

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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CLARK and JANE MOELLER,  
JEFFREY GONZALEZ, LAURA BLAIN,  
KRIS SCHWENKE, and  
TIM THURSTON,

*Plaintiffs,*

v.

Civil Action No. \_\_\_\_\_

BRADFORD COUNTY;  
CARL J. ANDERSON, in his official  
capacity as Executive Director  
of the Pennsylvania Commission  
on Crime and Delinquency;  
ALBERTO GONZALES, in his  
official capacity as Attorney General  
of the United States; and  
THE FIRM FOUNDATION  
OF AMERICA, doing business as  
THE FIRM FOUNDATION  
OF BRADFORD COUNTY,

*Defendants.*

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**COMPLAINT**

## **I. Introduction**

1. Defendant The Firm Foundation of America receives federal, state, and local government funding to operate a vocational training program for inmates in the Bradford County Correctional Facility, which is the jail for Bradford County, Pennsylvania. A significant proportion of inmates' time in the program is spent not on the learning of job skills, but on religious discussions, religious lectures, and prayer. The Firm Foundation describes its program as "a prison ministry." Program staff are required to be "believer[s] in Christ and Christian Life today" and to "shar[e] these ideals when opportunity arises." Program staff proselytize inmates in the specific religious beliefs of the Firm Foundation. Inmates are pressured to take part in prayer.

2. Virtually all expenses of the Firm Foundation program are paid with federal, state, and local government funds. The Firm Foundation makes no effort to segregate government funds for solely secular uses; nor, as a practical matter, could it do so, given the nature of the Firm Foundation program. The government is thus financing religious activity and instruction. And because government funds are being used to pay the salaries of Firm Foundation employees, who must meet a religious test to be hired, the government is also financing religious discrimination in employment.

3. For these and other reasons, the government's financing and support of the Firm Foundation program violates the Establishment Clause of the First Amendment to the U.S. Constitution and the religious-freedom provisions of the Pennsylvania Constitution. The plaintiffs — taxpayers whose tax dollars are used to finance the Firm Foundation program, and a former inmate participant in the program — seek, among other relief, an injunction barring the defendant governmental entities and officials from continuing to fund the Firm Foundation's religious indoctrination and discrimination.

## **II. Jurisdiction and Venue**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

5. The Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as the Firm Foundation program is operated within this district, and most of the parties are located within this district.

### **III. Parties**

7. Plaintiffs Clark and Jane Moeller are residents of Bradford County. The Moellers pay income taxes to the United States and to the Commonwealth of Pennsylvania, and they pay property taxes to Bradford County. The Moellers oppose government funding and support for indoctrination into any religious view. They object to and are offended by the use of their tax dollars to finance the Firm Foundation program and thus to finance the Firm Foundation's promulgation of its religious beliefs. By so using tax dollars, defendants have harmed and continue to harm the Moellers.

8. Plaintiff Jeffrey Gonzalez is a resident of Bradford County. Gonzalez pays income taxes to the United States and to the Commonwealth of Pennsylvania, and he pays property taxes to Bradford County. Gonzalez opposes government funding and support for indoctrination into any religious view. He objects to and is offended by the use of his tax dollars to finance the Firm Foundation program and thus to finance the Firm Foundation's promulgation of its religious beliefs. By so using tax dollars, defendants have harmed and continue to harm Gonzalez.

9. Plaintiff Laura Blain is a resident of Bradford County. Blain pays income taxes to the United States and to the Commonwealth of Pennsylvania, and she pays property taxes to Bradford County. Blain opposes government funding and support

for indoctrination into any religious view. She objects to and is offended by the use of her tax dollars to finance the Firm Foundation program and thus to finance the Firm Foundation's promulgation of its religious beliefs. By so using tax dollars, defendants have harmed and continue to harm Blain.

