UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

St. Augustine School and
Joseph and Amy Forro,
Plaintiffs,

v. Case No. 16-CV-575

Tony Evers, in his official capacity,
as Superintendent of Public Instruction and
Friess Lake School District,
Defendants.

REPLY BRIEF IN SUPPORT OF PLAINTIFFS, ST. AUGUSTINE SCHOOL AND JOSEPH AND AMY FORRO'S, MOTION FOR SUMMARY JUDGMENT

Plaintiffs (St. Augustine School and Joseph and Amy Forro) have brought state and federal constitutional claims arising out of Defendants' decision to deny St. Augustine its lawful attendance area and to deny the Forro children transportation to St. Augustine. In their constitutional claims the Plaintiffs assert that the Defendants are treating St. Augustine and the Forros less favorably than other private schools and private school parents, and have done so because the Plaintiffs have chosen to operate and have their children attend a religious school. The Defendants' conduct has burdened the free exercise of religion and violated the equal protection clause and the establishment clause. The Defendants make seven statements in their opposition brief that individually and collectively, although inadvertently, show that the Plaintiffs' motion for summary judgment should be granted.

Statement No. 1: (Defendants' Br. 6) The District received a letter from St. Augustine dated March 31, 2015 with its proposed "designated enrollment area." (Declaration of Denise Howe ¶9, Ex. C; Defs.' PFF ¶9; Zignego Decl. Ex. H; Pls' PFF ¶33.) Based upon the understanding that St. Augustine is a Catholic school, the proposed attendance area was not approved because it overlapped with the approved attendance area for St. Gabriel, another Catholic school within the geographic area of the District. (Howe Decl. ¶9, Ex. C; Defs.' PFF ¶12; Zignego Decl. Ex. H; Defs.' PFF ¶33.)

The Defendants acknowledge three facts here which make the Plaintiffs' point. First, they admit that the District's immediate reaction to St. Augustine's requested attendance area was to deny it based upon the District's "understanding that St. Augustine is a Catholic school." The District made no inquiry into the ownership, management, control, or legal affiliations of St. Augustine. The District denied St. Augustine's attendance area based solely on a religious test.

Second, the District knew that St. Augustine was not affiliated with the Archdiocese. St. Augustine's request – it is actually dated April 27, 2015 not March 31, 2015 and it is Howe Ex. B and not Howe Ex. C – advises the District that St. Augustine is not an archdiocesan school. St. Augustine told the District that St. Augustine is an independent school with its own Board of Directors, that it receives no funding from and has no communications with the Archdiocese, and that other public school districts (Hartford and Slinger) recognized that St. Augustine is not affiliated with the schools of the Archdiocese, and that those other school districts are providing transportation benefits to St. Augustine students as required by Wis. Stat. §121.54. These were all "professions of the school" that Defendants concede they were obligated to accept under *Holy Trinity*. (Defendants' Br. 19.) But they did not. They instead applied a religious test – basing their claim of "affiliation" on an (incorrect) belief that St. Augustine is sufficiently theologically similar to the Archdiocese that it should be considered part of it.

Third, the District's written response referenced in the statement (Howe Ex. C) may explain this curious refusal to acknowledge the legal status of St. Augustine. The response criticizes St. Augustine, as a private school, for "trying to access taxpayer funds" for transportation, reflecting hostility to the very idea that it has to provide transportation to families that support the District with their tax dollars. The District may not like the provisions of the Wisconsin Constitution and the subsequent enabling legislation that requires Friess Lake to

provide transportation to children attending private schools on a uniform basis as those attending public schools, but that does not permit it to evade its obligations.

Statement No. 2: (Defendants' Br. 6) Plaintiffs claim that the rulings in *Vanko* and *Holy Trinity* superseded the statutory language regarding private schools affiliated by religious denomination and replaced it in its entirety with a test exclusively based on legal or secular affiliation. (Pls.' Br. 3-5, 11-14.) Plaintiffs' position is untenable and not supported by these decisions.

