**UNITED STATES DISTRICT COURT**

**DISTRICT OF MCGEE**

**23-CV-0181**

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*LENORE MAXWELL* and *THE ALLIANCE*

*FOR A SECULAR STATE*,

Plaintiffs, **STIPULATION OF**

 **FACTS**

v.

*THE MCGEE STATE BOARD OF EDUCATION*,

*THE ETERNALIST EDUCATIONAL AND*

*OUTREACH FOUNDATION, INC.*, and

*THE BOARD OF DIRECTORS OF*

*BAUDOLINO COMMUNITY SCHOOL*,

Defendants.

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The parties hereby stipulate the following facts:

1. Pursuant to Article 3, Section 1, of the McGee State Constitution and state legislation implementing it, local school districts in McGee operate a system of free public schools. These district-operated public schools educate 64 percent of grade K-12 schoolchildren in the state of McGee.

2. Charter schools also operate in McGee pursuant to authorization by the McGee state legislature, codified in Section 125 of the McGee state code (the McGee Charter Schools Act). Charter schools educate eight percent of K-12 schoolchildren in the state of McGee.

3. Private schools educate 25 percent of K-12 schoolchildren in McGee and three percent of children are homeschooled.

4. Eternalism is a Christian denomination with a large number of adherents in the state of McGee. The Eternalist religion maintains a strict interpretation of its religious doctrine and expects adherents to the religion to strictly follow church doctrine.

5. The Eternalist Educational and Outreach Foundation of McGee (“the Foundation”) is a religious non-profit organization incorporated in the state of McGee. The purposes of the Foundation are (1) to support adherents to the Eternalist religion in spiritual and personal growth through educational programming designed to deepen understanding of Eternalism and its teachings and (2) to raise awareness of Eternalism and its tenets through outreach and evangelism efforts directed towards people who are not currently adherents to Eternalism.

6. In 1999, the Foundation opened a private, religious K-12 school in the state of McGee, and has continuously operated the school since.

7. On January 31, 2022, the Foundation filed an application with the McGee State Board of Education, seeking the Board to sponsor a new charter school in McGee City within the state of McGee, to be operated by the Foundation.

8. The McGee City School District has been identified by the State Board of Education as a district in need of improvement under McGee state law which directs the State Board to identify such school districts.

9. The Foundation’s application sought the Board’s sponsorship to open Baudolino Community School (“BCS”) as a K-12 charter school located within the geographical limits of the McGee City School District.

10. Relevant portions of the Foundation’s application to operate the charter school state that:

1. The Foundation’s intent is to “establish and operate Baudolino Community School as an Eternalist school and to educate its students in the tenets of Eternalism and to seek to encourage them to use their education to educate others in their community about Eternalism as well.”
2. The Foundation seeks to establish a school that will “give parents genuine choice in the environment in which their children will receive education, that will be accessible to all children who choose to be educated at BCS, regardless of their parents’ resources, or lack thereof.”
3. The Foundation chose to site its proposed school in McGee City “in order to allow the children of the city to attain a quality of education that would otherwise not be available to them in the city’s public schools.”
4. Among the courses the Foundation will require students to take are courses in the history, tenets, philosophy, and practices of Eternalism. Similar courses will not be offered in any other Christian denomination or non-Christian religion. Among the elective (optional) courses BCS will provide to students in grades 11 and 12 are pre-ministry courses designed to help students attain admission to, and succeed in, post-secondary seminarian programs necessary to become ordained clergy in the Eternalist religion.
5. In addition to the religious instruction required at BCS, the school will require coursework in the same subjects generally offered and required to graduate from public schools operated by school districts in the state of McGee.
6. BCS’s curriculum also includes a “service learning” class wherein the students participate in service projects designed to assist and provide charity to members of the local community. The community members and organizations who are assisted by these projects will not be chosen on the basis of their affiliation (or lack thereof) with the Eternalist religion and the projects themselves will not be religiously focused.
7. The school will admit children “of any faith or no faith” to attend BCS. All children who attend BCS, regardless of their personal religious affiliation, will be required to take and pass the same required course load, including courses in the history, tenets, philosophy, and practices of the Eternalist religion.
8. Students will be required, when on school grounds, to follow a code of conduct derived from the tenets of the Eternalist religion. Students violating the code will be disciplined, up to and including expulsion from the school. The charter application does not list the specific provisions of the code of conduct; those provisions were to be promulgated by the school’s board of directors after approval of the application.
9. Faculty, staff, and employees of the school will be required as a condition of employment to adhere to a code of personal conduct derived from the tenets of Eternalism. The specific provisions of the code of conduct applicable to employees are not included in the charter but were to be promulgated by the school’s board of directors after approval of the application.
10. The school’s operations will be directed and overseen by a five-member volunteer board of directors. The initial board members are identified in the charter application. No member of the board is employed by any unit of government within the state of McGee, nor employed by the Foundation or by an Eternalist church.

11. On April 3, 2022, the State Board of Education approved the Foundation’s application and agreed to sponsor Baudolino Community School as a charter school operated by the Foundation, sited in McGee City, to begin operating in fall 2023.

12. As a charter school, no student in the state of McGee or in McGee City will be required to attend BCS. The McGee City school district operates public schools that would be capable of providing a public school education to each eligible child within the McGee City school district. No religious instruction nor “service learning” occurs at public schools in the state of McGee or McGee City.

13. Forty-five charter schools currently operate in the state of McGee. Nine of these schools were sponsored by the State Board of Education upon applications by non-profit organizations, and one of those charter schools operates within the geographical boundaries of the school district of McGee City. No charter school sponsored by a higher-education institution operates within the geographical boundaries of the school district of McGee City. Prior to the Foundation’s application, the State Board of Education had never approved an application of a religious organization to operate a charter school.

14. After the Foundation’s application was approved, the school’s board of directors began the process of opening and operating the school, including developing the school’s codes of conduct and hiring employees.

15. Pursuant to the school’s charter, the school’s board of directors promulgated the specific provisions of the codes of conduct applicable to students and to school employees. One provision of the code applicable to employees is a prohibition on being in a same-sex marriage.

16. The code of conduct’s prohibition on an employee being in a same-sex marriage is consistent with the beliefs of the Eternalist church. The parties stipulate that Eternalism’s prohibition on same-sex marriage represents a sincerely held and longstanding belief within the church and remains part of Eternalism’s official church doctrine.

17. Plaintiff Lenore Maxwell is a woman who applied to work as a mathematics teacher at BCS. The school’s board of directors offered her an employment contract. However, two days later, the board rescinded the employment offer after a member of the board learned via a conversation with a neighbor that Maxwell is married to a woman.

18. Eighty-nine percent of BCS’s anticipated operating budget for fall 2023 comes from its state and federal funding allocation. Eleven percent comes from private donations.