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11

12 UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 EASTERN DIVISION
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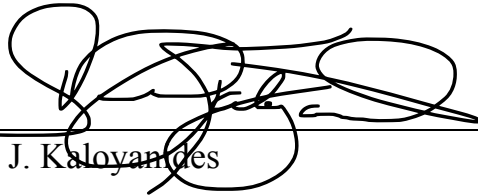
FREEDOM FROM RELIGION)	Case No.: 5:14-CV-2336 JGB (DTBx)
FOUNDATION, INC., et al.,)	
)	PLAINTIFFS' SUPPLEMENTAL
Plaintiffs,)	BRIEF IN SUPPORT OF PLAINTIFFS'
vs.)	MOTION FOR SUMMARY
)	JUDGMENT
CHINO VALLEY UNIFIED)	
SCHOOL DISTRICT BOARD OF)	Hearing Date: November 16, 2015
EDUCATION, etc. et al,)	Hearing Time: 9:00 a.m.
)	Courtroom: 1 Riverside
Defendants.)	Hon. Jesus G. Bernal

21 Pursuant to the Court's request, Plaintiffs Freedom From Religion Foundation,
22 Inc., Michael Anderson, Larry Maldonado, and Does 1-20 inclusive, by and through
23

1 their attorney of record in this case, David J. Kaloyanides, hereby submit this
2 Supplemental Brief in Support of Plaintiffs' Motion for Summary Judgment.

3 Respectfully submitted,

4
5 Dated: November 22, 2015

6 
7 _____
8 David J. Kaloyanides

9 Andrew Seidel
10 Rebecca Markert
11 Freedom from Religion Foundation, Inc.

12 Attorneys for Plaintiffs
13 Freedom From Religion Foundation,
14 Inc., Michael Anderson, Larry
15 Maldonado, and Does 1-20 inclusive.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

At the conclusion of the hearing on the parties’ cross Motions for Summary Judgment, the Court requested additional briefing from plaintiffs regarding two subjects. First, the Court requested plaintiffs to address the need for specificity in establishing standing and to provide the Court with the dates of the meetings the plaintiffs attended as well as the prayers given at those meetings. Second, the Court requested that plaintiffs address the basis for plaintiffs’ request for an award of nominal damages in this case.

As discussed below, specificity of the kind that identifies each meeting that each plaintiffs attended by date is not required to show standing in Establishment Clause cases. *Vasquez v. Los Angeles ("LA") Cty.*, 487 F.3d 1246, 1249 (9th Cir. 2007) (allegation that plaintiff had “daily contact” sufficient to confer standing); *Buono v. Norton*, 371 F.3d 543, 546 (9th Cir. 2004) (allegation that plaintiff “visit[s] the Preserve two to four times a year on average” sufficient to confer standing). However, plaintiffs supplemental declarations, filed concurrently herewith, provide the details of the meeting dates and the prayers conducted at those meetings.

In addition, plaintiffs are entitled to an award of nominal damages in this case. Nominal damages awards are appropriate where a constitutional right is violated even in the absence of proof of actual injury.

II. DISCUSSION

A. PLAINTIFFS ENCOUNTERED THE OFFENDING PRAYER POLICY AT EACH OF THE SCHOOL BOARD MEETINGS THEY ATTENDED.

General principles of Article III standing require that a plaintiff have standing at the inception of the litigation. *See Friends of the Earth, Inc. v. Laidlaw Envntl. Servs.*, 528

1 U.S. 167, 180, 120 S.Ct. 693, 145 L.Ed2d 610 (2000) (“[W]e have an obligation to
2 assure ourselves that [the plaintiff] had Article III standing at the outset of the
3 litigation.”). In Establishment Clause cases, standing arises from direct contact with an
4 offensive religious or anti-religious symbol. *See Vasquez v. Los Angeles (LA) County*,
5 487 F.3d 1246, 1251 (9th Cir. 2007) (county resident was found to have a “sufficiently
6 concrete injury” giving rise to standing to bring action against county for removing the
7 image of the cross from the county’s official seal, because he had “unwelcome direct
8 contact” with the seal on a regular basis); *see also Van Orden v. Perry*, 545 U.S. 677,
9 125 S.Ct. 2854, 162 L.Ed.2d 607 (2005) (plaintiff who passes by the Capitol grounds on
10 his way to the library northwest of the Capitol building was found to have standing to
11 question the religious monument erected on the Capitol grounds).