Yes. That is exactly what Plaintiffs claim. The rulings by the Wisconsin Supreme Court in *Vanko* and *Holy Trinity* supersede (the Plaintiffs would say overrule) the statutory language regarding schools affiliated by religious denominations and replaced it in its entirety with a test based on legal and secular affiliation. The Defendants argue that all entities "affiliated" with a religious denomination might be regarded as commonly managed and controlled, but, even if so, this changes precisely nothing. Even in assessing whether an entity is "affiliated" with a religious denomination, the state may not make religious judgments. It must limit itself to the secular connections that the government is in a position to assess. This position is not "untenable," it is what the Wisconsin Supreme Court said must be done, both as a matter of statutory construction and to avoid constitutional infirmity. Its interpretation of Wisconsin Statutes is binding on the Defendants and on this Court. *See* Plaintiffs' Br. 12.

Statement No. 3: (Defendants' Br. 8) In *Vanko*, the Wisconsin Supreme Court did *not*, as Plaintiffs argue, replace the statutory language regarding religious affiliation with a new and separate test that looks only to legal and secular matters and requiring school boards or the superintendent to ignore any references to religious affiliation.

Yes, it did. On its face, the statute appears to adopt a religious test and to provide that a determination must be made as to whether two different schools are part of the same religious denomination. However, in *Vanko v. Kahl*, 52 Wis. 2d 206, 215, 188 N.W.2d 460 (1971), the Wisconsin Supreme Court held that the statute cannot be read that way. Such a religious test, the Supreme Court said, would result in "an apparent constitutional infirmity" because a

classification based on religious affiliation would not be "germane or reasonably related to the purpose of the statute." 52 Wis. 2d at 214. The problem is that there is nothing that is analogous to "religious denomination" that could be used as an equivalent test for non-religious schools. Nothing in the statute says that the state may declare all Montessori schools or all "progressive" schools or all schools that teach phonics as "affiliated." It would indeed be "untenable" to think that it could, because almost all schools will be alike in some ways and not in others. Imposing a test on religious schools that can only be applied to religious schools – *i.e.*, doctrinal affinity – is the "constitutional infirmity" that the Wisconsin Supreme Court identified in *Vanko*.

The Supreme Court avoided the constitutional infirmity in the statute by reading the provision on "religious denomination" – at least as it pertains to theological affinity – out of the statute and replacing it with a different test: No private schools may have overlapping attendance areas if they are operated by a single sponsoring group. *Vanko*, 52 Wis. 2d at 215. The Supreme Court said that this was the test regardless of "whether such school operating agency or corporation is secular or religious." *Id.*

The Defendants read *Vanko* to say there is still a religious denomination test left in the statute based upon the hypothetical that the Court discusses regarding one school operated by Franciscans and another school operated by Jesuits. That hypothetical is *dicta*, but, even if it represents the law, it has nothing to do with this case. It is undisputed here that St. Augustine is not under the authority of any religious order of the Catholic Church. In fact, all of the following facts are undisputed:

- St. Augustine is an independent school and not under the authority of the Archbishop or any religious order of the Catholic Church but rather under the authority of its own Board of Directors. (Zignego Decl. ¶ 3-4, 7; PFF ¶¶5, 6, 10-11.)

- Its By-Laws make it clear that "all powers of the corporation" belong to the Board of Directors (By-laws Section 2) and that the Board may take "all lawful acts" with respect to the conduct of the corporation. (Zignego Decl. ¶ 6, Ex. C; PFF ¶9.)
- There is no over-lapping ownership, management, staff or employees between St Augustine and St. Gabriel (or between St. Augustine and any other school) (Zignego Decl. ¶ 8; PFF ¶11.)
- The curricula and policies of St. Augustine are determined solely by St. Augustine and not by the Archdiocese or any other third party. (Zignego Decl. ¶ 9; PFF ¶17.)
- St. Augustine does not recognize and does not need to comply with either the Archdiocesan religious curriculum for high school students as set by the U.S. Conference of Catholic Bishops, or the Grade Specific Catholic Education Curriculum for elementary schools required for schools sponsored by the Archdiocese. (Zignego Decl. ¶ 10; PFF ¶18.)

In determining whether a school is affiliated with a religious denomination, *Vanko* precludes the use of a religious test. The question of whether a religious denomination is the "sponsoring group" is limited to asking whether the school is run by, in the Court's terminology, an "agency" of the denomination. This is a legal and secular test, not a religious one. The Franciscans and Jesuits are – or at least in its hypothetical the Court assumed that they are – agencies of the officially constituted Roman Catholic Church and subject to its authority. But everything in *Vanko* and the Court's subsequent decision in *Holy Trinity* makes clear that the state cannot determine that two schools are affiliated by asking whether they follow the "same" religion or are theologically or doctrinally the same.

