

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

JANE DOE, individually and as mother and putative next friend of DOECHILD I and DOECHILD II,
Joplin, Jasper County, Missouri,

and

DOECHILD I, an individual and minor child, by and through mother and putative next friend, JANE DOE,
Joplin, Jasper County, Missouri,

and

DOECHILD II, an individual and minor child, by and through mother and putative next friend, JANE DOE,
Joplin, Jasper County, Missouri,

Plaintiffs,

v.

Case No. 3:15-cv-05052-MDH

BRANDON EGGLESTON,
NORMAN RIDDER and
JOPLIN SCHOOLS PUBLIC SCHOOL
DISTRICT a/k/a JOPLIN R-VIII SCHOOL
DISTRICT,

Defendants.

Plaintiffs' Suggestions in Support of Summary Judgment

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QUESTION PRESENTED

The Establishment Clause prohibits school districts from endorsing religion and coercing schoolchildren to support religion, and specifically from conducting school events in a Christian ministry surrounded by prominent, unavoidable Christian banners and crosses. For many years, Joplin School District has used such a Christian ministry for school events, including middle school field trips and high school functions. Jane Doe’s child, Doechild I, was forced to forgo an eighth grade field trip because attending the Christian ministry was against their convictions and Jane’s other child, Doechild III, was forced to attend a high school field trip at said Christian ministry without Jane’s knowledge and consent. Does the District’s practice violate the Establishment Clause? Are Jane and her children entitled to nominal damages for the past violations and injunctive and declaratory relief to prevent future violations?

STATEMENT OF UNDISPUTED FACTS

I. Parties

1. Plaintiff Jane Doe (“Jane”) is a resident of Joplin, Jasper County, Missouri, and a parent of four children in Defendant Joplin Schools Public School District a/k/a Joplin R-VIII School District (“District”), including Plaintiffs Doechild I and Doechild II.

- Complaint (“Compl.”)¹ ¶3
- Jane Doe Declaration 1 (“Jane Decl.”) at ¶1

2. The District is the body governing public schools in the City of Joplin, Missouri, and establishes and administers the policies by which public schools in Joplin are operated.

- Compl. ¶9
- Answer (“Ans.”) ¶9

3. Defendant Brandon Eggleston is the principal of North Middle School (“NMS”).

- Compl. ¶7
- Ans. ¶7
- Eggleston Dep. 7:24-25 – 8:1, 5-6; 13:1

¹ All references to the “Complaint” refer to the Amended Complaint filed on October 27, 2015.

4. Defendant Norman Ridder is the current interim superintendent of the District.

- Compl. ¶8
- Ans. ¶8

5. Jane pays county and local taxes to support the District.

- Compl. ¶3
- Jane Decl. 1 at ¶1

6. Jane is a non-Christian and has raised her children as non-theists. She brings this action individually, as a parent on behalf of all her children, and as next friend of Plaintiffs Doechild I and Doechild II. Jane is injured and aggrieved by the District's actions in promoting and endorsing religion.

- Compl. ¶3
- Jane Decl. 1 at ¶¶1, 19, 38

7. Two of Jane's children attend Joplin High School ("JHS"), Doechild I, an incoming sophomore, and Doechild III, an incoming junior. Her other two children attend NMS. The first, Doechild II, is entering seventh grade. Her youngest, Doechild IV, recently graduated from West Central Elementary and will matriculate to NMS in August. Doechild II and Doechild IV will attend JHS in the 2018-2019 and 2019-2020 academic years, respectively.

- Compl. ¶¶3-5
- Jane Decl. 1 at ¶¶2-3

8. The Doe children are non-Christian and do not believe in any gods. They are Humanists.

- Doechild I Decl. 1 at ¶4
- Doechild II Decl. 1 at ¶5
- Doechild III Decl. 1 at ¶3
- Doechild IV Decl. 1 at ¶4

9. During the 2014-15 school year, Doechild I was a student at NMS. Doechild I was exposed to NMS's endorsement of religion, felt coerced by school officials to support religion, and has been made to feel like an outsider and unwelcome in the District.

- Compl. ¶4
- Jane Decl. 1 at ¶4

- Doechild I Decl. 1-3 at ¶¶3, 5, 11-17, 20-22

10. During the 2014-15 school year, Doechild II was an elementary student and knew of Doechild I's exposure to Defendants' promotion and endorsement of religion. Doechild II is currently attending NMS and does not want to be exposed to the District's promotion and endorsement of religion or coerced by the school to participate in religious activity.

- Compl. ¶5
- Jane Decl. 1 at ¶¶3, 5
- Doechild II Decl. 1-2 at ¶¶3-4, 6, 9-12

11. Doechild III has also been subjected to the challenged religious practice at JHS.

- Doechild III Decl. 1 at ¶¶4, 6-9
- Jane Decl. 4 at ¶¶27-29

12. The Doe children do not wish to encounter school-sponsored religious activity in the future, at NMS and at JHS. Their District's persistent endorsement of Christianity through the challenged field trip practice makes them feel excluded from their school community.

- Doechild I Decl. 3 at ¶¶ 20-22
- Doechild II Decl. 1-2 at ¶¶6, 9-12
- Doechild III Decl. 1-2 at ¶¶5, 13-15
- Doechild IV Decl. 1 at ¶¶7-8, 10

13. Jane's parental interests in raising her children as non-Christians are injured by the District's religious practices challenged in this case. (Jane Decl. 3 at ¶19).

II. District-wide practice of using a Christian ministry for school events

14. Since at least 2010, the District has had an ongoing practice of summoning schoolchildren to a Christian ministry for school field trips, excursions, cheer practices, abstinence-only instruction and other functions. The facility, Victory Ministries and Sports Complex ("Victory"), is located in Joplin, Missouri.

- Compl. ¶13
- Ans. ¶13
- Huff First Response to RPDs No. 2
- Huff Ans. Ints. Nos. 8 & 9
- Exs. 1-2, 5-12, 21-22, 25, 40, 42-45, 47, 49-51, 54-64, 66-73

- Cravens Dep. 6:11-17; 8:4-17

15. The following (but not limited to the following) District functions and events have been held at Victory Ministry:

School	Date	Event	\$ paid by District to Victory Ministry (if known)
North Middle School			
	May 7, 2015	Field trip (8 th)	\$875
	April 2015	Field trip (6 th & 7 th)	\$1,750
	May 14, 2014	Jazz Band – middle school students bussed to Victory to play band for secretaries celebration (\$200 spent, included in final cell)	
Joplin High School			
	March 10, 2015	Battle of the Sexes (Life Choices)	
	March 9, 2015	Battle of the Sexes (Life Choices)	
	March 3, 2015	Battle of the Sexes (Life Choices)	
	March 2, 2015	Battle of the Sexes (Life Choices)	
	Feb. 26, 2015	Youth Summit	
	Feb. 24, 2015	Future Farmers of America (FFA)	\$300
	Dec. 18, 2014	Cheer Practice	\$75
	Dec. 11, 2014	Cheer Practice	
	Dec. 4, 2014	Cheer Practice	
	October 21, 2014	Fusion Gauntlet	
	October 20, 2014	Fusion Gauntlet	
	October 2, 2014	Cheer Practice	\$87.50
	October 1, 2014	Cheer Practice	
	Sept. 29, 2014	Cheer Practice	\$100
	Sept. 2, 2014	Cheer Practice	
	Aug. 18, 2014	Cheer Practice (\$350 covers all August cheer practices)	\$350
	Aug. 15, 2014	Cheer Practice	
	Aug. 14, 2014	Cheer Practice	
	Aug. 13, 2014	Cheer Practice	
	Aug. 12, 2014	Cheer Practice	
	Aug. 11, 2014	Cheer Practice	
	Aug. 5, 2014	Cheer Practice	
	July 2014 x2	Cheer Practice	\$100
	March 12, 2014	Battle of the Sexes (Life Choices)	
	March 11, 2014	Battle of the Sexes (Life Choices)	

	Feb. 20, 2014	Cheer Practice	\$150
	Feb. 19, 2014	Cheer Practice	
	Feb. 12, 2014	Cheer Practice	
	Feb. 12, 2014	Inside Out (Fusion)	
	Feb. 11, 2014	Inside Out (Fusion)	
	Feb. 9, 2014	Inside Out (Fusion)	
	Jan. 15, 2014	Cheer Practice (\$150 covers all cheer practices for January)	\$150
	Jan. 13, 2014	Cheer Practice	
	Jan. 8, 2014	Cheer Practice	
	Nov. 25, 2013	Cheer Practice (\$175 covers all November practices)	\$175
	Nov. 21, 2013	Cheer Practice	
	Nov. 18, 2013	Cheer Practice	
	Nov. 13, 2013	Cheer Practice	
	Nov. 11, 2013	Cheer Practice	
	Nov. 6, 2013	Cheer Practice	
	Nov. 4, 2013	Cheer Practice	
	October 30, 2013	Cheer Practice (\$150 covers all October practices)	\$150
	October 23, 2013	Cheer Practice	
	October 22, 2013	Fusion Gauntlet (covers 21 & 22)	\$2,500
	October 21, 2013	Fusion Gauntlet	
	October 17, 2013	Cheer Practice	
	October 15, 2013	Cheer Practice	
	October 9, 2013	Cheer Practice	
	October 7, 2013	Cheer Practice	
	March 8, 2013	Life Choices	
	March 7, 2013	Life Choices	
	March 6, 2013	Life Choices	
	March 5, 2013	Life Choices	
	March 9, 2012	Man Up (Life Choices)	
	March 8, 2012	Man Up (Life Choices)	
	March 7, 2012	Man Up (Life Choices)	
	March 6, 2012	Man Up (Life Choices)	
	Nov. 23, 2010	School Field Trip	
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	Nov. 11, 2010	School Field Trip	
	Nov. 10, 2010	School Field Trip	
	Nov. 9, 2010	School Field Trip	
Franklin Technology	Feb. 19, 2014	Future Farmers of America	

Center			
Columbia Elementary	May 8, 2015	Field Trip Celebration Trip (5 th graders); 9:30 – 1:30 pm (lunch included); \$8 student, appx. 33 students	\$264
Soaring Heights Elementary	May 15, 2015	Field Trip / Celebration Trip (60 students); \$5 student, appx. 60 students	\$300
School District	May 14, 2014	District-wide Secretary Lunch (150 school employees and NMS middle school Jazz Band students)	\$200

- Eggleston Int. 5
- Exs. 2, 63-64, 66-73
- Cravens Dep. 6:11-17

III. Victory Ministry and Sports Complex

A. Christian purpose and history

16. Victory Ministry is a Christian ministry that operates for three stated purposes that are expressed on its website: (1) “Exalt Jesus,” (2) “Expand the Kingdom of God,” and (3) “Equip the Body of Christ.”

- Compl. ¶14 & Compl. Ex. A
- Ans. ¶14
- Frost Dep. 16:10-17; 35:11-17
- Ex. 3
- Jane Decl. 2 at ¶11

17. Victory’s goals include: “Keep Jesus central in everything we do,” and “Have God-honoring entertainment.” (Compl. ¶15 & Compl. Ex. A) (Ans. ¶15).

18. Victory’s Bylaws state that the specific purposes of Victory Ministry and Sports Complex shall be:

- 1.) A Christ centered ministry and community center for all ages that is open to the general public with all products and services offered regardless of race, economic status, disability, or gender.
- 2.) Victory Ministry and Sports Complex is a unified Christian effort focused on: expanding the Kingdom of God, exalting the name of Jesus, and equipping the Body of Christ. (Ephesians 4:12), (Philippians 2:9)

3.) It is the specific intent of this organization to share from the Bible, God's message of love, forgiveness, and reconciliation for all people through Jesus Christ at a local, regional, national and even international level. (II Corinthians 5:16-21), (Mark 16:15), (Matthew 28:18-20)

- Ex. 3
- Frost Dep. 35:11-25

19. Victory's Bylaws set forth their "Statement of Beliefs" (Ex. 3) which provides:

Victory Ministry and Sports Complex operates in accordance with the following beliefs:

- (a) We believe in God, the Father Almighty, Creator of heaven and earth. (Genesis 1:1)
- (b) We believe in Jesus Christ, God's only Son, our Lord, who was conceived by the Holy Spirit, born of the Virgin Mary, suffered under Pontius Pilate, was crucified, died, and was buried; he descended to the grave. On the third day he rose again; he ascended into heaven, he is seated at the right hand of the Father, and he will come again to judge the living and the dead. (Matthew 1:20), (Luke 24:46), (Luke 24:51), (II Timothy 4:1)
- (c) We believe in the Holy Spirit, the holy Christian church, the communion of saints, the forgiveness of sins, the resurrection of the body, and the life everlasting. (John 3: 16)
- (d) We also believe in the inerrancy of Scripture, the indwelling of the Holy Spirit in those who believe, and the abundant life found only through Jesus Christ, who is the Way, the Truth, and the Life. (2 Timothy 3:16-17), (John 10:10), (John 14:6), (John 14:16-17).
- (e) Because these beliefs are foundational to our ministry (Matthew 7:24), everyone involved in our ministry is expected to act in a manner that promotes and supports these beliefs. As representatives of Victory Ministry and Sports Complex, it is imperative that our actions are above reproach in all things. (Matthew 7:24), (Colossians 3:12-17)
- (f) Scripture further teaches us that certain behaviors should be avoided, including: theft, lying, dishonesty, gossip, slander, backbiting, profanity, vulgarity, sexual promiscuity (including adultery, homosexual behavior, and premarital sex), drunkenness, and immodesty of dress. (Colossians 3:1-14)
- (g) All members of the Board of Trustees are expected to show Christian concern in their interaction with others, and to join together with a body of believers for worship and fellowship on a regular basis. (Acts 2:42-47)
- (h) The Board of Trustees, Employees, and Volunteers of Victory Ministry and Sports Complex reserve the right to refuse service to "users" or "renters" of the facilities and grounds, which they believe or suspect may be in support of or offer a service,

product or message that conflicts, or may conflict with the biblical values held by Victory Ministry and Sports Complex.

