IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:14-cv-02878-RBJ

AMERICAN HUMANIST ASSOCIATION, INC., et al,

Plaintiffs,

v.

DOUGLAS COUNTY SCHOOL DISTRICT RE-1, et al,

Defendants.

PLAINTIFFS' SUPPLEMENTAL SUMMARY JUDGMENT MEMORANDUM

Introduction.[1] The Tenth Circuit reversed this Court's judgment as to Zoe and AHA, holding that Zoe undeniably has standing to seek retrospective relief, and remanded to determine the merits of Zoe's claims and AHA's standing for the same relief. 859 F.3d 1243, 1247-48, 1254 n.4, 1261. Plaintiffs respond to DCSD's post-remand arguments herein.

I. DCSD attempts to unduly narrow the scope of Zoe's Establishment Clause claim.

DCSD insists that this Court can only consider "the conduct [Zoe] and her son personally experienced," which it later contends is actually limited to what only Zoe Mother encountered: an email and a flyer promoting and soliciting funds for Cougar Run's week-long fundraiser for two Christian organizations and their proselytizing mission trip. (D.Supp.1-2). DCSD asserts that these communications are the "complete scope of her Establishment Clause claim." (D.Supp.2).

A. Cougar Run's solicitations alone violated the Establishment Clause.

Even if the Court considered the flyer and email in isolation, the result would be the same, as these school-sponsored solicitations unconstitutionally endorsed and affiliated DCSD with Christianity regardless of Cougar Run's tangible contributions to Christian proselytizing on the trip itself and the evidence of school sponsorship at HRHS. (PSJ 3-4) (P.Opp. 7, 10-11) (P.Reply 4). The "government may not *promote or affiliate* itself with any religious doctrine *or organization*." *Cty. of Allegheny v. ACLU*, 492 U.S. 573, 590 (1989) (emphasis added). The Establishment Clause requires the government to "remain secular, rather than affiliate itself with religious beliefs or institutions." *Id.* at 610. Merely symbolically endorsing the Christian organizations is enough. *Bell v. Little Axe Indep. Sch. Dist.*, 766 F.2d 1391, 1405 (1985). The "resulting advancement need not be material or tangible." *Friedman v. Bd. of Cnty. Comm'rs*, 781 F.2d 777, 781-82 (10th Cir. 1985). "[E]ven the unspoken grant of a state 'imprimatur' to religious activity in primary schools is impermissible under the effect test." *Id.* And if "the challenged practice is likely to be interpreted as advancing religion, it has an impermissible effect … regardless of whether it actually is intended to do so." *Id.* "Religious minorities may not

[1] Plaintiffs incorporate by reference their summary judgment memoranda, Doc.47 ("PSJ"), Doc.58 ("P.Opp."), Doc.63 (P.Reply), and all evidence previously filed, herein. Defendant Douglas County School District (DCSD)'s post-summary judgment memorandum (Doc.103) is cited herein as ("D.Supp.").

be made to feel like outsiders because of government's malicious or merely unenlightened endorsement of the majority faith." *Id.* The flyer declared Cougar Run's "Sponsoring" and "Partnering" with "Fellowship of Christian Athletes" for their "mission." (Gutierrez Dep. Ex. 20). The principal admitted the flyer conveyed a religious message. (Gutierrez Dep. 22-23, 31-34, 39). Thus, students would "unquestionably perceive" the trip (and AIM and FCA) as "stamped with her school's seal of approval." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000).[2]

B. This Court cannot confine its analysis to the flyer and email alone.

DCSD implores the Court not to consider the fundraiser or trip itself or any other evidence of school sponsorship. (D.Supp.2). DCSD is wrong for three reasons. First, DCSD ignores Zoe-Son's week-long exposure to the fundraisers conducted at his school and in his classroom during school hours, and the pressures *he* felt to contribute. (Zoe Int.6; RFA 1; Zoe Dep. 32). While DCSD concedes, "*her son* had personal contact," it inexplicably insists the Court can *only* consider the email and flyer Zoe received. (D.Supp.2). But Zoe's claims include her son's claims. *Bell*, 766 F.2d at 1398. Second, DCSD construes Zoe's injuries "too narrowly." *Id.* at 1408. Zoe objected to the donation drive itself and "this whole Guatemala trip," as Cougar Run was "asking for donations for a mission trip." (Zoe Dep. 14-15, 33). The Tenth Circuit recognized that Zoe's injuries transcended the flyer and email. 859 F.3d at 1248-49, 1253-54.