This is so even if two distinct entities claim a tie to a common religious tradition. The state cannot lump the Lutherans of the Missouri Synod in with those who are with the Evangelical Lutheran Church in America. It cannot decide whether the Anglican Catholics are to be thrown in with the Byzantine Catholics and the Roman Catholics.[1] It cannot proclaim unity between Orthodox and Reform Judaism or Shia and Sunni Islam. If it wants to tie different

[1] The fact that there are many differing bodies of theological thought that claim affinity to the "Catholic" tradition belies the notion that all entities who say they are "Catholic" are alike or are affiliated.

entities to a single denomination, it must do so by finding secular connections – legal control, common ownership, etc. – not religious affinity.

Defendants make much of the fact that *Vanko* looked to "affiliation in a single school system" (Defendants' Br. 7-8, 15-16), but they fail to complete the argument. They never explain how merely claiming to be in the "catholic *tradition*" places St. Augustine in the same school system as St. Gabriel and other archdiocesan schools.[2]

Statement No. 4: (Defendants' Br. 10) Contrary to Plaintiffs' contentions, *Holy Trinity* does not stand for the premise that "the government must limit its review of the factors that may constitute 'affiliation' to those that are purely legal and secular."

Yes, it does. In every sense, *Holy Trinity* was a closer case than this one. *Holy Trinity Community School v. Kahl*, 82 Wis. 2d 139, 262 N.W.2d 210 (1978) followed *Vanko*. Holy Trinity was an archdiocesan school. It wanted a larger attendance area than it could have as an archdiocesan school (because its attendance area could not overlap with other archdiocesan schools) so it closed as an archdiocesan school but then immediately reopened as an independent school with its own articles of incorporation and by-laws. It employed many of the same employees (including five Catholic nuns), served many of the same students, and leased the school building from the Catholic parish for one dollar per year. 82 Wis. 2d at 146. It moved its Catholic religious instruction to a "released time program" where students could be released from classes for one-half hour each day for religious instruction, but only the Catholic religion was taught in that program. Approximately 75 percent of the students attended the Catholic released time program and 80% of the students attending the school were children of the members of the Holy Trinity Catholic Parish. *Id.* at 146-147.

[2] Similarly, Defendants fail to explain how two legally-distinct schools teaching a Montessori philosophy would be part of the same "system." (*See* Defendants' Br. 16.) Two such schools, in fact, could share overlapping attendance zones under *Vanko*.

Holy Trinity certainly looked exactly like the same Catholic school it was before it closed and then immediately reopened. In fact, it was formed specifically to evade the requirement that it have an attendance area that did not overlap any archdiocesan school. Based upon the above facts, the Superintendent concluded that Holy Trinity was still a Catholic school and, thus, still affiliated with the Archdiocese. *Id.* at 155. But the Wisconsin Supreme Court disagreed. It held that despite its previous history as an archdiocesan school, the Catholic makeup of its staff and students, and the very reason that it came into existence, Holy Trinity was nevertheless independent of the Archdiocese because it was separately incorporated and managed, and because it operated independently of the diocesan superintendent and without conformity to any hierarchically-imposed Catholic curriculum. *Id.* at 147.

If, on those facts, Holy Trinity is independent, there can be no doubt that the same is true of St. Augustine. It is undisputed that the school is separately incorporated and managed, and is not under the ecclesiastic or other control of the Archdiocese, and does not follow the hierarchically-imposed Catholic curriculum. In fact, St. Augustine considers itself as operating in the "Catholic tradition" (a theological concept), but religiously distinct from schools operated by the Archdiocese. (Zignego Dec. ¶10, PFF ¶¶12-13.) In *Holy Trinity*, the Superintendent wanted the Court to "pierce the corporate veil to look at the facts and, from those facts, determine that, despite the protestation of the corporation, it nevertheless is Roman Catholic and is affiliated with that denomination." 82 Wis. 2d at 148. But the Supreme Court said no. The precise same thing is happening here.