10. Plaintiff Kris Schwenke is a resident of Bradford County. Schwenke pays income taxes to the United States and to the Commonwealth of Pennsylvania, and he pays property taxes to Bradford County. Schwenke opposes government funding and support for indoctrination into any religious view. Schwenke therefore objects to and is offended by the use of his tax dollars to finance the Firm Foundation program and thus to finance the Firm Foundation's promulgation of its religious beliefs. By so using tax dollars, the defendants have harmed and continue to harm Schwenke.

11. Plaintiff Tim Thurston is a resident of Bradford County and a former inmate of the Bradford County Correctional Facility. When he was incarcerated there, Thurston participated in the Firm Foundation program. Thurston does not subscribe to the religious beliefs taught in the Firm Foundation program; nor does he subscribe to any religious faith. Thurston enrolled in the Firm Foundation program because doing so was the only way for him to obtain vocational training while incarcerated. Before he signed up for the program, Thurston was not informed by county-jail or Firm Foundation staff about the program's religious nature. Instead, the jail and

program staff-members told him that although the program staff held certain religious beliefs, religion was not part of the program.

12. But after Thurston entered the program, program personnel proselytized him in their religious beliefs without his consent, and they pressured him to engage in prayer. Because Thurston did not share and could not adopt the Firm Foundation's religious beliefs, he felt like an outsider within the program. Thurston felt coerced by jail officials and Firm Foundation staff into submitting to religious proselytization and attending prayer sessions. Thurston believes that the County is endorsing religion through its sponsorship and support of the Firm Foundation program. For all of these reasons, the conduct of the County and the Firm Foundation harmed Thurston.

13. Defendant Bradford County is a municipality of the Commonwealth of Pennsylvania that is situated within this federal judicial district. As detailed below, the County has paid federal, state, and County funds to the Firm Foundation and continues to do so, and has given the Firm Foundation other forms of support and continues to do so.

14. Defendant Carl J. Anderson is sued in his official capacity as Executive Director of the Pennsylvania Commission on Crime and Delinquency ("PCCD"). The PCCD is an administrative commission within the Executive Offices of the Governor of Pennsylvania. The PCCD's purposes include "assist[ing] the criminal and juvenile

justice systems [to] function more productively.” The PCCD administers the distribution of certain federal and state grant funds, including grant funds awarded to the Commonwealth of Pennsylvania by the U.S. Department of Justice from the Department’s Drug Control and System Improvement program. The PCCD’s responsibilities include reviewing applications for sub-grants out of Drug Control and System Improvement funds, financial management of such sub-grants, and auditing of such sub-grants.

15. Defendant Anderson has served as Executive Director of the PCCD since February 2003. His office is in Harrisburg, Pennsylvania, which is within this judicial district. As detailed below, defendant Anderson authorized the payment of Drug Control and System Improvement funds to the County for the Firm Foundation program, and he failed to cause the PCCD to monitor or audit the Firm Foundation to ensure that the Firm Foundation was not using federal funds for religious activities or other unconstitutional purposes.

16. Defendant Alberto Gonzales is sued in his official capacity as the Attorney General of the United States. The Attorney General is the chief executive officer of the U.S. Department of Justice. The Justice Department approved the granting of federal Drug Control and System Improvement funds to the Commonwealth of Pennsylvania, and some of those funds were paid to the Firm Foundation. As head

of the Department of Justice, Gonzales has the authority to cause Bradford County and defendant Anderson to stop providing federal Drug Control and System Improvement funds to the Firm Foundation. Gonzales has not done so.

17. Defendant The Firm Foundation of America is a non-profit corporation incorporated in Pennsylvania and headquartered in the Borough of Towanda, which is in Bradford County. The Firm Foundation does business in Bradford County under the fictitious name “The Firm Foundation of Bradford County.” The Firm Foundation describes itself as a “Faith based, non-profit organization.” It operates the Firm Foundation program for the Bradford County Correctional Facility. As detailed below, the Firm Foundation has received federal, state, and local funds from the County and from other governmental entities for the Firm Foundation program, and has signed contracts with the County and other governmental entities providing for the operation and funding of the Firm Foundation program.

