

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

**FREEDOM FROM RELIGION FOUNDATION, INC.,
DOROTHY MANLEY,
KEN MISCHKA, and
JUDY MISCHKA,**

Plaintiffs,

Case No. _____

v.

**LISA BJERGAARD,
DANIEL P. RICHTER, and
THE DAKOTA BOYS & GIRLS RANCH, INC.,**

Defendants.

COMPLAINT

1. The Plaintiffs bring suit against the Defendants alleging violations of the Establishment Clause of the First Amendment to the United States Constitution and 42 U.S.C. §1983.

2. The Court has Federal jurisdiction pursuant to 28 U.S.C. §1331.

3. Venue is appropriate in the District Court for the District of North Dakota, pursuant to 28 U.S.C. §1391, because one or more of the Defendants resides within this judicial district, and because the actions giving rise to the claims occurred within the district.

4. The Plaintiff, Freedom From Religion Foundation, is a Wisconsin non-stock corporation with its principal office in Madison, Wisconsin.

5. The Plaintiff, Freedom From Religion Foundation, has more than 10,000 members, who are opposed to government endorsement of religion in violation of the Establishment Clause of the First Amendment to the United States Constitution.

6. The membership of the Plaintiff, Freedom From Religion Foundation, includes North Dakota residents who pay taxes to the State of North Dakota.

7. The organizational purpose of the Plaintiff, Freedom From Religion Foundation, is to protect the fundamental constitutional principle prohibiting government endorsement of religion, which the Foundation does by representing and advocating on behalf of its members.

8. The Plaintiff, Freedom From Religion Foundation, in its representational capacity, and including its resident North Dakota taxpayers, is opposed to the use of taxpayer appropriations to advance and promote religion.

9. The Plaintiff, Dorothy Manley, is an adult individual residing in Mandan, North Dakota, and she is a North Dakota taxpayer who is opposed to the use of taxpayer appropriations to advance, endorse, and/or promote religion.

10. The Plaintiffs, Ken Mischka and Judy Mischka, are adult individuals residing in Valley City, North Dakota, and they are North Dakota taxpayers who are opposed to the use of State taxpayer appropriations to advance, endorse, and/or promote religion.

11. The Defendant, Lisa Bjergaard, is the Director of the Division of Juvenile Services, within the North Dakota Department of Corrections and Rehabilitation; Ms. Bjergaard has a business address of 3100 Railroad Avenue, Bismarck, ND 58501; Ms. Bjergaard is sued in her official capacity.

12. The Defendant, Daniel P. Richter, is the Director of the Ward County Social Services Department, with a business address at 400 22nd Avenue N.W., P. O. Box 2209, Minot, ND 58702; Mr. Richter is sued in his official capacity.

13. The North Dakota Division of Juvenile Services is a duly organized North Dakota State public agency that is funded with North Dakota taxpayer appropriations.

14. The Ward County Department of Social Services is a duly organized North Dakota public agency that is funded from North Dakota taxpayer appropriations and local taxpayer appropriations.

15. The Defendant, Dakota Boys & Girls Ranch, is a private organization, receiving taxpayer appropriations, with operations located in Minot, Fargo, and Bismarck, North Dakota; the Dakota Boys & Girls Ranch provides residential services to teenage children referred for treatment by government social service agencies; the Dakota Boys & Girls Ranch is included as an interested party whose public funding is being challenged by this suit.

16. The Dakota Boys & Girls Ranch, through its staff, attempts to modify behavior by directing children to find faith in the Lord Jesus Christ.

17. The children who are committed to Dakota Boys & Girls Ranch are instructed to rely on the love of Jesus Christ to cope with their emotional and behavioral problems.

18. The Dakota Boys & Girls Ranch purports to address the spiritual “needs” of the children committed to its care.

19. The Dakota Boys & Girls Ranch is an avowedly Christian organization, and is an integral part of the evangelizing effort of the Lutheran Church/Missouri Synod, and the Evangelical Lutheran Church in America, the Dakota Boys & Girls Ranch, participating in the ministry of Jesus Christ, including by instructing children to accept Christ as their Savior.

20. The Dakota Boys & Girls Ranch provides services to children in the context of an explicitly Christian community, including post-release mentoring services, which are publicly funded with taxpayer appropriations.

21. The Dakota Boys & Girls Ranch implements a philosophy holding that the spiritual needs of committed children must be identified and met.

22. Programming at the Dakota Boys & Girls Ranch incorporates Biblical teachings; being a Lutheran agency, the Dakota Boys & Girls Ranch subscribes to the three Ecumenical Creeds and the Lutheran Confessions.