Ironically, the Defendants say that this case is different because they did not actually look into any facts or do the more detailed investigation that the Superintendent did in *Holy Trinity*.[3] They simply seized on one fact – St. Augustine claims an affinity with what it regards to be the Catholic religious tradition – and they looked no further. They ignored St. Augustine's claim of religious differences and legal distinction. For the Defendants, all "Catholics" are indistinct for the purpose of the statute. That's a religious test. The fact that it's a superficial and careless one does not make it acceptable. However cavalier their analysis, they decided "who or what is Catholic," and doing so was "repugnant to the Constitution." *See id.* at 153.

Statement No. 5: (Defendants' Br. 12) Defendants understand Plaintiffs' position to be that Defendants' decisions resulted in the limitation of their right to freely exercise their religion because they were denied an economic benefit available to other families whose children attend a different Catholic school within the District.

No. That is not the Plaintiffs' position. It is a strawman set up by the Defendants. The Plaintiffs' position is that they were denied their right to freely exercise their religion (and their rights under the Establishment Clause) because they were denied government benefits based upon a religious test that the state does not apply to non-religious persons or entities. The comparison is not between the Plaintiffs and St. Gabriel (and its students), but between the Plaintiffs and a secular private school otherwise in the same position as St. Augustine.

If St. Augustine School was named August Academy and did not say it was a religious school, the Defendants would not be claiming that it was affiliated with St. Gabriel or some non-religious school located precisely where St. Gabriel is located and would not be denying the school a lawful attendance area and denying transportation benefits to its students. It is only

[3] They also say that St. Augustine's corporate documents fail to "disavow" a catholic affiliation, as did the school's in *Holy Trinity*, and therefore that case does not apply. (Defendants' Br. pp. 16, 20.) Defendants are looking at the situation backward. The only reason the disavowal was relevant in *Holy Trinity* is that the school previously had been a diocesan school.

because the school and its families are religious and have decided to associate with one another at a religious school that they are being denied benefits.

Oddly, the Defendants cite *Braunfeld v. Brown*, 366 U.S. 599 (1961), a case that was essentially overruled two years later by *Sherbert v. Verner*, 374 U.S. 398 (1963). The dissenting justices in *Braunfeld* turned into the majority in *Sherbert*, and although they did not explicitly overrule *Braunfeld*, the reasoning between the two cases cannot be squared. As Justice Stewart pointed out in his *Sherbert* concurrence, in order to reach the conclusion reached in *Sherbert*, "the Court must explicitly reject the reasoning of *Braunfeld v. Brown*. I think the *Braunfeld* case was wrongly decided and should be overruled." *Id*. at 418. *Sherbert* expressly recognized that the denial of economic benefits based upon religious beliefs violates the Free Exercise clause. 374 U.S. at 403-04, 406.

The Defendants also cite *Leutkemeyer v. Kaufmann*, 364 F. Supp. 376 (W.D. Mo. 1973), but that case is even more off point. In *Leutkemeyer*, the district court held that it was not unconstitutional for Missouri to provide transportation only to public school students and not private school students. Even if the legal proposition were true – something that this Court need not address – Wisconsin does not assert such an interest. Our Constitution and statutes expressly permit transportation aid to private school students, and the question here is whether such aid may be denied to students solely because they are attending a private religious school. That denial is a violation of the Plaintiffs' religious rights.

It is only by setting up their strawman that the Defendants even attempt to address the Plaintiffs' rights to Free Exercise. It is a fundamental principle of constitutional law that the state may not deny a public benefit simply because the beneficiary is engaged in religious exercise. *See McDaniel v. Paty*, 435 U.S. 618, 626 (1978); *Sherbert*, 374 U.S. at 406 (1963);

Thomas C. Berg, *Vouchers and Religious Schools: The New Constitutional Questions*, 72 U. CIN. L. REV. 151, 170 (2003).

The Defendants do not quarrel with this principle. Courts have consistently concluded that when the state offers a neutral and non-religious subsidy or provides a neutral and non-religious benefit, that benefit or subsidy cannot be subsequently denied simply because the recipient evinces a specific religious affiliation or is a religious organization. In their opening brief, the Plaintiffs pointed out the application of this rule in *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 846 (1995) (subsidizing printing costs), *Good News Club v. Milford Central School*, 533 U.S. 98, 111-12 (2001) (after school use of public buildings), *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 14 (1993) (provision of a sign language interpreter to a deaf student attending Catholic school); *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481, 487 (1986) (subsidizing a blind student pursuant to a state vocational assistance grant to finance pastoral studies at a Christian college). The Defendants do not challenge (or even discuss) any of these cases. They simply ignore them and by doing so ask this Court to ignore them too.