18. The Firm Foundation is named as a defendant on the ground that its conduct constitutes state action. The Firm Foundation operates the Firm Foundation program under the terms of contractual and administrative rights and privileges granted to it by Bradford County. Virtually all of the Firm Foundation’s funding comes from government grants, and the County otherwise significantly aids the Firm Foundation program, including by providing the county-jail inmates who participate

in the program. The County has delegated to the Firm Foundation the performance of a traditionally public function — supervision and rehabilitation of jail inmates. For these reasons, the conduct of the Firm Foundation may fairly be treated as conduct of the state itself, and is actionable under 42 U.S.C. § 1983.

19. In addition, and in the alternative, the Firm Foundation is named as a defendant because it is an indispensable party under Federal Rule of Civil Procedure 19. The Firm Foundation has a contractual relationship with Bradford County that plaintiffs allege is unconstitutional. Part of the relief sought by this action is an order requiring the Firm Foundation to return government funds received by it to the governmental entities that paid out those funds. Thus, plaintiffs could not obtain full relief if the Firm Foundation were not a party to this action. Resolution of this action in the absence of the Firm Foundation will subject the other parties to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations, for the Firm Foundation could attempt to protect its contractual relationship with the County through a separate action. Moreover, both the Firm Foundation's interest in obtaining government funds and that organization's ability to indoctrinate jail inmates in its religious views would be affected if this action were to proceed without its participation.

#### **IV. General Allegations**

##### **A. The Government's Funding of the Firm Foundation**

20. The Firm Foundation's initial funding was awarded in late 2002 out of federal grant funds provided by the United States Department of Labor under the Workforce Investment Act. The Department of Labor awarded a "Faith-Based and Community Initiative" grant of Workforce Investment Act funds to the Team Pennsylvania Workforce Investment Board (a state body that manages Workforce Investment Act funds in Pennsylvania). The Board then awarded some of those funds as a sub-grant to the Northern Tier Regional Planning and Development Commission ("the NTRPDC," a regional body that manages Workforce Investment Act funds for a portion of Pennsylvania that includes Bradford County). The NTRPDC in turn awarded some of those funds as a sub-grant to the Firm Foundation. This sub-grant to the Firm Foundation, in the amount of \$57,000, was for the time period from December 1, 2002, through June 30, 2003. The NTRPDC and the Firm Foundation signed a contract providing for the payment of the sub-grant for the Firm Foundation program. In September 2003, the NTRPDC awarded an additional \$5,150 in Workforce Investment Act funds to the Firm Foundation.

21. In April 2003, Bradford County and the PCCD began funding the Firm Foundation. The County applied on behalf of the Firm Foundation to the PCCD for

funding of the Firm Foundation program. Under the authority of defendant Anderson, the PCCD approved the application; and the County and the PCCD awarded a \$129,125 grant to the Firm Foundation. The County and the Firm Foundation signed a contract providing for the payment of the grant. The grant consisted of \$92,344 in federal funds from the Drug Control and System Improvement program — which the Department of Justice awarded to the PCCD and the PCCD in turn provided to Bradford County — and \$36,781 from the County's general fund. This grant covered the period from April 1, 2003, through June 30, 2004.

22. In mid-2004, the County applied to the PCCD for a continuation grant to fund the Firm Foundation for the period from July 1, 2004, through June 30, 2005. Under the authority of defendant Anderson, the PCCD approved this application. The total amount of the grant again was \$129,125. This time, \$64,562 of the grant came from the federal Drug Control and System Improvement program, and the remaining \$64,563 came from state funds.

23. Projects supported by the federal Drug Control and System Improvement program are eligible for twelve-month grants that are renewable twice (for a maximum of three years' funding). Accordingly, in its application to the PCCD on behalf of the Firm Foundation for funding for 2004-05, Bradford County stated that it intended to apply for a second continuation grant for the Firm Foundation program for 2005-06.

