



November 11, 2013

Renee Mathews  
Principal  
East Point Academy  
1401 Leaphart St.  
West Columbia, SC 29169  
[rmathews@eastpointsc.org](mailto:rmathews@eastpointsc.org)

Dr. Wayne Brazell  
Superintendent  
South Carolina Public Charter School District  
[wbrazell@sccharter.org](mailto:wbrazell@sccharter.org)

**Re: School Promotion of Operation Christmas Child is Unconstitutional**

Ms. Mathews and Mr. Brazell:

This letter is written on behalf of the parent of a child attending East Point Academy who has alerted us to a serious constitutional violation occurring at the school. For the third year in a row, East Point Academy has affiliated itself with an evangelical Christian organization, “Samaritan’s Purse,” by promoting student participation in their program, “Operation Christmas Child.” Because the purpose and effect of Operation Christmas Child is to induce impoverished children to convert to Christianity, the school’s promotion of this program violates the Constitution. The school must immediately suspend its unconstitutional participation in Operation Christmas Child.

The American Humanist Association is a national nonprofit organization with over 20,000 members and 125,000 supporters across the country, including in South Carolina. The mission of AHA’s legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring separation of church and state.

As you should know, Samaritan’s Purse is a self-proclaimed “evangelical Christian organization providing spiritual and physical aid to hurting people around the world . . . *with the purpose of sharing God’s love through His Son, Jesus Christ.*”<sup>1</sup> Its mission is “to follow the example of Christ by helping those in need and *proclaiming the hope of the Gospel*” and motto is “HELPING IN JESUS’ NAME.”<sup>2</sup>

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<sup>1</sup> <http://www.samaritanspurse.org/>

<sup>2</sup> <http://www.samaritanspurse.org/our-ministry/statement-of-faith/>

Samaritan's Purse runs Operation Christmas Child, which sends boxes filled with toys by outside volunteers, such as the students at East Point Academy, to impoverished children overseas expressly as a means to deliver them concomitant proselytizing messages. The mission of Operation Christmas Child is to "demonstrate God's love in a tangible way to needy children around the world, and together with the local church worldwide, to share the Good News of Jesus Christ."<sup>3</sup> The program "deliver[s] the gifts and share[s] the life-changing Good News of Jesus Christ."<sup>4</sup>

The evangelical booklet delivered with the toys includes a conversion pledge for the child to sign.<sup>5</sup> As its founder has admitted, Operation Christmas Child "is about introducing children and their families to God's greatest gift - His Son, Jesus Christ" and that "evangelism is the focus" of the program.<sup>6</sup> He has boasted that the program has converted "tens of thousands of children and their families," citing an example where "one shoebox prepared the way for nearly two dozen people to come to faith in Jesus Christ." The shoebox gifts are used to "support pastors and churches overseas who are committed to sharing the Gospel with children in their communities."<sup>7</sup>

The boxes of toys are essentially a bribe, expressly used to pressure desperately poor children living in developing countries to convert to Christianity, and are delivered with prayers, sermons, evangelical tracts and pressure to convert. While a private religious group is free to pursue such a goal, even through such questionable means, a public school cannot affiliate itself with, endorse, promote or support such a group's program without violating the Establishment Clause.

Since 2011, however, the school has formally participated in Operation Christmas Child by asking the first grade class both to assemble shoeboxes for it and to donate money to the Christian organization that runs it. This year, it appears that East Point Academy has made Operation Christmas Child a school-wide project. In a flier sent home to parents, the school wrote: "Operation Christmas Child Shoeboxes will be due Thursday, November 14<sup>th</sup>. Turn them into the front desk at the Primary or Elementary Campus. For more information visit [www.operationchristmaschild.com](http://www.operationchristmaschild.com). Please make sure that you include your \$7.00 donation to cover shipping costs inside the box. Checks should be made payable to Samaritan's Purse and include 'OCC' on the menu line." Above this message is the Operation Christmas Child logo. The top of the flier depicts the school's logo and is followed by a title: "School-wide Service Project promoted by First Grade."

The Supreme Court has made clear that the Establishment Clause "erected a wall between church and state" that "must be kept high and impregnable." *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 18 (1947). To do so, "the Constitution mandates that the government remain secular, rather than affiliate itself with religious beliefs or institutions." *Cnty of Allegheny v. ACLU*, 492 U.S. 573, 610 (1989). This includes the prohibition of state-sponsored religious

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<sup>3</sup> <http://www.samaritanspurse.org/operation-christmas-child/frequently-asked-questions/>

<sup>4</sup> <http://www.samaritanspurse.org/what-we-do/operation-christmas-child/>

<sup>5</sup> <https://sites.google.com/site/occalert/evangelisingbooklet>

<sup>6</sup> <http://www.theguardian.com/society/2002/dec/18/guardiansocietysupplement7>

<sup>7</sup> <http://www.samaritanspurse.org/article/partners-in-the-gospel-2/>

activity in a public school. A religious activity is “state-sponsored” under the Establishment Clause if “an objective observer in the position of a secondary school student will perceive official school support for such religious [activity].” *Board of Educ. v. Mergens*, 496 U.S. 226, 249–50 (1990), as is clearly the case here.

