

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

**MINOR I DOE  
through parent PARENT I DOE**

and

**MINOR II DOE  
through parent PARENT II DOE,**

Plaintiffs,

v.

**Case No. 3:08-cv-00361-MCR-EMT**

**SCHOOL BOARD FOR SANTA ROSA  
COUNTY, FLORIDA. et. al.,**

Defendants,

v.

**CHRISTIAN EDUCATORS  
ASSOCIATION INTERNATIONAL,**

Defendant-Intervenor.

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**DEFENDANT-INTERVENOR CHRISTIAN EDUCATORS  
ASSOCIATION INTERNATIONAL'S MOTION TO INTERVENE**

COMES NOW the Defendant-Intervenor, Christian Educators Association International ("CEAI"), by and through counsel, pursuant to Fed. R. Civ. P. 24(a)(2) and 24(b)(2), and moves this Court for permission to intervene in this cause as a Defendant. In

support thereof, Defendant-Intervenor CEAI states as follows:

1. On August 27, 2008, Plaintiffs MINOR I DOE and MINOR II DOE filed a complaint pursuant to 42 U.S.C. § 1983 against Defendants SCHOOL BOARD FOR SANTA ROSA COUNTY, FLORIDA (“School Board”), JOHN ROGERS, and H. FRANK LAY. Plaintiffs claimed that school officials had utilized their government positions in the School District of Santa Rosa County, Florida (“School District”) to promote personal religious beliefs at Pace High School.

2. The complaint alleged that Defendants endorsed prayer at school events, held religious baccalaureate services, sponsored school activities at places of religious worship when viable alternative locations existed, and “proselytized students” by promoting personal religious views. Plaintiffs sought a court order declaring Defendants’ actions to be unconstitutional, permanently enjoining Defendants from violating the Constitution, nominal damages, and attorney fees and costs.

3. The Defendant-Intervenor CEAI is a non-profit religious association. Its mission is to “serve the educational community by encouraging, equipping and empowering Christian educators serving in public and private schools.” CEAI was established in 1953. CEAI’s membership consists of classroom teachers, administrators, and para-professionals in education. Certain members of CEAI are employed by the Defendant School Board in the School District.

4. CEAI has come to learn that on or about January 9, 2009, the Court entered a temporary injunction against the Defendant School Board. This temporary injunction became effective on January 19, 2009. The Court enjoined the Defendant School Board from “promoting, advancing, aiding, facilitating, endorsing, or causing religious prayers or devotionals during school sponsored events.” The temporary injunction also banned the School Board from “planning, organizing, financing, promoting, or otherwise sponsoring religious baccalaureate services at all schools within the Santa Rosa School District.” Additionally, the School District was enjoined from “permitting school officials to promote their personal religious beliefs and proselytize students in class or during school-sponsored events and activities.”

5. CEAI has also come to learn that on or about May 6, 2009, without any legal briefing, the Court entered a Consent Order that contained a permanent injunction which superceded the temporary injunction. The Consent Order purported to bind the members of CEAI who are employed by Defendant School Board, by enjoining “Defendants and their officers, agents, affiliates, subsidiaries, *servants, employees*, successors, and *all other persons or entities in active concert* or privity or participation with them in his or her official capacity.” (Emphasis added).

6. The Consent Order goes much further than the brief Preliminary Injunction, encompassing some nine pages of specific directives proscribing and prohibiting actions of school employees during work hours and after work hours. The Consent Order goes far

beyond what the Court could have ordered as relief following a decision on the merits. Indeed, the relief obtained by the Plaintiffs in the Consent Order far exceeds the relief sought in their prayer for relief in the Complaint. For example:

a. “Prayer” is defined as one might expect, except that it is also defined to include “sermons,” a term left undefined but one that generally includes non-prayer religious speech and discourse. (Paragraph 3.(b)) “School Event” includes any happening, on or off school property, whether during or after instructional time, that is approved by “School Officials.” (Paragraph 3.(g)) And “School Officials” are defined to include all employees of the School District at any School Event, without regard to whether they are acting within the course and scope of their employment, whether they are on the clock or on their own personal time, and whether or not they are required to be present by their job description. (Paragraph 3.(h)).

b. In paragraph 5.(a), the Consent Order states: “School Officials shall neither offer nor participate in a Prayer during or in conjunction with a School Event.” Moreover, according to paragraph 8.(a), employees cannot posture themselves in a way likely to be *perceived* as an endorsement of Prayer, including simply bowing their head or folding their hands.

c. In Paragraph 6., “School Officials are permanently enjoined from planning, organizing, promoting, or otherwise sponsoring in whole or in part a Religious Service, including bacculaureate.”

d. Paragraph 7.(g) of the Consent Order provides that “School Officials shall prohibit [student] club[s] or organization[s] from having a position in the organization of ‘chaplain’ or one whose responsibilities are to serve as a religious leader, counselor or guide.”

e. In paragraph 8.(c), the Consent Order provides that “School Officials shall not cite to the Bible as authority for historical or scientific fact to students during or in conjunction with a School Event.”