23. Programming at the Dakota Boys & Girls Ranch includes weekly Spiritual Life Groups activities, church attendance or other spiritual activities on Sundays, individual discussions with spiritual life staff, and prayers at meals.

24. Other Christian programming at the Dakota Boys & Girls Ranch includes baptism, confirmation studies, devotions, Bible studies, and discussion groups.

25. Non-Christian religious services are not allowed on the premises of the Dakota Boys & Girls Ranch.

26. Each cottage at the Dakota Boys & Girls Ranch has a designated Spiritual Life Specialist, who is a direct care person responsible for the spiritual life of the committed children.

27. Each cottage at the Dakota Boys & Girls Ranch has Spiritual Life Groups; a typical group views videos or reads the Bible, followed by discussions of what the children have seen or heard.

28. All activities at the Dakota Boys & Girls Ranch incorporate a Christian theme.

29. The mission of the Dakota Boys & Girls Ranch is to help children succeed in the name of Jesus Christ.

30. The Dakota Boys & Girls Ranch is a Recognized Social Ministry Organization of the Lutheran Church/Missouri Synod, and the Dakota Boys & Girls Ranch is affiliated with the Social Ministry Organization of the Evangelical Lutheran Church in America.

31. The Dakota Boys & Girls Ranch provides services to vulnerable youth who are experiencing severe emotional disorders.

32. The Dakota Boys & Girls Ranch purports to provide a spiritual foundation for each committed child on an individual basis in a Christian atmosphere.

33. An explicitly Christian perspective embodies all of the services provided by the Dakota Boys & Girls Ranch.

34. The Dakota Boys & Girls Ranch embraces a Christ-centered environment in all of its activities, including post-release mentoring services.

35. The Dakota Boys & Girls Ranch considers personal security and well being to require a close relationship with God.

36. According to the message of the Dakota Boys & Girls Ranch, that is communicated to the resident children, God has a plan and His plan includes the children at the Dakota Boys & Girls Ranch; the Dakota Boys & Girls Ranch teaches that Christ chose to love, live, and die for all people, and that Jesus sits at the right hand of God.

37. The Dakota Boys & Girls Ranch wants the children committed there to know Christ as Lord and Savior and to realize His strategy.

38. Public agencies referring children to the Dakota Boys & Girls Ranch are responsible for paying for the care and treatment provided to each child in placement.

39. Christian beliefs and standards are integrated into the fabric of the treatment services provided by the Dakota Boys & Girls Ranch.

40. Children are committed to the Dakota Boys & Girls Ranch, without their consent, by county social service agencies or the North Dakota Department of Juvenile Services.

41. Children placed at the Dakota Boys & Girls Ranch are interviewed initially by the Spiritual Life Advisor for the cottage in which they are assigned; the Spiritual Life Advisor assesses the spiritual status and “needs” of each child.

42. Spirituality premised on Christian beliefs is an integral part of the therapeutic treatment plan for each child at the Dakota Boys & Girls Ranch.

43. Children are disciplined for refusing to participate in the spiritual aspects of their therapeutic treatment plan, including suspension of privileges; prolongation of commitment at the Dakota Boys & Girls Ranch; compelled writing assignments to explain personal religious beliefs. Refusal to participate in religious activities is considered non-participation in a child's treatment plan.

44. Staff at the Dakota Boys & Girls Ranch are instructed to indoctrinate committed children; staff also are evaluated on adherence to the religious mission of the Dakota Boys & Girls Ranch; staff is not permitted to promote any religion or belief except Christianity.

45. Behavior modification is encouraged at the Dakota Boys & Girls Ranch by characterizing unwanted behaviors as an offense or corruption in the eyes of Jesus Christ.

46. The Defendants, Bjergaard and Richter, in their official capacities, oversee and are responsible for the disbursement of taxpayer appropriations, including appropriations that are used to pay for the costs of residential treatment of children committed to the Dakota Boys & Girls Ranch, as well as post-release mentoring services.

47. Children are committed to the Dakota Boys & Girls Ranch by a variety of North Dakota public entities, including the North Dakota Department of Juvenile Services and the Ward County Department of Social Services, as well as many other local Departments of Social Services.

48. Referrals by the State and the County to the Dakota Boys & Girls Ranch are funded with taxpayer appropriations, including North Dakota taxpayer appropriations and Ward County taxpayer appropriations; County appropriations include appropriations received from the State of North Dakota.

49. Referrals to the Dakota Boys & Girls Ranch by the North Dakota Department of Juvenile Services and the Ward County Social Services Department are made under the direction of the Defendants Bjergaard and Richter, who are responsible respectively for the activities of the North Dakota Department of Juvenile Services and the Ward County Department of Social Services.