- Ex. 3
- Frost Dep. 35:10-25 – 36:1-23

20. Victory, and its “entire ministry,” is based on “scripture in 1 Corinthians” Chapter 15, Verse 57.² According to its CEO Jack Frost: “That’s the verse for our entire ministry and it’s for he gives us the victory through our Lord Jesus Christ.” (Frost Dep. 58:19-25 – 59:1-15).

21. Victory has two logos, a “long logo” and a “short logo.” Both feature a prominent Christian cross in the center and “VICTORY.” The long logo also features wings flanking the “VICTORY” and “MINISTRY & SPORTS COMPLEX” beneath “VICTORY.”

- Frost Dep. 48:13-25 - 49:1-25; 50:12-19
- Exs. 1, 4, 6-7, 14-18, 20-27, 32, 54, 55

22. Victory is a self-described “facility ministry” and is regularly used for Christian worship and services. (Frost Dep. 29:1-22 – 30:1-18; 31:14-25 – 32:1-25; 33:1-17).

23. Victory advertises to public and private schools, churches, and local businesses. Its Christian logo and the word “ministry” appears on virtually all of its promotional materials and advertisements, including those sent to Joplin public schools.

- Frost Dep. 11:8-12; 23:25; 24:1; 25:11-25–26:1-4; 47:2-6; 47:21-25–48:1-12; 50:5-25; 51:1-25; 52:1-9, 25; 53:1-25; 54:4-6, 9-17; 56:1-8; 57:2-11; 75:5-6
- Exs. 21-26

24. Victory does not permit renters and users to express beliefs that are not “biblically sound” while on its premises. (Frost Dep. 36:2-12). *See also* (Ex. 3).

25. Victory will not rent its facility to Buddhists or Hindus for non-Christian religious activity. (Frost. Dep. 16:18-21).

26. Non-Christians must not engage in any non-Christian religious activities while on the premises. (Frost Dep. 18:5-12).

² “But thanks be to God! He gives us the victory through our Lord Jesus Christ.” 1 Corinthians 15:57. *See also* King James Version (“But thanks be to God, which giveth us the victory through our Lord Jesus Christ.”)

27. Victory was formerly known as “The Bridge Ministries” but changed its name in or around May 2013, and officially in July 2013. The Bridge was also centered on Christianity and when the name changed to Victory, the “focus on promoting Christianity continued.” It came under new management “in an effort to expand its Christian outreach and mission to a larger audience.” The focus shifted from teens only to the “entire community” of Joplin.

- Ex. 13
- Huff RPD 2
- Frost Dep. 19:11-25 -20:6-20; 24:19-25- 25:1-5; 64:3-5
- Cravens Dep. 8:9-17

28. In an article discussing the change, Misty Frost, co-director of Victory Ministries, announced: “We are in complete agreement with the Bridge Ministries that reaching area teens is crucial, and we will support their ministry as they move forward in their plans.” (Ex. 13).

29. In a letter to supporters, the founder and president of Bridge Ministries wrote, “Bridge history from 1999 seems like a flash, though I know that literally thousands upon thousands have been impacted by Jesus in this ministry and will continue to be for a long time to come,” and “As part of our mission to reach area teens with the gospel of Jesus, we have been committed to serving and blessing area churches and ministries with the use of our facility. Victory Ministries Unlimited is a perfect fit to continue this vision.” (Ex. 13)

B. Christian Environment

30. Prominent, unavoidable Christian imagery and messages abound in the Victory facility.

- Compl. ¶16 & Compl. Exs. A & B
- Ans. ¶16
- Exs. 14-20
- Frost Dep. 37:11-25 – 38:1-22

31. Most signs, banners, and flyers at the facility utilize the “Victory” logo with the Christian cross in the center.

- Compl. ¶16 & Compl. Ex. B
- Ans. ¶16
- Exs. 1, 14-16, 20

32. Large banners prominently featuring Christian messages surround the interior of the gym. Each banner is either three-by-five or four-by-eight feet.

- Exs. 17-19
- Frost Dep. 37:11-25 – 38:1-22; 40:7-10; 41:10-13; 44:16-23; 45:1-25; 46:1-16; 77:7-25
- Compl. ¶17 & Compl. Ex. B
- Ans. ¶17

33. The highest of the large banners mentioned in the previous paragraph, placed above all the others, is one that exalts Jesus, proclaiming, “Jesus is worthy of it all!”

- Compl. ¶17 & Compl. Ex. B
- Ans. ¶17
- Exs. 17-19

34. At least fourteen banners are featured on a single wall of the gym. These fourteen banners are visible from nearly every vantage point inside the gym.

- Exs. 17-19
- Frost Dep. 77:20-25

35. The fourteen banners generally include, but are not limited to:

- “JESUS Is Worthy Of It All.”
- “HOPE The Confident Expectation That What God Has Promised Is True.”
- “INTEGRITY 1 John 2:6 and Matthew 22:16.”
- “COURAGEOUS Be Mighty & Strong Without Fear. – Joshua 1:9”
- “WORSHIP”
- Comp. ¶17 & Comp. Ex. B
- Ans. ¶17
- Ex. 17
- Frost. Dep. 45:4-11,18-23 – 46:11-16

36. A large banner on the right (south) side of the gym proclaims: “VISION Lord, We Want To See What You Say We Have Access To Come To Pass.” (Ex. 18). *See also* (Frost Dep. 37:11-25 – 38:1-22).

37. Students encounter religious iconography and Christian messages from the moment they arrive at Victory in the school buses.

- Ex. 14
- Frost Dep. 70:16-25 – 71:1

38. To enter the facility, students must pass beneath a large cross. Above the main entrance is a large permanent sign with Victory's Christian cross logo.

- Ex. 14
- Frost Dep. 43:10-24; 70:16-25 – 71:1-11

39. Above the separate gym entrance, to the left of the main entrance, is another Victory sign with the cross in the center. (Ex. 14).

40. Flanking the separate gym entrance are four enormous signs, two on the left say "FIGHT" and "THE GOOD," and on the right say "FIGHT" and "OF FAITH." Together, the signs read: "FIGHT THE GOOD FIGHT OF FAITH." Each has Victory's winged logo with the Christian cross. (Ex. 14). *See also* (Frost Dep. 42:3-25 – 43:1-7).

41. Once inside the lobby of the main entrance, students immediately encounter Christian messages at the front desk. The word "VICTORY" with a large Christian cross is spelled out in large text on the dividing wall. (Ex. 15). *See also* (Frost Dep. 71:16-25).

42. A large white banner with the "VICTORY" logo and Christian cross is displayed on the back wall of the basketball court. (Ex. 15). *See also* (Frost Dep. 71:22-25 – 72:1-4).

43. To enter the main double court gym, students must take a left where they encounter a second welcome desk. Two large emblems permanently affixed to the desk have the winged "VICTORY" logo with a Christian cross in the center. The top right of the wings says "1 COR 15:57." To the center left, a TV screen advertises "Victory Worship Sessions." (Ex. 16). *See also* (Frost Dep. 71:1-11).

44. From the entryway into the main double court gym, behind Victory merchandise, a white "VICTORY" sign with the Christian cross appears. The sign also states in part: "THANKS

BE TO GOD! HE GIVES US THE VICTORY THROUGH OUR LORD JESUS CHRIST.” It too references “1 Cor. 15:57.” Above that banner is a large sign that reads: “VICTORY 4 HAITI.” The “t” in Haiti is a cross. (Ex. 16).

45. Near the entrance to the double court, by the weight room, are three prominent “VICTORY” displays with the cross in the center. (Ex. 16).

46. An information table laden with Christian promotional materials is visible from the entranceway. Most of the flyers and pamphlets on the table feature the “VICTORY” logo, with the Christian cross. (Ex. 16). These include, but are not limited to:

- A flyer with: “EXALT JESUS” and “EXPAND THE KINGDOM OF GOD”
- A flyer advertising a Victory Church Picnic
- A flyer advertising Zumba, which states “STRETCH YOUR FAITH.” Under this, it says 2: Timothy 4:7 and a Christian fish symbol.
- A flyer listing Victory’s purposes and goals
- A book entitled “GOD’S WORD.”
- A brochure advertising “Victory Worship Sessions.” The text in the upper center says “Live Worship & Prayer Led by Passionate Community Leaders.”
- Several flyers for a 5K that says “WE’VE GOT THE VICTORY 5K,” with the “VICTORY” logo. In the upper left arm of the K, there is a white cross.

47. The basketball backboards feature the Victory logo with a Christian cross. (Ex. 20)

IV. 2015 North Middle School field trips to Victory Ministry

A. Overview

48. NMS conducts approximately three to four field trips per year. (Eggleston Dep. 50:6-7).

49. Every grade is entitled to at least one field trip a year. (Huff Int. 18).

50. The District’s field trip policy provides that “all field trips should be planned with an educational purpose.” (Ex. 37).

51. In Spring 2015, NMS conducted two separate field trips to Victory Ministry, one for the sixth and seventh graders, and a separate trip for eighth graders, Doechild I's class.

- Compl. ¶13
- Ans. ¶13
- Eggleston Int. 5
- Exs. 2, 5-6, 9, 68
- Eggleston Dep. 7:2-7; 8:19-22; 9:15-17; 21:16-17; 22:8-11
- Jane Doe Decl. 1 at ¶6
- Doechild I Decl. 1 at ¶7

52. The NMS field trips were intended to motivate students for their Missouri Assessment Program (MAP) assessments and to reward them for good behavior from the assessments.³

- Eggleston Dep. 8:21-25 – 9:1-19
- Ex. 9

53. NMS held the first trip to Victory for its sixth and seventh graders on April 29, 2015, during regular school hours.

- Eggleston Int. 5
- Exs. 5-10, 68

54. The eighth grade trip to Victory was held May 7, 2015, during regular school hours.

- Compl. ¶¶13, 23
- Ans. ¶¶13, 23
- Eggleston Int. 5
- Exs. 5-10, 64, 68
- Jane Decl. 1 at ¶6
- Doechild I Decl. 1 at ¶7

55. The eighth grade trip lasted approximately 3.5 hours. The students were transported to Victory in school buses shortly after arriving to campus. They also ate lunch at Victory.

- Eggleston Dep. 26:17-20
- Exs. 2, 9, 64

56. Nine school officials attended the field trip, including Eggleston.

- Eggleston Int. 4
- Eggleston Dep. 27:6-25 – 28:1-16

³ All students at NMS are required to participate in MAP assessments. (Ex. 38)

57. Victory staff presided over the field trips and introduced students to the facility.

- Frost Dep. 12:17-21; 72:5-23
- Ex. 28

58. Public school resources, including paid personnel time and other resources such as public school buses paid for by tax monies, were expended in planning and conducting the 2015 NMS field trips to Victory.

- Compl. ¶29
- Ans. ¶29
- Eggleston Dep. 23:4-25; 24:1-25; 25:1-19; 48:1-25
- Exs. 2, 6, 12, 64, 68

59. Victory charged the District \$5 per student. (Exs. 5-6, 10, 12, 66, 68).

60. The District directly paid Victory Ministry approximately \$2,500 to use the facility for the two NMS 2015 field trips. (Exs. 5-6, 10, 12, 68).