24. In addition, the Firm Foundation has received other forms of government funding and support. In or about early 2004, Firm Foundation inmates received for participating in the program hourly wages that were paid from federal funds provided under the Workforce Investment Act to the NTRPDC, which had in turn provided the funds to a non-profit organization called Bradford County Action. Plaintiffs are informed and believe that the amount of such payments exceeded \$11,000. In or about August 2004, the Borough of Towanda, Pennsylvania, provided an additional grant in the amount of \$15,000 to the Firm Foundation out of federal Temporary Assistance for Needy Families funds received by the Borough from the Pennsylvania Department of Community and Economic Development. Plaintiffs are informed and believe that the Firm Foundation has received other forms of support from government entities.

25. Virtually all of the funding received by the Firm Foundation has come from federal, state, and local governmental sources. Plaintiffs are informed and believe that, up through October 2003, all but \$25 of the Firm Foundation's income consisted of payments from governmental entities, and that, thereafter, more than ninety percent of the Firm Foundation's income consisted of payments from such entities. Most of the government funds received by the Firm Foundation are used to pay the salaries and benefits of Firm Foundation employees. The Firm Foundation makes no effort

to use private funds to pay for the religious activity and instruction that it provides to inmates.

**B. The Firm Foundation’s Religious Proselytization and Coercion of Inmates**

26. The Firm Foundation operates a program for inmates who are incarcerated in the Bradford County Correctional Facility, which is the County’s jail. In its newsletter, the Firm Foundation describes itself as a “prison ministry.” According to the Firm Foundation’s executive director, “We see ourselves as missionaries and live accordingly.” In a document promoting its program, the Firm Foundation states, “This program is based on the belief that lives are changed as hearts become open to Faith. The administration, trainers, and staff have committed their lives to this belief and are examples of Jesus Christ the Lord.” The Firm Foundation’s newsletter also states the following about the program:

As the men interact over the course of the day, and as the vocational skills are passed along and the satisfaction of a job well-done is earned, someone else is present there with them. His is an unseen presence, manifested through the trainers.

That someone is Jesus Christ.

27. The Firm Foundation claims that it provides inmates of the Bradford County Correctional Facility with vocational training in the construction field, life skills training, and mentoring. As part of their vocational training, inmates

participating in the Firm Foundation program work on construction projects at various sites in Bradford County outside the jail. Once inmates participating in the program leave the jail to go to a project site, the Firm Foundation conducts, directs, and manages the entire program and has full supervisory control over the inmates.

28. A significant proportion of inmates' time in the Firm Foundation program is spent not on vocational training, but on religious discussions, religious lectures, and prayer.

29. For example, at the beginning of each program day and at lunch, Firm Foundation staff (who, as stated above, are paid with government dollars) and inmates pray. The Firm Foundation's publicly-funded staff pressure inmates to take part in these prayers. Program personnel proselytize inmates in the Firm Foundation's specific Christian beliefs both in formal education sessions and informally during the program day. Program personnel make statements to inmates that pressure inmates to express professions of faith and adopt the specific Christian beliefs of the Firm Foundation.

30. The Christian beliefs that the Firm Foundation advocates reflect a specific form of Christianity whose teachings differ from those of many Christian denominations such as Catholicism and many mainline Protestant denominations.

31. The Firm Foundation's publicly-funded staff engage in religious proselytization of inmates when the inmates are a captive audience, including during transport of inmates between the jail and project sites.

32. The Firm Foundation's publicly-funded staff also give inmates Bibles and religious literature.

33. The Firm Foundation relies on an organization called Prison Fellowship Ministries to provide written materials, mentors, and training of mentors for the Firm Foundation program. Prison Fellowship is an Evangelical Christian religious organization that describes itself as "the largest prison ministry in the world" and states that it "is in the business of saving souls for Christ." Prison Fellowship further describes itself as "Compelled to Evangelize in our passion to bring Jesus Christ to the lost and to witness the Kingdom."

34. As part of a post-release phase of the Firm Foundation program, Firm Foundation staff have taken inmates to church.

### **C. The Firm Foundation's Religious Discrimination in Employment**

35. The Firm Foundation discriminates in hiring on the basis of religion, employing only Christians.

36. A Firm Foundation job description states that an employee “will be a [sic] example of a believer in Christ and Christian Life today, sharing these ideals when opportunity arises.”

