

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WISCONSIN

FREEDOM FROM RELIGION FOUNDATION, INC.;  
ANNE NICOL GAYLOR;  
ANNIE LAURIE GAYLOR;  
and DAN BARKER,

Plaintiffs

v.

JIM TOWEY, Director of White House Office of Faith-Based and Community Initiatives;  
PATRICK PURTILL, Director of Department of Justice Center for Faith-Based and Community Initiatives;  
BRENT ORRELL, Director of Department of Labor Center for Faith-Based and Community Initiatives;  
BOBBY POLITO, Director of Department of Health and Human Services Center for Faith-Based and  
Community Initiatives;  
RYAN STREETER, Director of Department of Housing and Urban Development Center for Faith-Based and  
Community Initiatives;  
JOHN PORTER, Director of Department of Education Center for Faith-Based and Community Initiatives;  
JULIETE McCARTHY, Director of Department of Agriculture Center for Faith-Based and Community  
Initiatives;  
MICHAEL MAGAN, Director of Agency for International Development Center for Faith-Based and  
Community Initiatives;  
DAVID CAPRARA, Director of Corporation for National and Community Service Center for Faith-Based  
and Community Initiatives;  
ELAINE CHAO, Secretary of the Department of Labor;  
TOMMY THOMPSON, Secretary of the Department of Health and Human Services;  
ROD PAIGE, Secretary of the Department of Education;  
JOHN ASHCROFT, Secretary of the Department of Justice;  
DR. JULIE GERBERDING, Director of the Centers for Disease Control and Prevention,

Defendants.

COMPLAINT

1. This is an action by the plaintiffs brought against the defendants alleging violations of the Establishment Clause of the First Amendment to the United States Constitution.
2. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.
3. Venue is appropriate in the District Court for the Western District of Wisconsin pursuant to 28 U.S.C. § 1391(e).
4. The plaintiff, Freedom From Religion Foundation, Inc., ("FFRF") is a Wisconsin non-stock corporation whose principal office is in Madison, Wisconsin.
5. FFRF has more than 5,000 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. FFRF's purpose is to protect the fundamental constitutional principle of separation of church and state by representing and advocating on behalf of its members.

7. The plaintiff, Anne Nicol Gaylor, is a federal taxpayer residing in Madison, Wisconsin, and she is the President of FFRF, and she is a non-believer who is opposed to governmental establishment of religion.
8. The plaintiff, Annie Laurie Gaylor, is a federal taxpayer residing in Madison, Wisconsin, and she is an employee of FFRF and the Editor of FFRF's periodical "Freethought Today," and she is a non-believer who is opposed to governmental establishment of religion.
9. The plaintiff, Dan Barker, is a federal taxpayer residing in Madison, Wisconsin, and he is an employee and Public Relations Director of FFRF, and he is a non-believer who is opposed to governmental establishment of religion.
10. The plaintiffs are opposed to the use of federal taxpayer appropriations to advance and promote religion.
11. The defendant, Jim Towey, is the Director of the White House Office of Faith-Based and Community Initiatives, a duly created office of the Government of the United States.
12. The defendant, Patrick Purtill, is the Director of the Department of Justice Center for Faith-Based and Community Initiatives, a duly created office of the Government of the United States.
13. The defendant, Bobby Polito, is the Director of the Department of Health and Human Services Center for Faith-Based and Community Initiatives, a duly created office of the Government of the United States.
14. The defendant, Ryan Streeter, is the Director of the Department of Housing and Urban Development Center for Faith-Based and Community Initiatives, a duly created office of the Government of the United States.
15. The defendant, John Porter, is the Director of the Department of Education Center for Faith-Based and Community Initiatives, a duly created office of the Government of the United States.
16. The defendant, Juliete McCarthy, is the Director of the Department of Agriculture Center for Faith-Based and Community Initiatives, a duly created office of the Government of the United States.
17. The defendant, Michael Magan, is the Director of the Agency for International Development Center for Faith-Based and Community Initiatives, a duly created office of the Government of the United States.
18. The defendant, David Caprara, is the Director of the Corporation for National and Community Service, a duly created office of the Government of the United States.
19. The defendant, Elaine Chao, is the Secretary of the Department of Labor, a duly created office of the Government of the United States.
20. The defendant, Tommy Thompson, is the Secretary of the Department of Health and Human Services, a duly created office of the Government of the United States.
21. The defendant, Rod Paige, is the secretary of the Department of Education, a duly created office of the Government of the United States.
22. The defendant, John Ashcroft, is the Secretary of the U.S. Department of Justice, a duly created office of the Government of the United States.
23. The defendant, Dr. Julie Gerberding, is the Director of the Centers for Disease Control and Prevention, a duly created office of the Government of the United States.