Statement No. 6: (Defendants' Br. 13) The logical prerequisite to this analysis [referring to Plaintiffs' Free Exercise Claim] is a factual showing that the Forros have a sincerely held religious belief and that education of their children at St. Augustine is part and parcel to that set of religious beliefs. Without such a factual showing, the claim fails as a matter of law.

The Defendants say that the Court should delve even deeper into the religious beliefs of the Plaintiffs. The Forros, they say, have not adequately explained their religious beliefs and how those religious beliefs are served by attending St. Augustine. This only compounds the Defendants' initial error. These things are none of the state's business. The Forros do not have to explain because evaluating religious claims is forbidden. *See* cases at p. 11, *infra*.

The people of Wisconsin amended the Wisconsin Constitution to permit taxpayer funds to be used to protect the health and safety of school children attending private schools, including religious schools. The legislature of Wisconsin decided that to accomplish that result, public school districts would provide transportation to children attending private schools. The Supreme Court of Wisconsin has decided that the state cannot deny school transportation based on a religious test – meaning in particular a test that could not be applied to a private non-religious school. The Defendants' conduct violates the decisions of the people, the legislature, and the Supreme Court.

Statement No. 7: (Defendants' Br. 17-18.) Plaintiffs' position is that *any* analysis that includes the school's own statements regarding Catholicism outside of the bylaws and/or articles of incorporation constitute excessive entanglement for purposes of the Establishment Clause.

That is not quite the Plaintiffs' position. The Plaintiffs' position is that the state cannot decide what schools follow the same "religion." What matters is who controls the schools in question as a legal matter. This is so because the U.S. Supreme Court has consistently held under the Establishment Clause that the state may not "evaluate" religious claims, make religious decisions, or otherwise insert itself into religious conduct and practices. *See, e.g.*, *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 458 (1988) (stating that interpreting the propriety of certain religious beliefs puts the Court "in a role that [it was] never intended to play"); *United States v. Lee*, 455 U.S. 252, 257 (1982) (refusing to assess the "proper interpretation of the Amish faith"); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 451 (1969) (refusing to "engage in the forbidden process of interpreting . . . church doctrine"); *United States v. Ballard*, 322 U.S. 78, 87 (1944) (avoiding the "forbidden domain" of evaluating religious doctrine). Doing so makes the state a religious actor in violation of the Establishment Clause.

If there is no legal connection between schools – no common ownership or control – then the only remaining way to say they are affiliated is to say that they follow the same "religion," and that would lead to excessive entanglement. There is no way to make such a judgment without evaluating competing religious claims. The Defendants cannot conclude that St. Augustine is "Catholic" in the same way as the schools of the Archdiocese without making a judgment as to what being "Catholic" is. That is precisely why the Wisconsin Supreme Court interpreted the statutory language to exclude such judgments.

The part of Plaintiffs' position that the Defendants get wrong is the Defendants' statement that the Plaintiffs contend that *any* analysis outside the articles of incorporation and by-laws is impermissible. While that is certainly a plausible reading of *Holy Trinity*, it is not quite the Plaintiffs' position. The Plaintiffs believe that the Defendants could look at other items if those other items dealt with legal affiliation, ownership, etc. in the secular sense. For example, if there were documents other than the articles of incorporation and by-laws that said that St. Augustine was owned by St. Gabriel, or that they had a common board of directors, then the Plaintiffs acknowledge that the Defendants could take those documents into consideration.

What the Defendants cannot do, and what they cannot constitutionally ask this Court to do, is inquire into the religious beliefs of St. Augustine, St. Gabriel, and the Forros. As pointed out in the Plaintiffs' opening brief, the impropriety of the Defendants' position is directly illustrated in *New York v. Cathedral Academy*, 434 U.S. 125 (1977). In that case, the state of New York attempted to deny certain statutory benefits to religious schools unless those schools could establish that the funds were not being used for religious purposes. The state argued that it was doing so to avoid an Establishment Clause violation, but the Supreme Court held that such a process was, itself, an Establishment Clause violation. The Supreme Court held that "[t]he

prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment." *Id*. at 132–33; *see also Colorado Christian University v. Weaver*, 534 F.3d 1245 (10th Cir. 2008) (striking down a Colorado scholarship program that subsidized tuition at private schools provided that the private institution was not "pervasively sectarian," on the grounds that it entailed "intrusive governmental judgments regarding matters of religious belief and practice.").