B. School Selection of Victory and Majoritarian Vote

61. The NMS Victory field trips were organized and planned by Eggleston and NMS faculty. Eggleston initiated the idea to use Victory. He “became aware of Victory due to a meeting with an employee from Victory about what their facility had to offer public schools and organizations.”

- Huff Int. 7
- Eggleston Int. 1
- Eggleston Dep. 7:21-23 – 8:5-10; 9:23-25 – 10:1-25; 11:1-25; 12:1-22; 23:4-25 - 24:1-22

62. In February or March 2015, Victory Ministry mailed the Joplin public schools a packet advertising its facility for school events. The packet included two flyers and a cover letter. The cover letter featured a large Victory logo with the Christian cross in the center. (Ex. 21).

63. According to Jack Frost, the letter served as “an introduction of who we are, what we’re looking for, what we offer.” (Frost Dep. 57:1-6–57:21-25).

64. The letter stated in part: “Are you looking for the perfect venue for your next school field trip or class outing? If so, Victory Ministry & Sports Complex is the place. Victory is a 60,000 square foot athletic complex in Joplin that schools use routinely for incentive rewards days, fundraising, athletic practice, or simply entertaining students . . . A Victory representative will be calling you soon to discuss how we might be able to help you engage and reward your students with safe, fun outings that they’ll love. We would also like to invite you to take a tour so you can see for yourself all that Victory has to offer. In the meantime, please visit www.victoryjoplin.com or call 417-206-6886 for more information.” (Ex. 21).

65. Both flyers featured the Victory logo with the Christian cross and “Ministry.” One included a testimonial from a JHS school official describing JHS events at Victory. The other flyer was directed at middle schools.

- Ex. 21
- Frost Dep. 50:5-25; 51:1-25; 52:1-25; 56:22-25 – 57:1-25

66. In addition to the packet, Victory mailed a postcard to schools, which stated “Victory 4 Schools,” “Ministry,” and included the Christian cross logo.

- Ex. 22
- Frost Dep. 52:24-25- 53:1-25; 54:1-6

67. Eggleston visited Victory at least twice before the NMS field trips; the first time was when it was the Bridge and the second time was in May 2014 for the District-wide secretary’s luncheon. (Eggleston Dep. 16:11-25 – 17:1-21).

68. “The school came up with three options for the students – Victory, miniature golf or bowling.”

- Eggleston Ints. 1 & 3
- Eggleston Dep. 13:23-25; 14:1-5; 15:4-6
- Exs. 28-29
- Doechild I Decl. 1 at ¶8

69. NMS then submitted those three options to the students for a majoritarian vote.

- Eggleston Int. 2

- Eggleston Dep. 14:9-15
- Exs. 28-29
- Doechild I Decl. 1 at ¶8

70. Voting took place by written ballot in the lunchroom and was monitored by Eggleston and other school officials. Votes were counted by Eggleston and another school official. Eggleston determined the voting guidelines. The school does not have the final count from the vote but asserts the vote was in favor of Victory.

- Eggleston Int. 3
- Eggleston Dep. 14:16-25
- Doechild I Decl. 1 at ¶8

71. Doechild I testified: “I voted for bowling. I did not want to discuss the vote with my peers because I am not a Christian and did not want them to know that. I even felt uncomfortable about the election.” (Doechild I Decl. 1 at ¶8).

72. Prior to the student vote, NMS contacted Victory and had already made tentative arrangements to hold the NMS field trips at Victory Ministry.

- Eggleston Dep. 22:4-25 - 23:1-25 – 24:1-7; 48:1-25
- Exs. 5-8

73. The trip was formally approved by Jason Cravens, the District’s executive director of secondary education, and then-superintendent Dr. C.J. Huff. (Eggleston Int. 7).

C. Permission Slip and Victory’s Waiver

74. Around May 4, 2015, NMS sent home permission slips and waivers with students for parents to sign as a requirement to attend the trip. The waiver was stapled to the permission slip.

- Compl. ¶18 & Compl. Ex. C
- Ans. ¶18
- Exs. 4, 11
- Jane Decl. 1-2 at ¶¶7-8
- Doechild I Decl. 1 at ¶9

75. During class, a teacher gave Doechild I a permission slip and waiver for Jane to sign.

- Compl. ¶19 & Compl. Ex. C
- Doechild I Decl. 1 at ¶9

- Jane Decl. 1 at ¶7
- Exs. 4, 11

76. According to Doechild I: “We were instructed to give the forms to our parents. I began signing my name on part of the slip as a matter of habit when dealing with papers and school. I did not realize what it was at the time. When I got home, I gave it to my mother, Jane Doe. Once my mom learned about Victory, we decided I should not go.” (Doechild I Decl. 1-2 at ¶¶9-10).

77. The permission slip stated in part: “On May 7th, the 8th grade will be traveling to Victory Sports Complex. We will depart North at 8:30 and return to the school at 12:00. Please sign both forms and have your student return to the office before the scheduled event.”

- Ex. 11
- Jane Decl. 1-2 at ¶7

78. Paragraph six of the waiver required parents to consent to the following: “We (1) understand that the officers, officials, agents, other participants and employees of Victory Ministry and Sports Complex may be inviting me or (my) our students to Bible studies and local churches of the Christian faith. While at any Victory Ministry and Sports Complex location or event (my) our student(s) has permission to participate in worship services, Bible studies or any other activities that may pertain to the Christian faith.”

- Compl. ¶20 & Compl. Ex. C
- Ans. ¶20
- Exs. 4-5, 11, 35
- Eggleston Dep. 37:14-25
- Frost Dep. 62:17-19; 63:1-25 – 64:1-5
- Jane Decl. 2 at ¶9

79. Victory Ministry required NMS to mandate that parents sign this waiver. All parents of students who attended the NMS field trips signed the waiver, including paragraph six.

- Frost Dep. 66:7-15
- Ex. 6

80. Eggleston read the waiver prior to the field trip. (Eggleston Dep. 35:19-25 –36:1-14).

81. The same verbiage appeared in the waiver the Bridge had used. (Frost Dep. 63:15-25).

82. After seeing the permission slip, Jane visited the Victory Ministry and Sports Complex's website and learned more about its clearly stated, unambiguous Christian mission and purpose. (Jane Decl. 2 at ¶11).

83. Jane testified: "I refused to sign a waiver permitting my child to be proselytized to on a school trip. I also refused to sign any permission slip consenting to my child attending a Christian ministry." (Jane Decl. 2 at ¶10).

84. According to Doechild I: "I did not like how the school put my family and me in the position of having to choose between attending a religious school-sponsored event and forgoing participation entirely. I do not want to be put in this position again." (Doechild I Decl. 2 at ¶17).

85. Jane testified: "I do not want my children's public school asking me to sign a permission slip to allow my child to be exposed to Christian indoctrination and proselytizing." (Jane Decl. 3 at ¶21).

D. Victory's Building Use Agreement

86. In addition to requiring signed waivers by parents, Victory also required the District to sign its Building Use Agreement.

- Exs. 5-7
- Frost Dep. 62:3-25 – 63:1-2; 64:6-25 – 65:1

87. On April 17, 2015, a Victory Ministry employee, Sandra Laws, responded to an email from NMS school official Renee Rivers regarding the two NMS field trips. Attached to the email was Victory's Building Use Agreement, the waiver that was ultimately distributed to parents, and two invoices (one for each trip).

- Ex. 5-6
- Frost Dep. 62:3-25 – 63:1-2; 64:6-25 – 65:1

88. The Building Use Agreement provided in part:

This agreement by and between Victory Ministry & Sports Complex and North MS-Joplin (8th) ("User") will take effect on Thurs. May 7, 2015. Set up will begin at N/A and tear down and clean up will be completed by N/A. The actual event will begin at 9 a.m. and will be completed by 12 p.m.

WHEREAS, Victory Ministry & Sports Outreach owns premises located at 3405 S. Hammons Blvd. Joplin, Missouri, 64804, which is normally used for family and Christian outreach, . . .

WHEREAS, Victory Ministry & Sports Complex has agreed to allow User to use the building provided that the following terms and conditions are met,

It is Therefore Agreed By and Between the Parties:

4. User agrees to not use the premises for any purpose that is contrary to the mission, purposes or beliefs of Victory Ministry & Sports Complex, which is a biblically-based organization . . .

Additional notes:

User will provide a signed waiver for each participant

Café will be open for snacks and drinks

- Exs. 6-7
- Frost Dep. 62:17-23; 64:6-10

89. The District signed the Building Use Agreements for both NMS trips on April 20, 2015.

- Ex. 7
- Frost Dep. 62:3-25; 64:12-25 – 65:1-3; 66:7-22

90. Victory's bylaws set forth their "Statement of Beliefs" (Ex. 3), relevant to section four of the Building Use Agreement signed by the District. (Frost Dep. 35:10-25 – 36:1-23).

91. On April 20, the District also emailed Victory proof of liability coverage.

- Ex. 8
- Frost Dep. 60:6-24 -61:5-21

E. Doechild I excluded from school trip due to Christian nature and purpose

92. Faced with the choice of sending her child on a field trip to a Christian ministry or forgoing the trip entirely, Jane made the difficult decision to keep Doechild I out of school.

- Compl. ¶¶25, 28
- Jane Decl. 2 at ¶12

93. Due to the District's selection of a Christian ministry, with its Christian purpose and mission directly conflicting with the Doe family's deeply held convictions, Doechild I was forced to forgo the class field trip.

- Compl. ¶¶24 – 25
- Doechild I Decl. 2 at ¶¶11-17
- Jane Decl. 3 at ¶14

94. According to Doechild I: "I was forced to stay at home instead of go on my class field trip because it was held in a Christian ministry and I am not a Christian." (Doechild I Decl. 2 at ¶12).

95. If Doechild I had participated in the field trip, Doechild I would have been exposed to Christian messages that directly contradict the religious beliefs of the Doe family.

- Compl. ¶26 & Compl. Ex. B
- Jane Decl. 3 at ¶18
- Doechild I Decl. 2 at ¶14

96. If Doechild I participated in the field trip, the Does would be symbolically and tangibly supporting the Christian mission of Victory against their sincerely held convictions.

- Jane Decl. 3 at ¶18
- Doechild I Decl. 2 at ¶¶11-17

97. There were no specific alternative activities for non-Christian children who did not attend the Victory field trip.

- Huff Int. 11
- Eggleston Int. 11
- Jane Decl. 3 at ¶17
- Doechild I Decl. 2 at ¶13

98. Doechild I stayed home the entire day. Jane was not informed of any comparable alternative activities for her child. According to Jane "there was no alternative to the field trip other than to be at school to do whatever work the school assigned. It was either attend a religious field trip or do schoolwork. I felt this was tremendously unfair to my child." (Jane Decl. 3 at ¶17).

99. Doechild I testified: “I really wanted to go on my class’s field trip, but couldn’t because it was to a religious ministry. The school did not offer any fun alternatives for non-Christian students who could not go on the trip. As a result, I stayed at home all day.” (Doechild I Decl. 2 at ¶13).

100. According to Doechild I: “If I had participated in the trip, I would have been exposed to Christian messages that directly contradict my beliefs. I would have been very uncomfortable there and I would have been hesitant to openly identify as a non-Christian or openly question the legitimacy of the Christian messaging on the walls and elsewhere at Victory. I expect that some of my classmates and perhaps Victory staff and other adults, would have engaged in prayer and perhaps asked me to participate.” (Doechild I Decl. 2 at ¶14).

101. Doechild I testified: “I was sad that I could not participate on the trip with my friends, but the trip made me feel uncomfortable. When talking to my peers, I don’t know what to say when religious stuff comes up, and I would rather not talk about it. Sometimes when I explain to my friends that I am an atheist, they try to convert me or even get upset. I knew I’d feel awkward if I went on the trip, but I was sad that I was left out. I wish that the school could schedule field trips and activities that everyone can enjoy.” (Doechild I Decl. 2 at ¶¶15-16).

102. All students were eligible for the trip, so long as they met minimal requirements surrounding the MAP assessments, including having their book, attendance, and good behavior.

- Eggleston Int. 5
- Eggleston Dep. 29:5-19
- Ex. 9

103. Doechild I met the field trip eligibility requirements. (Doechild I Decl. 2 at ¶11).

104. According to Doechild I: “I could not attend my class’s field trip to Victory without violating my conscience. I would have been eligible to go on the trip, because I met all the school’s requirements for the MAP assessments.” (*Id.*). *See also* (Jane Decl. 3 at ¶¶14-15).

105. Approximately 164 eighth grade students attended the trip. (Ex. 12).

106. About 10 students did not meet the MAP requirements and therefore could not attend. About 10 additional students did meet the requirements but did not attend the trip, including Doechild I. NMS made no effort to determine the reasons for the nonattendance of those 10 students.

