

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN DIVISION

JERRY PORTA,

Plaintiff,

v.

LEO F. KLAGHOLZ, New Jersey
Commissioner Of Education, THE STATE OF
NEW JERSEY, THE GALLOWAY
TOWNSHIP SCHOOL DISTRICT, THE
JERSEY CITY SCHOOL DISTRICT, Both
Duly Authorized New Jersey School Districts,
GALLOWAY KINDERGARTEN CHARTER
SCHOOL, INC., SOARING HEIGHTS
CHARTER SCHOOL, Both New Jersey
Charter Schools Chartered Under N.J.S.A.
18A:36A-3, and J. DOES #3 TO #100,
Fictitious Persons or Entities Whose Real
Names are Unknown At This Time, jointly,
severally and in the alternative,

Defendants.

CIVIL ACTION No. 98-cv-2350 (JBS)

Judge Jerome B. Simandle

FIRST AMENDED COMPLAINT

(FILED WITHOUT LEAVE OF

THE COURT UNDER

FED.R.CIV.PRO. 15(a))

Attorney for Plaintiff

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Attorney for Defendants

Plaintiff Jerry Porta, residing in the Township of Galloway, New Jersey, by way of
complaint against the defendants says:

NATURE OF ACTION

1. This is a taxpayer/citizen's lawsuit arising out of blatant violation of the Establishment Clause of the First Amendment to the U.S. Constitution (as applied to the State by operation of the 14th Amendment) by the defendants.

2. Plaintiff seeks declaratory and injunctive relief against the defendants who are either spending or allowing the spending of taxpayers' funds on the operation of a public "charter school" within the premises of an Episcopal Church in Galloway Township, New Jersey.

3. It is unknown if other instances of such violations of the Establishment Clause have occurred in this State so the lawsuit names ninety-eight J. Doe defendants to allow for the possibility that other violations may become known in the course of discovery in this matter. (Please note that since the filing of the Original Complaint, two additional defendants have become known to the plaintiff.)

JURISDICTION AND VENUE

4. This is an action brought pursuant to 42 U.S.C. § 1983 for violation of the Due Process Clause of the 14th Amendment which has been interpreted by the U.S. Supreme Court to have applied the First Amendment of the U.S. Constitution to state action. The jurisdiction of this Court is founded on this section and on 28 U.S.C. §§ 1331 (Federal Question), 1343(3) (Deprivation Federal Rights under Color of State Law), 1343(4) (Any Federal Civil Rights Act), 2201 (Declaratory Judgments) & 2202 (Further Relief Based on Declaratory Judgment).

5. Venue is proper with in this district. All of the acts and occurrences alleged and conduct constituting violations of § 1983 occurred in this district. Additionally, the plaintiff and all known defendants reside in this district.

THE PARTIES

The Plaintiff

6. Plaintiff Jerry Porta is a citizen of New Jersey, residing in the Township of Galloway. He is also a New Jersey and Galloway Township taxpayer. The plaintiff is offended by expenditure of public funds to maintain a public school within a house of worship.

The Defendants

7. Defendant Leo F. Klagholz is the New Jersey Commissioner of Education. Dr. Klagholz is responsible for the disbursement of millions of dollars in New Jersey State funds for education. Most of these funds are provided to the various school districts which, in turn, spend the money as they see fit within State guidelines. Pursuant to N.J.S.A. 18A:36A-12, the school districts, including the Galloway Township School District, are authorized to transfer these State funds, now co-mingled with local funds, to charter schools, including Defendant Galloway Kindergarten Charter School. It is also likely that the Commissioner has directly disbursed public funds to Defendant Galloway Kindergarten Charter School. Finally, pursuant to N.J.S.A. 18A:36A-11, the Commissioner is charged with assuring that no exceptions to State regulations concerning public schools are granted if such exception would affect the civil rights of the students.

