *Interrogatory Response 18.*)

Response: No dispute, but additionally, the NDP Task Force actively touts annual "Day of Prayer" Proclamations as evidencing the Governor's support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited by the Governor. (Bannister Dep. at 17, 33-34 and 91.)

44. The Plaintiffs' evidence supporting the allegation that the governor or his predecessor has a "collaborative" relationship with the NDP Task Force and/or Focus on the Family is that the honorary proclamations issued in 2004-2008 incorporated the NDP Task Force annual theme and/or supporting scriptural reference suggested in the form letters submitted by Shirley Dobson. (Ex. C, *Interrogatory Response 19.*)

Response: No dispute, but note additionally that the NDP Task Force actively touts annual "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

45. The Plaintiffs' evidence supporting the allegation that the governor endorses the religious principles of the NDP Task Force and/or Focus on the Family is that the honorary proclamations issued in 2004-2008 included the NDP Task Force annual theme and/or supporting scriptural reference as suggested in the form letters submitted by Shirley Dobson. (Ex. C, *Interrogatory Response 20.*)

Response: No dispute, but additionally, the NDP Task Force actively touts annual "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

46. The Plaintiffs' evidence supporting the allegation that the governor endorses religion in violation of the Colorado Constitution is that: 1) since 2004, he or his predecessor has issued an annual honorary proclamation declaring a Day of Prayer at the request of the National Day of Prayer Task Force; 2) in 2007, he spoke briefly at a public event organized by the NDP Task Force and held on the Capitol steps; and 3) he has allegedly attended Colorado Prayer luncheons, including in 2008. (Ex. C, *Interrogatory Response 21.*)

Response: No dispute, but additionally, the NDP Task Force actively touts annual "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

47. The Plaintiffs' evidence supporting the allegation that the governor supports "an indelible bond between church and state" is that the honorary

proclamations issued between 2004 and 2008 included annual themes and scriptural references suggested by the NDP Task Force. (Ex. C. *Interrogatory Response 22.*)

Response: No dispute, but additionally, the NDP Task Force actively touts annual "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

48. The Plaintiffs' evidence supporting the allegation that the governor endorses public celebrations of religion by public officials, as distinguished from freedom of religion, is that:

- a. the governor or his predecessor has issued honorary proclamations declaring a Day of Prayer since 2004;
- b. the 2004-2008 honorary proclamations included an annual theme and scriptural reference chosen by the NDP Task Force;
- c. the Plaintiffs allege that issuance of such proclamations constitutes a celebration of religion by public officials;
- d. the governor made brief remarks at a privately-organized (but open to the public) event held on the Capitol steps in 2007; and he has allegedly attended Colorado Prayer luncheons, including in 2008.

(Ex. C, *Interrogatory Response 23.*)

Response: No dispute, but additionally, the NDP Task Force actively touts annual "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-

33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

49. The Plaintiffs' evidence supporting the allegation that the words or phrases in the honorary proclamations convey to non-religious Americans that they are expected to believe in God is that: 1) the issuance of an annual Colorado Day of Prayer honorary proclamation gives the appearance that the government views religion as the solution to social problems, therefore allegedly elevating religion to the status of generally accepted dogma in which all citizens are encouraged to believe, including belief in a God; and 2) the Plaintiffs are non-believers who perceive the proclamations to be an encouragement for them to believe in a God, which they allege violates their freedom of conscience. (Ex. C, *Interrogatory Response 24.*)

Response: No dispute, but additionally, the NDP Task Force actively touts annual "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

50. The Plaintiffs' evidence supporting the allegation that the governor prefers religion over non-religion for all Colorado citizens is that an honorary proclamation recognizing the annual "Colorado Day of Prayer" allegedly gives this appearance, including elevating religion to the status of a preferred solution to problems and by encouraging all citizens to believe in a God. (Ex. C, *Interrogatory Response 25.*)

Response: No dispute, but additionally, the NDP Task Force actively touts annual "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

51. The Plaintiffs' evidence supporting the allegation that believers are made political insiders while non-believers remain political outsiders, and how this alleged belief specifically affects the lives of Plaintiffs and other Colorado citizens is as follows:

- a. issuance of an annual "Colorado Day of Prayer" proclamation allegedly gives this appearance, because no proclamations extolling the role of religion are allegedly issued;
- b. inclusion of the annual theme and/or scriptural reference chosen by the NDP Task Force in the 2004-2008 proclamations allegedly gives the appearance that believers have access to government leaders;
- c. while the Plaintiffs do not allege they have been coerced into becoming believers, they allege that the proclamations give the appearance to the Plaintiffs and others that religion is preferred and expected, and that the Plaintiffs' non-belief is disfavored and discouraged;
- d. the Plaintiffs allege that they are put in a position of having to justify their non-belief (although they have provided no evidence on this point).