- Eggleston Int. 5
- Eggleston Dep. 29:9-10; 30:3-5; 31:3-25; 32:1-21

107. Approximately 339 students attended the sixth and seventh grade trip. Thirteen were ineligible and an additional 5 did not attend for other reasons. NMS did not attempt to determine the reasons for the nonattendance of the latter five students.

- Exs. 9, 12
- Frost Dep. 65:6-24; 66:12-15; 70:4-6

F. Prior notice of Establishment Clause violation and District's response

108. Several days before the eighth grade field trip, the District received at least five written warnings regarding the unconstitutionality of the trip.

- Compl. ¶21
- Ans. ¶21
- Exs. 29-30, 32-35
- Eggleston Dep. 28:22-25 – 29:1-4; 32:24-25; 33:1-8

109. On May 4, the District received a warning email from Hemant Mehta from the Friendly Atheist blog. The next day, then-Superintendent Huff forwarded the email to Eggleston and Cravens. Eggleston emailed Cravens and Huff on May 5, in part: “The form sent home to parents was accompanied with a permission slip. It is not mandatory for students to go and if a parent objects to their child going they do not have to go.”

- Exs. 28-29
- Eggleston Dep. 40:19-25; 42:1-25; 43:1-25; 44:1-13

110. Cravens responded to Eggleston: “Are there any religious ceremonies as part of the day, or any speakers planned that will be evangelizing or giving a message? Also, do you know if Victory will have a lot of staff present? Thanks.” (Ex. 28). Eggleston replied: “There is nothing

planned, there is Victory staff present but they just run the games. I can contact them to make sure they will not be preaching to the students.” (*Id.*)

111. On May 5, 2015, the American Humanist Association (“AHA”), a Washington, D.C. nonprofit organization, sent an email to Eggleston and Huff warning them that a NMS parent (Jane) had raised concerns about the planned field trip and pointing out that the trip would violate the Establishment Clause.

- Compl. ¶21 & Compl. Ex. D
- Ans. ¶21
- Ex. 30
- Cravens Dep. 28:23-25 – 29:1-3, 8-11, 19-24; 30:7-9

112. Huff responded to AHA’s email denying that the trip would violate the Establishment Clause but admitting that the permission slip was inappropriately worded. He wrote in part: “The permission slip was the standard waiver of Victory Gym. We have not had any parents contact us about concerns, but if they do, we will assure them the secular nature of the trip. Your email brings a good point for us to review the waivers of locations better so our communication can be clearer. I believe removing the language on the waiver would have created more clarity and removed the confusion for the parents regarding the nature of the trip.”

- Compl. ¶22 & Compl. Ex. E
- Ans. ¶22
- Ex. 31
- Cravens Dep. 21:12-19; 23:10-15

113. AHA replied that day, drawing specific attention to the religious nature of Victory and warning that the field trip would result in litigation. The email stated in part: “[A]lthough you choose to call the destination ‘Victory Gym,’ the facility is in fact ‘Victory Ministries and Sports Complex.’ See the link here. As for the trip being ostensibly ‘secular,’ that claim is quickly impeachable simply by looking at the web site. See their ‘About’ page (a screen shot is attached to this email). They list three purposes (all religious) and eight goals (seven of which are expressly religious). They even utilize a cross in their sign. Any pretext that this is a ‘secular’

trip is laughable - even if aggressive proselytizing doesn't occur, clearly efforts to influence the children will abound. I'm trying to be as straightforward with you as possible, so that we can avoid needless litigation. How do you think non-Christian parents would feel about their child being brought to this destination by their tax-supported public school?" The District did not respond to this email but instead, went forward with the field trip.

- Compl. ¶23 & Ex. F
- Ans. ¶23
- Ex. 32

114. In addition to AHA, on May 5, Defendants received a cease and desist letter from the Freedom From Religion Foundation (FFRF) on behalf of a concerned parent. The letter stated in part: "Notably, it would not cure a constitutional violation if students were allowed to opt out of the religious exercises. In fact, doing so would only single out students who are in the nonreligious minority from their Christian classmates. The Constitution's prohibition against school endorsement of religion cannot be overcome by claiming that the activities are 'voluntary.'" (Ex. 33). *See also* (Cravens Dep. 28:23-25 – 29:1-3,8-11,19-24; 30:7-9).

115. That day, Defendants also received a complaint from Troy Boyle, who expressed concern about the religious nature of the field trip. (Ex. 34). *See also* (Cravens Dep. 28:23-25 – 29:1-3, 8-11, 19-24; 30:7-9).

116. On May 6, Defendants received a fifth complaint. The email was from a former Joplin student, Scott Cragin, on behalf of a current parent. The letter stated in part: "I received a letter from a North Middle School parent who is so concerned for his own child that he did not want to be identified . . . I wondered if you could provide an explanation for me, the concerned parent, the SSA, and Carol Stark at the Joplin Globe why you are sending students to this event that is clearly sponsored by a religious group. 'Ministry' is part of their name, so this can come as no surprise to you." (Ex. 35). *See also* (Eggleston Dep. 32:24-25 – 33:1-9; 34:24-25 – 35:1-25-36:1-7).

117. On May 7, Eggleston responded to Cragin, in part: “In the future if we use this venue for trips we will ask for the wording on Article 6 of their standard release form be changed or omitted for public schools.” Cragin replied, in part: “I cannot believe there are not religious symbols all over that location which will imply an adherence to the Christian faith and I’m sure they have very subtle ways of proselytizing since that is a major objective of the organization. And no one will really know what happens unless there is a third-party present. Since apparently no teachers objected to the field trip, that may imply their complicity with the primary objective of that organization.” (Ex. 36)

118. According to Frost, after learning of a parent’s objection to the waiver, he and his wife concluded that “if they [the parents] had a problem with it then they could strike number six if they didn’t feel like they should have to do that, and so we were, uh, just instructed to go with as is.” (Frost Dep. 67:3-15). Victory then informed the District “that they [parents] could strike number six as long as they initialed that they had struck it out of there and submit and then the child would be okay to use the facility.” (Frost Dep. 67:19-24).

119. But the District responded to Victory that they should “just go as it’s written.” The District therefore did not communicate to NMS parents that they could strike out paragraph six of the waiver. (Frost Dep. 68:5-7).

120. Jane received no instruction regarding crossing out paragraph six or any other part of the waiver. (Jane Decl. 3 at ¶22).

121. None of the waivers returned to the District had paragraph six struck out and initialed. All of the students who used Victory Ministry facilities from the District used the waiver provided without alteration. (Frost Dep. 68:8-23).

122. Eggleston allegedly met with the NMS faculty attending the trip on the morning of, instructing them to monitor Victory employees to ensure no proselytization occurred. (Eggleston Dep. 33:21-25; 34:1-11). But faculty were not instructed to look out for religious symbols, logos,

phrases on the walls, and any other items that would contribute to the religious atmosphere. (Eggleston Dep. 34:12-23; 45:2-23; 46:1-25; 47:3-11).

123. Victory staff present during the NMS field trip were not given any instructions on proselytization. (Frost Dep. 79:24-25 – 80:1-4).

124. Victory staff supervising the sixth and seventh grade NMS trip had no instructions on proselytization. To the contrary, paragraph six expressly permitted them to proselytize to the students. The same is true for all Joplin school trips to Victory prior to the May 2015 NMS trip.

- Eggleston Dep. 33:21-25; 34:1-11;
- Frost Dep.79:1-4

125. Even if Victory and the District allowed Jane to cross out paragraph six, she still would not condone or permit her children to attend a school trip to Victory Ministry. Jane does not want to support a Christian ministry and does not want her children to be subjected to such a proselytizing Christian environment. (Jane Decl. 4 at ¶¶23-26).

126. Jane does not want her children to attend any religious field trips, thus missing invaluable instruction time or educational recreational time with Jane’s taxpayer monies. Jane feels that, regardless “of paragraph six, Victory Ministry makes it abundantly clear that it seeks to indoctrinate not only my children but also all students in attendance with Christian dogma. In its own words, this is their goal ‘in everything we do.’ I do not approve of my children’s public school sending its children—and especially my children—to this ministry.” (Jane Dec. 3-4 at ¶¶22, 24).

127. According to Jane: “Also, it is clear from viewing the Victory facility that no child attending the venue would be shielded from religious messaging, and therefore crossing out the paragraph would be a meaningless gesture.” (Jane Decl. 3 at ¶22).

128. Jane testified: “I do not want to support a Christian ministry in any way and do not want my children to be subjected to such a proselytizing Christian environment.” (Jane Decl. 3 at ¶25).

129. Victory’s waiver has been modified as a result of this litigation. (Frost Dep. 89:3-6). The new waiver is mostly the same but it no longer contains the language previously found in paragraph six. However, paragraph ten reads in part: “Acknowledgement of Purpose. Parent/Guardian and Participant acknowledges and understands that Victory Ministry and Sports Complex is organized and operated for Christian purposes. Victory Ministry and Sports Complex treats all guests with respect and dignity, regardless of their religion or beliefs and we request our guests respect our beliefs as stated in the Victory Ministry and Sports Complex belief statement.” (Ex. 4).

130. Paragraph twelve states: “Victory Ministry and Sports Complex reserves the right to refuse service to: Parent/Guardian and Participants, ‘users’ or ‘renters’ of the facilities and grounds, which they believe or suspect may be in support of, or offer a service, product or message that conflicts, or may conflict with the values held by Victory Ministry and Sports Complex.” (Ex. 4).

V. District’s widespread use of Victory Ministry

131. The District, and JHS in particular, uses Victory Ministry for many other events, as shown in the chart above. JHS has consistently hosted events at Victory (and formerly The Bridge) from at least 2010 through 2015.

- Exs. 2, 56-64, 66-73
- Jane Decl. 4-5 at ¶¶27-29, 36
- Doechild III Decl. 1 at ¶6

132. Victory Ministry has a website page, “Victory 4 Schools,” which includes the Christian cross and the long logo. The webpage includes a testimonial from Tobin Schulz, a JHS school official, which states: ““Hosting events at Victory Ministries has had a tremendously positive impact on the students and staff of Joplin High School. The staff, facilities, and climate create an exceptional atmosphere that promotes team building, leadership development, and growth in self-confidence. Going to Victory has created experiences that could not be replicated in the

traditional, high school environment.’–Tobin Schultz Joplin High School” The page also features pictures from a JHS trip to Victory.

- Frost Dep. 55:16-25 – 56:1-21
- Exs. 15-16, 21, 23-25

A. JHS: Life Choices a/k/a Battle of the Sexes a/k/a Man Up

133. The District regularly hosts high school excursions to Victory for abstinence-only sex education provided by LifeChoices (variously spelled “Life Choices” or “Lifechoices”), a Christian-based organization.

- Exs. 2, 39-55, 63
- Cravens Dep. 10:1-10; 12:25 – 13:1-4,11-21; 14:2-5, 9-12

134. LifeChoices states that it “believes there is a divine purpose and plan for every child that is conceived.” (Ex. 39)

135. In its 2015 report, LifeChoices boasted that in the “past 26 years we have provided nearly 10,000 ULTRASOUNDS and more than 24,000 STD SERVICES. But most exciting is our staff has had over 22,000 SPIRITUAL DISCUSSIONS and more than 6,600 CLIENTS CHOOSE LIFE for their unborn child!” (Ex. 40).

136. JHS regularly uses Victory Ministry as the site for a LifeChoices abstinence-only program, variously entitled, “Battle of the Sexes,” “Man Up,” and “Life Choices.” According to Cravens, these are the same events but titled differently in bus logs.

- Exs. 2, 42-44, 50-52
- Cravens Dep. 10:1-10; 12:25 – 13:1-25; 14:20-25

137. Battle of the Sexes is run through Connection Institute, the prevention services arm of LifeChoices Medical Clinic & Resource Center in Joplin, MO. The adults who teach the JHS students while at Victory come from the Connection Institute. The Connection Institute determines the content of program.

- Ex. 41
- Cravens Dep. 14:6-8; 15:1-3; 25:21-23; 26:4-9

138. The JHS Battle of the Sexes trips take place during school hours and school buses take the students to Victory. The trip is considered part of the “curriculum” and the administration has final approval over the content of the program.

- Exs. 2, 63
- Cravens Dep. 11:10-16; 26:10-20; 27:4-5

139. The LifeChoices programs held at Victory for JHS students do not include information about contraception or abortion. They teach abstinence only. (Cravens Dep. 27:14-24; 28:1-6).

140. Battle of the Sexes is the incarnation of a program that started in 2010 by Melissa Winston at LifeChoices, called “Man Up” for boys and “My Life” for girls.

