

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

FREEDOM FROM RELIGION FOUNDATION,
INC., CRAIG GOSLING, JOHN KIEL, SEAN
O'BRIEN, and DIANA O'BRIEN,

Plaintiffs,

Case No. _____

v.

E. MITCHELL ROOB, JR., in his official capacity
as SECRETARY, INDIANA FAMILY AND
SOCIAL SERVICES ADMINISTRATION,

Defendant.

COMPLAINT

The plaintiffs, Freedom From Religion Foundation, Inc. ("FFRF"), Craig Gosling, John Kiel, Sean O'Brien, and Diana O'Brien, by their attorneys, Godfrey & Kahn, S.C. and the Law Office of William O. Harrington, P.C., for their Complaint against the defendant, allege as follows:

JURISDICTION

1. This is an action under 42 U.S.C. § 1983 to redress, by declaratory and injunctive relief, the deprivation, under color of state law, of rights guaranteed by article VI and the First and Fourteenth Amendments to the U.S. Constitution and article I, sections 4, 5, 6, and 23 of the Indiana Constitution. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(a)(3), and has supplemental jurisdiction over the plaintiffs' state law claim under 28 U.S.C. § 1367(a).

PARTIES

2. Plaintiff Craig Gosling is an adult resident of Indianapolis, Indiana, and a taxpayer of the State of Indiana.

3. Plaintiff John Kiel is an adult resident of Indianapolis, Indiana, and a taxpayer of the State of Indiana.

4. Plaintiff Sean O'Brien is an adult resident of Indianapolis, Indiana, and a taxpayer of the State of Indiana.

5. Plaintiff Diana O'Brien is an adult resident of Indianapolis, Indiana, and a taxpayer of the State of Indiana.

6. Plaintiff FFRF is a Wisconsin, non-stock corporation whose principal office is in Madison, Wisconsin. FFRF's purpose is to protect the fundamental constitutional principle of separation of church and state. FFRF brings this action on behalf of its Indiana members, including the individual plaintiffs, who are taxpayers of the State of Indiana.

7. Defendant E. Mitchell Roob, Jr., is the Secretary of the Indiana Family and Social Services Administration (the "FSSA"), and he has ultimate authority over the FSSA Chaplaincy Program at issue in this action.

INDIANA'S STATE-FUNDED CHAPLAINCY PROGRAM

8. In 2006, the FSSA hired Pastor Michael L. Latham, a Baptist minister, as the Chaplain for the FSSA. Pastor Latham's annual salary, \$60,000.00, is paid with revenue from Indiana state taxpayers. On information and belief, the Indiana Legislature has appropriated funds to pay for the FSSA Chaplaincy Program, including Pastor Latham's salary.

9. According to the FSSA Chaplain job description, Pastor Latham "serves as the *Chaplain* for the Family and Social Services Administration and functions as a staff advisor on all problems involving *spiritual* needs of the employees. [He] also serves as the strategic

director for policy, procedures and communication efforts on *faith-based* services. The position reports directly to the FSSA Chief of Staff.”

10. Pastor Latham’s representative duties include, but are not limited to, the following:

- *ministering* and counseling FSSA employees, contractors, *etc.* to connect with compassion with serving FSSA clients;
- developing a state-wide network of volunteer *ministers* from various backgrounds and serve as a liaison with internal and external stakeholders in order to collect, share and develop pertinent information related to *religious services* and *faith-based* community involvement;
- developing, planning and conducting workshops to train and educate FSSA staff on encouraging a *faithful* environment in the workplace;
- participating in the formulation, establishment and interpretation of central office outreach efforts to *faith-based* organizations; and,
- preparing and presenting as needed, materials on *faith-based* services at state-wide stakeholder meetings, and for legislators and service providers.

11. Again, according to the job description, the Chaplain for FSSA “must be an *ordained or licensed minister* in good standing with a recognized *religious denomination* or group,” and he must have “expert knowledge of current standards and *practices of religious and faith-based* community service programs.”

12. Individuals who are not members of the clergy are not eligible for the position. And, on information and belief, the FSSA has no secular equivalent to its Chaplain.

13. Furthermore, on information and belief, no FSSA employee is responsible for developing a state-wide network of secular volunteers to counsel FSSA employees, contractors, *etc.* in a secular manner.

14. The FSSA Chaplaincy Program requires a religious test as a qualification for the public office of FSSA Chaplain—the Chaplain must be an ordained or licensed minister of a religious group.

15. The FSSA Chaplaincy Program is inherently religious. Paying a member of the clergy with taxpayer money to provide religious, faith-based counseling and to develop a state-wide network of volunteer ministers to do the same has no secular purpose.

16. The primary effect of the FSSA Chaplaincy Program is to advance religion amongst FSSA employees, contractors, *etc.*

17. The FSSA Chaplaincy Program fosters an excessive entanglement with religion by requiring the FSSA to hire an ordained or licensed minister to provide religious counseling to FSSA employees, contractors, *etc.* and to develop a network of volunteer ministers.

CLAIMS FOR RELIEF

18. The state funding of a Chaplaincy Program for the religious purpose of providing and coordinating faith-based counseling to other state employees, recruiting volunteer members of the clergy to do the same, and fostering a faithful work environment violates:

- (a) Art. VI of the U.S. Constitution;
- (b) The First Amendment to the U.S. Constitution;
- (c) The Fourteenth Amendment to the U.S. Constitution;
- (d) Art. I, section 4 of the Indiana Constitution;
- (e) Art. I., section 5 of the Indiana Constitution;
- (f) Art. I, section 6 of the Indiana Constitution; and,
- (g) Art. I, section 23 of the Indiana Constitution.

19. The program has no secular purpose, it advances religion as its principal effect, and it fosters an excessive entanglement between church and state, all in violation of well-

established constitutional rights. Furthermore, the program requires a religious test as a qualification for public office.

20. As taxpayers and citizens of the State of Indiana, all of the individual plaintiffs are injured by the impermissible advancement and support of religion caused by the use of state funds devoted exclusively to employing a member of the clergy as FSSA Chaplain, to funding faith-based counseling and encouraging a faithful work environment, and to funding the coordination of faith-based organizations.

21. By authorizing state funds to be used to pay a state employee who is a member of the clergy to provide counseling that is exclusively faith-based and to recruit volunteers who also are members of the clergy to do the same, the state is denying the plaintiffs and other taxpayers and citizens of the State of Indiana the equal protection of the laws.

WHEREFORE, the plaintiffs request that the Court:

A. Enter a declaratory judgment that the state's funding of the FSSA Chaplaincy Program violates article VI and the First and Fourteenth Amendments to the U.S. Constitution and article I, sections 4, 5, 6, and 23 of the Indiana Constitution;

B. Enter a permanent injunction prohibiting the defendant and his agents and employees from funding, creating or maintaining the position set forth in the program;

C. Award the plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

D. Award the plaintiffs such other and further relief as is appropriate under the circumstances.

Dated: _____, 2007.

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