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*Via Email*

Will Schofield – Superintendent  
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Nath Morris – Chairman, Board of Education  
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**RE: Establishment Clause Violations at Chestatee High School**

Dear Mr. Schofield, Mr. Morris and Ms. Jarrard,

Our office was recently alerted to serious violations of the Establishment Clause of the First Amendment to the United States Constitution occurring at Chestatee High School (“CHS”). We have been informed that the school’s football coaches have been using their position to promote Christianity on the football team by integrating Bible verses into functional team documents and team promotions in various ways; meanwhile, they have been either leading the team in prayer or participating in team prayers on a regular basis. This type of religious activity, by government employees in the course of their duties as public school football coaches, is a clear violation of the Establishment Clause. This letter demands that CHS coaching staff cease leading, participating in, or encouraging team prayer, and that the school remove all Bible verses and other religious messages from team documents and related materials.

The American Humanist Association (“AHA”) is a national nonprofit organization with over 30,000 members and supporters across the country, including many in Georgia, and an online following of over 300,000. The Appignani Humanist Legal Center, the AHA’s legal arm, includes a network of cooperating attorneys from around the country. The center has litigated cases involving church-state separation and the rights of Humanists and other non-theists in state and federal courts nationwide. 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.

The First Amendment’s Establishment Clause “commands a separation of church and state.” *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). It requires the “government [to] remain

secular, rather than affiliate itself with religious beliefs or institutions.” *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 610 (1989). Courts “pay particularly close attention to whether the challenged governmental practice either has the purpose or effect of 'endorsing' religion.” *Id.* at 592. Not only must the government not advance, promote, affiliate with, or favor any particular religion, it “may not favor religious belief over disbelief.” *Id.* at 593 (citation omitted).

Indeed, the Establishment Clause “create[s] a complete and permanent separation of the spheres of religion activity and civil authority.” *Everson v. Bd. of Ed.*, 330 U.S. 1, 31-32 (1947). *Accord Engel v. Vitale*, 370 U.S. 421, 429 (1962). Separation “means separation, not something less.” *McCollum v. Bd. of Educ.*, 333 U.S. 203, 231 (1948). In “no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart.” *Id.*

To comply with the Establishment Clause, a government practice must pass the *Lemon* test,<sup>1</sup> 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. Government action “violates the Establishment Clause if it fails to satisfy any of these prongs.” *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987). In applying these general principles to the context of public schools, the Supreme Court has emphasized that courts must defend the wall of separation with an even greater level of vigilance because “there are heightened concerns with protecting freedom of conscience from [even] subtle coercive pressure in the elementary and secondary public schools.” *Lee v. Weisman*, 505 U.S. 577, 592 (1992).

A religious activity is “state-sponsored,” and therefore unconstitutional, if “an objective observer . . . w[ould] perceive official school support for such religious [activity].” *Board of Educ. v. Mergens*, 496 U.S. 226, 249-50 (1990). *See, e.g., Santa Fe Ind. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2000) (holding that student-initiated, student-led prayers at public high school football game were unconstitutional). Any action by a school official that amounts to “inviting or encouraging students to pray violates the First Amendment.” *Herdahl v. Pontotoc County Sch. Dist.*, 933 F. Supp. 582, 591 (N.D. Miss. 1996).

Where, as here, a teacher or coach leads or participates in prayer with students, the prayers are school-sponsored and thus prohibited by the Establishment Clause. *Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981), *aff'd*, 455 U.S. 913 (1982) (statute permitting teacher-led prayers upon the request of students held unconstitutional); *Borden v. Sch. Dist.*, 523 F.3d 153, 174 (3rd Cir. 2008), *cert. denied*, 555 U.S. 1212 (2009) (coach silently bowing head and kneeling while team prayed violated Establishment Clause); *Holloman v. Harland*, 370 F.3d 1252, 1285 (11th Cir. 2004) (teacher’s practice of initiating silent prayer with her students with “let us pray” and ending it with “amen” violated Establishment Clause); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995) (school’s practice of allowing coaches to participate in student prayers during athletic events violated Establishment Clause); *Doe v. Duncanville Indep. Sch. Dist.*, 994 F.2d 160, 163 (5th Cir. 1993) (*Duncanville I*) (school officials’ supervision of student-initiated and student-led prayers preceding basketball games violated Establishment Clause); *Steele v. Van Buren Public Sch. Dist.*, 845 F.2d 1492, 1493 (8th Cir. 1988) (permitting teachers to conduct prayer and religious activity at mandatory school

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<sup>1</sup> The test is derived from *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

functions unconstitutional). *See also Jager v. Douglas County Sch. Dist.*, 862 F.2d 824, 831 (11th Cir. 1989) (invocations at high school football games violated Establishment Clause).<sup>2</sup>

In applying the first prong of *Lemon*, the courts have made clear that because “prayer is ‘a primary religious activity in itself,’” a “teacher or administrator’s intent to facilitate or encourage prayer in a public school is *per se* an unconstitutional intent to further a religious goal.” *Holloman*, 370 F.3d at 1285 (teacher’s practice of initiating silent prayer with her students violated Establishment Clause). *See also Santa Fe*, 530 U.S. at 309 (“infer[ring] that the specific purpose of the policy” permitting but not requiring student-led prayers was religious thus failing the purpose prong); *Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff’d*, 472 U.S. 38 (1985); *Jager*, 862 F.2d at 830 (where school officials sponsor or participate in an “intrinsically religious practice” such as prayer, even if student-led, it “cannot meet the secular purpose prong.”). Thus, the School District’s actions here in allowing coaches to lead or participate in prayer with students are plainly unconstitutional under the first *Lemon* prong. *See Holloman*, 370 F.3d at 1285-86 (teacher’s participation in silent prayer with students “during the school day” lacked secular purpose); *Pelozo v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994) (teacher’s discussion of religion with students before and after class “would not have a secular purpose”); *Karen B.*, 653 F.2d at 901 (no secular purpose in authorizing teacher-initiated prayer at the start of school day).<sup>3</sup>

