

COURT OF APPEALS, STATE OF COLORADO

2 East Fourteenth Ave. 3rd Floor
Denver, CO 80203

District Court, City and County of Denver

The Honorable R. Michael Mullins
Civil Action No. 2008-CV-9799

Plaintiffs/Appellant:

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

v.

Defendant/Appellees:

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

▲ COURT USE ONLY ▲

Attorneys for the Plaintiffs:

Daniele W. Bonifazi, Atty. No. 30645
John H. Inderwish, Atty. No. 10222
Inderwish & Bonifazi, P.C.
6377 S. Revere Parkway, Suite 400
Centennial, CO 80111
Telephone: (720) 208-0111
Fax: (720) 208-0130
Email: dbonifazi@i-blaw.com
jhi@i-blaw.com

Richard L. Bolton, Esq.
Boardman, Suhr, Curry & Field LLP
1 South Pinckney Street, 4th Floor
P. O. Box 927
Madison, WI 53701-0927
Telephone: (608) 257-9521
Fax: (608) 283-1709
Email: rbolton@boardmanlawfirm.com

Case Number: 2010 CA 2559

Courtroom:

PLAINTIFFS'/APPELLANTS' AMENDED NOTICE OF APPEAL

COMES NOW the Plaintiffs/Appellants **FREEDOM FROM RELIGION FOUNDATION, INC., MIKE SMITH, DAVID HABECKER, TIMOTHY G. BAILEY** and **JEFF BAYSINGER**, by and through their attorneys, **Inderwish & Bonifazi, P.C., and Boardman, Suhr, Curry & Field LLP** and submits their Amended Notice of Appeal pursuant to C.A.R. 3(d) as follows:

1. TRIAL COURT INFORMATION

Court: District

County: Denver

Trial Judge's Name: R. Michael Mullins

Party Initiating the Appeal: Plaintiffs, Freedom From Religion Foundation, Inc.,

Mike Smith, David Habecker, Timothy G. Bailey and Jeff Baysinger.

Trial Court Case Number: 2008-CV-9799

2. DESCRIPTION OF THE NATURE OF THE CASE

A. GENERAL STATEMENT OF NATURE OF CONTROVERSY:

Plaintiff, Freedom From Religion Foundation Inc. ("FFRF") is a Wisconsin non-stock corporation, which is a non-profit membership organization working for the separation of church and state. The underlying action sought a declaration that Day of Prayer Proclamations and Dedications by Governor Bill Ritter, Jr., in his official capacity, violates Article II, Section 4 of the Colorado Constitution, and that the Governor Bill Ritter, Jr., in his official capacity be enjoined from issuing further proclamations.

In 2007 and 2008, Governor Ritter issued official Proclamations, declaring a dedicated state-sanctioned official Day of Prayer. The Trial Court dismissed Plaintiffs' lawsuit which alleged these Proclamations violated the Religious Freedom clause of the Colorado Constitution by endorsing religion over non-religion by endorsing prayer and public celebrations of religion in the public domain. Further, it was alleged that the actions of Governor Ritter in issuing prayer proclamations and dedicating days of prayer violate the fundamental principle of the separation of church and state because they include actively and intentionally endorse religion in violation of the Religious Freedom clause of the Colorado Constitution.

Pursuant to C.R.C.P. 56, both Plaintiff's and Defendant's agreed that the controversy would be presented to the Trial Court in the form of Cross-Motions for Summary Judgment to be dispositively ruled upon by the Trial Court. The Trial Court denied Plaintiffs' Motion and granted Defendant's Motion the Order of which Plaintiff now appeals.

B. ORDER BEING APPEALED AND STATEMENT INDICATING BASIS FOR APPELLATE COURT'S JURISDICTION:

1. **Order Being Appealed:** Denied Plaintiff's for Summary Judgment Motion and Granted Defendant's Motion for Summary Judgment.
2. **Basis for Appellate Court's Jurisdiction:** Appeal by law of Final Order Granting Summary Judgment in a Civil action

C. WHETHER THE ORDER RESOLVED ALL ISSUES PENDING BEFORE THE TRIAL COURT, INCLUDING ATTORNEY FEES AND COSTS: Yes.

D. WHETHER THE JUDGMENT WAS MADE FINAL FOR PURPOSES OF APPEAL PURSUANT TO C.R.C.P. 54(b): Yes.

E. DATE THE ORDER WAS ENTERED AND MAILED TO COUNSEL:
October 28, 2010.

- F. WHETHER ANY EXTENSIONS WERE GRANTED TO FILE ANY MOTIONS FOR POST-TRIAL RELIEF:** No.
- G. DATE ANY MOTION FOR POST-TRIAL RELIEF WAS FILED:** Not Applicable.
- H. DATE ANY MOTION FOR POST-TRIAL RELIEF WAS DENIED OR DEEMED DENIED UNDER C.R.C.P. 59(j):** Not Applicable.
- I. WHETHER ANY EXTENSIONS WERE GRANTED TO FILE ANY NOTICES OF APPEAL:** No.
- J. ADVISORY LISTING OF ALL ISSUES TO BE RAISED ON APPEAL:**
1. Whether the District Court erred in granting Defendant's Motion for Summary Judgment.
 2. Any new issues raised by Orders subsequent to this Notice.
- K. WHETHER THE TRANSCRIPT OF ANY EVIDENCE TAKEN BEFORE THE TRIAL IS NECESSARY TO RESOLVE THE ISSUES RAISED ON APPEAL.**
- All evidence before trial, including deposition testimony and documentary exhibits are necessary, as the case was dismissed before trial.
- L. WHETHER A PRE-ARGUMENT CONFERENCE IS REQUIRED:** No.

