THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FREEDOM FROM RELIGION FOUNDATION, INC., DOE 1, by DOE 1's next friend and parent, MARIE SCHAUB, who also sues on her own behalf, DOE 2, by Doe 2's next friend and parent DOE 3, who also sues on Doe 3's own behalf. Plaintiffs, vs. NEW KENSINGTON-ARNOLD SCHOOL DISTRICT, Defendant.	:	Civil Action No. _____

COMPLAINT

AND NOW, TO WIT, this 14th day of September, 2012, Freedom From Religion Foundation; Doe 1, by Doe 1's next friend and parent, Marie Schaub; Marie Schaub; Doe 2, by Doe 2's next friend and parent, Doe 3; and Doe 3, Plaintiffs, by and through their attorneys Marcus B. Schneider and Steele Schneider, file the within Complaint against New Kensington-Arnold School District, Defendant, and in support thereof avers as follows:

Introduction

1. For decades, the New Kensington-Arnold School District ("District") has maintained a monument of the Ten Commandments in front of Valley High School, in violation of the First Amendment to the United States Constitution. District students come into contact with the monument while attending or visiting Valley High School. The plaintiffs seek a declaration that the District's practice of displaying the Ten Commandments in front of its public school is unconstitutional, an injunction requiring the Ten Commandments to be removed from public school property, nominal damages, and attorneys' fees and costs.

Jurisdiction and Venue

2. This action arises under the Constitution of the United States and 42 U.S.C. § 1983.

3. This Court has federal question jurisdiction pursuant to Article III of the United States Constitution and 28 U.S.C. § 1331. In addition, this Court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) and (4).

4. The Court is authorized to award the declaratory relief requested by Plaintiffs pursuant to 28 U.S.C. §§ 2201 and 2202.

5. Pursuant to 28 U.S.C. § 1391 and LCvR 3, venue is proper in the Pittsburgh Division of the Western District of Pennsylvania. The defendant is a corporate body located in the Western District of Pennsylvania and Westmoreland County. The events complained of occurred in Westmoreland County.

Parties

6. Plaintiff Freedom From Religion Foundation ("FFRF") is a national non-profit IRC 501(c)(3) educational charity and a Wisconsin non-stock corporation. FFRF works to defend the constitutional principle of separation between state and church, as well as to educate the public about the views of non-theists.

7. FFRF has more than 18,500 members nationwide, including at least 673 members in the state of Pennsylvania. FFRF represents and advocates on behalf of its members throughout the United States.

8. Plaintiff Marie Schaub ("Plaintiff Schaub") is the mother and guardian of Doe 1.

9. Plaintiff Schaub is a resident and taxpayer of the District and the City of Arnold. She is a member of FFRF.

10. Doe 1 is a minor attending the public schools operated by the New Kensington-Arnold School District (the "District").

11. Plaintiff Doe 2 is a student at Valley High School.

12. Plaintiff Doe 3 is the parent and guardian of Doe 2 and a resident and taxpayer in the District.

13. Doe 1, Doe 2, and Doe 3 use pseudonyms to protect themselves from injury.[1]

14. Defendant New Kensington-Arnold School District is a municipal corporate body that maintains control of public schools within the limits of the cities of New Kensington and Arnold.

Facts

15. An approximately six foot tall stone monument of the Ten Commandments stands in front of Valley High School.

16. The Ten Commandments monument is situated directly in front of the main school entrance, near two footbridges that students and visitors use to enter the building. Photos of the monument are attached hereto as Exhibits 1 and 2.

17. The Ten Commandments monument reads:

the Ten Commandments
I AM the LORD thy God.

I. Thou shalt have no other gods before me.
II. Thou shalt not take the Name of the Lord thy God in vain.
III. Remember the Sabbath day, to keep it holy.
IV. Honor thy father and thy mother, that thy days may be long upon the land which the Lord thy God giveth thee.
V. Thou shalt not kill.
VI. Thou shalt not commit adultery.

