

IN THE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

|                                   |   |                 |
|-----------------------------------|---|-----------------|
| FREEDOM FROM RELIGION FOUNDATION, | ) |                 |
| JOHN DOE, and JACK DOE,           | ) |                 |
|                                   | ) |                 |
| Plaintiffs,                       | ) |                 |
|                                   | ) |                 |
| v.                                | ) | No. 3:15-cv-463 |
|                                   | ) |                 |
| CONCORD COMMUNITY SCHOOLS,        | ) |                 |
|                                   | ) |                 |
| Defendant.                        | ) |                 |

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
AND NOMINAL DAMAGES**

**Introductory Statement**

1. Concord Community Schools (“the School Corporation”) is a public school corporation that operates several schools—including Concord High School (“the High School”)—in Elkhart, Indiana. Each winter for the past several decades, the High School has staged a “Christmas Spectacular,” a series of performances taking place at the High School in which students perform various holiday songs and to which other students, family-members, and members of the community are invited to attend. While the holiday songs chosen for the Christmas Spectacular vary somewhat each year, the Christmas Spectacular always closes with an approximately 20-minute live depiction—also by students of the High School—of the story of the birth of Jesus. This event is set to be staged again in early December of 2015. The plaintiffs—a non-profit membership organization devoted to the separation of church and state, the father of a student at the High School who will attend the event, and a student at the High School who will participate in a separate segment of the event—all object to this portion of the “Christmas

Spectacular.” This live Nativity Scene violates the Establishment Clause of the First Amendment to the United States Constitution, and declaratory and injunctive relief must issue. The plaintiffs are also entitled to their nominal damages.

### **Jurisdiction, Venue, and Cause of Action**

2. This Court has jurisdiction of this case 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 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 U.S. Constitution.

### **Parties**

6. Freedom From Religion Foundation (“FFRF”) is a nationwide not-for-profit membership organization with its primary place of business in Madison, Wisconsin. The organization is devoted to protecting the constitutional principle of the separation of church and state. FFRF has 23,000 members in the United States and 361 members in Indiana.
7. John Doe is the pseudonym of an adult resident of Elkhart County, Indiana.
8. Jack Doe is the pseudonym of a minor resident of Elkhart County Indiana.
9. Concord Community Schools is a public school corporation that operates several public schools in Elkhart County, Indiana.

### **Factual Allegations**

#### The Christmas Spectacular

10. For several decades, toward the beginning of each winter trimester the High School’s Performing Arts Department has planned and produced a “Christmas Spectacular.”

11. In 2015, five performances of the Christmas Spectacular will be staged: a school-day performance on December 11th that is not open to the public but is instead only open to (and will be attended by) students and faculty-members of elementary schools operated by the School Corporation; and two performances each on December 12th and December 13th that are open to the public. The Christmas Spectacular will again occur in December 2016 and in future years.
12. The Christmas Spectacular is planned by the faculty of the High School's Performing Arts Department and features performances by students enrolled in elective, for-credit performing arts classes. According to the School Corporation's webpage, the Performing Arts Department "involves approximately half of the school's 1,500 students at the high school. Students are involved in marching band, 3 concert bands, 2 jazz bands, pep band, string orchestra, symphony orchestra, 6 choirs, piano, and dance." Attendance and performance at the Christmas Spectacular is mandatory for students enrolled in these classes.
13. The pieces to be performed during the Christmas Spectacular are selected by the faculty-members of each class, although, to the plaintiffs' knowledge, the live Nativity Scene and the retelling of the story of the birth of Jesus are performed by tradition of the School Corporation.
14. Rehearsals for the Christmas Spectacular typically occur both during and after school and on the premises of the High School. Additionally, "run throughs"—in which the entire Christmas Spectacular is rehearsed from beginning to end—occur both during and after school. These rehearsals are led by various faculty members in the performing arts department of the High School.

15. The performances of the Christmas Spectacular take place in the High School's auditorium. The public performances (as opposed to the performance for the elementary schools of the School Corporation) are open to students, faculty, family-members, and members of the community at large, and are typically attended by thousands of persons.
16. During the event, several musical numbers are performed. While some of the precise songs chosen differ each year, these songs generally celebrate Christmas and the winter season. For instance, the following songs (among others) were presented during the 2014 Christmas Spectacular: "Joy to the World"; "Here Comes Santa Claus"; "Last Christmas"; "Christmas Time is Here"; a mash-up of "Walking in a Winter Wonderland" and "Don't Worry, Be Happy"; and "Let It Snow."
17. Every performance of the Christmas Spectacular ends with an approximately 20-minute telling of the story of the birth of Jesus, including a live Nativity Scene and a scriptural reading from the Bible. During this segment, students at the High School portray the Virgin Mary, Joseph, the Three Wise Men, shepherds, and angels. Portraying these biblical figures, the students gather on stage with a manger backdrop, which includes a cradle and the Star of Bethlehem.
18. While students of the High School portray the various characters present in the story of the birth of Jesus, a faculty-member (acting as narrator) recites the story as it appears in the Christian Bible (Luke 2:6-14 and Matthew 2:1-11).
19. At the same time, other students perform various religious hymns—either singing or instrumentally—such as "Christ in the Manger," "Silent Night," and "Hark! The Herald Angels Sing." These hymns are performed by the High School's various choirs, which

are placed throughout the school's auditorium, including to the side of the stage and in the aisles of the auditorium.