37. In a document promoting its program, the Firm Foundation states, “This program is based on the belief that lives are changed as hearts become open to Faith. The administration, trainers, and staff have committed their lives to this belief and are examples of Jesus Christ the Lord.”

38. As described above, the Firm Foundation uses government funds to pay the salaries of its employees, despite requiring the employees to meet a religious test in order to be hired.

39. The governmental entities that fund the Firm Foundation are thus financing invidious religious discrimination in employment with federal, state, and local tax revenues obtained from plaintiffs and other taxpayers.

**D. The Firm Foundation’s Construction Work for a House of Worship**

40. One construction project that the Firm Foundation undertook with its inmates was demolition work for a church, the Greater Valley Assembly of God.

## **E. The Firm Foundation's Use of Government Funds for Religious Purposes**

41. As described above, virtually all of the funding received by the Firm Foundation has come from federal, state, and local government sources; most of those funds are used to pay the salaries and benefits of Firm Foundation employees; and the Firm Foundation makes no effort to use private funds to pay for religious activity or instruction. As further described above, Firm Foundation staff, who must meet a religious test to be hired, lead inmates in prayer, proselytize inmates in specific Christian religious beliefs, provide religious instruction to inmates, and pressure inmates to participate in religious activity.

42. The Firm Foundation thus uses government money, including tax dollars obtained from the plaintiffs, to pay for and support religious activity, instruction, and proselytization, religious coercion of inmates, and religious discrimination in employment.

43. If tax funds were not being granted to the Firm Foundation, either the tax funds would be used in a constitutional manner benefitting plaintiffs and their fellow taxpayers, or else the amount of taxes paid by plaintiffs and other Bradford County residents would be reduced.

44. Defendants Bradford County, Anderson, and Gonzales have failed to establish safeguards sufficient to prevent the Firm Foundation from using government funds for religious activities and purposes. The County, the PCCD, and the Department of Justice do not audit or monitor the Firm Foundation program to determine whether government money is being used for religious activities or other unconstitutional purposes. Indeed, the government did not even make any attempt to determine whether the Firm Foundation was complying with its non-religion-related statutory, regulatory, and contractual obligations in its use of government funds until the Bradford County Alliance for Democracy (in which some of the plaintiffs are members) provided the County with evidence of financial irregularities and thereby persuaded the County to undertake a financial review (which was inadequate) of the Firm Foundation's handling and expenditure of public monies.

45. The County is paying government funds directly to the Firm Foundation. Government money is therefore being delivered directly into the coffers of a religious organization. Those funds are readily available for diversion, and have in fact been diverted, to uses that violate the federal Establishment Clause as well as the Pennsylvania Constitution.

**F. Inmates are Wrongfully Induced to Enroll in the Firm Foundation Program**

46. The Firm Foundation program is the only program available to inmates in the Bradford County jail that provides vocational training or teaches employment skills to inmates. The County's failure to make secular alternatives to the Firm Foundation program available to inmates coerces, induces, and gives inmates incentives to enroll in the program (and thereby to subject themselves to the program's religious instruction, prayer, and proselytization) even if they do not subscribe to the religious beliefs of the Firm Foundation or do not desire religious instruction or experiences.

47. Before inmates enroll in the Firm Foundation program, County jail and Firm Foundation staff fail to provide them with complete information about the religious nature of the program or the nature of the specific religious beliefs presented therein. The County's and the Firm Foundation's inadequate disclosures further coerce and induce inmates to enroll in the program even if the inmates do not subscribe to the religious beliefs of the Firm Foundation or do not desire religious instruction or experiences.

**G. The County's Endorsement of and Entanglement with the Firm Foundation**

48. Bradford County gave the Firm Foundation the support of the County and of the County jail's officials.

49. The County has given the Firm Foundation access to the jail and the jail's inmates; it has permitted the Firm Foundation to involve those inmates in the organization's program; it has cooperated with and assisted the Firm Foundation with respect to the recruitment of inmates and the operation of the program; and plaintiffs are informed and believe that the County has aided the Firm Foundation in other ways.

