

**FREEDOM FROM RELIGION FOUNDATION,
ANNIE LAURIE GAYLOR, and
DAN BARKER,**

Plaintiffs,

Case No: _____
Code No: 30701

v.

**ELIZABETH BURMASTER,
State Superintendent of Public Instruction,**

and

**MARK MCGUIRE,
District Administrator, Rio Community School District,**

Defendants.

COMPLAINT

1. The plaintiff, Freedom From Religion Foundation ("FFRF"), is a Wisconsin non-stock corporation with its principal office in Madison, Wisconsin.
2. FFRF has more than 12,000 members, with members in Wisconsin and every other state, who are opposed to the use of government appropriations for the support of religious organizations in violation of the Wisconsin Constitution.
3. The organizational purpose of FFRF is to protect the fundamental constitutional principle prohibiting government support and endorsement of religion, which FFRF does by representing and advocating on behalf of its members.

4. FFRF, in its representational capacity, is opposed to government actions that support or give the appearance of endorsement of religion, including by using state appropriations to support religion in violation of the Wisconsin Constitution.

5. The plaintiff, Annie Laurie Gaylor, is a Wisconsin state taxpayer residing in Madison, Wisconsin; she is a member of and co-President of FFRF; she is the editor of FFRF's periodical "Free Thought Today;" and she is a non-believer who is opposed to the use of government appropriations in support of religion in violation of the Wisconsin Constitution.

6. The plaintiff, Dan Barker, is a Wisconsin state taxpayer residing in Madison, Wisconsin; he is a member of and co-President of FFRF; he is the public relations director of FFRF, and he is a non-believer who is opposed to the use of government appropriations in support of religion in violation of the Wisconsin Constitution.

7. All of the plaintiffs are opposed to the use of state taxpayer appropriations to support religion, including appropriations made by the Department of Public Instruction to local school districts, including the Rio Community School District.

8. The membership of FFRF includes taxpayers who are parents of young children enrolled in the Rio Community School District, who are opposed to government support of religious organizations in violation of the Wisconsin Constitution.

9. The defendant, Elizabeth Burmaster, is the State Superintendent of Public Instruction, and her office is located at 125 S. Webster Street, Madison, Wisconsin.

10. Burmaster is responsible for oversight and control of the operations of the Wisconsin Department of Public Instruction, which duly organized state agency makes

appropriations of Wisconsin taxpayer money to local school districts, including the Rio Community School District, and which appropriations have been, and are being used, in violation of the Wisconsin Constitution.

11. The defendant, Mark McGuire, is District Administrator of the Rio Community School District, and his office is located at 411 Church Street, Rio, Wisconsin.

12. McGuire is responsible for overseeing and controlling the operations of the Rio Community School District, including the use of taxpayer appropriations used to support religious organizations in violation of the Wisconsin Constitution.

13. Article I, §18 of the Wisconsin Constitution, prohibits the appropriation of any money from the state treasury for the benefit of religious organizations.

14. Article I, §24 of the Wisconsin Constitution also prohibits the use of public school buildings by religious organizations during non-school hours unless authorized by the Legislature and only upon payment of reasonable compensation for such use.

15. Money is being drawn from the Wisconsin state treasury, and distributed by the Wisconsin Department of Public Instruction, under the direction of Burmaster, and these appropriations are being used for the benefit of religious organizations, in violation of Article I, §§18 and 24 of the Wisconsin Constitution.

16. Appropriations from the Wisconsin Department of Public Instruction are being used by local school districts, including the Rio Community School District, for the benefit of religious organizations by permitting the free use of public school buildings by religious organizations during non-school hours.

17. The Rio Community School District permits religious organizations to use its public school buildings during non-school hours, including free use by the Child Evangelism Fellowship Group.

18. Child Evangelism Fellowship is a Bible-centered, worldwide organization composed of born-again believers whose purpose is to evangelize boys and girls with the Gospel of the Lord Jesus Christ, disciple them in the Word of God and establish them in a Bible believing church for Christian living.