(Ex. C, *Interrogatory Response 26.*)

Response: No dispute, but additionally, the NDP Task Force actively touts annual "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

52. The Plaintiffs' evidence supporting the allegation that honorary proclamations become known to all citizens is that honorary proclamations are allegedly intended to become known to all citizens of the State, and proclamations are allegedly broadcast through extensive media coverage on the internet, in print media, and by broadcast media. (Ex. C, *Interrogatory Response 27.*)

Response: No dispute, but additionally, the NDP Task Force actively touts annual "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

53. The Plaintiffs' evidence supporting the allegation that the honorary proclamations create a hostile environment for the Plaintiffs is as follows:

- a. the governor's honorary proclamation of a "Colorado Day of Prayer" allegedly gives the appearance that he encourages religion as a preferred solution to problems and that all citizens should believe in God;
- b. the issuance of the honorary proclamations allegedly causes the Plaintiffs to have to defend their non-belief (a point on which the Plaintiffs have offered no evidence);

- c. the Plaintiffs believe that issuance of the honorary proclamations violates their freedom of conscience, which is magnified by alleged annual media hoopla, which they allege the governor promotes; and
- d. the Plaintiffs believe they are made to feel like stigmatized outsiders, who must defend or justify their non-belief.

(Ex. C, *Interrogatory Response 28.*)

Response: No dispute, but additionally, the NDP Task Force actively touts annual "Day of Prayer" Proclamations as evidencing official support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

54. The Plaintiffs' evidence supporting the allegation that the Plaintiffs and other FFRF members in Colorado are subjected or exposed to unwanted honorary proclamations or commands to pray is that the proclamations are allegedly intended to be broadcast publicly and become known to all citizens via the media. (Ex. C, *Interrogatory Response 29.*)

Response: No dispute, but additionally, the NDP Task Force actively touts annual "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

55. The Plaintiffs' evidence supporting the allegation that the government, including the State of Colorado and the governor, have induced celebrations of religion in the public realm is as follows:

- a. millions of Americans in thousands of events across the country have allegedly participated in public Day of Prayer events because of the Day of Prayer proclamations by various government officials;
- b. Governor Ritter allegedly attended public Day of Prayer events in 2007 and 2008;
- c. Plaintiffs allege that the honorary proclamations go beyond simply acknowledging independently organized events and hosted events, and instead allege that the honorary proclamations explicitly endorse such events and the message that they convey, and also encourage public participation in them.

(Ex. C, *Interrogatory Response 30.*)

Response: No dispute, but additionally, the NDP Task Force actively touts official "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.) The Governor's annual proclamation of a Colorado Day of Prayer gives support and credibility. (Bolton Aff., Exs. 23-33.)

56. The Plaintiffs' evidence supporting the allegation that the governor's actions constitute a culture of officially-sanctioned religiosity is that: 1) the governor has issued honorary proclamations acknowledging a "Colorado Day of Prayer," which allegedly encourage all citizens to believe in God; 2) thus precipitating massive Day of Prayer events.

(Ex. C, *Interrogatory Response 31.*)

Response: No dispute, but additionally, the NDP Task Force actively touts official "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of

such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

57. The Plaintiffs' evidence supporting the allegation that Colorado's governor has "dedicated" a Day of Prayer is that since 2004 he or his predecessor has issued an honorary proclamation acknowledging a "Colorado Day of Prayer" on the day designated by federal law for the National Day of Prayer, and at the request of the NDP task force. (Ex. C, *Interrogatory Response 32.*)

Response: Dispute that proclaiming a Colorado Day of Prayer is an acknowledgement and not a dedication.

58. The Plaintiffs' evidence supporting the allegation that the governor or his predecessor officially supports and advocates religion through the medium of prayer for all Colorado citizens is that he has issued annual honorary proclamations acknowledging a "Colorado Day of Prayer," which proclamations allegedly include the endorsement of religion as practiced through prayer; and that the 2004-2008 proclamations included an annual theme and/or scriptural reference chosen by the NDP Task Force headed by Shirley Dobson. (Ex. C, *Interrogatory Response 33.*)

Response: No dispute, but additionally, the NDP Task Force actively touts official "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

59. The Plaintiffs' evidence supporting the allegation that the interests and behavior of Plaintiffs and other FFRF members in Colorado are injured or affected by actions of the governor is that the Plaintiffs perceive that their freedom of personal conscience is

violated and that the government apparently prefers religion and allegedly stigmatizes Plaintiffs who must defend or justify their non-belief. (Ex. C, *Interrogatory Response 34*.)

Response: No dispute.

60. The Plaintiffs' evidence supporting the allegation that the governor has officially admonished anyone to pray is that he has issued annual honorary proclamations acknowledging a "Colorado Day of Prayer," which allegedly encourage all citizens to pray and believe in God. (Ex. C, *Interrogatory Response 35*.)

Response: No dispute, but additionally, the NDP Task Force actively touts official "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.)

61. The Plaintiffs' evidence supporting the allegation that the text of the honorary proclamations endorses religion per se, as distinguished from religious freedom, is that the governor has issued honorary proclamations acknowledging a "Colorado Day of Prayer." (Ex. C, *Interrogatory Response 23*.)

Response: No dispute, but additionally, the NDP Task Force actively touts official "Day of Prayer" Proclamations as evidencing support. (Bolton Aff., Exs. 23-33.) The use of such proclamations to tout official support is known by the Governor's Office and it is not prohibited. (Bannister Dep. at 17, 33-34 and 91.) The proclamations themselves declare a specified date to be the official Colorado Day of Prayer. (Bolton Aff., Exs. 2-7.)