50. The County's conduct thereby communicates a message of governmental endorsement of and preference for religion in general and the specific religious tenets of the Firm Foundation in particular.

51. The County's involvement with the Firm Foundation program has also resulted in excessive government entanglement with religion.

**H. The Defendants Knowingly Acted Unlawfully**

52. The contract between the Firm Foundation and the County (under which the Firm Foundation has been receiving federal Drug Control and System Improvement funds, state funds, and county funds) prohibited the Firm Foundation from discriminating based on religion in employment or in the operation of its

program. The contract between the Firm Foundation and the NTRPDC (under which the Firm Foundation received Workforce Investment Act funds) not only prohibited the Firm Foundation from engaging in any form of religious discrimination, but also provided:

No funds may be used in support of any religious activity, nor may any trainee be employed in the construction, operation, or maintenance of such part of any facility which is used or intended for use for sectarian instruction or as a place of religious worship. Trainees shall not be involved in, or funds expended for, religious or anti-religious activities.

53. These contractual provisions, which are in accordance with the U.S. and Pennsylvania Constitutions, were based on a statute prohibiting the use of Drug Control and System Improvement funds to support religious discrimination (*see* 42 U.S.C. § 3789d(c)(1)), and on a statute prohibiting the use of Workforce Investment Act funds to support religious discrimination or activity (*see* 29 U.S.C. § 2938(a)). Defendant Firm Foundation blatantly violated the constitutional and statutory prohibitions against religious discrimination and religious uses of government funds that were set forth in the very contracts it signed. (While plaintiffs do not bring a statutory or contractual cause of action, the statutes and contracts support the relief plaintiffs seek against the Firm Foundation, as described below.)

54. An organization in which some of the plaintiffs are members — the Bradford County Alliance for Democracy — informed Bradford County and

defendant Anderson that the Firm Foundation was using government funds to support proselytization of inmates and religious discrimination in employment. Nevertheless, Bradford County and defendant Anderson continued to fund and support the Firm Foundation.

## **V. Claims for Relief**

### **Count One**

#### **(Violation of the Establishment Clause of the U.S. Constitution)**

55. Paragraphs 1 through 54 above are incorporated as if fully set forth herein.

56. The Establishment Clause of the First Amendment to the U.S. Constitution provides that “Congress shall make no law respecting an establishment of religion.” The Establishment Clause also applies with full force and effect to the acts of state and local governments and officials under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

57. By financing and supporting the Firm Foundation program, the defendants have violated and continue to violate the Establishment Clause in many ways, including as described below.

58. The government’s financing and support of the Firm Foundation program has the primary effect of advancing religion. It results in governmental indoctrination.

Government funds are being used to pay for and support religious activity, instruction, and proselytization, religious coercion of inmates, and invidious discrimination in employment based on religion. Government funds have also been used to pay for construction-related work for church property. Governmental cash aid is being delivered directly into the coffers of a religious organization. No adequate monitoring or other safeguards exist to prevent the aid from being used for religious instruction or other unconstitutional purposes.

59. The defendants' conduct coerces, induces, and gives inmates incentives to participate in and submit to religious instruction, activity, and proselytization. The defendants' financing and support of the Firm Foundation program convey to reasonable observers a message of endorsement of religion in general and of the specific form of Christianity presented by the Firm Foundation program in particular. The defendants' financing and support of the Firm Foundation program further constitute a governmental preference for Christianity in general and for the specific form of Christianity presented by the Firm Foundation program in particular. The County's involvement with the Firm Foundation program has also resulted in excessive government entanglement with religion. In addition, by giving the Firm Foundation full authority over the supervision and rehabilitation of inmates enrolled

in the program when the inmates are outside the jail facility, the County is delegating governmental power to a religious organization.