- Exs. 42-43
- Cravens Dep. 14:20-25

141. Melissa Winston serves as the Director of Community Engagement for Joplin Schools. She has held this position since November 2013. Winston previously worked for The Bridge as well as Christ Church. In June 2004, Winston became youth development coordinator for Life Choices Medical Clinic & Resource Center. (Exs. 45-48).

142. In 2010, Joplin held its first Man Up/My Life event at The Bridge. (Ex. 44). *See also* (Cravens Dep. 12:25 – 13:1-4).

143. In an article dated December 2, 2010, entitled “Joplin High School tries to deal with teen pregnancies,” former superintendent Dr. Huff stated: “Teen pregnancies are 15% higher than state average so there's an issue in this area that needs to be addressed,” and that “The ‘Man Up’ – ‘My Life’ program is one way going about awareness with kids have important conversations with kids that need to be had, but might not be happening in the home.” (Ex. 42). The article added: “Recently the district took high school students off site to participate in a supplemental program called ‘Man Up’ for boys, and ‘My Life’ for girls.” (*Id.*).

144. JHS took students to Victory (or the Bridge) in 2011, 2012, 2013, 2014, and 2015 for LifeChoices programs.

- Exs. 2, 63
- Cravens Dep. 13:22-25; 14:2-5, 18-19; 15:1-3
- Doechild III Decl. 1 at ¶¶6-7

145. About 800 JHS students attend Battle of the Sexes for a given trip, depending on the year. (Cravens Dep. 10:21-23).

146. From March 11-12, 2014, JHS took the junior class to Victory Ministry for a 2-day Battle of the Sexes event. (Exs. 2, 50-51). The event was held from about 1:00-3:00 pm each day at Victory. About 800 students attended. (Cravens Dep. 11:14-20).

147. On March 11, 2014, Victory Ministries wrote a post on its official Facebook page, “Victory Worship Sessions,” about the JHS Battle of the Sexes event, along with four pictures. (Ex. 50). The post stated:

Good Tuesday Morning!

The Victory Campus is full of excitement and JOPLIN HIGH SCHOOL Juniors (Day 1 of 2).. These students are awesome!

We began the morning with live worship & prayer in the Event Center led by Reynaldo & Tiffany Velez. Once the buses pulled up, hundreds of JHS Juniors made their way inside to experience this week's event called "Battle of the Sexes" put on by the amazing crew at Life Choices.

Joplin High School part 2 will happen tomorrow, Webb City & Carthage High School Juniors will finish the week here Thursday and Friday! A big thank you to all who made this event possible! We love our Joplin High School students and look forward to the rest of our time together!

In case you can't tell, we love what we do here at Victory. It is such an honor to be a part of the great things that these schools are doing with the help of Life Choices and you!

Have a blessed day..

148. One photo from the March 11 post shared by Victory is of a Joplin school bus parked in front of a large Victory banner with the Christian cross in the center. Another shows Joplin students inside the lobby of the main entrance. (Ex. 50).

149. On March 12, 2014, Victory Ministries wrote a second post on its Facebook page “Victory Worship Sessions” about the JHS Battle of the Sexes event, along with four pictures. (Ex. 51). The post stated:

Good Wednesday Morning!

We started out this day with worship and prayer for our schools, community and nation.. believing that God is in control and worthy to be praised! This morning's session led by Joshua Bussey. God's faithfulness endures forever!

This is Day 2 of us hosting the Joplin High School Junior Class for the "Battle of the Sexes" event this week! The energy and excitement level has been just as high this morning as it has been all week! These students make us proud.. It is a complete joy being around all the volunteers, Life Choices workers, and students as we all grow together and expose very important truths about life's battles.

Once again, thank you Joplin School District for allowing us to pour into these students' lives.. We have loved every second of it! Today has been a great day!

150. The most recent JHS Battle of the Sexes trip to Victory was held in March 2015. (Cravens Dep. 15:19-25 – 16:1-3).

B. Doechild III required to attend Victory for 2015 JHS LifeChoices Trip

151. In March 2015, Doechild III, a freshman at the time, was sent to Victory on a school field trip without Jane’s knowledge and consent.

- Jane Decl. 4 at ¶28
- Doechild III Decl. 1 at ¶¶4-6

152. Jane only became aware of the Victory events for JHS, and this particular event, after the suit was filed, during discovery. (Jane Decl. 4 at ¶¶27-28).

153. JHS took the students, including Doechild III, to Victory in school buses, separated the boys from the girls, and then subjected the children to a presentation from the Connection Institute and LifeChoices on how to “be a man.”

- Ex. 2
- Doechild III Decl. 1-2 at ¶¶9-12
- Jane Decl. 4 at ¶29

154. Jane never received a permission slip for this or any other JHS trip to Victory. According to Jane, “I had no idea that they were taking my son out of the school for these events, or else I would have opted Doechild III out as I did with Doechild I.” (Jane Decl. 4 at ¶¶28, 31).

155. Doechild III testified: “I was never given a permission slip or any other form for my mother to fill out prior to the trip. I just showed up to school and they took us to Victory. The event was held during the regular school day.” (Doechild III Decl. 1 at ¶9).

156. Doechild III felt uncomfortable with the Christian nature of Victory. (Doechild III Decl. 1-2 at ¶¶12-15).

157. Doechild III explained: “Once we arrived at Victory, I saw a few Christian crosses and some banners with Christian messages.” (Doechild III Decl. 1 at ¶10).

158. According to Jane: “I was shocked and could not believe that the District felt that Victory was an appropriate venue for sex education instruction, which in practice was abstinence-only instruction, conducted by employees of a Christian-based organization rather than public school teachers.” (Jane Decl. 4 at ¶32).

159. Jane also felt betrayed by the District for not being given an option, as Doechild III’s parent, to withhold Doechild III’s attendance from the religious trip. She felt that her rights as a parent were completely disregarded in favor of a Christian ministry. (Jane Decl. 5 at ¶33).

160. Jane had previously disallowed her children from entering a sex-education class at NMS when she learned that LifeChoices was instructing the class rather than a public school teacher. Jane would never have permitted her children to attend LifeChoices classes at Victory, an overwhelming Christian environment. (Jane Decl. 5 at ¶34).

161. Doechild III does not want to attend future events at Victory. (Doechild III Decl. 2 at ¶¶13-15).

162. Doechild III wishes to participate in all class-wide school events and field trips but does not want to attend them in religious venues. (Doechild III Decl. 2 at ¶¶13-15). Doechild III

testified: “I do not want to go back to Victory or be subjected to a religious presentation like the LifeChioeces seminar, as I don't want to risk having to tell my friends that I am an atheist. We have had successful presentations in our school gym this year without all the Christian stuff.” (*Id.*).

163. If JHS holds another event at Victory, Doechild III will be forced to forgo the event in order to avoid the religious venue.

- Doechild III Decl. 2 at ¶14
- Jane Decl. 5 at ¶35

C. JHS Cheerleading Practices at Victory

164. JHS regularly uses Victory Ministry for its cheerleading practices. (Ex. 69).

165. The District pays Victory Ministry to use the facility for the JHS cheer team. (Ex. 69).

D. Fusion / Inside Out

166. JHS also uses Victory for “Fusion” events. Fusion is a school initiative for seniors and juniors to support freshmen.

- Exs. 2, 53-54, 63,
- Cravens Dep. 9:5, 9-13; 10:19-21

167. Fusion events include “The Gauntlet” and “Inside Out.” (Exs. 54-55, 72-73).

168. Photographs and information about these events are available on JHS’s official school website. (Exs. 54-55).

169. The director of Fusion is the JHS freshman principal and the Fusion coordinator is also a school official. (Ex. 53).

170. Cravens testified: “Inside Out is a, an extension of our, uh, you know, promoting positive relationships, uh, program that we start in middle schools and then, uh, Inside Out is, uh, an extension of that leading into the high school.” (Cravens Dep. 9:14-18; 10:4-5).

171. The Gauntlet is a large-scale event focused on team building with activities and motivational speakers. (Ex. 54). The 2014, “The Gauntlet: We’re All in This Together” was held at Victory. Pictures on the school’s website show Christian banners visible during the event. (Ex. 54).

172. About 650 JHS students attend Fusion events at Victory in a given trip. (Cravens Dep. 10:19-21).

173. School District resources are expended on the Fusion events at Victory. School buses transport students to Victory, a cost borne on the District. Additionally, the District directly pays Victory \$5 per student for these events. For instance, JHS paid Victory \$2,500 for the October 21 and 22, 2013 Gauntlet events at Victory. (Exs. 2, 53-55, 63, 72-73).

E. Soaring Heights Elementary and Columbia Elementary 2015 Field Trips

174. In addition to the two NMS trips, Soaring Heights Elementary and Columbia Elementary also took schoolchildren to Victory for celebration field trips in May 2015. (Exs. 64, 66 - 67).

175. Victory required both Soaring Heights Elementary and Columbia Elementary to sign the Building Use Agreement and administer the Victory waiver forms to parents. (Exs. 66 - 67).

176. The Columbia Elementary field trip was for fifth graders and was held during the regular school day, on May 8, 2015, from 9:30 am – 1:30 pm. (Exs. 64 & 67).

177. The Soaring Heights Elementary field trip to Victory was held during the regular school day, from 9:00 am – 12:00 pm, on May 15, 2015. (Exs. 64 & 66). Approximately 60 students attended and teachers presided over the event. (Ex. 66).

178. School buses transported the Columbia Elementary students and the Soaring Heights Elementary students to and from Victory. (Ex. 64).

179. The Columbia Elementary trip included lunch at Victory as part of Victory's "lunch combo." (Ex. 67).

180. Victory charged the District \$8 per student for the Columbia Elementary trip, inclusive of lunch at Victory. (Ex. 67).

181. Victory charged the District \$5 per student for the Soaring Heights trip. (Ex. 66).

182. Columbia Elementary informed Victory that it would have parents sign the Victory waiver and return the waivers to Victory by mail. (Ex. 67).

183. Soaring Heights informed Victory that it would give the waivers to students to have their parents sign before the trip. (Ex. 66).

F. District-wide Secretary Luncheon

184. On May 14, 2014, the District used Victory Ministry for a District-wide Secretary Luncheon. Approximately 150 school officials and students attended. The event was held from 11:30 am – 1:00 pm.

- Exs. 2, 61, 71
- Cravens Dep. 11:21-25 – 12:1

185. NMS students on the jazz band attended the luncheon at Victory.

- Exs. 2, 61, 71
- Cravens Dep. 11:21-25 – 12:1

186. The event was organized by Ashley Ackerson, the Special Projects Coordinator for Joplin Schools. (Ex. 71). In an email to Victory's Facility Manager Ron Laws, dated March 14, 2014, Ackerson wrote: "I would love to set up a time to come look at the facility. I have been in many times (Zach Grimm is my brother) but would love to meet you." (Ex. 71). Zach Grimm is Victory's Director of Marketing. (Ex. 74).

187. The District was required to sign Victory's Building Use Agreement. (Ex. 71)

188. The District paid Victory at least \$200 to rent the facility for the luncheon. (Ex. 71).

VI. Other Christian venues used for school events

189. The District has held school events at numerous religious venues including several Christian churches. (Exs. 56-64).

190. All of the religious venues utilized by the District are Christian. (Exs. 56-64).

191. The following table reflects other religious venues utilized for school purposes:

Venue	School	Date(s)	Purpose of event
First Baptist Church			
	Irving Elementary	3/6/15	Fifth Grade Field Trip
	West Central Elementary	3/6/15	Fifth Grade Field Trip
	Royal Heights Elementary	3/6/15	Fifth Grade Field Trip
First United Methodist Church	JHS		
		3/10/15	Strolling Strings
		10/8/13	Orchestra
		4/12/11	Sound Demension [sic]
Joplin Family Worship Center	Beacon School		
		5/6/15	Award Ceremony
		5/5/15	Ceremony Practice
		5/14/14	Award Ceremony
		5/13/14	Award Ceremony
Fellowship Baptist Church	JHS		
		12/9/14	[Not specified]
		12/14/10	Strolling Strings
Ignite Church	JHS	4/20/13	Prom
College of the Ozarks			
	JHS		
		5/16/15	Track Meet
		4/6/13	Soccer
		4/5/13	Soccer
	South Middle School	5/8/15	College Bound
St. Paul's United Methodist Church	[Not specified]		

- Exs. 56-63

192. The Doe family does not want to attend any of the above venues for school events. If a school event is held in a Christian church or similar venue, the Does will not be able to attend without violating the dictates of their consciences.

