

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

H.S., on her own behalf and as parent)	
and next friend of her minor child, J.S.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:08-cv-271
)	
HUNTINGTON COUNTY COMMUNITY)	
SCHOOL CORPORATION,)	
)	
Defendant.)	

AMENDED VERIFIED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1) This is an action for declaratory and injunctive relief to enjoin the Huntington County Community School Corporation (hereinafter AHuntington Schools@) from allowing a religious education program to engage in religious instruction of students during school hours in a trailer on school property. An injunction is also sought to prevent any employee of the school system, on school time, from supervising, directing, or being involved with the program in any way. The action is brought by a taxpayer and parent of a child who attends an elementary school where the religious program has been allowed to operate in this fashion. The action is brought by the plaintiff on her own behalf and on behalf of her minor child pursuant to 42 U.S.C. §1983 to enjoin these actions and inactions of Huntington Schools which violate the Establishment Clause of the First Amendment to the United States Constitution.

Jurisdiction and Venue

- 2) This Court has jurisdiction of this cause pursuant to 28 U.S.C. ' 1331.
- 3) Venue is proper in this district pursuant to 28 U.S.C. ' 1391.
- 4) Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and by 28 U.S.C. ' ' 2201 and 2202.
- 5) This action is brought pursuant to 42 U.S.C. ' 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

Parties

- 6) H.S. is an adult resident of Huntington County, Indiana who lives within the area served by Huntington Schools. She is the mother of J.S., a child attending Horace Mann Elementary School.
- 7) The Huntington County Community School Corporation is a school district located in Huntington County, Indiana.

Facts

- 8) H.S. is the mother of an eight year old child, J.S., who is in the third grade at Horace Mann Elementary School, which is a school within the Huntington County Community School Corporation.
- 9) H.S. is a property tax payer in Huntington County, Indiana.
- 10) Horace Mann Elementary School offers its third and fourth grade students a release time program for religious instruction under which students whose parents consent are released from school during instructional time for approximately one hour of religious education once each week.
- 11) The religious education program at Horace Mann Elementary School is called

“By the Book Weekday Religious Education,” and it is run by the Associated Churches of Huntington County.

- 12) On September 11, 2008, J.S.’s public school teacher led him and all his fellow students out of the school building to the “By the Book” trailer parked in the school parking lot on Horace Mann Elementary School grounds.
- 13) The defendant did not inform H.S. of the religious release time program prior to September 11, 2008, and it did not obtain H.S.’s consent for her child to be taken to the religious release time trailer on that date or participate in the religious release time program in any other way.
- 14) In the trailer, By the Book personnel gave J.S. and his fellow third grade students a pamphlet about the By the Book program, which also contained a “Parent’s Request Form” to enroll their child in the religious release time program. See “By the Book” pamphlet, attached hereto and herein incorporated at Exhibit 1.
- 15) According to the By the Book pamphlet, children who participate in the program study the Bible, both Old and New Testament, and learn to do such things as “apply Bible stories to daily life, know steadfast moral values based on Scripture, locate Scripture, trust God’s unconditional love, be aware of God’s presence, know the value of prayer, use God’s plan for their lives as their source of self-worth, know and follow Jesus ...(and) know and keep the Ten Commandments.” See Ex. 1.
- 16) Teachers of the By the Book program come from different local churches. *Id.*
- 17) Children who do not participate in the By the Book religious release time program remain in their school class rooms and can either read books or do homework

during the time "By the Book" is in session.

- 18) On September 11, 2008, J.S.'s teacher instructed his third grade students, including J.S., to return to him the By the Book Parent's Request Form with the parents' signatures.
- 19) J.S. took the pamphlet home to H.S., but H.S. did not sign the form on the pamphlet because she does not want her child to participate in the "By the Book" program.
- 20) Horace Mann Elementary School teachers collect the By the Book "request forms" from the students in their third and fourth grade classes.
- 21) The first day of the "By the Book" program at Horace Mann Elementary School this school year took place on September 18, 2008.
- 22) On that date, J.S.'s teacher walked all of his third grade students, including J.S., from their class room and through the school hall.
- 23) In the hall, J.S.'s teacher instructed J.S. and three other students whose parents did not return the enrollment form to wait in the hall while he walked the rest of the students out to the By the Book trailer.
- 24) At Horace Mann Elementary School, the religious release time program is conducted in a church trailer that is located on the school grounds and that is hooked up to the elementary school's electricity.
- 25) Horace Mann Elementary School third and fourth grade students are escorted by their teachers as they walk to the church trailer from the school building to attend the religious classes each week.
- 26) While the students are in the release time religious program, there is no school

instruction for students who remain in school and who do not participate in the programming.

- 27) On October 1, 2008 at approximately 3:20 p.m. H.S. arrived at Horace Mann Elementary School for a parent/teacher conference and saw the religious release time trailer parked in the school's parking lot and plugged into a post with the school's electrical meter on it. H.S. took two pictures of the trailer on that date, which are attached hereto and incorporated herein as Exhibit 2.
- 28) On October 16, 2008 at about 8:45 a.m., H.S. drove by Horace Mann Elementary School and again saw the church trailer parked in the school parking lot. She took a picture of the trailer at that time, which is attached hereto and incorporated herein as Exhibit 3.
- 29) On October 17, 2008 at approximately 11:00 a.m., H.S. drove by Northwest Elementary School, which is also a school run by the defendant, and observed a trailer parked in that school parking lot also. H.S. took two pictures of the trailer at that time, which are attached hereto and incorporated herein as Exhibit 4.
- 30) The religious instruction of the By the Book program is conducted by the Christian religious educational organization in the trailer, on school grounds, during the release time period of the school instructional day.
- 31) H.S. objects, on her own behalf and on behalf of her minor child, to Huntington Schools allowing religious organizations to engage in religious instruction on school property, during school hours, using school utilities.
- 32) H.S. also objects, on her own behalf and on behalf of her minor child, to the active participation of Huntington Schools personnel in supervising, directing

and/or otherwise participating in the By the Book religious release time program.

- 33) H.S. believes that the actions of Huntington Schools represent an establishment of religion in violation of the United States Constitution.
- 34) The actions of the defendant are therefore causing H.S. and her minor child irreparable harm for which there is no adequate remedy at law.
- 35) At all times defendant has acted under color of state law.

Claim for relief

- 36) Defendant has violated the Establishment Clause of the First Amendment to the United States Constitution by:
 - a) allowing religious instruction to occur on school property during instructional time;
 - b) allowing a religious organization conducting religious instruction of students during instructional time to use school utilities, such as electricity; and
 - c) supervising, promoting, directing and/or otherwise participating in the "By the Book" religious release time program.

Request for relief

WHEREFORE, plaintiff requests that this Court:


1. Accept jurisdiction of this cause and set it down for hearing at the earliest opportunity.
2. Enter a declaratory judgment that the actions and inactions of the defendant violate the First Amendment for the reasons specified above.
3. Enter a preliminary, later to be made permanent, injunction preventing defendant from: allowing religious instruction to occur on its property during instructional time; providing utility services, including electricity, to the religious release time

program; and participating in the religious release time program in any way.

4. Award plaintiff her attorney fees and costs pursuant to 42 U.S.C. ' 1988.
5. Award all other proper relief.



H.S.



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VERIFICATION

I hereby verify, under penalty of perjury, that the foregoing factual statements are true to the best of my knowledge and belief.



H.S.