Third and critically, *Lemon*'s purpose and effect prongs *require* this Court to consider all "openly available data" through the lens of an "objective observer" who is presumed to know more than the litigants. *McCreary Cty. v. ACLU*, 545 U.S. 844, 862-64 (2005); *Allegheny*, 492 U.S. at 620. This "reasonable observer" is "not the everyday casual gawker" and is aware of more than just the "challenged" activity. *Cressman v. Thompson*, 798 F.3d 938, 958 (10th Cir.

[2] *E.g.*, *Am. Atheists, Inc. v. Duncan*, 616 F.3d 1145, 1160-61 (10th Cir. 2010) (the motorist is "bound to notice the preeminent symbol of Christianity and the UHP insignia, linking the State to that religious sign"); *Doe v. Village of Crestwood*, 917 F.2d 1476, 1478-79 (7th Cir. 1991) (village unconstitutionally endorsed religion simply because the information published in the village paper would "lead an objective observer to conclude that the Village itself is the sponsor, or at least a sponsor" of the mass, even though the mass was actually privately-sponsored); *Newman v. City of East Point*, 181 F. Supp. 2d 1374, 1381 (N.D. Ga. 2002) ("a flyer advertising the Mayor's Prayer Breakfast" was unconstitutional because the city played a "part in the promotion" by printing the flyers and distributing them).

2015).[3] In the Tenth Circuit, the extent of the reasonable observer's knowledge is vast. The observer is keenly aware of the details, context, and "circumstances" surrounding the challenged activity,[4] including the "religious motivation" of private entities, details about the community,[5] and other facts not typically available to the average passerby.[6]

The Tenth Circuit has never confined the Establishment Clause analysis to the facts the plaintiffs experienced first hand. On the contrary, in *Bell*, the court held that parents were entitled to damages stemming from faculty participating in religious club meetings that their children never attended. 766 F.2d at 1396-99, 1405, 1408. The two cases DCSD relies upon — *Roberts* and *Bauchman* — do not require this Court to confine its analysis to the flyer and email. In *Roberts*, the plaintiffs lacked standing to seek injunctive relief because there was no likelihood they would ever be in the teacher's classroom. 921 F.2d at 1051-52. And they "failed to preserve their damages claims." *Id.* Therefore, the court never even reached the merits of the plaintiffs' claims and thus, did not limit the scope to the facts they personally experienced. (D.Supp.1). In *Bauchman v. West High Sch*., the plaintiff merely pointed to a teacher's pattern of conduct dating back twenty years and his underlying belief system to support her claim that the teacher's selection of certain choir songs furthered a religious purpose. 132 F.3d 542, 545, 560 (10th Cir. 1997). Zoe, however, does not rely upon a teacher's subjective religious beliefs to demonstrate religious purpose. (PSJ 12-13) (P.Opp. 6-9) (P.Reply 4). Nor is Zoe relying on any evidence predating her son's attendance at Cougar Run. HRHS's endorsement of the trip, and the activities on the trip itself, are all directly connected to Cougar Run's actions that the Zoes personally

[3] *E.g.*, *Weinbaum v. City of Las Cruces*, 541 F.3d 1017, 1031 n.16 (10th Cir. 2008) ("Undoubtedly, the 'objective observer' is presumed to know far more than most actual members of a given community.").
[4] *Green v. Haskell Cnty. Bd. of Comm'rs*, 568 F.3d 784, 800, 805-06 (10th Cir. 2009); *Weinbaum*, 541 F.3d at 1033-37; *O'Connor v. Washburn Univ*., 416 F.3d at 1228-29 (10th Cir. 2005)
[5] *Green*, 568 F.3d at 800-03; *Weinbaum*, 541 F.3d at 1033-34, 1037, *O'Connor*, 416 F.3d at 1228-29.
[6] *Green*, 568 F.3d at 801-02 (statements and photographs of county commissioners); *Weinbaum*, 541 F.3d at 1033-34 (brochure produced by city); *id*. at 1034 n.18 (fact that other towns often incorporate symbols of the city's name in the seal); *id*. at 1037 (the "Olympic spirit" evoked by the display's Spanish slogan); *O'Connor*, 416 F.3d at 1228 ("that the statue was one of thirty outdoor sculptures displayed,…the existence of a brochure available in the campus art museum," and "that art in previous years had been placed at the location of *Holier Than Thou*.").