Dated this 14th day of December, 2010

INDERWISH & BONIFAZI, P.C.

s/ Dan Bonifazi *
Dan Bonifazi (#30645)

ATTORNEYS FOR PLAINTIFFS/APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2010, a true and correct copy of the foregoing **PLAINTIFFS'/APPELLANTS' AMENDED NOTICE OF APPEAL** was filed and served electronically via LexisNexis, addressed to:

JOHN W. SUTHERS, Attorney General
DANIEL D. DOMENICO, Solicitor General #32038
GEOFFREY N. BLUE, Deputy Attorney General #32684
MAURICE KNAIZER, Deputy Attorney General #5264
MATTHEW D. GROVE, Assistant Attorney General #34269
1525 Sherman Street, 7th Floor
Denver, CO 80203

Denver County District Court
Judge R. Michael Mullins

/s/ Alyssa M Sylvester *
Alyssa M Sylvester, Paralegal

*In accordance with C.R.C.P. 121 § 1-26(7) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

COURT OF APPEALS, STATE OF COLORADO

2 East Fourteenth Ave. 3rd Floor
Denver, CO 80203

District Court, City and County of Denver

The Honorable R. Michael Mullins
Civil Action No. 2008-CV-9799

Plaintiffs/Appellant:

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

v.

Defendant/Appellees:

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

▲ COURT USE ONLY ▲

Attorneys for the Plaintiffs:

Daniele W. Bonifazi, Atty. No. 30645
John H. Inderwish, Atty. No. 10222
Inderwish & Bonifazi, P.C.
6377 S. Revere Parkway, Suite 400
Centennial, CO 80111
Telephone: (720) 208-0111
Fax: (720) 208-0130
Email: dbonifazi@i-blaw.com
jhi@i-blaw.com

Richard L. Bolton, Esq.
Boardman, Suhr, Curry & Field LLP
1 South Pinckney Street, 4th Floor
P. O. Box 927
Madison, WI 53701-0927
Telephone: (608) 257-9521
Fax: (608) 283-1709
Email: rbolton@boardmanlawfirm.com

Case Number: 2010 CA 2559

Courtroom:

**UNOPPOSED MOTION TO AMEND NOTICE OF APPEAL TO CORRECT
TYPOGRAPHICAL ERRORS**

COMES NOW the Plaintiffs/Appellants FREEDOM FROM RELIGION FOUNDATION, INC., MIKE SMITH, DAVID HABECKER, TIMOTHY G. BAILEY and JEFF BAYSINGER, by and through their attorneys, Inderwish & Bonifazi, P.C., and Boardman, Suhr, Curry & Field LLP and MOVES THIS Court for an Order permitting them to Amend their Notice of Appeal to correct a typographical error, as grounds therefore, Plaintiffs state as follows:

Certification Pursuant to C.R.C.P. 121, § 1-15(8): Plaintiffs' counsel has discussed amending the Notice of Appeal to correct typographical errors with opposing counsel. Counsel for Defendants does **not object** to the relief requested herein.

1. C.R.C.P. 15(a) provides that leave to amend a pleading "shall be freely given when justice so requires." Court should be liberal in allowing amendments to the pleadings. *Wiggington v. Denver & R.G.R. Co.*, 118 P. 88 (Colo. 1911). Typically, amendments to a Complaint shall be granted unless an opposing party can demonstrate prejudice in defending against the merits of the claims, undue delay, bad faith, or dilatory motive on the part of the moving party. *Polk v. Denver Dist. Court*, 849 P.2d 23 (Colo. 1993); *Werkmeister v. Robinson Dairy, Inc.*, 699 P.2d 1042 (Colo. App. 1983). No such prejudice, undue delay, bad faith, or dilatory motive exists in this case.
2. Plaintiffs filed their Notice of Appeal in this matter on December 2, 2010.
3. It has come to Plaintiffs' attention that the Notice of Appeal contains typographical errors.
4. The Defendants will not be prejudiced by the amendment of the Notice of Appeal with the correction of the typographical errors. Conversely, if Plaintiffs are not permitted to amend their Notice of Appeal, they will suffer significant prejudice.

WHEREFORE, Plaintiffs request that they be permitted to amend their Notice of Appeal to correct typographical errors. A Notice of Appeal is filed herewith.

Dated this 14th day of December, 2010

INDERWISH & BONIFAZI, P.C.

s/ Dan Bonifazi *

Dan Bonifazi (#30645)

ATTORNEYS FOR PLAINTIFFS/APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2010, a true and correct copy of the foregoing **UNOPPOSED MOTION TO AMEND NOTICE OF APPEAL TO CORRECT TYPOGRAPHICAL ERRORS** was filed and served electronically via LexisNexis, addressed to:

JOHN W. SUTHERS, Attorney General
DANIEL D. DOMENICO, Solicitor General #32038
GEOFFREY N. BLUE, Deputy Attorney General #32684
MAURICE KNAIZER, Deputy Attorney General #5264
MATTHEW D. GROVE, Assistant Attorney General #34269
1525 Sherman Street, 7th Floor
Denver, CO 80203

Denver County District Court
Judge R. Michael Mullins

/s/ Alyssa M Sylvester *
Alyssa M Sylvester, Paralegal

*In accordance with C.R.C.P. 121 § 1-26(7) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.