- Jane Decl. 5 at ¶35
- Doechild I Decl. 3 at ¶¶20-21
- Doechild II Decl. 1 at ¶10
- Doechild III Decl. 2 at ¶14
- Doechild IV Decl. 1 at ¶7

193. Jane testified: “I do not want my children to attend any Christian venues for school events. If a school event is held in a Christian church or similar venue, my children will not be allowed to attend.” (Jane Decl. 5 at ¶35).

194. Doechild I testified: “I really hope that I am not forced or feel pressured to attend Victory Ministry during my time at JHS. I do not want to attend any Christian venues for school events. I hope that all the school events are held in secular, non-religious venues, so that I can attend. If a school event is held in a Christian church or similar venue, I will not be able to attend without violating my conscience. (Doechild I Decl. 3 at ¶¶20-21).

195. Doechild II testified: “If a school event is held in a Christian church or similar venue, I will not be able to attend without violating my own beliefs.” (Doechild II Decl. 1 at ¶10).

196. Doechild III testified: “I felt uncomfortable with the Christian nature of Victory. I wish to participate in all class-wide school events and field trips but do not want to attend them in religious venues. If JHS holds another event at Victory, I will be forced to forgo the event in order to avoid the religious venue and religious message.” (Doechild III Decl. 2 at ¶14).

197. Doechild IV testified: “I do not wish to encounter school-sponsored religious activity in the future at NMS or Joplin High School, which I will be attending during the 2019-2020 school year.” (Doechild IV Decl. 1 at ¶7).

198. In addition, the District’s practice of selecting exclusively Christian venues for its events makes the Does feel like religious outsiders in their own community.

- Jane Decl. 5 at ¶37
- Doechild I Decl. 3 at ¶22
- Doechild II Decl. 1 at ¶9
- Doechild III Decl. 2 at ¶15
- Doechild IV Decl. 1 at ¶¶8, 10

199. Jane testified: “The District’s practice of selecting exclusively Christian venues for its events makes me and my family feel like outsiders in our own community” (Jane Decl. 5 at ¶37).

200. Doechild I testified: “My school district’s ongoing endorsement of Christianity through the field trips it takes to Christian venues make me feel excluded from my school community.” (Doechild I Decl. 3 at ¶22).

201. Doechild II testified: “The District’s endorsement of Christianity via field trips to Victory makes me feel excluded from my classmates.” (Doechild II Decl. 1 at ¶9).

202. Doechild III testified: “Because the District continues to select Christian venues and use Victory Ministry even though we have our own gym, I feel it is endorsing Christianity. I also feel that the District disapproves of atheists and Humanists like me.” (Doechild III Decl. 2 at ¶15).

203. Doechild IV testified: “I feel excluded from my school community knowing that the District continues to endorse Christianity through field trips to Christian places . . . I will feel left out and sad if I am not able to go on field trips because they are religious, like an outsider in my own school.” (Doechild IV Decl. 1 at ¶¶8, 10).

VII. Procedural History

The Does commenced this action on May 27, 2015. (Doc. 1). They subsequently moved to proceed by pseudonyms and for Jane Doe to serve as next friends of Doechild I and II. (Docs. 3, 4, 5, 9). The Court granted both motions on June 23. (Docs. 13 & 14). The District filed its answer on June 26. (Doc. 15). On July 30, the Court issued a scheduling and trial order. (Doc. 20). Written discovery commenced shortly thereafter. (Docs. 26, 29-30, 32-33).

On October 26, 2015, Does filed an unopposed motion to file an Amended Complaint and for an order restyling the case. (Doc. 36). On October 27, the Court granted the motion and the Does filed their amended complaint. (Docs. 37-38). The District filed its answer on November 2, 2015. (Doc. 40).

On April 12, 2016, the parties filed a joint motion for an extension of time to file dispositive motions and to cancel the scheduled jury trial. (Doc. 49). Both parties concurred that no disputed material facts exist and that the issues presented are issues of law for the Court's determination on cross-motions for summary judgment (Doc. 49). On April 15, the Court granted the motion, scheduling dispositive motions to be due on or before June 24, 2016, and striking the scheduled jury trial and all associated pre-trial conferences and filing deadlines. (Doc. 50).

I. Summary Judgment and Establishment Clause Overview⁴

Does are entitled to summary judgment under FED. R. CIV. P. 56 because the material facts are undisputed and the District's policy and practice of endorsing Christianity by regularly sending students to Christian venues for school events violates the Establishment Clause.⁵

The Establishment Clause requires the "government [to] remain secular, rather than affiliate itself with religious beliefs or institutions." *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 610 (1989). It "prohibits the government's support and promotion of religious communications by religious organizations." *Id.* at 600. 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).⁶

The Supreme Court "has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools." *Edwards v. Aguillard*, 482 U.S. 578, 583-84 (1987).⁷ It has repeatedly emphasized that there are "heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." *Lee*, 505 U.S. at 592. In *Town of Greece v. Galloway*, Justice Kennedy, the author of *Lee*, reaffirmed this heightened protection for students, noting that they are readily susceptible to indoctrination and peer pressure. 134 S. Ct. 1811, 1823, 1826-27 (2014). *See also Stark v. St. Cloud State Univ.*, 802 F.2d 1046, 1051 (8th Cir. 1986) ("Adults often can separate the power of the state from the prophecy of the church in instances where impressionable children cannot.").

Relatedly, parents have a constitutionally protected interest in guiding "the religious

⁴ Plaintiffs refer to and incorporate by reference their Statement of Undisputed Facts ("PSUF").

⁵ *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)

⁶ *E.g., Ams. United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 422 (8th Cir. 2007) (state funding of a Christian program for inmates violated Establishment Clause)

⁷ *E.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Stone v. Graham*, 449 U.S. 39 (1980); *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *McCullum v. Bd. of Educ.*, 333 U.S. 203 (1948)

future and education of their children.” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). They have a right to have their “children educated in public schools that do not impose or permit religious practices.” *Steele v. Van Buren Pub. Sch. Dist.*, 845 F.2d 1492, 1493, 1495 (8th Cir. 1988).⁸

To comply with the Establishment Clause, a governmental practice must pass the *Lemon* test, under which it must: (1) have a secular purpose; (2) not have the effect of advancing or endorsing religion; and (3) not foster excessive entanglement with religion. *Allegheny*, 492 U.S. at 592 (citing *Lemon v. Kurtzman*, 403 U.S. 602 (1971)). State action “violates the Establishment Clause if it fails to satisfy any of these prongs.” *Edwards*, 482 U.S. at 583. Additionally, in *Lee*, the Court formulated the separate “coercion test,” declaring, “at a minimum, the . . . government may not coerce anyone to support or participate in religion or its exercise.” 505 U.S. at 587.⁹ Under the coercion test, a public school cannot “force a student to choose between attending and participating in school functions and not attending only to avoid personally offensive religious rituals.” *Skarin v. Woodbine Cmty. Sch. Dist.*, 204 F. Supp. 2d 1195, 1198 (S.D. Iowa 2002).

The jurisprudence analyzing similar practices is decidedly against the District.¹⁰ Indeed, holding a public school event “in a religious institution . . . [is] contrary to Supreme Court precedent.” *Musgrove v. Sch. Bd.*, 608 F. Supp. 2d 1303, 1305 (M.D. Fla. 2005). The Eighth Circuit has found violations in analogous and even less egregious circumstances, such as:

- Requiring teachers to attend training at a religious college (*Warnock*, 380 F.3d at 1081)
- Allowing university students to teach at parochial schools (*Stark*, 802 F.2d 1046)
- Permitting a private group to distribute Bibles to students during school hours¹¹
- Offering Bible classes taught by volunteers not acting on behalf of any church even where the classes were voluntary and not for school credit¹²

⁸ See also *Bell v. Little Axe Indep. Sch. Dist.*, 766 F.2d 1391, 1398 (10th Cir. 1985)

⁹ See *Warnock v. Archer*, 380 F.3d 1076, 1080 (8th Cir. 2004) (noting that the “Court has focused much of its attention on the possibility of coercing the participation of students in state-sponsored religion.”)

¹⁰ See *Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 851 (7th Cir. 2012) (en banc, cert. denied, 134 S. Ct. 2283 (2014)); *Does v. Enfield Pub. Schools*, 716 F. Supp. 2d 172 (D. Conn. 2010); *Spacco v. Bridgewater Sch. Dep’t*, 722 F. Supp. 834 (D. Mass. 1989); *Reimann v. Fremont Cnty. Joint Sch. Dist.*, Civil No. 80-4059 (D. Idaho 1980) (Ex.65); *Lemke v. Black*, 376 F. Supp. 87, 89-90 (E.D. Wis. 1974).

¹¹ *Roark v. S. Iron R-1 Sch. Dist.*, 573 F.3d 556, 560 (8th Cir. 2009); *Doe v. S. Iron R-1 Sch. Dist.*, 498 F.3d 878, 882 (8th Cir. 2007)

¹² *Doe v. Human*, 725 F. Supp. 1503, 1505-06 (W.D. Ark. 1989), *aff’d*, 923 F.2d 857 (8th Cir. 1990)

- Faculty leading students in prayer (*Steele*, 845 F.2d at 1493) and participating in religious bachelorettes (*Warnock v. Archer*, 443 F.3d 954, 955-56 (8th Cir. 2006))

II. The District’s practice of taking schoolchildren to a Christian ministry for school field trips and abstinence-only instruction violates the Establishment Clause.

A. The practice lacks a secular purpose.

The District’s use of a Christian ministry for school events fails the *Lemon* purpose test. The secular purpose must be the “pre-eminent” and “primary” force driving the government’s action, and “has to be genuine, not a sham.” *McCreary Cnty. v. ACLU*, 545 U.S. 844, 862-64 (2005). The purpose test is violated regardless of the “possible applications of the [practice].” *Santa Fe*, 530 U.S. at 314.¹³ The government must “show by a preponderance of the evidence that action challenged” has a secular purpose. *Church of Scientology Flag Serv. v. City of Clearwater*, 2 F.3d 1514, 1530 (11th Cir. 1993). *See McCreary*, 545 U.S. at 870-72.

An unconstitutional purpose may be inferred where, as here, “the government action itself besp[eaks] the purpose . . . [because it is] patently religious.” *Id.* at 862-63. When a school sponsors an “intrinsically religious practice” it “cannot meet the secular purpose prong.” *Jager v. Douglas Cnty. Sch. Dist.*, 862 F.2d 824, 829-30 (11th Cir. 1989).¹⁴ Victory Ministry is intrinsically religious and overwhelmingly Christian. (PSUF ¶¶16-47). A visit to its website alone reveals an unambiguous message of exclusively Christian purposes: “Exalt Jesus, Expand the Kingdom of God, and Equip the Body of Christ.” (*Id.* ¶16). NMS selected Victory after receiving their information packet featuring the Christian cross and “ministry.” (*Id.* ¶¶62-66). The principal visited the venue at least twice and thus encountered the numerous Christian banners and crosses pervading the facility. (*Id.* ¶67). The District even required parents to sign a waiver demanding that they allow their children to be proselytized. (*Id.* ¶¶74-75,78-79). Accordingly, the District’s selection of Victory, fully aware of its Christian nature, fails the purpose test. It follows that JHS’s use of Victory for Christian-based instruction fails too.

¹³ *See Am. Humanist Ass’n v. Baxter Cnty.*, 2015 U.S. Dist. LEXIS 153162, at *18-20 (W.D. Ark. Nov. 12, 2015) (county’s nativity display held unconstitutional under purpose test independent of its effect)

¹⁴ *See Edwards*, 482 U.S. at 590-94; *Stone*, 449 U.S. at 41; *Doe v. S. Iron R-1 Sch. Dist.*, 453 F. Supp. 2d 1093, 1102 (E.D. Mo. 2006), *aff’d*, 498 F.3d 878 (8th Cir. 2007) (“the School Board’s behavior here raises a very strong inference that the purpose . . . is to promote Christianity by providing a means for Christian Bibles to be distributed”)

Further, the rejection of “wholly secular [alternatives]” including mini golf and bowling “makes it very clear that the School District’s actual purpose” in selecting a Christian ministry “was religious.” *Id* at 830. 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).¹⁵

That NMS gave “the ultimate choice to the students” does not change this conclusion. *Doe v. Santa Fe Indep. Sch. Dist.*, 168 F.3d 806, 817 (5th Cir. 1999). The policy challenged in *Santa Fe* lacked a secular purpose where it permitted students to vote on whether to include a brief invocation or message before football games. 530 U.S. at 296-97, 309-10. The Court reasoned: “the District’s decision to hold the constitutionally problematic election is clearly ‘a choice attributable to the State.’” *Id.* at 311 (citing *Lee*, 505 U.S. at 587).¹⁶

B. The practice has the unconstitutional effect of endorsing Christianity.

Regardless of the purposes motivating it, the District’s practice of sending schoolchildren to a Christian ministry that loudly proclaims its proselytizing purpose fails the second *Lemon* prong because it creates “a perception that the state endorses the institution[’]s religious mission.” *Stark*, 802 F.2d at 1050-51. The “effect prong asks whether, irrespective of government’s actual purpose,” *Wallace*, 472 U.S. at 56 n.42, the “symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices.” *Grand Rapids Sch. Dist. v. Ball*, 473 U.S. 373, 390 (1985). Even the “mere appearance of a joint exercise” between “Church and State” is unconstitutional. *Larkin v. Grendel’s Den*, 459 U.S. 116, 125-26 (1982). When a school “program fosters the appearance of such a union, the state places its imprimatur on the religion and thereby ‘promotes religion.’”