[1] A motion for leave to proceed pseudonymously will be filed with this Honorable Court. For use in pleadings and briefing, Doe 1 will be referred to by use of a female pronoun and Does 2 and 3 will be referred to by use of male pronouns.

VII. Thou shalt not steal.
VIII. Thou shalt not bear false witness against thy neighbor.
IX. Thou shalt not covet thy neighbor's house.
X. Thou shalt not covet thy neighbor's wife, nor his manservant, nor his maidservant, nor his cattle, nor anything that is thy neighbor's.

18. The bottom of the Ten Commandments monument says, "Presented by New Kensington Aerie No. 533 Fraternal Order of the Eagles" and contains a Christian Chi-Rho symbol and two inscriptions of the Star of David.

19. Upon information and belief, District maintenance staff maintain the area adjacent the Ten Commandments monument by, among other things, burning and cutting the brush that surrounds the monument.

20. FFRF Staff Attorney Patrick Elliott sent a letter dated March 20, 2012 to George Batterson, the District Superintendent at the time, requesting that the Ten Commandments monument be removed because it violated the Establishment Clause. The District failed to remove the monument or write an official response to FFRF.

21. However, Board President Robert Pallone wrote on the District facebook webpage "KEEP THE TEN COMMANDMENTS AT VALLEY HIGH SCHOOL" on March 24, 2012. He wrote:

> To the community of the NKASD - I am writing this to all of you that are concerned about the Ten Commandments Monument at the high school.
>
> Clearly, we are under attack from an outside group from the state of Wisconsin - Our community, the administration, the board and our staff are outraged by the request to remove a monument that has been part of our district and community for decades. We WILL NOT remove this monument without a fight !!!!! We will litigate this issue at the highest level (US Supreme Court) if necessary. All of us in the district appreciate the overwhelming support from the community and as the current President of the board I want to assure all of you that we won't remove this monument without a battle. We are one of the most diverse school populations and communities in the Commonwealth, and we are extremely sensitive and accepting to

> everyone in the community. The claims of this organization are ridiculous and a complete travesty when you consider all the facts surrounding this situation.
>
> This entire situation is ludicrous and a frivolous lawsuit and request by a radical group. Let's all attempt to remain professional and mannerly as we show our support on both sides of this emotionally charged issue. Please do not allow your emotions to denigrate your support by lowering our arguments to obscenities and radical responses. Please be assured that we will fight this and litigate this in a professional manner and continue to challenge until we get a decision that is acceptable to all of us!!! We will use our current legal team and the support of outside legal scholars and organizations that have contacted the district and offered free services…
>
> Sincerely,
> Robert M. Pallone

22. Upon information and belief, Superintendent Batterson told news media that the Ten Commandments monument would stay and that he had received over 1,000 emails and calls in support of the monument.

23. On March 29, 2012, clergy members in the New Kensington area held a rally during the school day in front of Valley High School to support the District's decision to keep the religious monument in place.

24. Plaintiffs' undersigned counsel sent a final demand letter dated August 29, 2012, to the Board and Thomas Rocci, acting Superintendent at the time, requesting that the Ten Commandments monument be removed and indicating that plaintiffs would file a lawsuit. The District failed to remove the monument or provide notice that it would be removed.

25. Students returned to Valley High School on August 29, 2012, for the first day of the 2012-2013 school year.

26. Doe 2 regularly sees the Ten Commandments in front of Valley High School when Doe 2 enters school each day.

27. Plaintiff Doe 1 attends Valley Middle School and has been exposed to the Ten Commandments monument at Valley High School when visiting the school on various occasions.

28. During the 2011-2012 school year, Plaintiff Doe 1 walked by the Ten Commandments monument when attending a school-sponsored basketball game.

29. Plaintiff Doe 1 has also visited the school to use the swimming pool.

30. Plaintiff Doe 1 plans to attend indoor sporting events at Valley High School this year, which would cause her to come into contact with the Ten Commandments monument given its prominent placement.