experienced. The *McCreary* Court admonished defendants for reading its "cases as if the purpose enquiry were so naive that … [it] would cut context out of the enquiry, to the point of ignoring history, no matter what bearing it actually had on the *significance of current circumstances*." 545 U.S. at 863-64 (emphasis added). Insofar as *Bauchman* deemed "past conduct" and "past violations" irrelevant to the purpose analysis, it has been abrogated by *Santa Fe* and *McCreary*, 545 U.S. at 862, 866, 873. *Santa Fe* held that courts must evaluate the "evolution" and "history" of the challenged activity and cannot "turn a blind eye to the context." 530 U.S. at 309, 315. The Court found it relevant that the challenged practice was the progeny of past school "practices that unquestionably violated the Establishment Clause." *Id. Santa Fe* therefore "compels courts to consider the government's past violations of the Establishment Clause when evaluating its present conduct." *ACLU v. McCreary Cnty.*, 354 F.3d 438, 457-58 (6th Cir. 2003).[7]

II. Cougar Run's Christian fundraisers violated the Establishment Clause.

A. Sponsoring and fundraising for Christian organizations and their proselytizing mission trip unconstitutionally endorsed Christianity and advanced religion.

DCSD's direct sponsorship, funding, and material support for two Christian organizations violated the Establishment Clause in a fundamental sense. There are "three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active involvement of the sovereign in religious activity.'" *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971) (quoting *Walz v. Tax Commission*, 397 U.S. 664, 668 (1970)). The government must not "place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling nonadherents to support the practices or proselytizing of favored religious organizations and conveying the message that those who do not contribute gladly are less than full members of the community." *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 9 (1989). Cougar Run did exactly that through its

[7] *See also ACLU of Ohio Found., Inc. v. Deweese*, 633 F.3d 424, 432 (6th Cir. 2011) ("the history of Defendant's actions demonstrates that any purported secular purpose is a sham."); *Borden v. Sch. Dist.*, 523 F.3d 153, 176 (3d Cir. 2008) (looking to the history and context of the coach's prayer activities with the team and determined that his "past conduct signaled an unconstitutional endorsement of religion."); *M.B. v. Rankin Cnty. Sch. Dist.*, 2015 U.S. Dist. LEXIS 117289, *14-15 (S.D. Miss. July 10, 2015) ("Evidence from prior years' ceremonies [that plaintiff did not attend] is probative").

fundraisers for AIM and FCA, the proceeds of which *directly* aided the Christian mission trip.[8]

The "State is [also] constitutionally compelled to assure that the state-supported activity is not being used for religious indoctrination." *Levitt v. Comm. for Pub. Educ. & Religious Liberty*, 413 U.S. 472, 480 (1973). DCSD "failed to do so here," leaving the Court "with no choice" but to hold that Cougar Run's fundraisers constituted "an impermissible aid to religion." *Id.* The Tenth Circuit recognized that the group "engaged in various proselytizing activities during the trip, some of which were *aided by the supplies raised at Cougar Run*." 859 F.3d at 1248-49 (emphasis added). It also recognized that "AIM is a Christian group that arranges evangelical mission trips." *Id*. It noted that "Zoe was directly and personally solicited by school officials to donate to a 'mission' trip, and she was informed that a class at her son's school was 'partnering with' a religious group, the 'Fellowship of Christian Athletes,' to conduct the fundraiser. The solicitation further advised that checks for the event should be written to the school." *Id.* at 1253. Cougar Run urged students to donate "beads and bracelet string," which were used to make "Salvation Bracelets" "to help [the children] remember the story of Christ."[9] Sports equipment purchased from the proceeds were used as an "opportunity to discuss Jesus." (Goings Dep. Ex. 13). The proceeds from HRHS also "went to AIM." (Malach Dep. 45). "This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith." *McCollum v. Bd. of Educ*., 333 U.S. 203, 210 (1948).

DCSD argues that its fundraisers survive effect prong muster because they were "'purely optional'" and Zoes "suffered no adverse consequences." (D.Supp.7). But the "Establishment Clause … does not depend upon any showing of direct governmental compulsion." *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 221 (1963). In *Allegheny*, the Court held that a crèche displayed on government property had "the effect of endorsing a patently Christian message." 492 U.S. at 601-02. The Court made clear: "nothing more is required to demonstrate a violation."