50. The activities of the Dakota Boys & Girls Ranch are paid for, in part, through State taxpayer-supported appropriations, disbursed at the direction of the Defendants.

51. The Dakota Boys & Girls Ranch engages in activities that promote religion.

52. The Defendants, through their actions in referring children to the Dakota Boys & Girls Ranch, supported by taxpayer appropriations, promote the integration of religion as a component of the services delivered to the children.

53. The Dakota Boys & Girls Ranch integrates religion as a substantive integral component of the services provided to children committed to the Dakota Boys & Girls Ranch.

54. The Defendants, through their actions, promote the integration of religion as an inherent component of the services provided to children committed to the Dakota Boys & Girls Ranch, as a result of the taxpayer appropriations disbursed by the Defendants to the Dakota Boys & Girls Ranch.

55. The actions of the Defendants violate the Establishment Clause of the First Amendment to the United States Constitution and Sec. 1983 of Title 42 of the United States Code.

56. The Defendants' actions have violated the fundamental principle prohibiting government endorsement of religion by disbursing taxpayer appropriations for the operation of a faith-based organization that includes the integration of religion as an inherent component of services provided.

57. The activities of the Defendants, by authorizing the disbursement of funds to the Dakota Boys & Girls Ranch, impermissibly advance, endorse, and promote the establishment of

religion in violation of the Establishment Clause of the First Amendment to the United States Constitution.

58. The use of North Dakota taxpayer funds to pay for services provided to children committed to the Dakota Boys & Girls Ranch violates the Establishment Clause of the First Amendment to the United States Constitution because taxpayer funds are used to support the operations of a faith-based organization whose mission is to integrate religious indoctrination as an indivisible component of services delivered to committed children.

59. Religious indoctrination is an integral component of the services provided by the Dakota Boys & Girls Ranch, which indoctrination is supported by taxpayer appropriations through the actions of the Defendants.

60. North Dakota taxpayer appropriations are disbursed to fund the activities of the Dakota Boys & Girls Ranch as a result of decisions for which the Defendants are responsible.

61. Patently religious principles dominate the approach to services provided by the Dakota Boys & Girls Ranch, which approach includes explicitly religious content integrated into services provided to committed children.

62. The involvement of the Defendants on behalf of the North Dakota Department of Juvenile Services and the Ward County Department of Social Services constitutes governmental approval of the religious content integrated into the services provided by the Dakota Boys & Girls Ranch.

63. The actions of the Defendants have occurred under color of State law.

64. The Defendants' actions give the appearance of governmental endorsement of religion.

65. The Defendants' actions convey a message that religion is favored, preferred, and promoted, and the programming procured by the Defendants is cloaked in traditional indicia of governmental endorsement.

66. The actions of the Defendants violate 42 U.S.C. §1983 because the Defendants are violating the United States Constitution while acting under color of State law.

67. The funds appropriated by the Defendants to the Dakota Boys & Girls Ranch are derived from amounts paid by residents of the State of North Dakota, including resident North Dakota taxpayers who are members of the Plaintiff organization, Freedom From Religion Foundation.

68. The actions of the Defendants, in violating the Establishment Clause of the First Amendment to the United States Constitution and §1983 of Title 42 of the United States Code, are injurious to the interests of the Plaintiffs because the Defendants' actions compel the Plaintiffs to support the establishment, endorsement, and advancement of religion through taxpayer funding of programmatic religious indoctrination.

WHEREFORE, the Plaintiffs demand judgment as follows:

A. For a declaration that the actions of the Defendants violate the Establishment Clause of the First Amendment to the United States Constitution and 42 U.S.C. §1983.

B. For an order enjoining the Defendants from continuing to refer children to the Dakota Boys & Girls Ranch to receive services paid for with taxpayer appropriations, if religion remains integrated as a part of such services.

C. For an order enjoining the Defendants from using state and county funds to promote, advance, or endorse the establishment of religion, including disbursements made to the Dakota Boys & Girls Ranch.

D. For judgment awarding such further relief as the Court deems just and equitable.

E. For a judgment awarding the Plaintiffs the reasonable costs, disbursements, and attorneys' fees as allowed by law, including pursuant to 42 U.S.C. §1988.

Dated this 18th day of June, 2007.

BOARDMAN, SUHR, CURRY & FIELD, LLP

By:

A handwritten signature in cursive script, appearing to read "Richard L. Bolton", written over a horizontal line.

Richard L. Bolton

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