The Defendants think they can avoid the problem by saying that all they did was accept the statements by St. Gabriel and St. Augustine that they are both "Catholic." But the Defendants can't pick and choose. The Plaintiffs say that they are "Catholic" in a different way. The Defendants are necessarily making a judgment – even if it is one rooted in ignorance and formed without any serious inquiry – about religion. St. Augustine and St. Gabriel may disagree about what being "Catholic" means. One may think that it is "Catholic" and the other is not. It is not up to the state to resolve this dispute by saying one is right and the other wrong or that both are right. Whether the decision is easy or hard, it cannot apply a religious test.

What could be more compelling than the words that the Superintendent used in determining that St. Augustine was not entitled to its lawful attendance area:

> The School's website provides ample evidence the School is a religious school affiliated with the Roman Catholic denomination. The "About Us" portion of the website states the School is, "…an independent and private traditional Roman Catholic School…[that is] an incorporation of dedicated families, who believing that all good things are of God, have joined together to provide the children of our Catholic community with an exceptional classical education…" The website also contains the statement, "SAS loves and praises all the traditional practices of the Catholic faith…" These statements are but two of a number of statements in the website pages from which any reasonable person would conclude the School is a religious school affiliated with the Roman Catholic denomination.

(Zignego Decl. Ex. J; Decision at page 7; PPF ¶47).

The Decision contains no facts concerning the ownership or management of St. Gabriel, no facts concerning the ownership or management of St. Augustine or its constituent corporate documents, no facts concerning any corporate or other secular affiliation between St. Gabriel and St. Augustine, and no facts establishing that St. Gabriel and St. Augustine are affiliated or operated by a single sponsoring group. It imposes a religious test, pure and simple.

Could the Defendants have looked at documents outside of the articles of incorporation and by-laws to determine facts about ownership, management and control? Sure. Did they? No. Instead they looked solely at the words – but only some of the words – of St. Augustine about its religious beliefs.

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Finally, the Plaintiffs need to remind the court that the Defendants did not make an innocent mistake here. The Plaintiffs made both Friess Lake and Superintendent Evers aware of the Wisconsin Supreme Court's interpretation of Section 121.51, and St. Augustine gave them the facts that show that St. Augustine is not affiliated with St. Gabriel. (*See* Plaintiffs' Br. 21.) The Defendants knew all of the relevant facts and dispute none of them, except that the Defendants now say that they did not receive the articles of incorporation. However, St. Augustine's letter dated May 20, 2015 says that the articles of incorporation were enclosed. (Zignego Decl. Ex. E; PFF ¶38.) Taking the Defendants' word that they were omitted or lost raises three questions.

First, given the pronounced importance of the articles of incorporation as set forth in *Holy Trinity*, if they were missing, why didn't the Defendants ask for them? Answer: Because the Defendants never actually considered anything other than the improper religious test.

Second, why didn't the Defendants, as required by *Holy Trinity*, 82 Wis. 2d at 155, accept St. Augustine's affirmative statements that it had its own governing board, received no funding from, and had no communications with the Archdiocese as sufficient? Answer: Because the Defendants never actually considered anything other than the improper religious test.

Third, what evidence was there to establish any overlapping ownership, operation or control? Answer: None, but the Defendants didn't care because they never actually considered anything other than the improper religious test.

CONCLUSION

On their state law claim, Plaintiffs request summary judgment granting them a declaration that their rights were violated and an injunction preventing the Defendants from imposing a religious test under Wis. Stat. §121.51.[4] Under §1983, the Plaintiffs request summary judgment granting them a declaration, an injunction, costs, and attorney's fees (and damages from Friess Lake), all as permitted under 42 U.S.C. §1988.

Submitted this 13th day of January, 2017.

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[4] Alternatively, if for any reason the Court believes that declaratory and injunctive relief is not appropriate the Plaintiffs seek certiorari review of the decisions or such other review as the Court deems appropriate under the circumstances.