12 Even defendants’ often cited case, *Town of Greece*, acknowledged that standing
13 was sufficient where the plaintiffs alleged simply that they “felt uncomfortable and
14 offended by the allegedly sectarian prayers.” *Galloway v. Town of Greece*, 732 F. Supp.
15 2d 195, 215 (W.D.N.Y. 2010) rev'd, 681 F.3d 20 (2d Cir. 2012) *rev'd sub nom. Town of*
16 *Greece, N.Y. v. Galloway*, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014). Defendants in
17 *Town of Greece* argued at the district court level that “that the plaintiffs do not have
18 standing to challenge what was said in Town Board meetings which the plaintiffs have
19 no specific memory of attending.” *Galloway, supra*, 681 F.3d. at 30. This argument was
20 squarely rejected:

21 The defendants argue, however, that the plaintiffs do not have standing to
22 challenge what was said in Town Board meetings which the plaintiffs have
23 no specific memory of attending. The Supreme Court did not adopt such a
24

1 restrictive view of the prayer practice under challenge in *Marsh* [*v.*
2 *Chambers*]. Nor has any circuit, as far as we are aware, adopted such a view
3 in assessing a challenge to legislative prayer.

4 *Id.* at 30 n.4.

5 There is no requirement for detailed allegations to include date, time, or even
6 specific memory of attending meetings to confer standing in an Establishment Clause
7 case.

8 As discussed previously in plaintiffs' papers in support of their Motion for
9 Summary Judgment, the Ninth Circuit has found standing even where the offensive
10 government conduct is merely an official government enactment such as a resolution. In
11 *Catholic League for Religious & Civil Rights v. City & Cnty. of San Francisco*, 624 F.3d
12 1043 (9th Cir. 2010), plaintiffs alleged that they lived within the city that was subjected
13 to the resolution that plaintiffs alleged conveyed a message of hostility towards their
14 belief. This was enough contact with the offending Resolution sufficient to show
15 standing. *Id.* at 1053.

16 Finally, specificity of date and time in alleging unwelcome contact with the
17 offending conduct is not required because feelings of marginalization and exclusion are
18 cognizable forms of injury, particularly in the Establishment Clause context. One of the
19 core objectives of modern Establishment Clause jurisprudence is to prevent the
20 government from sending a message to non-adherents of a particular religion that they
21 are not full members of the community.

22 By showing a purpose to favor religion, the government "sends the ...
23 message to ... nonadherents 'that they are outsiders, not full members of the
24

1 political community, and an accompanying message to adherents that they
2 are insiders, favored members’ ” *Santa Fe Independent School Dist. v.*
3 *Doe*, 530 U.S. 290, 309–310, 120 S.Ct. 2266, 147 L.Ed.2d 295 (2000)
4 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688, 104 S.Ct. 1355, 79 L.Ed.2d
5 604 (1984) (O’CONNOR, J., concurring)).

6 *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860, 125
7 S.Ct. 2722, 162 L.Ed. 2d 729 (2005).

8 Coupled with the fact that this is a school issue and “students and parents of
9 students attending public schools ... enjoy a cluster of rights vis-a-vis their schools, and
10 thus are not merely concerned bystanders,” plaintiffs’ standing in this case is clear. *See*
11 *Doe v. Sch. Bd. of Ouachita Parish*, 274 F.3d 289, 292 (5th Cir.2001); *see also Catholic*
12 *League for Religious & Civil Rights v. City & Cty. of San Francisco*, 624 F.3d 1043,
13 1070 (9th Cir. 2010) (“When plaintiffs regularly attend events at which an invocation
14 occurs, however, the plaintiffs have standing because they have been subjected to
15 unwelcome religious exercises.”). The Supreme Court has repeatedly held that children
16 and their parents have the right to receive a public education that complies with the
17 Establishment Clause. *See Sch. Dist. of Abington Township v. Schempp*, 374 U.S. 203,
18 224 n. 9, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963); *People ex rel. McCollum v. Bd. of*
19 *Educ.*, 333 U.S. 203, 206, 68 S.Ct. 461, 92 L.Ed. 649 (1948).

20 Specificity as to the date of the encounter with the offending religious conduct is
21 not necessary to confer standing and need not be alleged nor proved. Nevertheless, as
22 demonstrated by the supplemental declarations requested by the Court, plaintiffs have
23 shown a direct connection to the defendants’ offending policy and conduct setting forth
24

1 the dates of the meetings and the specific prayers given at those meetings. The
 2 individual plaintiffs are either employees of defendants or have children who are
 3 students within the District. All have attended and want to continue attending the School
 4 Board meetings. The plaintiffs want to attend meetings without being subject to
 5 defendants' unconstitutional prayer policy and religious conduct.