¹⁵ *E.g.*, *Schempp*, 374 U.S. at 222-23; *Holloman v. Harland*, 370 F.3d 1252, 1286 (11th Cir. 2004); *Hall v. Bradshaw*, 630 F.2d 1018, 1020-21 (4th Cir. 1980) (prayer on state map failed purpose prong even if it “promoted safety,” because the state chose “a clearly religious means to promote its secular end.”)

¹⁶ *See also* *ACLU v. Black Horse Pike Reg’l Bd. of Educ.*, 84 F.3d 1471, 1484 (3d Cir. 1996) (providing students an “option that would allow prayer to be delivered” failed purpose test); *Jager*, 862 F.2d at 830 (“In choosing the equal access plan, the School District opted for an alternative that permits religious invocations, which by definition serve religious purposes”)

Stark, 802 F.2d at 1050-51. *Santa Fe* held that even student-initiated, student-led prayer unconstitutionally endorses religion when delivered at a school event. 530 U.S. at 305, 309-10.

In *Elmbrook*, a case directly on point, the Seventh Circuit held that using an auditorium within a nondenominational church for high school graduations failed the effect test, despite having a secular purpose, because the “sheer religiosity of the space” “created a likelihood” that students “would perceive a link between church and state.” 687 F.3d at 853-86. The school selected the church because its facilities were crowded and overheated and it could not find a comparable venue for the same price. *Id.* at 845 n.2, 848, 855. The court nonetheless concluded, as relevant here, that conducting a public school event in “a church—one that among other things featured staffed information booths laden with religious literature and banners with appeals for children to join ‘school ministries’” unconstitutionally endorses religion. *Id.* at 850-51. This “is consistent with well-established doctrine prohibiting school administrators from bringing church to the schoolhouse.” *Id.* (citing *McCullum*, 333 U.S. 203).

The salient facts are indistinguishable from *Elmbrook*. There, as here, “the environment was pervasively Christian, obviously aimed at nurturing Christian beliefs and gaining new adherents among those who set foot inside the church.” *Id.* at 852-53. And the “cross was not the only vehicle for conveying religious messages. *Id.* Upon passing through the doors, students proceed “into a lobby that contained numerous religious materials.” *Id.* (PSUF ¶¶41-46).

The court in *Enfield* similarly held that using a church for school events “constitutes an impermissible endorsement of religion because it conveys the message that certain religious views are embraced by Enfield Schools, and others are not.” 716 F. Supp. 2d at 189. This was so even though the church “provided the best location within the budget.” *Id.* at 182.

Notably, in *Spacco*, the court enjoined a school district from renting facilities owned by a church for classes, based in part on the need for students to “pass beneath a large cross” to enter the facility and the existence of religious flyers that were confronted upon entry. 722 F. Supp. at 842-43. The court held that the Establishment Clause was violated, even though by “[s]imply sitting in a classroom, a reasonable observer, including a reasonable child, would not receive any

constitutionally impermissible message from his or her surroundings.” *Id.*

Victory “creates an environment even more overwrought with religious symbols than the venue challenged in *Spacco*.” *Enfield*, 716 F. Supp. 2d at 191. Similar to the *Spacco* students, in order to attend Victory field trips, Joplin students observe large crosses from the parking lot, signs that bear the name “Victory Ministry,” and must pass beneath a large cross that is plainly visible above the main entrance. *Id.* But unlike *Spacco* students – who sat in classrooms free from religious messages – Joplin students are surrounded by large banners with Christian messages. And JHS students are further subjected to Christian-run, abstinence-only instruction.

In addition to the venue itself, many parents such as Jane Doe, and students, derive their first impression of entities such as Victory Ministries by visiting the institution’s website, which gushes religiosity. (PSUF ¶¶16,82,132). Virtually all activities and messaging mentioned on the site relate to Christianity. (*Id.*). The only rational conclusion of any parent or student viewing this would be that the District, by regularly patronizing this facility, are endorsing Christianity.

Supreme Court precedent is also controlling. In *Stone*, the Court held that copies of Ten Commandments posted in public school classrooms were unconstitutional, reasoning that the effect “will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.” 449 U.S. at 42.¹⁷ If “constitutional doctrine teaches that a school cannot create a pervasively religious environment in the classroom,” as in *Stone*, or “at events it hosts,” as in *Santa Fe* and *Lee*, it is “overly formalistic to allow a school to engage in identical practices when it acts through a short-term lessee.” *Elmbrook*, 687 F.3d at 856. The “same risk that children in particular will perceive the state as endorsing a set of religious beliefs is present both when exposure to a pervasively religious environment occurs in the classroom and when government summons students to an offsite location.” *Id.*

Although further analysis is unnecessary, six additional factors magnify the

¹⁷ *Accord Allegheny*, 492 U.S. at 620 n.69; *Washegesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679, 684 (6th Cir. 1994) (portrait of Jesus in school hallway unconstitutional because “his portrait has a proselytizing, affirming effect that some non-believers find deeply offensive.”); *Ahlquist v. City of Cranston*, 840 F. Supp. 2d 507, 524 (D.R.I. 2012). See also *Webb v. City of Republic*, 55 F. Supp. 2d 994, 999-1000 (W.D. Mo. 1999) (the “portrayal of the [Christian] fish [on a city seal] impermissibly excludes other religious beliefs or nonbeliefs”)

unconstitutional religious endorsement clearly present in the District’s field trip practice, *infra*.

First, NMS parents were forced to sign a waiver consenting to Victory proselytizing Christianity to their children, making this case far more egregious than *Elmbrook* and *Enfield*.

Second, NMS’s process of submitting a Christian venue to a “majoritarian election” separately violated the Establishment Clause under *Santa Fe*. 530 U.S. at 313-17. (PSUF ¶¶68-70). The District “established a governmental electoral mechanism that turns the school into a forum for religious debate.” *Id.* It further empowered “the student body majority with the authority to subject students of minority views to constitutionally improper messages. The award of that power alone, regardless of the students’ ultimate use of it, is not acceptable.” *Id.* “Simply by establishing this school-related procedure, which entrusts the inherently nongovernmental subject of religion to a majoritarian vote, a constitutional violation has occurred.” *Id.*¹⁸

Third, unlike in *Elmbrook* and *Enfield*, which were limited to once-a-year events, the District persistently uses Victory for numerous functions throughout the year, and will continue to do so absent injunctive relief. (PSUF ¶¶14-15). The *Elmbrook* district had already built a “new field house that could accommodate graduation ceremonies and had been engaging in efforts to obtain funding to renovate [its] gymnasiums.” 687 F.3d at 847. And the districts in both cases selected the venues out of sheer necessity, *supra* at 5. Here, by contrast, the District selected Victory over numerous, viable, secular alternatives. Accordingly, and to a much greater degree than in those cases, an “observer could reasonably conclude that the District would only choose such a proselytizing environment aimed at spreading religious faith” despite “the existence of other suitable [field trip] sites—if the District approved of the Church’s message.” *Id.* at 854.

Fourth, and relatedly, the District’s use of numerous other Christian venues, including churches, but no non-Christian religious venues, compounds the already overwhelming message of Christian favoritism conveyed by the District’s consistent use of Victory. *See Stark*, 802 F.2d

¹⁸ *Accord Black Horse*, 84 F.3d at 1485 (the practice “puts such students on the horns of an impossible dilemma by forcing them to chose between doing violence to their own religious beliefs and voting, or abstaining and thereby risking that their forbearance may provide the margin of victory for those with a different religious preference.”)

at 1050-51. The practice “creates the unmistakable impression that the [District] approves of the religious mission on which the institutions are embarked,” *id.*, and that “it prefers Christians over those that subscribe to other faiths, or no faith at all.” *Enfield*, 716 F. Supp. 2d at 192.

Fifth, because the “sheer religiosity” of Victory renders its use unconstitutional for any public school event, its use for Christian-based abstinence-only programs led by a Christian organization inevitably creates a “link between church and state.” *Elmbrook*, 687 F.3d at 853. A school district may not “allow public-school students to receive religious instruction on public-school premises.” *Allegheny*, 492 U.S. at 590 n.40. Necessarily then, it may not send students to a Christian ministry to receive instruction by a Christian organization as part of a school program. Grappling with a parallel issue, the Court in *McColum* held that a public school violated the Establishment Clause by permitting part-time religious instruction by nonpublic school personnel on its premises, even though participation was entirely voluntary. 333 U.S. at 229-31. The Court reasoned: “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.” *Id.* at 209-10. The “same result should obtain when administrators bring seminal schoolhouse events to a church—at least to one with the proselytizing elements present in this case.” *Elmbrook*, 687 F.3d at 851.

Indeed, a much stronger link results from the District’s practice than that which the Court held unconstitutional in *McColum* because the JHS LifeChoices programs are held in Victory, an overwhelming Christian environment, whereas the courses in *McColum* were held in secular classrooms. (PSUF ¶¶16-47). Joplin “students witness the state join with the church to teach them in an atmosphere dominated by religion.” *Stark*, 802 F.2d at 1051. They watch Christian employees “instruct their class under the full-time supervision” of their public school teachers. *Id.* The public school students “therefore see a true union between church and state.” *Id.*

Moreover, in *McColum*, the district *excused* students from the normal school program to attend classes taught by religious teachers. In the present case, the District itself is conducting *school field trips* to Christian venues where students are subjected to instruction by a Christian organization. In declining to overrule *McColum*, *Zorach v. Clauson* upheld New York’s

“released time” program because unlike *McCollum*: (1) no public funds were expended; and (2) the school did not promote the instruction beyond simply collecting permission slips. 343 U.S. 306, 309-10, 315 & n.8 (1952). By contrast, public funds are expended on Victory trips and the District promotes LifeChoices far beyond permission slips; school buses transport students to Victory and school officials supervise. Rather than “excuse” students from school, the trips are *school events*. Students must affirmatively opt out to avoid unwanted religious messages.¹⁹

Apart from the above, the content of LifeChoices programs are problematic insofar as they only present a Christian perspective on sexuality. (PSUF ¶¶133-139). The Establishment Clause prohibits the government from placing its support “behind the tenets of one or of all orthodoxies.” *Schempp*, 374 U.S. at 222. The “content of a public school’s curriculum may not be based on a desire to promote religious beliefs.” *Allegheny*, 492 U.S. at 590 n.40. *E.g.*, *Edwards*, 482 U.S. at 593 (“As in *Epperson*, the legislature passed the Act to give preference to those religious groups which have as one of their tenets the creation of humankind by a divine creator”). It is not mere “happenstance” the District supports “the teaching of a theory that coincided with this religious view.” *Id.* at 592. The participation of the Christian organization in determining its content and teaching it, rather than public school teachers, together with the selection of a Christian ministry as the site for instruction, belies any such contention. *See Books v. City of Elkhart*, 235 F.3d 292, 303 (7th Cir. 2000) (“The participation of these influential members of several religious congregations makes it clear that the purpose [was religious]”).

Sixth, unlike *Elmbrook* and *Enfield*, the District’s practice applies to middle and elementary schools. (PSUF ¶¶15). The “symbolism of a union between church and state is most likely to influence children of tender years.” *Ball*, 473 U.S. at 390. These “schoolchildren are vastly more impressionable than high school or university students.” *Bell*, 766 F.2d at 1404.

C. The practice fosters unconstitutional school entanglement with religion.

¹⁹ *Cf. Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 108 n.66 (2001) (“In the present case, there is simply no integration and cooperation between the school district and the [religious afterschool] Club. The Club’s activities take place after the time when the children are compelled by state law to be at the school.”)

The government violates the Establishment Clause through “excessive entanglement with religious institutions.” *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984). “The objective is to prevent, as far as possible, the intrusion of either [church or state] into the precincts of the other.” *Lemon*, 403 U.S. at 614. The “burden is upon the state to show that implementation of a [practice] will not ultimately infringe upon and entangle it in the affairs of a religion.” *Surinach v. Pesquera de Busquets*, 604 F.2d 73, 75 (1st Cir. 1979). Here, the District’s practice fosters unconstitutional entanglement in two independently significant ways, *infra*.