8. The State of New Jersey collects taxes from taxpayers such as Jerry Porta through such sources as the sales tax and the income tax. These funds are then provided to State officials, including Commissioner Klagholz, who disburse them pursuant to statutory and constitutional mandates. As described in Paragraph 7, these State funds, paid by millions of New Jersey taxpayers including Mr. Porta, have found their way into the coffers of Defendant Galloway Kindergarten Charter School. It should be noted that since this suit seeks no monetary

damages, the 11th Amendment to the Federal Constitution provides no bar to naming the State directly in this action.

9. The Galloway Township School District (GTSD) is a duly authorized school district under New Jersey Law. GTSD has taxed Mr. Porta and thousands of other Galloway Township residents to raise funds to maintain the public schools of Galloway Township. Pursuant to N.J.S.A. 18A:36A-12, GTSD has provided hundreds of thousands of dollars, representing both local and State funds, to the Galloway Kindergarten Charter School.

10. The Jersey City School District (JSSD) is a duly authorized school district under New Jersey Law. JSSD has taxed hundreds of thousands of Jersey City residents to raise funds to maintain the public schools of Jersey City. Pursuant to N.J.S.A. 18A:36A-12, JSSD has provided hundreds of thousands of dollars, representing both local and State funds, to the Soaring Heights Charter School.

11. Galloway Kindergarten Charter School, Inc. has received a charter from the New Jersey Commissioner of Education pursuant to N.J.S.A. 18A:36A-3. Under this charter, it operates the Galloway Kindergarten Charter School (collectively GKCS) at two locations. One site is maintained in the Historic Towne of Smithville and is not relevant to this suit. The other site is maintained inside St. Mark and All Saints Episcopal Church on Pitney Road in Galloway Township. As stated in the paragraphs above, GKCS is the recipient of both New Jersey State and Galloway Township funds which are derived from taxes levied by New Jersey and the Galloway Township School District, respectively. Finally, it is specifically alleged that GKCS is a public school not only because public funds are the major source of its budget but also because N.J.S.A. 18A:36A-3 proclaims the obvious stating, "A charter school shall be a public school"

12. Soaring Heights Charter School (corporate designation unknown) has received a charter from the New Jersey Commissioner of Education pursuant to N.J.S.A. 18A:36A-3. Under this charter, it operates the Soaring Heights Charter School (collectively SHCS with its unknown corporate entity) at one location. The school is maintained inside Riverside Assembly of God Church at 317 Third Street in Jersey City. As stated in the paragraphs above, SHCS is the recipient of both New Jersey State and Jersey City funds which are derived from taxes levied by New Jersey and the Jersey City School District, respectively. Finally, it is specifically alleged that SHCS is a public school not only because public funds are the major source of its budget but also because N.J.S.A. 18A:36A-3 proclaims the obvious stating, "A charter school shall be a public school"

FACTS

13. St. Mark and All Saints Episcopal Church ("St. Mark," "Church" or collectively "Churches" with the other Church in this Complaint) is a modern house of worship located on Pitney Road in Galloway Township. Upon pulling into the driveway of St. Mark, the most prominent feature of the building is a large cross towering about 30 feet high. Upon entering the main doors, there is a medium sized foyer which has an icon of Mary with a prayer bench as its most prominent feature. Typically, there are Church announcements on a cork board to the left of these doors. If a visitor proceeds to the right, there are two bathrooms on the right and the "knave" or worship area of the Church is to the left through a set of doors. If one proceeds to the left from the main doors, there is a classroom on the left and, after a sharp right turn, the Church "hall" is also to the left. If one continues walking down the corridor with the Church hall to the left, there is a door to another classroom at the end of the corridor. This classroom has two stained glass windows which are believed to represent Jesus and John the Baptist. Near this

class room there are numerous bookshelves which house several hundred books, many of which address religious topics.

14. GKCS has been using the two classrooms and the Church hall area as classrooms since the beginning of this school year.