In order to comply with the Establishment Clause, a governmental practice must pass the *Lemon* test, pursuant to which it must: (1) have a secular purpose; (2) not have the effect of advancing or endorsing religion; and (3) not foster excessive entanglement with religion. *Allegheny*, 492 U.S. at 592. Specifically, the government “may not promote or affiliate itself with any religious doctrine or organization.” *Id.* at 590. Courts “pay particularly close attention to whether the challenged governmental practice either has the purpose or effect of [unconstitutionally] ‘endorsing’ religion.” *Id.* at 592. Endorsement includes “conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred.” *Id.* at 593. Not only may the government not advance, promote, affiliate with, endorse, prefer or favor any particular religion, it “may not favor religious belief over disbelief” or “adopt a preference for the dissemination of religious ideas” as well. *Id.* (citations omitted).

Furthermore, the Supreme Court has frequently reiterated its especially “heightened concerns with protecting . . . [students] from subtle coercive pressure [in favor of religion] in the elementary and secondary public schools.” *Lee v. Weisman*, 505 U.S. 577, 592 (1992) (holding prayers at graduation unconstitutional) (citing *Sch. Dist. Abington v. Schempp*, 374 U.S. 203, 205 (1963) (Bible reading before class unconstitutional) and *Engel v. Vitale*, 370 U.S. 421 (1962) (prayer at beginning of school day unconstitutional)).<sup>8</sup>

It is clear that the school’s sponsoring and endorsement of and affiliation with Christianity through its participation in the sectarian and evangelical Operation Christmas Child is unconstitutional. The primary purpose of Operation Christmas Child is to convert children to Christianity. Where, as here, a school sponsors an “intrinsically religious practice” such as evangelism it “cannot meet the secular purpose prong.” *Jager v. Douglas County Sch. Dist.*, 862 F.2d 824, 829-30 (11th Cir. 1989). See also *Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff’d* 472 U.S. 38 (1985) (recognizing that because “prayer is the quintessential religious practice” there can be “no secular purpose” in acting to encourage it); *North Carolina Civil Liberties Union v. Constangy*, 947 F.2d 1145, 1150 (4th Cir. 1991), *cert. denied*, 505 U.S. 1219 (1992) (finding religious purpose in judge’s practice of opening court sessions with prayer, as it involved “an act so intrinsically religious”).

In addition to having a religious purpose, the plain effect of Operation Christmas Child is to endorse and promote religion. The school is in effect urging students to make an in-kind contribution, as well as for their parents to make a monetary one, to Samaritan Purse’s conversion efforts. Moreover, the school is plainly sending the message to young school children

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<sup>8</sup> See also *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 303 (2000) (student-delivered prayer before football games unconstitutional); *Wallace v. Jaffree*, 472 U.S. 38, 48 (1985) (moment of silence to start school day unconstitutional); *Stone v. Graham*, 449 U.S. 39 (1980) (posting of Ten Commandments on classroom walls unconstitutional); *McCullum v. Board of Education*, 333 U.S. 203 (1948); *Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981), *aff’d*, 455 U.S. 913 (1982) (prayers by students and teachers in classroom unconstitutional).

that the Christianity at the core of Operation Christmas Child is “stamped with [the] school’s seal of approval.” *Santa Fe*, 530 U.S. at 308.

The fact that student participation in the program is technically voluntary does not change the fact that the school’s endorsement and promotion of it is unconstitutional. Coercion is not required to violate the Establishment Clause. See *Santa Fe*, 530 U.S. at 312.

This letter serves as notice to policymaking school officials of the East Point Academy’s unconstitutional conduct and as a demand that the school terminate all promotion, sponsorship, endorsement or affiliation with Operation Christmas Child immediately. Because the law prohibiting school endorsement of religion is well-settled, not only is the school district itself liable for this constitutional infringement pursuant to 42 U.S.C.A. § 1983, including in the form of punitive damages and the payment of plaintiff’s attorney’s fees, but each and every school official and employee involved are *personally* liable, in their individual capacities, as well.

In order to avoid the necessity of litigation to end your unconstitutional practices, contact us *immediately* (preferably by email) indicating that you will take the appropriate steps to remedy this clear constitutional violation, including by expressly renouncing any affiliation with or support of Operation Christmas Child and stating that the school will not collect or boxes on their behalf or encourage staff or students to do so. For those boxes already prepared by students as part of this school project, perhaps they can be donated to an appropriately secular program, such as Toys for Tots.

Sincerely,

Monica Miller, Esq.  
William Burgess, Esq.  
American Humanist Association