31. Plaintiff Doe 1 will attend Valley High School starting in the year 2014.

32. Plaintiff Schaub, the mother of Plaintiff Doe 1, has viewed the Ten Commandments monument while visiting Valley High School to engage in necessary business at the school.

33. Plaintiff Schaub identifies as agnostic and views the Ten Commandments monument as "commanding" that students and visitors worship "thy God." Plaintiff Doe 1 identifies as non-religious. To Plaintiff Schaub, the monument excludes her, Plaintiff Doe 1, and others, both members of the community and outsiders of the community who visit the district, who do not follow the particular religion or god that the monument endorses.

34. The exclusion effectuated by the prominent placement of the Ten Commandments monument has been stressful on both Plaintiff Schaub and Plaintiff Doe 1.

35. Plaintiff Schaub has lost sleep over the presence of the Ten Commandments monument, and both Plaintiff Schaub and Plaintiff Doe 1 have felt anxiety over the proposition

that the religious monument will stay put and that they will continue to encounter it in front of the Valley High School.

36. Plaintiff Doe 3, the parent of Doe 2, has viewed the Ten Commandments monument while visiting Valley High School to conduct necessary business at the school.

37. Plaintiffs Doe 2 and Doe 3 identify as non-religious and do not subscribe to the religious statements that are inscribed on the Ten Commandments monument.

38. The Plaintiffs object to and are offended by the District's practice of displaying the Ten Commandments monument.

39. The Plaintiffs perceive the prominent display of the Ten Commandments monument as an endorsement by the District of the religious principles set forth on the monument.

40. The display sends a message to the Plaintiff students and their parents that they are outsiders in the District and not fully a part of the school community.

41. The Plaintiffs perceive the prominent display of the Ten Commandments monument as evidencing a favored religious view within the District.

42. The Ten Commandments monument places coercive pressure on Doe 1 and Doe 2 to adopt the District's favored religious views.

43. Plaintiffs Schaub and Doe 3 believe that the religious or non-religious upbringing of their children is their own personal right and responsibility, not the right or responsibility of the District. The display of the Ten Commandments monument usurps the parental authority of Plaintiff Schaub and Plaintiff Doe 3 over the religious or non-religious education of their children.

COUNT ONE I
42 U.S.C. § 1983 - Deprivation of Plaintiffs' Constitutional Rights by Defendant

44. The foregoing averments of this Complaint are incorporated by reference.

45. By erecting, displaying, and maintaining the Ten Commandments monument, the Defendant has deprived the Plaintiffs of rights secured by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

46. The District's practice of erecting, maintaining, and continuing to display the Ten Commandments monument in front of Valley High School lacks any secular purpose.

47. "The pre-eminent purpose for posting the Ten Commandments on school[] walls is plainly religious in nature. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact. The Commandments do not confine themselves to arguably secular matters, such as honoring one's parents, killing or murder, adultery, stealing, false witness, and covetousness. See Exodus 20: 12-17; Deuteronomy 5: 16-21. Rather, the first part of the Commandments concerns the religious duties of believers: worshipping the Lord God alone, avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath Day. See Exodus 20: 1-11; Deuteronomy 5: 6-15." *Stone v. Graham,* 449 U.S. 39, 41-42 (1980).

48. The display of the Ten Commandments by the District has the primary effect of both advancing religion generally and advancing the tenets of a specific faith in particular.

49. The display of the Ten Commandments by the District also impermissibly coerces students to suppress their personal religious and non-religious beliefs and adopt the favored religious views of the District.

50. The display of the Ten Commandments at Valley High School constitutes an endorsement of religion by the District.

WHEREFORE, Plaintiffs respectfully request the following relief from this Honorable Court:

A. A declaration that the Defendants' maintenance and display of the Ten Commandments monument at Valley High School is unconstitutional;

B. A permanent injunction directing the District to remove the Ten Commandments monument from District property;

C. Nominal damages to compensate the Plaintiffs for the injury to their constitutional rights;

D. Reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

E. Such other relief as this Honorable Court deems just and proper.

Respectfully submitted,

/s/ Marcus B. Schneider, Esquire
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