6 For the Court's convenience, the following chart summarizes the attendance of
 7 plaintiffs Larry Maldonado and DOEs 4, 5, 6, 7, 9, 10, 11, and 18 based on the
 8 Supplemental Declarations Filed In Support of Plaintiffs' Supplemental Brief
 9 ("Supplemental Declarations"), filed concurrently herewith:

School Board Meeting	Plaintiffs who Attended	Prayer Given
February 6, 2014	DOE 18	Pastor Kelly Larned, Bridge Church
March 6, 2014	DOE 5, DOE 6, DOE 7	Father Mike Gilsean, St. Paul the Apostle Catholic Church
March 20, 2014	DOE 5, DOE 6, DOE 7	Pranav Patel of BAPS Shri Swaminarayan Mandir Temple
May 1, 2014	DOE 5, DOE 6, DOE 7	David Bustamonte of Calvary Chapel
May 21, 2015	DOE 5, DOE 6	Imam Zafarullah, Ahmaddiya Muslim Community
June 12, 2014	DOE 5, DOE 7	School Board member Charles Dickie
July 17, 2014	Larry Maldonado, DOE 4,	Don Jones, CVUSD employee
September 18, 2014	Larry Maldonado, DOE 7	School Board member Charles Dickie
October 2, 2014	DOE 7	Pastor Guil Misquez, Living Waters Church
November 20, 2014	DOE 7, DOE 9, DOE 10, DOE 11, DOE 18	Pastor Paul Thé, Bridge Church

School Board Meeting	Plaintiffs who Attended	Prayer Given
December 11, 2014	DOE 9, DOE 10, DOE 11	Pastor Nathan Goble, Chino Valley Community Church
February 5, 2015	Larry Maldonado, DOE 18	Pastor Jack Hibbs, Calvary Chapel
February 19, 2015	DOE 7	Pastor Joe McTarsney, Calvary Chapel
March 19, 2015	DOE 7, DOE 9, DOE 10, DOE 11	Pastor Dennis Cantor, Higher Ground Church
April 2, 2015	Larry Maldonado, DOE 7	School Board Member James Na
May 7, 2015	DOE 7, DOE 9, DOE 10, DOE 11	Pastor David King, Isaiah's Rock
May 21, 2015	DOE 5, DOE 7	Imam Zafarullah, Ahmaddiya Muslim Community
June 25, 2015	DOE 9, DOE 10, DOE 11	Pastor Lynn Thrush, Gateway Community Church
July 16, 2015	DOE 6, DOE 7	Pastor Jeff Kerns, Calvary Chapel
August 13, 2015	DOE 6, DOE 7, DOE 9, DOE 10, DOE 11, DOE 18	Pastor Dustin Harrison, Calvary Chapel
September 17, 2015	DOE 7, DOE 9, DOE 10, DOE 11	Pastor Sheldon Boyd, Cornerstone Community Church
October 1, 2015	DOE 7	Pastor Jason Andrews, Chino Valley Community Church

As the Supplemental Declarations show, plaintiffs attended the School Board meetings prior to the filing of the First Amended Complaint. At those meetings they were confronted by defendant's unconstitutional prayer policy, the actual prayers, defendants' official endorsement of and engagement in open religious prayer, religious comments, readings and quoting from religious texts, and proselytizing during the

1 School Board meetings.¹ The Supplemental Declarations show that plaintiffs have
2 attended School Board meetings after the filing of the First Amended Complaint as well.
3 And they intend to do so in the future.

4 Defendants' prayer policy and religious conduct is offensive to plaintiffs'
5 personal beliefs. As fully argued in plaintiffs' prior briefings in support of their Motion
6 for Summary Judgment, defendants' prayer policy promoting religion and religious
7 conduct sends the message that the plaintiffs are outsiders and not full members of the
8 community. *See Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh*
9 *Chapter*, 492 U.S. 573, 595, 109 S. Ct. 3086, 106 L. Ed. 2d 472 (1989) (citing *Lynch v.*
10 *Donnelly*, 465 U.S. 668, 687, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984) (O'Connor, J.,
11 concurring)). It is clear that plaintiffs have Article III standing in this case.

12 As plaintiffs have demonstrated standing for Mr. Maldonado and DOEs 4, 5, 6, 7,
13 9, 10, 11, 18, the Court need not inquire into the specifics regarding standing for the
14 remaining plaintiffs. The prior declarations demonstrate all the plaintiffs have standing
15 even without the specificity regarding the meetings contained in the Supplemental
16 Declarations. All plaintiffs are jointly represented and have presented joint arguments.
17 "Nothing is gained or lost" by the institutional plaintiff (FFRF) or the other named and
18 DOE plaintiffs continuing presence as parties. *See Doe v. Bolton*, 410 U.S. 179, 189, 93
19 S. Ct. 739, 35 L. Ed. 2d 201 (1973) ("[W]e need not pass upon the status of these
20 additional appellants in this suit, for the issues are sufficiently and adequately presented
21
22

23
24 ¹ The First Amended Complaint, Dkt No. 20, was filed on December 15, 2014.

