

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

Civil Action No. 07-cv-02126-MSK-CBS

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

Plaintiffs,

v.

CHERRY CREEK SCHOOL DISTRICT # 5; and  
MONTE C. MOSES, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF SCHOOLS  
OF CHERRY CREEK SCHOOL DISTRICT # 5,

Defendants.

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**MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT**

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COME NOW the Plaintiffs, by undersigned counsel, and hereby move the Court for leave to file a Third Amended Complaint herein.

**Certificate Under D.C.Colo.LCivR 7.1A**

Counsel for the Plaintiffs has conferred with counsel for the Defendants by telephone to resolve this matter and advises the Court that Defendants do not consent to the filing of this Motion.

By Order dated September 8, 2008, the Court dismissed this case. However, it stayed the Order for ten days during which time Plaintiffs would be allowed to file a third amended complaint.

Most of the changes in the Third Amended Complaint are attributable to new information supplied by Messrs. Barton G. Prieve and Robert L. Stuart which was not available when the previous complaints were filed. Both Messrs. Prieve and Stuart have been very active in the Defendant School District's activities and they only stepped forward to provide information to Plaintiffs' counsel within the past month.

Plaintiffs have amended their complaint to add the following facts and allegations:

a. Plaintiffs are now challenging the 40 Development Assets on two grounds: First, that the 40 Assets taken as a unit constitute a moral code promulgated by the Lutheran church or a sect thereof and are therefore, constitutionally impermissible and, second, that Asset 19 standing alone violates the Establishment Clause.

b. The 40 Developmental Assets, including Asset 19, are being taught and discussed in the classroom and students are not given the opportunity to leave the classroom at such times.

c. Contrary to the claims made by the Defendants about the benefits of the 40 Developmental Assets, there is no reliable research to support such claims for Asset 19 or for any of the other 39 Assets.

d. The Search Institute which developed the 40 Developmental Assets was and is a highly sectarian institution and each Asset, including Asset 19, is based on a specific biblical reference.

e. The Assets are not only promoted to parents of students in Defendant School District, they are also heavily promoted to the student body.

f. This Third Amended Complaint is more specific about the injuries claimed by Plaintiffs as the result of Defendants' promotion of Asset 19 and the other 39 Assets.

Associated with this Motion is a Motion for Reconsideration. In sum, that Motion asks the Court to vacate its dismissal order and allow this case to proceed. The arguments set forth in the Motion are incorporated herein by reference.

For the foregoing reasons, it is respectfully requested that this Motion for Leave to file a Third Amended Complaint be granted. An appropriate order is attached hereto.

Respectfully submitted,

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Attorney for the Plaintiffs

#### **CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

[rjbanta@bantahoyt.com](mailto:rjbanta@bantahoyt.com)

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