20. A video of the 2014 Christmas Spectacular is available at [https://www.youtube.com/watch?v=6ni2anXa\\_H4&feature=youtu.be](https://www.youtube.com/watch?v=6ni2anXa_H4&feature=youtu.be) (last visited Sept. 29, 2015). Several photographs of the 2014 Christmas Spectacular are available at <https://concordmusic.smugmug.com/Christmas-Spectacular-2014/Christmas-Spectacular-2014> (last visited Sept. 29, 2015).
21. The Nativity Scene and the story of the birth of Jesus are, of course, well-recognized symbols of the Christian faith. Their presence at the Christmas Spectacular is coercive, represents an endorsement of religion by the High School and the School Corporation, has no secular purpose, and has the principal purpose and effect of advancing religion.
22. To the plaintiffs' knowledge, no faith other than the Christian faith has ever been represented in performances staged at the Christmas Spectacular.

#### The Plaintiffs

23. FFRF is a non-profit membership organization dedicated to defending the constitutional principle of the separation between state and church.
24. After receiving a complaint about the Christmas Spectacular from one of its members, FFRF sent a letter in August 2015 to the Superintendent of the School Corporation expressing FFRF's concern about the constitutionality of school officials incorporating the Nativity Scene and the story of the birth of Jesus into the Christmas Spectacular. A true and correct copy of that letter is attached and incorporated herein as Exhibit 1. (Originally attached to the letter was a portion of the program for the 2014 Christmas Spectacular identifying the student musicians and cast-members that participated in the

live Nativity Scene. This program excerpt has been omitted from the attached exhibit insofar as most, if not all, of these students are presumably minors.)

25. In response to the letter from FFRF, the Superintendent of the School Corporation issued a statement, which he read during the September 2015 meeting of the school board. A true and correct copy of that statement is attached and incorporated herein as Exhibit 2.
26. As a result of the objectionable portion of the Christmas Spectacular, FFRF has been forced to expend resources in order to investigate the School Corporation's actions and to advocate on behalf of its mission and on behalf of FFRF's members. The resources that FFRF has expended and will continue to expend concerning the Christmas Spectacular have necessarily been diverted from other projects about which FFRF is concerned, and FFRF will continue to expend these resources in future years. Thus, in addition to traditional membership standing, FFRF has suffered injury-in-fact within the meaning of *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).
27. John Doe is the pseudonym of an adult resident of Elkhart County, Indiana, and is a member of FFRF. John Doe is the father of Jack Doe, which is the pseudonym of a minor resident of Elkhart County, Indiana, who is currently a student at the High School.
28. John Doe attended the 2014 Christmas Spectacular and intends to attend the 2015 Christmas Spectacular and the 2016 Christmas Spectacular.
29. Jack Doe is actively involved in the music department at the High School and will perform during the 2015 Christmas Spectacular. In addition to performing in other elements of the Christmas Spectacular by virtue of his participation in the music department, Jack Doe will perform one or more of the religious hymns that are part of the live Nativity Scene and the telling of the story of the birth of Jesus. He will also attend

and perform in the 2016 Christmas Spectacular as he intends to remain actively involved in the music department.

30. FFRF, John Doe, and Jack Doe all object to the portion of the Christmas Spectacular with the live Nativity Scene and the telling of the story of the birth of Jesus.
31. Both John Doe and Jack Doe have thus come into, and will in the future come into, direct and unwelcome contact with the objectionable portions of the Christmas Spectacular.

Concluding Factual Allegations

32. The defendant has, at all times, acted under color of state law.
33. As a result of the actions of the defendant, the plaintiffs are suffering irreparable harm for which there is no adequate remedy at law.

**Legal Claim**

34. The portion of the Christmas Spectacular with the live Nativity Scene and the telling of the story of the birth of Jesus violates the Establishment Clause of the First Amendment to the United States Constitution.

**Request for Relief**

**WHEREFORE**, the plaintiffs request that this Court do the following:

1. Accept jurisdiction of this cause and set it for hearing.
2. Declare that the defendant has violated the rights of the plaintiffs for the reason noted above.
3. Enter a preliminary injunction, later to be made permanent, enjoining the defendant from organizing, rehearsing, presenting, or allowing to be presented the portion of the Christmas Spectacular with the live Nativity Scene and the telling of the story of the birth of Jesus.

4. Award the plaintiffs \$1.00 each in nominal damages.
5. Award the plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. § 1988.
6. Award all other proper relief.

/s/ Gavin M. Rose  
Gavin M. Rose,  
ACLU OF INDIANA  
1031 E. Washington St.  
Indianapolis, IN 46202  
317/635-4059  
fax: 317/635-4105  
grose@aclu-in.org

Sam Grover  
*Motion for admission pro hac vice to be filed*  
Ryan Jayne  
*Motion for admission pro hac vice to be filed*  
FREEDOM FROM RELIGION FOUNDATION  
P.O. Box 750  
Madison, WI 53701  
608/256-8900  
fax: 608/204-0422  
sgrover@ffrf.org  
rjayne@ffrf.org

Daniel Mach  
*Motion for admission pro hac vice to be filed*  
Heather L. Weaver  
*Motion for admission pro hac vice to be filed*  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
915 15th Street, N.W., Ste. 600  
Washington, D.C. 20005  
202/675-2330  
fax: 202/546-0738  
dmach@dcaclu.org  
hweaver@aclu.org

*Attorneys for the plaintiffs*