[8] *See also Ams. United for Separation of Church & State v. Prison Fellowship Ministries, Inc*., 509 F.3d 406, 422 (8th Cir. 2007); *Gilfillan v. Philadelphia*, 37 F.2d 924, 931 (3d Cir. 1980) ("regardless of imprimatur, the City's assistance had effectively enabled the Pope to reach large numbers of persons").
[9] (Goings Exs.13-14) (Gutierrez Exs.20-21) (SJ Ex 2-G) (Malach Dep.21,62-65) (Odice Dep.45,56).

Id. Plaintiffs "are entitled to recover … even if they are unable to demonstrate *consequential injury*." *Bell*, 766 F.2d at 1408 (emphasis added). DCSD then posits that "Malach and Odice were acting entirely in their private capacity," and that "no school district funds were used to pay for the trip." (D.Supp.9). This is irrelevant since Cougar Run's endorsement of FCA, AIM, and the trip was violative independent of the HRHS teachers, *supra*. But the record is replete of evidence that refutes DCSD's "private capacity" claim. (PSJ 1-4) (P.Opp.12-13). Even the principal admitted it was a "school trip" and that "it's absolutely policy" teachers attend. (Goings Dep. 38, 45). Parents were directed to "make checks payable to Highlands Ranch High School." (SJ Ex. 2-B). The Tenth Circuit recognized the overwhelming evidence of school sponsorship, including the fact that "Malach created flyers … which provided her school email account," and that "Micki Benge, a teacher at Cougar Run, emailed Odice and Malach about organizing a supply drive," and later "sent an email to the Cougar Run staff.'" 859 F.3d at 1248.

The four cases DCSD relies upon in its effect analysis are inapposite. *Van Orden v. Perry*, 545 U.S. 677, 681, 699-702 (2005) is an *exception* to *Lemon* for "borderline" cases involving longstanding passive *displays*. *Van Orden* has no bearing in the "public school" context. *Id.* at 703.[10] *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995) was a free speech case involving a forum for private speech. Unlike here, the university was *not* "making direct money payments to an institution or group that is engaged in religious activity." *Id.* at 842. The Court reiterated that there are "special Establishment Clause dangers where the government makes direct money payments to sectarian institutions." *Id.* The Court found, "[t]he exaction here, by contrast, is a student activity fee," and the university took "pains to disassociate itself from the private speech." *Id.* at 840-41. *Rosenberger* also has no bearing on "school-related events." *Santa Fe*, 530 U.S. at 302. Cougar Run's fundraisers were *part of the* "curriculum."[11] *Bauchman* involved the *sui generis* issue of choir music. 132 F.3d at 546. Given the "traditional

[10] The Tenth Circuit is not even bound by *Van Orden* in display cases. *Green*, 568 F.3d at 797 n.8.
[11] (Compl. Exs. 58-59) (Ans. ¶201, ¶¶206-207) (Goings Dep. 37, 64 & Ex. 14) (Gutierrez Dep. 15, 17, 22-24, Exs. 19, 21) (Malach Dep. 66-68) (Odice Dep. 39-41) (Fagen Dep. 10-11) (Sch. Dist. Int. No. 13).

and ubiquitous presence of religious themes in vocal music," together with the inclusion of a variety of secular songs, the court held that, "[a]ny choral curriculum designed to expose students to the full array of vocal music culture therefore can be expected to reflect a significant number of religious songs." *Id.* at 554-55. Lastly, in *Smith v. Jefferson Cty. Bd. of Sch. Comm'rs*, a "budgetary crisis forced the Board to close its alternative school and, needing to accommodate the alternative-school students on short notice … selected a high-performing, state-certified alternative school." 788 F.3d 580, 590 (6th Cir. 2015). The arrangement "allowed the Board to fulfill its legal obligation to provide an alternative school" and "saved significant taxpayer money." *Id.* The Sixth Circuit stressed: "a reasonable observer would view all of these in the specific context of the arrangement." *Id.* DCSD did not fundraise for the Christian organizations out of legal or budgetary necessity nor did it save taxpayer money. Such a "needless use of means that are inherently religious makes a message of endorsement likely if not unavoidable." *Jewish War Veterans v. U.S.*, 695 F. Supp. 3, 14 (D.D.C. 1988). An "observer could reasonably conclude that the District would only choose" these Christian charities despite "the existence of other suitable [charities]—if the District approved of [their religious] message." *Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 854 (7th Cir. 2012) (en banc). Moreover, in *Smith*, there was no evidence of any "religious activism" by Kingswood.[12] And although a chapel was occasionally used for assemblies, Kingswood organized these events, *not a public school*. 788 F.3d at 590.