7. As a direct result of these provisions and others, under the Consent Order:

a. teachers attending a football game on their own time cannot pray a blessing before eating their snacks, even silently;

b. teachers cannot pray over meals during their lunch period;

c. teachers cannot engage in any religious discourse on their free time, for example, while having conversations during the intermission of a school play, or with fellow faculty members in the staff lounge;

d. teachers cannot voice agreement with another’s religious discourse or discussion at any time they are on school property, or at any happening permitted to occur by any school employee;

e. if students prior to competition choose to pray voluntarily, school employees must disrespect this act by not closing their eyes, bowing their heads or even

folding their hands, even when those employees are voluntarily present at the event on their own time, and even if the employees' sincerely held religious beliefs would compel them to not dishonor God in such circumstances;

f. when private third parties use school facilities for religious events, pursuant to School District policies, with the approval of the appropriate District employee (*e.g.*, an after-school Good News Club evangelical event, or a Sunday church service), no district employee on his or her own private time may participate in any prayer or religious discourse, nor communicate any agreement with the prayer or discourse, even if he or she is attending the event voluntarily, outside of school hours and on his or her own time;

g. school employees must decline any invitation to lecture, provide an opening prayer or give any religious discourse during a voluntarily organized student religious club meeting or event, even when such events are voluntarily attended, take place after school hours and are held at locations off school property;

h. school employees can not help organize or prepare for a baccalaureate, even on their own time and using their own private resources;

i. school employees who do attend a baccalaureate service voluntarily and on their own private time are subject to strict regulations that do not apply to members of the public, such as purging their wardrobe from anything that may reveal the identity of their employer, and not being able to sit wherever they choose;

j. school employees cannot cite to the Bible as authority for any historical fact, even though the Bible is undisputedly the only source for various historical facts, and is probably the sole source for the early history of the Jewish people;

k. all District employees must actively discourage and prohibit students from exercising their First Amendment rights to engage in religious speech, such as prohibiting all athletic teams, academic teams, honoraries, bands, choruses and cheerleading squads from voluntarily selecting a student chaplain or other student who might provide religious inspiration or prayer;

l. while the Constitution permits students to organize portions of school events and elect speakers of their own choosing to provide remarks of their own choosing, including prayer and religious speech, the faculty and administrators of the District now must prohibit any such speech, such that:

i. if any school employee reviews any student speech for School Events, the employee must prohibit the student from offering any prayer or religious discourse;

ii. if any school employee can shape, review or edit any student address, the employee must instruct the speaker that the speech must exclude prayer or religious discourse;

iii. speech teachers now must incorporate a prior restraint process and shape all student speeches offered in their classes to purge, censor and discourage

religious content, even if pertinent to the subject matter of the assignment;

m. even if every member of a school jazz quartet or voice ensemble voluntarily wanted to perform at their baccalaureate, the school would have to actively prohibit such performance; and

n. since school employees are also compelled to prohibit the religious expression of non-student third-parties at School Events, school employees are now forced to intervene and obstruct:

i. a youth pastor who wishes to pray with one of his church members prior to the member running in a race at a track meet;

ii. a distraught student voluntarily attending a football game from praying with, or receiving encouragement or counseling from, an adult who also happens to be in voluntary attendance at the same event; and

iii. a father praying on the sidelines with his football player son who has just been injured in a game.

8. Neither CEAI nor its members were consulted or provided any advance notice of the Consent Order, nor that the case would be resolved in such a fashion. Under cover of a letter dated May 22, 2009, from the School District Superintendent, CEAI members and their co-employees of the School District were provided a copy of the Consent Order for the first time. The terms of the Consent Order affect and infringe the constitutional rights of free speech and free exercise of CEAI members, both in their capacities as employees of

Defendant School Board and as private citizens. Moreover, the Consent Order purports to require CEAI members to infringe upon the free speech and free exercise rights of students and other third parties.

9. CEAI seeks to intervene as a party-defendant in order to protect the constitutional rights of its members in a representative capacity.

10. Pursuant to Fed. R. Civ. P. 24(a)(2), a party requesting intervention must satisfy four criteria:

- a. the Motion to Intervene must be timely;
- b. the movant must claim an interest in the subject of the action;
- c. the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; and,
- d. the existing parties do not adequately represent the movant's interest.