19. The Rio Community School District does not charge the Child Evangelism Fellowship Group anything for use of its public school buildings.

20. The Rio Community School District insists that it will not charge reasonable compensation for the use of public school buildings, including by religious organizations, during non-school hours, despite the challenging economic circumstances facing the District.

21. Article I, §24 of the Wisconsin Constitution was adopted by the Wisconsin Legislature and public voters to narrowly modify Article I, §18, which prohibits the use of any money drawn from the treasury for the benefit of religious organizations.

22. Article I, §24 partially modifies the prohibition of Article I, §18 by allowing use of public school buildings by religious organizations during non-school hours if (1) authorized by the Legislature, and (2) upon payment to the District of reasonable compensation for such use.

23. Article I, §24 requires Legislative authorization by the State of the Rio School District's policy of permitting the use of school buildings by religious organizations during non-school hours, which authorization has not been given.

24. The Rio Community School District, as well as other school districts, is in violation of the Wisconsin Constitution by refusing to require payment by the Child Evangelism Fellowship Group of reasonable compensation for use of District school buildings.

25. Appropriations from the Wisconsin Department of Public Instruction to local school districts, including the Rio Community School District, also are being used to distribute and post religious literature directed to young children, including by the Child Evangelism Fellowship Group in Rio; the distribution and posting of religious promotional material is accomplished by paid District personnel.

26. The distribution of literature, including for religious organizations and activities, requires the time and resources of paid school personnel, who are trying to satisfy academic requirements with already limited resources.

27. State appropriations are being used by local school districts, including the Rio Community School District, to distribute religious literature to children as young as 5 years old.

28. School-sponsored distributions of religious material carry the stamp of official endorsement and they constitute a benefit to religious organizations, which rely upon school districts to freely promote their activities.

29. The use of state appropriations by local school districts to distribute promotional material for religious organizations, including the Rio Community School District, violates Article I, §18 of the Wisconsin Constitution, which is not qualified by Article I, §24 as to the free distribution by school districts of promotional materials on behalf of religious organizations under any circumstances.

30. The use of state appropriations from the Department of Public Instruction by local school districts, including the Rio Community School District, in short, are being used in violation of the Wisconsin Constitution, including because public school buildings are being used by religious organizations during non-school hours without authorization from the Legislature, and without payment to the school district of reasonable compensation for such use.

31. Appropriations from the Wisconsin Department of Public Instruction, under the direction of defendant Burmaster, also are being used in violation of Article I, §18 of the Wisconsin Constitution because such appropriations are being used by school districts, including the Rio Community School District, to distribute and promote the activities of religious organizations.

32. Using state appropriations to support religious organizations violates the Wisconsin Constitution, including as a result of the failure by the defendant Burmaster to assure that school districts, including the Rio Community School District, do not use State appropriations to support religious organizations.

33. The actions of the defendants in violating the Wisconsin Constitution are injurious to the interests of the plaintiffs individually, and to FFRF in its representational capacity, because the defendants' actions compel the plaintiffs to pay support for the benefit of religious organizations, to which support the plaintiffs object.

WHEREFORE, the plaintiffs demand judgment as follows:

A. For judgment declaring that appropriations by the Department of Public Instruction are being used in violation of Article I, §18 and Article I, §24 of the Wisconsin Constitution;

B. For an order enjoining the defendants from continuing to disburse and/or use appropriations in violation of the Wisconsin Constitution;

C. For an order requiring the defendants to establish rules, regulations, prohibitions, standards and oversight to ensure that future appropriations are not made and/or used to support religious organizations in violation of the Wisconsin Constitution;

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

E. For a judgment awarding the plaintiffs their reasonable costs, disbursements and attorneys' fees as allowed by law.

Dated this ____ day of April, 2008.

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