B. DCSD's Christian fundraisers failed *Lemon*'s purpose prong.

DCSD's explicit "partnership" with FCA to fundraise for FCA and AIM's Christian mission trip clearly lacked a secular purpose. (PSJ 12) (P.Opp. 6-9). The purpose of the trip was "to share Jesus Christ with those who don't know him" and bring "faith to people in Guatemala."[13] They "did not do" secular "service work, physical labor [or] giving less fortunate people resources." (Odice Dep. 56-57). DCSD argues that the purpose prong is satisfied simply because the "purpose of the supply drive was to have Benge's sixth-grade students 'make real-

[12] *Kucera v. Jefferson Cty. Bd. of Sch. Comm'rs*, 956 F. Supp. 2d 842, 853 (E.D. Tenn. 2013).
[13] (Malach Dep. 18-19, 32) (Odice Dep. 8, 12-13, 30) (Berry Dep. 89, 106-07) (SJ Ex. 2-B).

world connections with their Latin American social studies curriculum.'" (D.Supp.3). But the "unmistakable message of the Supreme Court's teachings is that the state cannot employ a religious means to serve otherwise legitimate secular interest." *Karen B. v. Treen*, 653 F.2d 897, 901 (5th Cir. 1981), *aff'd*, 455 U.S. 913 (1982).[14] In *Gilfillan*, for instance, a city's funding of a platform for the Pope's visit failed even though it was constructed for "the safety of the expected crowd." 637 F.2d at 927-30 & 937 (Aldisert, J., dissenting). And while DCSD erroneously insists that the Court must ignore how the supplies and funds were ultimately utilized, Cougar Run's flyer alone reflected a "patently religious" purpose. *McCreary*, 545 U.S. at 862-63.[15]

DCSD's purpose analysis hinges on four inapplicable cases. *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327 (1987) involved an *accommodation*. The Court relied on the fact that Congress's exempting religious organizations from Title VII created a level playing field. *Id*. at 335. *Summum v. City of Ogden* was a free speech display case involving "equal access." 297 F.3d 995, 1010-11 (10th Cir. 2002). Likewise, *O'Connor* held that a "state is not prohibited from displaying art that may contain religious or anti-religious symbols in *a museum setting*." 416 F.3d at 1228. Finally, *Zelman v. Simmons-Harris*, 536 U.S. 639, 649 (1997) held: "When a government program is *neutral toward religion* and 'provides assistance directly to a *broad class of citizens* who, in turn, direct government aid to religious schools wholly as a result of *their own genuine and independent private choice*,' the Establishment Clause is not violated." *Id*. (emphasis added). Cougar Run, however, *directly* aided two Christian organizations exclusively.

C. DCSD's fundraisers fostered excessive entanglement with religion.[16]

The "state is constitutionally required to see that state-supported activity is not used for religious indoctrination." *Roberts*, 921 F.2d at 1054 (citations omitted). Yet, when, as in this case, a government program or grant requires officials "to ensure the absence of a religious

[14] *See Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 222-23 (1963).
[15] *See also ACLU of Ohio Found., Inc. v. Deweese*, 633 F.3d 424, 434 (6th Cir. 2011) ("The poster's patently religious content reveals Defendant's religious purpose"); *Doe v. Cnty. of Montgomery*, 915 F. Supp. 32, 36-37 (C.D. Ill. 1996) ("the sign 'THE WORLD NEEDS GOD' is undeniably a religious message … [and thus lacks a] secular purpose.").
[16] Contrary to DCSD's statement, Plaintiffs *did* argue that the third prong is violated. (PSJ 15 n.59, 19).

message," it fosters "excessive entanglement." *Agostini v. Felton*, 521 U.S. 203, 221-22 (1997) (citation omitted). *See Santa Fe*, 530 U.S. at 305-07. It is enough that the "potential for impermissible fostering of religion is present." *Lemon*, 403 U.S. at 618-19.[17]