11. CEAI easily meets each of these requirements for intervention.

12. This motion is timely. A Defendant-Intervenor must move to intervene within a reasonable time after she knows or has reason to know of her interest in the subject of the action. While the Defendant-Intervenor's members might have expected a permanent injunction to grant the relief requested in the complaint, or to make permanent the relief granted through the temporary injunction, essentially requiring the School District and its employees to not violate the constitutional rights of others, Defendant Intervenor's members

had no knowledge of, or reason to anticipate, the sweeping terms of the Consent Order until they were notified of it on May 22, 2009.

13. Additionally, no party can claim any prejudice due to the timing of this Motion to Intervene. It has only been 56 days since the Consent Order was entered. Summer break has since begun. No party has changed its position in reliance upon the Consent Order. The existing parties have no legitimate interest in an unconstitutional order that abridges the constitutional rights of Defendant-Intervenor's members.

14. Conversely, CEAI would suffer significant prejudice if the application for intervention were to be denied, because its members would be bound by an order that negatively impacts their First Amendment rights to free speech and the free exercise of religion, and purports to require them to infringe upon the First Amendment rights of students and other third parties. The Consent Order actually requires CEAI members to violate the Establishment Clause by demonstrating hostility toward religious speech and religious viewpoints, and to actively infringe upon the First Amendment rights of students and other third parties involved with the public schools.

15. CEAI has a direct interest in the subject of this action which arises under the United States Constitution. If the Consent Order stands, the interests of CEAI and its members will be harmed. The Consent Order at issue unconstitutionally infringes on the First Amendment rights of CEAI members. CEAI's members would be irreparably harmed if they were denied their First Amendment rights without having an opportunity to intervene to

protect their interests. Moreover, CEAI's members may be forced to defend themselves if sued by students or third parties for infringing upon their constitutional rights as required by the Consent Order.

16. If CEAI is not allowed to intervene, CEAI would have to challenge the Consent Order issued in this case in separate legal proceedings. CEAI would be prejudiced because Plaintiffs would likely seek to defend their actions with reference to the court order entered in this case without the participation of CEAI. The *status quo* would have been altered to CEAI's detriment by this action and CEAI would be prejudiced to maintain the *status quo ante* until the second action is resolved on the merits or settled. During such time, CEAI and its members would be denied their First Amendment free speech and free exercise rights, for the loss of which there is no remedy at law. Accordingly, the disposition of this action can impair and impede the Defendant-Intervenor's ability to protect and defend its interests.

17. While the named Defendants undoubtedly have been represented by their own counsel in this cause, the interests of the School Board and other school officials, on one hand, and those of the Defendant-Intervenor CEAI, on the other, are not identical. Because Defendant-Intervenor CEAI has unique affirmative defenses that are personal to CEAI members and unavailable to the School Board, counsel for the named Defendants cannot adequately protect and represent the interests of CEAI.

18. For example, the School Board could not raise affirmative defenses regarding CEAI's First Amendment rights, which are different than the government's rights and limitations when engaging in government speech. CEAI's members' constitutional rights are personal, both as individuals and as employees of the School District. As such, CEAI is uniquely able to defend its members' own rights to speak about religion.

19. While the interest of the School Board may concern defending the school board policy within the context of the Establishment Clause and avoiding litigation, the interest of CEAI concerns defending its members' constitutional rights. These interests are sufficiently dissimilar that the representation by counsel for the School Board is inadequate to represent the interests of CEAI.

20. Moreover, the objectives of the named Defendant School Board and District officials and the objectives of Defendant-Intervenor CEAI are not identical. Political realities, the public interest, the costs of litigation, and the desire to settle are not the same for the named Defendants as they are for CEAI, a private entity with solely private interests.

WHEREFORE, Defendant-Intervenor Christian Educators Association International respectfully requests that this Court grant its Motion to Intervene as a Defendant in this cause.

Respectfully Submitted,

/s/ Horatio G. Mihet

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(B)**

I HEREBY CERTIFY that, prior to filing this motion, I conferred with counsel for each of the parties to this action in a good faith effort to resolve by agreement the issues raised herein. As a result of those conferences, I have learned from the respective counsel that:

(A) Defendant H. FRANK LAY does not oppose the relief sought herein and consents to the intervention sought by CEAI;

(B) Defendants SCHOOL BOARD FOR SANTA ROSA COUNTY, FLORIDA and JOHN ROGERS did not have a position on CEAI's Motion as of the time of its filing; and

(C) Plaintiffs did not have a position on CEAI's Motion as of the time of its filing.

/s/ Horatio G. Mihet

Horatio G. Mihet

One of the attorneys for Defendant-Intervenor  
Christian Educators Association International

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Court this 1st day of July, 2009. Service will be effectuated upon all parties of record by the Court's electronic notification system.

/s/ Horatio G. Mihet

Horatio G. Mihet

One of the attorneys for Defendant-Intervenor  
Christian Educators Association International