1 by Doe and the physician-appellants, and nothing is gained or lost by the presence of the
2 [other appellants]”).²

3 Accordingly, as long as one plaintiff has standing—and in this case, nine
4 plaintiffs have submitted detailed declarations of the dates of the meetings they attended
5 as well as the prayer they encountered—the Court ought not waste resources or address
6 unnecessary constitutional questions regarding the other plaintiffs.

7
8 **B. PLAINTIFFS ARE ENTITLED TO AN AWARD OF NOMINAL DAMAGES.**

9 Nominal damages are appropriate in actions regarding violations of constitutional
10 rights. *See Carey v. Piphus*, 435 U.S. 247, 266–67, 98 S.Ct. 1042, 55 L.Ed.2d 252
11 (1978) (holding that nominal damages are appropriate for deprivations of constitutional
12 rights that do not result in actual injury); *see also Vasquez v. Los Angeles ("LA") Cty.*,
13 487 F.3d 1246, 1258 n.9 (9th Cir. 2007). The mere violation of the constitutional right is
14 often the very injury to plaintiffs in §1983 cases. Proof of the value of such injury can be
15 difficult because such injury is not readily quantifiable. Where a constitutional violation
16 is shown, nominal damages should be awarded. *See Carey, supra*.

17 In *Carey*, the Court examined the elements and prerequisites for recovery of
18 damages by students suspended from elementary and secondary schools without
19

20
21 _____
22 ² *See also Jackson County, N.C. v. FERC*, 589 F.3d 1284, 1288-89 (D.C. Cir. 2009)
23 (When the parties “make the same arguments in joint briefs,” courts “need not inquire
24 whether the other plaintiffs had sufficient contact with the offensive practice to establish
standing.”).

1 procedural due process. *See Carey, supra*, at 248. In examining the importance of the
2 right of procedural due process, the Court noted:

3 Procedural due process rules are meant to protect persons not from the
4 deprivation, but from the mistaken or unjustified deprivation of life, liberty,
5 or property. Thus, in deciding what process constitutionally is due in
6 various contexts, the Court repeatedly has emphasized that “procedural due
7 process rules are shaped by the risk of error inherent in the truth-finding
8 process” [citation omitted]. Such rules “minimize substantively unfair
9 or mistaken deprivations of” life, liberty, or property by enabling persons to
10 contest the basis upon which a State proposes to deprive them of protected
11 interests.

12 *Carey, supra*, 435 U.S. at 259-60 (internal citations omitted).

13 Because of the importance of the constitutional right of procedural due process,
14 the Court in *Carey* held that “the denial of procedural due process should be actionable
15 for nominal damages without proof of actual injury.” *Id. at* 266-67.

16 *Carey* was explicitly limited to procedural due process cases. First Amendment
17 cases, especially Establishment Clause cases, are more analogous to procedural due
18 process violations in that the violation of the right is the injury itself. Actual damages are
19 difficult to prove in such cases because the value of the existence of the right is too
20 difficult to measure in concrete terms. Accordingly, nominal damages should be
21 awarded in Establishment Clause violation cases where actual damages are not or cannot
22 be readily ascertained. *See, e.g. Vasquez v. Los Angeles ("LA") Cty.*, 487 F.3d 1246,
23 1258 n.9 (9th Cir. 2007) (acknowledging availability of nominal damages in
24

1 Establishment Clause cases, relying on *Carey*); *see also Jackson v. Barnes*, 749 F.3d
2 755, 762 (9th Cir. 2014) *cert. denied*, 135 S. Ct. 980, 190 L. Ed. 2d 835 (2015)
3 (“[S]uccess on the merits of his Fifth Amendment claim would entitle Jackson to an
4 award of nominal damages.”); *Schneider v. Cnty. of San Diego*, 285 F.3d 784, 794 (9th
5 Cir.2002) (plaintiff entitled to award of nominal damages if violation of constitutional
6 right is proven).

7 Accordingly, plaintiffs request for nominal damages here is appropriate.

8
9 III. CONCLUSION

10 For the foregoing reasons, and those set forth in plaintiffs’ prior briefings, the
11 Court should grant plaintiffs motion and enter summary judgment in their favor and
12 against defendants.

13 Respectfully submitted,

14 Dated: November 22, 2015

15 
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21 Inc., Michael Anderson, Larry
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