



provides bible study to elementary and middle school students in 19 public schools throughout Mercer County. This program advances and endorses one religion, improperly entangles public schools in religious affairs, and violates the personal consciences of nonreligious and non-Christian parents and students.

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

### **JURISDICTION AND VENUE**

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

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

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

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

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

### **THE PARTIES**

8. Plaintiff Freedom From Religion Foundation ("FFRF") is a national 501(c)(3) educational nonprofit. FFRF has more than 26,000 members nationwide, including members in West Virginia. FFRF defends the constitutional principle of separation between state and church and educates the public about the views of non-theists. FFRF advocates on behalf of its members throughout the United States.

9. Plaintiff Jane Doe is a member of FFRF.

10. Jane Doe resides within Mercer County and is the parent of a child, Jamie Doe, who attends a Mercer County Schools elementary school. Jane is an atheist and wishes to raise her child, Jamie Doe, without religion.

11. Plaintiff Jamie Doe is currently a kindergarten student at an elementary school within Mercer County Schools.

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

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

14. Defendant Deborah S. Akers is the Superintendent of Mercer County Schools. Her primary duty is the implementation of Mercer County Schools' policies and programs, consistent with the rules and regulations promulgated by the West Virginia Department of Education, the laws and Constitution of the State of West Virginia, and the laws and Constitution of the United States of America.

### **FACTUAL BACKGROUND**

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

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

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

18. In response to these complaints, State Superintendent of Schools Dr. Tom McNeel wrote to the Attorney General of West Virginia requesting the parameters under which a course in the bible or a class utilizing the bible as a main textbook may be constitutionally taught in the public schools of West Virginia and guidance on legal requirements for teachers of any such classes.

19. On October 31, 1985, Dr. McNeel received a response from the Office of the Attorney General which claimed that bible instruction can be given in West Virginia's public schools provided the schools follow nine listed guidelines.

20. On December 19, 1985, Mercer County Schools Superintendent William H. Baker, sent a memo to members of the Mercer County Board of Education, which distilled the Attorney General of West Virginia's list of guidelines and surmised that Mercer County's bible classes could be brought into compliance with the guidelines.

21. Since 1986, the "Bible in the Schools" program has been administered by the Mercer County Board of Education.

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

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

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

25. The “Bible in the Schools” program instills religious teachings in elementary and middle school students.

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

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

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

### **Bible Class Curriculum and Policies**

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

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

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

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

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

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

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

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

37. Learning objectives for the Old Testament curriculum include: knowing the biblical account of the beginning of the earth, mankind, civilization, nations, and languages, and the nature of early biblical man; knowing the promises

to Abraham and the development of these promises through the families of Abraham, Isaac and Jacob; understanding the importance of the Ten Commandments and the tabernacle in the lives of the nation of Israel; and tracing Israel's journeys through the wilderness and knowing the cause of the nation's failure.

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

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



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

41. District policy requires reasonable alternatives for students who opt-out of the bible classes.

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

### **Bible Class Lessons**

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

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

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

### **Lesson 1 – Tucker**

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

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

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

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

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

## **Lesson 2 – Beginnings**

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

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

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

### **Lesson 6 – The Ten Commandments**

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

55. For example, Lesson 6 says, “The very first law or commandment, reads, ‘You shall have no other gods before me.’” Lesson 6 continues, “In other words, God was telling His people, ‘You shall have no other god than the Lord God!’”

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

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

58. For example, Lesson 6 says, “If all of the Israelites had chosen to follow the Ten Commandments, think of how safe and happy they would have been. They would never have been afraid someone would go into their tents and

steal something. They would never have been afraid someone was lying about them. They would never have been afraid that anyone would hurt them ---- or someone they loved.”

### **Lesson 25 - The Crucifixion and Resurrection of Jesus Christ**

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

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

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

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

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

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

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

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

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

### **CAUSES OF ACTION**

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

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

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

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

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

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

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

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

76. The Defendants' bible classes encroach on the parental rights of Jane Doe. Jane Doe feels coerced by her government into subjecting her child to religious indoctrination and raising her child in a specific set of religious beliefs to which Jane Doe does not adhere.

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

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

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

### **REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiffs request:

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

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

C. That this Court permanently enjoin Defendants, in their official capacity, and their successors in office, and all their respective agents, employees, and others in active concert with them from organizing, administering, or otherwise endorsing bible classes for Mercer County Schools' students;

D. That this Court award nominal damages to Plaintiffs;

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

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

RESPECTFULLY SUBMITTED,

/s/ Marcus B. Schneider, Esquire

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