First, as a response to AHA’s letter, the District now requires school officials to monitor proselytizing behavior by Victory staff. (PSUF ¶¶122). But monitoring by government officials in a sectarian venue in order “to ensure the absence of a religious message . . . infringes precisely those Establishment Clause values at the root of the prohibition of excessive entanglement.” *Agostini v. Felton*, 521 U.S. 203, 221-22 (1997) (citation omitted). Although students, rather than employees, were involved in *Santa Fe*, the Court found excessive entanglement in part because of the ability of school administrators to regulate the content of the prayers. 530 U.S. at 305-07.²⁰

The impermissibility of the District’s new position is underscored by *Lemon*, which involved attempts to insure that public subsidies to teachers in church-related schools did not contribute to the advancement of religion. The Court “simply recognize[d] that a dedicated religious person, teaching in a school affiliated with his or her faith and operated to inculcate its tenets, will inevitably experience great difficulty in remaining religiously neutral.” 403 U.S. at 618-19. There, as here, a “comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that . . . the First Amendment [is] respected.” *Id.* In short, “the very restrictions and surveillance necessary to ensure that [Victory employees] play a strictly nonideological role give rise to entanglements between church and state.” *Id.* at 620-21.

Such entanglement fosters to a much larger extent with JHS’s abstinence-only instruction

²⁰ See also *Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 288 (3d Cir. 2011) (“The Board sets the agenda for the meeting, chooses what individuals may speak and when, and in this context, recites a prayer to initiate the meeting. Thus, the circumstances surrounding the prayer practices suggest excessive government entanglement.”); *Mellen v. Bunting*, 327 F.3d 355, 375 (4th Cir. 2003) (school prayer fostered unconstitutional entanglement); *Washegesic*, 33 F.3d at 683 (“[school’s] display [of Jesus painting] entangles the government with religion.”)

taught by employees of a Christian organization. The Court in *Lemon* did not assume “that parochial school teachers will be unsuccessful in their attempts to segregate their religious beliefs from their secular educational responsibilities.” *Id.* at 618-19. But it found that the “potential for impermissible fostering of religion is present.” *Id.*

For similar reasons, the District cannot resolve the endorsement problem by concealing Christian displays within Victory. As the Seventh Circuit explained in *Elmbrook*: “scrubbing [the chapel] of religious symbols or working to tailor its message to a secular audience . . . would have run afoul of *Lemon’s* excessive entanglement prong.” 687 F.3d at 854 n.18 (citation omitted). *Enfield* squarely held that the “uneasy process of attempting to ‘secularize’ First Cathedral by covering some of its religious imagery” resulted in excessive “entanglement of the state in religious affairs.” 716 F. Supp. 2d at 197.²¹

Second, the Building Use Agreement, together with Victory’s bylaws, fosters excessive entanglement with religion. *Larkin*, 459 U.S. at 125-26. The “First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma.” *Epperson*, 393 U.S. at 106. Yet the District binds itself to Victory’s terms, including its provision forbidding users from acting in a way “contrary to the mission, purposes or beliefs of Victory Ministry.” (PSUF ¶88). This includes expressing beliefs that are not “biblically sound.” (*Id.* ¶24). Victory reserves “the right to refuse service to ‘users’ or ‘renters’ of the facilities and grounds, which they believe *or suspect* may be *in support of* or offer a service, product *or message* that conflicts, or *may conflict* with the biblical values held by Victory Ministry.” (*Id.* ¶¶19,130) (emphasis added).

A similar use agreement between a public school and parish was held to foster unconstitutional entanglement in *Spacco*. 722 F. Supp. at 844-85. That school temporarily leased secular classrooms within the parish center. *Id.* Under the agreement, the school agreed that its use would “be consistent with the teachings of the Roman Catholic Church.” *Id.* There was no

²¹ See also *See Voswinkel v. Charlotte*, 495 F. Supp. 588, 598 (W.D.N.C. 1980) (“The second source of entanglement arises from the City’s presumably sincere attempt to secularize the police chaplaincy”).

evidence that the school “actually made any decisions concerning its curriculum to avoid conflict with the teachings,” but the lease itself constituted “an impermissible delegation or sharing of the Town’s power and responsibility concerning what is taught to its elementary school students.” *Id.*

In addition to impermissible delegation, under Victory’s terms, Joplin school officials must police students to ensure that none could even be suspected of supporting atheism or any other issue Victory disagrees with. (PSUF ¶¶19,24,88,130). Although such surveillance fosters unconstitutional entanglement without more, *supra*, the constitutional problems far surpass entanglement. The school could be compelled to stop a Muslim from praying before lunch but could allow Christian students to join hands in a circle for prayer. A Humanist wearing a symbol of secularity, such as the “Darwin fish” or “Happy Humanist” pin, could be prohibited from even entering the facility while a Christian could wear a crucifix. A Jewish student might be precluded from engaging in a practice considered sacrilege to Christians, or from wearing “inappropriate” jewelry or other garb. If the school intervened in such cases, it would contravene the Establishment Clause, as well as the Equal Protection, Free Exercise, and Free Speech Clauses.

For entanglement purposes, the District’s agreement to Victory’s terms presents too great a risk for the Establishment Clause to tolerate, independent of it actually engaging in the foregoing discriminatory actions. In *Larkin*, the Court recognized that “*the potential* for the effective exercise of governmental power by a religious institution for religious purposes is sufficient to constitute excessive entanglement.” 459 U.S. at 125 (emphasis added). The Court did not find that the church had in fact exercised its power to veto the issuance of a liquor license to serve an explicitly religious goal. *Id.* The Court even assumed churches would act in good faith. *Id.* Yet the veto power was invalidated because “the potential for conflict inhere[d].” *Id.* (citations omitted). *Larkin* teaches that a court “may not step aside and await a course of events which promises to raise serious constitutional problems.” *Surinach*, 604 F.2d at 75-76.

D. The practice unconstitutionally coerces students to attend a Christian ministry.

The District’s practice also unconstitutionally coerces students to attend and support a Christian ministry. *See Lee*, 505 U.S. at 586-87 (graduation prayer unconstitutionally coercive

even though event was voluntary). The “First Amendment prohibits [a school] from requiring religious objectors to alienate themselves from the [school] community in order to avoid a religious practice.” *Mellen*, 327 F.3d at 372 n.9. And it is axiomatic that the government cannot “influence a person to go to . . . church.” *Everson v. Bd. of Edu.*, 330 U.S. 1, 15 (1947). This “principle is violated when the government directs students to attend a pervasively Christian, proselytizing environment.” *Elmbrook*, 687 F.3d at 855. Non-Christians are placed “in the dilemma of participating, with all that implies, or protesting.” *Lee*, 505 U.S. at 586-87. *Lee* made clear that a school may not place “school children in this position.” *Id.*

Significantly, in *Santa Fe*, the Court held that even student-initiated, student-led prayers at high school football games, which were completely voluntary, failed the coercion test. 530 U.S. at 301-02, 310-12. The Court recognized that “the choice between whether to attend these games or to risk facing a personally offensive religious ritual is in no practical sense an easy one.” *Id.* The Court declared that even “if we regard every high school student’s decision to attend a home football game as purely voluntary, we are nevertheless persuaded that the delivery of a pregame prayer has the improper effect of coercing those present.” *Id.*

Lee and *Santa Fe*, “cannot be meaningfully distinguished—both because endorsement . . . has the potential to be coercive, and because there was actual coerced activity in this case.” *Elmbrook*, 687 F.3d at 851. (PSUF ¶¶9-10). Both *Elmbrook* and *Enfield* held that using a church for school events was unconstitutionally coercive even though no prayers were involved. *Id.*; 716 F. Supp. 2d at 200-01. *Accord Lemke*, 376 F. Supp. at 89-90; *Reimann* (Ex.65).

The District’s practice is even more coercive than the brief prayers in *Lee* and *Santa Fe*. In *Lee* and *Santa Fe*, the state “merely required students to be exposed to others engaging in religious activity at secular venues.” *Enfield*, 716 F. Supp. 2d at 200-201. To the extent “that *Lee* and *Santa Fe* involved challenged action that required only passive observance” – whereas the District here “requires students to undertake the act of entering a place of religious worship” – holding events at Victory is “more coercive than the . . . prayers of *Lee* and *Santa Fe*.” *Id.*

Furthermore, the prayers in *Santa Fe* and “*Lee* occurred during an after-school

extracurricular event,” whereas the Joplin field trips take place “during instructional time.” *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160, 1170-71 (7th Cir. 1993) (permitting Bibles to be delivered during school hours held unconstitutionally coercive). Many courts, including this Court,²² have found that simply making Bibles available to students during school hours is unconstitutionally coercive, “[e]ven if none of the teachers with the District actually handed a Bible to a child or instructed that the child pick one up from the tables.” *M.B. v. Rankin Cty. Sch. Dist.*, 2015 U.S. Dist. LEXIS 117289, at *28-30 (S.D. Miss. July 10, 2015).

In *McCullum*, the Court observed as pertinent here: “If no provision is made for religious instruction in the particular faith of a child, or if for other reasons the child is not enrolled in any of the offered classes, he is required to attend a regular school class, or a study period during which he is often left to his own devices.” 333 U.S. at 227. Presented with such an option, “[t]he law of imitation operates, and non-conformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend.” *Id.* But the circumstances here are far more coercive because the choice is not between attending religious and secular *instruction*, but attending a *fun field trip* involving sports and games and sitting in classroom with students being punished for bad behavior from the MAP assessments. (PSUF ¶97-99).

The Eighth Circuit recently reiterated: “It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.” *Jackson v. Nixon*, 747 F.3d 537, 543 (8th Cir. 2014) (quoting *Lee*, 505 U.S. at 596)). In *Jackson*, the court held that an *adult* was unconstitutionally coerced because he would be required to attend a non-secular program in order to be eligible for early parole. *Id.* at 541-43. *Jackson* rests upon a basic principle, one “made clear” by the Supreme Court: “that the type of coercion that violates the Establishment Clause need not involve either the forcible subjection of a person to religious exercises or the conditioning of relief from punishment on attendance at church services.” *DeStefano v.*

²² See *S. Iron R-I*, 453 F. Supp. 2d at 1097

Emergency Housing Group, Inc., 247 F.3d 397, 407 (2d Cir. 2001) (citing *Lee* and *Santa Fe*).

Like *Jackson*, a Joplin student who absents herself from a school field trip to avoid the Christian ministry “forfeit[s] . . . intangible benefits.” *Herdahl v. Pontotoc Cty. Sch. Dist.*, 933 F. Supp. 582, 591 (N.D. Miss. 1996). To “subject a student at such an event to a display of religion that is offensive or not agreeable to his or her own religion or lack of religion is to constructively exclude that student . . . The Establishment Clause does not permit this.” *Gearon v. Loudoun Cty. Sch. Bd.*, 844 F. Supp. 1097, 1099-1000 (E.D. Va. 1993). The practice also “segregates students along religious lines. The [non-Christian] children are likely to feel ostracized and stigmatized.” *Herdahl v. Pontotoc Cty. Sch. Dist.*, 887 F. Supp. 902, 910-11 (N.D. Miss. 1995).

What is more, Doechild III was in fact coerced to attend Victory. (PSUF ¶¶151-162). Doechild III had no true option of non-attendance. (*Id.*). Such coercion was a separate yet particularly “serious” Establishment Clause injury. *Santa Fe*, 530 U.S. at 300.

III. Does are entitled to the relief they seek.

Having shown the practice violates the Establishment Clause, Does are entitled to injunctive relief because: (1) they continue to suffer irreparable harm, (2) that harm far exceeds any injury on other parties, and (3) “the public obviously has an enormous interest in seeing its government comply with the First Amendment.” *Baxter Cnty.*, 2015 U.S. Dist. LEXIS 153162, at *23 (citations omitted). Does are also entitled to nominal damages, as they are “the appropriate means to vindicate constitutional rights.” *Corpus v. Bennett*, 430 F.3d 912, 916 (8th Cir. 2005). And declaratory relief is proper under 28 U.S.C. § 2201.

CONCLUSION

To be sure, “some Christians may wish to see the government proclaim its allegiance to Christianity . . . but the Constitution does not permit the gratification of that desire.” *Allegheny*, 492 U.S. at 612. “The First Amendment protects not only Christians and Jews, but atheists, animists, pagans, wicca and everyone alike.” *ACLU v. Plattsmouth*, 358 F.3d 1020, 1041 (8th Cir. 2004). For the above reasons, Does request that the Court grant them summary judgment.

Respectfully submitted,

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