60. By violating the Establishment Clause as set forth above, defendants Bradford County, Anderson, and the Firm Foundation have, under color of federal and state statutes, ordinances, regulations, custom, or usage, deprived plaintiffs of rights secured by the First and Fourteenth Amendments to the U.S. Constitution, entitling plaintiffs to a remedy under 42 U.S.C. § 1983. By violating the Establishment Clause as set forth above, defendant Gonzales has deprived plaintiffs of rights secured by the First Amendment, entitling plaintiffs to a remedy under the U.S. Constitution.

61. Moreover, defendants Firm Foundation and Bradford County have entered into a combination, agreement, or understanding to maintain and facilitate the constitutional violations detailed herein and the resulting constitutional injury to plaintiffs. Since at least July 2004, the County has been aware that the Firm Foundation provides religious instruction to inmates, coerces inmates to take part in religious activity, and discriminates in employment based on religion. But the County has not demanded that such activities cease. Instead, the Firm Foundation and the County have conspired and acted to continue the unconstitutional use of government funds to promote religion. The Firm Foundation has continued and the County has permitted the continuance of prayers, religious lectures, coerced worship, and

religious discrimination in the Firm Foundation program. The Firm Foundation has failed to provide financial records and an accounting sufficient to enable monitoring or oversight of the program that would have the goal of ensuring that government funds not be used in an unconstitutional manner, and the County has failed to conduct such monitoring or oversight or to demand such financial records or accounting. The County and the Firm Foundation have proceeded with the above-described conduct in concert with the purpose of maintaining the unconstitutional use of public funds to support religion and religious discrimination, in violation of 42 U.S.C. § 1983.

62. By virtue of defendants' violations of the Establishment Clause, plaintiffs are entitled to injunctive relief, declaratory relief, nominal damages, and recoupment.

## **Count Two**

### **(Violation of Section 3 of the Declaration of Rights of the Pennsylvania Constitution)**

63. Paragraphs 1 through 62 above are incorporated as if fully set forth herein.

64. Section 3 of Article I of the Pennsylvania Constitution provides:

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

65. By compelling taxpayers to support a ministry, by coercing jail inmates to attend and take part in worship, by interfering with the rights of conscience of inmates, by exhibiting a preference for the particular Christian teachings presented by the Firm Foundation, and through the other conduct described above, defendants have violated Section 3 of Article I of the Pennsylvania Constitution.

66. By virtue of defendants' violations of Section 3 of Article I of the Pennsylvania Constitution, plaintiffs are entitled to injunctive relief, declaratory relief, nominal damages, and recoupment.

### **Count Three**

#### **(Violation of Section 29 of Article III of the Pennsylvania Constitution)**

67. Paragraphs 1 through 66 above are incorporated as if fully set forth herein.

68. Section 29 of Article III of the Pennsylvania Constitution provides:

No appropriation shall be made for charitable, educational or benevolent purposes to any person or community nor to any denominational and sectarian institution, corporation or association: Provided, That appropriations may be made for pensions or gratuities for military service and to blind persons twenty-one years of age and upwards and for assistance to mothers having dependent children and to aged persons without adequate means of support and in the form of scholarship grants or loans for higher educational purposes to residents of the Commonwealth enrolled in institutions of higher learning except that no scholarship, grants or loans for higher educational purposes shall be given to persons enrolled in a theological seminary or school of theology.

69. By making appropriations to a denominational and sectarian institution, corporation, or association, which is using for sectarian purposes the funds appropriated, defendants have violated Section 29 of Article III of the Pennsylvania Constitution.

70. By virtue of defendants' violations of Section 29 of Article III of the Pennsylvania Constitution, plaintiffs are entitled to injunctive relief, declaratory relief, nominal damages, and recoupment.