24. The defendants have engaged in and are engaged in actions that violate the Establishment Clause of the First Amendment to the United States Constitution.
25. The defendants' actions have violated the fundamental principle of the separation of church and state by using federal taxpayer appropriations to support activities that endorse religion and give faith-based organizations preferred positions as political insiders.
26. Defendants' actions include the funded support of national and regional conferences, at which faith-based organizations are singled out as particularly worthy of federal funding because of their religious orientation, and the belief in God is extolled as distinguishing the claimed effectiveness of faith-based social services.
27. The defendants, including at national and regional conferences, send messages to non-adherents of religious belief that they are outsiders, not full members of the political community, and the defendants send an accompanying message to adherents of religious belief that they are insiders, favored members of the political community.
28. A reasonable observer of the defendants' actions and listener to their words would perceive the defendants to be endorsing religious belief over non-belief.
29. The defendants' actions and/or words further give support to and the appearance of endorsing a preference for the funding of faith-based organizations.
30. The defendant Directors of the Centers for Faith-Based and Community Initiatives further oversee the expenditure of federal tax appropriations that are intended to give preferences for federal funding to faith-based organizations because such organizations are faith-based; the defendants also act to promote capacity building of faith-based organizations, all of which activities give support to and the appearance of religious endorsement to reasonable observers and/or listeners.
31. The defendant Secretaries of the Department of Labor, Health and Social Services, Education, and Justice, and the Director of the Centers for Disease Control and Prevention, further have directly and preferentially funded with federal taxpayer appropriations services that integrate religion as a substantive component, thereby also having the effect of establishing religion.
32. Finally, the defendant Secretaries and Director of the Centers for Disease Control have funded intermediary faith-based organizations that preferentially award sub-grants to other faith-based organizations, and without utilizing objective criteria by the intermediaries for making sub-awards, which has the further effect of forcing nonbelievers such as these plaintiffs to subsidize the establishment of religion.
33. The preferences for and endorsements of faith-based organizations by the defendants, as preferred providers of social services funded with federal taxpayer appropriations, belie the claim that defendants are trying to level the playing field for access to federal funds by faith-based organizations.
34. The use of federal taxpayer appropriations by the defendants give actual preferences to and public appearances of government endorsement and advancement of religion, including an inextricable entanglement of government and religion.
35. The federal taxpayer appropriations used to support the activities of the defendants convey a message that religion is favored, preferred and promoted over other beliefs and non-belief.
36. The actions of the defendants in using federal taxpayer appropriations to endorse and advance religion violate the Establishment Clause of the First Amendment to the United States Constitution.
37. The defendants' actions, undertaken without rules, regulations, limitations, restrictions or procedures for

assuring that appropriations are not made by the defendants to social service organizations which use government appropriations to advance and promote religion, further violate the Establishment Clause of the First Amendment to the United States Constitution.

38. The actions of all the defendants in violating the Establishment Clause of the First Amendment to the United States Constitution are injurious to the interests of the plaintiffs individually, and to FFRF in its representative capacity, because the defendants' actions compel the plaintiffs to support the establishment, endorsement and advancement of religion, to which the plaintiffs object.

WHEREFORE, the plaintiffs demand judgment as follows: (a) For a declaration that appropriations made by the defendants have been used in violation of the Establishment Clause of the First Amendment to the United States Constitution; (b) for an order enjoining the defendants from continuing to use appropriations in violation of the Establishment Clause of the First Amendment to the United States Constitution, including the prohibition of funding for Centers for Faith-Based Initiatives; (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 fund social service providers that include religion as an integral component of the funded activity; (d) for judgment awarding such further relief as the Court deems just and equitable; and (e) for judgment awarding the plaintiffs their reasonable costs, disbursements and attorney's fees, as allowed by law.

Dated this \_\_\_\_ day of June, 2004.

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