D. DCSD coerced elementary schoolchildren to support Christian organizations.

The coercion test "seeks to determine whether the state has applied coercive pressure on an individual to support or participate in religion." *Elmbrook*, 687 F.3d at 850. When, as here, "the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." *Engel v. Vitale*, 370 U.S. 421, 430-31 (1962). Furthermore, the "State exerts great authority and coercive power…because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure." *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987). A teacher's involvement no doubt "will be perceived by the students as inducing a participation they might otherwise reject." *Lee*, 505 U.S. at 590. Zoe-Son was solicited by "school officials to donate money and bring in a specific item to support a Christian Mission Trip." (Zoe Int. No. 7). Zoe-Son "felt coerced into participating and contributing," because "collection took place during school hours," he "felt that his teachers expected participation," and "a lot of his peers [were] contributing." (Zoe Int. 6; RFA No.1; Zoe Dep. 32).

DCSD's only defense to coercion is that the fundraisers were "purely optional." (D.Supp.7). The activities in *Santa Fe*, however, were "purely voluntary" and yet the Court still found the student-led prayers unconstitutionally coercive under *Lee.* 530 U.S. at 312. *Lee* also held that the fact "that attendance at the graduation ceremonies is voluntary in a legal sense does not save the religious exercise." 505 U.S. at 596. *Lee* and *Santa Fe* rest upon a basic principle, "that the type of coercion that violates the Establishment Clause need not involve either the forcible subjection of a person to religious exercises." *DeStefano v. Emergency Housing Group, Inc*., 247 F.3d 397, 407 (2d Cir. 2001). Justice Kennedy, joined by Justice Scalia, agreed that the "inquiry with respect to coercion" is simply "whether the government imposes pressure upon a

[17] *Accord Larkin v. Grendel's Den*, 459 U.S. 116, 125 (1982).

student to participate in a religious activity." *Bd. of Educ. v. Mergens*, 496 U.S. 226, 261-62 (1990) (Kennedy, J., concurring in part). [18]

In fact, Cougar Run's actions were even more coercive than *Lee* and *Santa Fe*, both because of the long duration of the fundraising (a week in contrast to a two-minute prayer), and because of the young age of the students. "Elementary schoolchildren" like Zoe-Son "are vastly more impressionable than high school" students. *Bell*, 766 F.2d at 1404. "In elementary schools, the concerns animating the coercion principle are at their strongest." *Peck v. Upshur Cnty. Bd. of Educ*., 155 F.3d 274, 287 (4th Cir. 1998).

III. AHA has associational standing.

DCSD misleads the Court into believing that only Zoe's claims remain. (D.Supp.1). The Tenth Circuit, however, reversed this Court's ruling that AHA lacked standing. 859 F.3d at 1254 n.4, 1261. AHA has standing for damages and retrospective declaratory relief because Zoe is an AHA member with standing on these claims, and they involve a pure question of law. *See Int'l Union v. Brock*, 477 U.S. 274, 287 (1986) (damage remedy involved pure question of law, which could be disposed of without reference to "the individual circumstances"); *Lake Lucerne Civic Ass'n v. Dolphin Stadium Corp*., 801 F. Supp. 684, 691 n.6 (S.D. Fla. 1992); *Fla. Paraplegic Ass'n v. Martinez*, 734 F. Supp. 997, 1001 (S.D. Fla. 1990). Since AHA's damage remedy is limited to "nominal damages only, the court can determine the damage to members of the plaintiff in a discrete and insular manner, in accord with *International Union*." *Id*. The same applies to declaratory relief. *See Alaska Fish & Wildlife Fed'n & Outdoor Council, Inc. v. Dunkle*, 829 F.2d 933, 938 (9th Cir. 1987). Retrospective declaratory relief is proper where, as here, it merely the requires the court "to determine whether a past constitutional violation occurred." *F.E.R. v. Valdez*, 58 F.3d 1530, 1533 (10th Cir. 1995); *PeTA v. Rasmussen*, 298 F.3d 1198, 1203 n.2 (10th Cir. 2002).

[18] *See also Warner v. Orange Cty. Dep't of Prob*., 115 F.3d 1068, 1076 (2d Cir. 1996) (fact that a parolee "managed to avoid indoctrination…does not make the County's program any less coercive."); *Meltzer v. Bd. of Pub. Instruction*, 548 F.2d 559, 575 (5th Cir. 1977) (coercion test was violated because "pressures would be exerted upon non-conforming pupils" to accept a Gideon bible).

Respectfully submitted,

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