## **VI. Prayer for Relief**

71. Paragraphs 1 through 70 above are incorporated as if fully set forth herein.

### **Injunction**

72. The plaintiffs have no adequate remedy at law. WHEREFORE, plaintiffs respectfully request a permanent injunction prohibiting Bradford County, the Executive Director of the Pennsylvania Commission on Crime and Delinquency, and the Attorney General of the United States from funding the Firm Foundation program so long as the program continues to include any of the following: (i) religious activity, instruction, or proselytization; (ii) religious coercion of inmates; or (iii) religious discrimination in employment. In the event that said relief is insufficient to ensure full compliance with the U.S. and Pennsylvania Constitutions, plaintiffs request a

permanent injunction prohibiting the defendants from providing any public funds at all to the Firm Foundation. Plaintiffs further request an injunction requiring Bradford County, the Executive Director of the PCCD, and the Attorney General to monitor all grants given to religious or faith-based organizations by them, or by government entities subject to their authority, so as to ensure that the funds so given are not used in a manner prohibited by the federal Establishment Clause or by the religious-freedom provisions of the Pennsylvania Constitution.

### **Declaratory Judgment**

73. An actual controversy exists between the parties as to whether the funding and operation of the Firm Foundation program violate the Establishment Clause of the First Amendment to the U.S. Constitution and the religious-freedom clauses of the Pennsylvania Constitution. WHEREFORE, plaintiffs respectfully request a declaratory judgment that:

(a) defendants Bradford County, Anderson, and Gonzales violated the U.S. and Pennsylvania Constitutions by providing government funds to the Firm Foundation and by failing to provide adequate monitoring of the Firm Foundation's use of those funds;

(b) defendant Bradford County violated the U.S. and Pennsylvania Constitutions by authorizing the operation of and supporting the Firm Foundation program;

(c) defendant Firm Foundation violated the U.S. and Pennsylvania Constitutions by using government funds to support religious activity, instruction, and proselytization, religious coercion of inmates, and religious discrimination in employment; and

(d) defendants Bradford County and the Firm Foundation violated the U.S. and Pennsylvania Constitutions by coercing and inducing plaintiff Thurston to submit to religious proselytization and attend prayer sessions.

### **Nominal Damages**

74. Plaintiffs' rights under the Establishment Clause of the U.S. Constitution and the religious-freedom clauses of the Pennsylvania Constitution were violated by defendants. WHEREFORE, plaintiffs respectfully request nominal damages against:

(a) defendant Bradford County for authorizing the operation of and supporting the Firm Foundation program, and for failing to adequately monitor the Firm Foundation's use of government funds;

(b) defendant Firm Foundation for using government funds to support religious activity, instruction, and proselytization, religious coercion of inmates, and religious discrimination in employment; and

(c) defendants Bradford County and the Firm Foundation for coercing and inducing plaintiff Thurston to submit to religious proselytization and attend prayer sessions.

### **Recoupment**

75. As described above in paragraphs 52 and 53, defendant Firm Foundation blatantly violated the constitutional and statutory prohibitions against religious discrimination and religious uses of government funds that were set forth in the very contracts it signed. Defendant Firm Foundation therefore knew or reasonably should have known that its receipt and uses of government funds were unconstitutional and unlawful, and the Firm Foundation therefore could not have reasonably relied on payments of government funds for its expenses. Return to the governmental entities that made payments to the Firm Foundation of the government funds so paid would protect and advance the constitutional rights raised by this action by deterring the Firm Foundation and other private organizations from accepting government funds in the future where, as here, such payments of funds are clearly unconstitutional and unlawful. WHEREFORE, plaintiffs respectfully request an order requiring the Firm

Foundation to return all government funds ever received by it to the governmental entities that paid out those funds, or, in the alternative, an order requiring return (after an appropriate accounting, if feasible) to the paying governmental entities of all government funds used by the Firm Foundation to support religious activity, instruction, and proselytization, religious coercion of inmates, and religious discrimination in employment.

### **Other Relief**

76. Plaintiffs further respectfully request an order awarding plaintiffs the costs of this action, including attorneys' fees, pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 2412.

77. Plaintiffs further respectfully request that the Court award any other relief that the Court deems just and proper.

Respectfully submitted,

By: s/ Alex J. Luchenitser  
Alex J. Luchenitser, Esq.

Date: February 17, 2005

Ayesha N. Khan, Esq. (DC 426836; application for admission *pro hac vice* submitted herewith)

Richard B. Katskee, Esq. (DC 474250; application for admission *pro hac vice* submitted herewith)

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