15. GKCS is paying rent to St. Mark in excess of \$10,000.00 per year for the use of these rooms.

16. Riverside Assembly of God Church ("Assembly of God," "Church" or collectively "Churches" with the other Church in this Complaint) is a modern two story brick building of simple rectangular design. A sign on the West side of the building identifies the building as "RIVERSIDE ASSEMBLY OF GOD." The sign also notes the times of worship services and proclaims, "COME PRAY WITH US" and "JESUS FORGIVES." Other signs on the building confirm that the Church is also the location of SHCS.

17. It is believed that various rooms on both floors of the building are being used for classrooms.

18. It is unknown if the Assembly of God is receiving rent from SHCS.

CAUSES OF ACTION

FIRST COUNT

42 U.S.C. § 1983

19. This Count arises under 42 U.S.C. § 1983 ("§ 1983").

20. Plaintiff repeats and reiterates all of the paragraphs set forth above and makes them a part hereof as if set forth specifically at length.

21. The above described facts, where public schools are being operated inside Churches, represent a violation of the Establishment Clause of the First Amendment to the U.S. Constitution which has been made applicable to the States through the operation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

22. State sponsored violation of Due Process Rights can properly be addressed in an action under § 1983.

23. Mr. Porta's Due Process Rights, as well as those of every other New Jersey Citizen, have been violated by the operation and funding of public schools inside Churches because:

- (a) The operation of a public school inside a Church gives rise to an impermissible entanglement between the Church and State;
- (b) The operation of a public school inside a Church gives rise to an impermissible endorsement of religion (particularly to the impressionable kindergarten youth);
- (c) The operation of a public school inside a Church gives rise to the possibility of divisiveness among religious groups or sects that the Establishment Clause was meant to avoid;
- (d) The operation of a public school inside a Church gives rise to the possibility that publicly purchased items would be used for religious purposes; and
- (e) The operation of a public school inside a Church gives rise to the possibility that religious items, such as religious books available within the Church, might be used for public instruction.

24. As a result of such deprivation of rights granted under the Fourteenth Amendment and § 1983, plaintiff demands that the Court declare that the State Action described above violates the Establishment Clause and issue both preliminary and permanent restraints upon the defendants from engaging in such conduct in the future as demanded in the Second Count.

SECOND COUNT

Demand For Declaratory Judgment & Restraints

25. This Count arises under 28 U.S.C. §§ 2201 & 2202 ("Declaratory Judgment Act").

26. Plaintiff repeats and reiterates all of the paragraphs set forth above and makes them a part hereof as if set forth specifically at length.

27. The plaintiff demands that this Court issue a Declaratory Judgment that operating a public charter school inside a Church is a violation of the Establishment Clause of the First Amendment to the U.S. Constitution.

28. Pursuant to such declaration, the Plaintiff further demands that this Court issue both preliminary and permanent injunctions restraining the defendants from operating or funding, as the case may be, a public charter school, including but not limited to GKCS and SHCS, inside a Church in the future.

WHEREFORE, Plaintiff demands Declaratory Judgment against the Defendants resulting in preliminary and permanent injunctions as requested above, attorney's fees and costs of suit as allowed by law, rule or discretion of the Court and such other relief as the Court may deem just and equitable.

CERTIFICATION
(NO OTHER ACTION TAKEN)

I hereby certify that the matter in controversy is not the subject of any other action pending in any court and is likewise not the subject of any pending arbitration proceeding. I further certify that I have no knowledge of any contemplated action or arbitration proceeding which is contemplated regarding the subject matter of this action and the I am not aware of any other parties who should be joined to this action.

CERTIFICATION

I have read Rule 11 of Federal Rules of Civil Procedure and certify that this complaint is true to the best of my knowledge and belief.

DESIGNATION OF TRIAL COUNSEL

Thomas B. Duffy is hereby designated as trial counsel for Plaintiff.

Dated: June 8, 1998

Thomas B. Duffy, Esquire