Yet, regardless of the purposes motivating it, the School District’s actions fail *Lemon*’s effect prong. The “effect prong asks whether, irrespective of government’s actual purpose, the practice under review in fact conveys a message of endorsement or disapproval [of religion].” *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985) (quotation marks omitted). The “prohibition against governmental endorsement of religion ‘preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred.’” *Allegheny*, 492 U.S. at 593 (citation omitted). Whether “the key word is ‘endorsement’ ‘favoritism,’ or ‘promotion,’ the essential principle remains the same. The Establishment Clause, at the very least, prohibits government from appearing to take a position

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<sup>2</sup> *See also Doe v. Wilson Cty. Sch. System*, 564 F. Supp. 2d 766 (M.D. Tenn. 2008) (holding that principal and kindergarten teacher who bowed their heads during a nonschool sponsored prayer event and wore ‘I Prayed’ stickers during instructional time endorsed the prayer event and thus violated Establishment Clause); *Daugherty v. Vanguard Charter Sch. Academy*, 116 F. Supp. 2d 897, 910 (W.D. Mich. 2000) (“The presence of teachers and elementary students together, for prayer, on school premises, albeit during non-instructional hours, is a matter of heightened concern.”); *Carlino v. Gloucester City High Sch.*, 57 F. Supp. 2d 1 (D.N.J. 1999), *aff’d*, 44 Fed. Appx. 599 (3rd Cir. 2002) (principal’s involvement with a baccalaureate service unconstitutional); *Sease v. Sch. Dist.*, 811 F. Supp. 183, 192 (E.D. Pa. 1993) (“Clearly, a school employee’s participation in, or sponsorship of, a public school gospel choir during school hours would be a violation of the Establishment Clause.”); *Quappe v. Endry*, 772 F. Supp. 1004 (S.D. Ohio 1991), *aff’d*, 979 F.2d 851 (6th Cir. 1992) (participation of teacher in religious club for students meeting in elementary school directly after close of school day established “symbolic nexus between the school and the club, thus providing the active government participation necessary to find a constitutional violation”); *Breen v. Runkel*, 614 F. Supp. 355 (W.D. Mich. 1985) (teachers praying and reading Bible in classrooms unconstitutional); *Doe v. Aldine Indep. Sch. Dist.*, 563 F. Supp. 883, 888 (S.D.Tex. 1982) (“the practice of initiating, leading, or encouraging the recitation or singing of the ‘Aldine School Prayer’ . . . is in violation of the First Amendment.”).

<sup>3</sup> *See also North Carolina Civil Liberties Union v. Constanly*, 947 F.2d 1145, 1150 (4th Cir. 1991) (finding religious purpose in judge’s practice of opening court sessions with prayer, as it involved “an act so intrinsically religious”); *Collins v. Chandler Unified Sch. Dist.*, 644 F.2d 759, 760-63 (9th Cir. 1981) (“the invocation of assemblies with prayer has no apparent secular purpose”); *Hall v. Bradshaw*, 630 F.2d 1018, 1020-21 (4th Cir. 1980) (state’s inclusion of prayer on state map failed purpose prong).

on questions of religious belief[.]” *Id.* at 593-94. Accordingly, schools cannot “sponsor the . . . religious practice of prayer,” *Santa Fe*, 530 U.S. at 313, or otherwise permit any “of its teachers’ activities [to] give[] the impression that the school endorses religion.” *Marchi v. Board of Coop. Educ. Servs.*, 173 F.3d 469, 477 (2d Cir. 1999).

There is no question that public school coaches encouraging “or facilitating any prayer clearly fosters and endorses religion over nonreligion, and so runs afoul of the First Amendment.” *Holloman*, 370 F.3d at 1288. A prayer, “because it is religious, . . . advance[s] religion.” *Hall*, 630 F.2d at 1021. Whenever a prayer “occurs at a school-sponsored event . . . the conclusion is inescapable that the religious invocation conveys a message that the school endorses” it. *Jager*, 862 F.2d at 831-32. The policy challenged in *Santa Fe* allowed the senior class to elect students to deliver a “brief invocation and/or message” at football games. 530 U.S. at 296-97. Despite the fact that any message would be student-led and student-initiated, the Supreme Court found the policy unconstitutional as it “involves both perceived and actual endorsement of religion.” *Id.* at 305, 310.

Indeed, numerous cases have specifically held that the second prong of *Lemon* is violated when faculty (such as coaches) participate in prayer with students. *See Holloman*, 370 F.3d at 1286-87 (teacher’s practice of saying “let us pray” with students had “the effect of both endorsing religious activity, as well as encouraging or facilitating its practice,” in violation of second prong); *Borden*, 523 F.3d at 176-77 (coach “was endorsing religion” in violation of the second prong when he silently kneeled and bowed head during prayer with students) *id.* at 176 (“As in *Duncanville*, Borden’s involvement in prayer at these two activities -- as a participant, an organizer, and a leader -- would lead a reasonable observer to conclude that he was endorsing religion.”); *Duncanville*, 70 F.3d at 405-06 (coach’s participation in prayer was “an unconstitutional endorsement.”); *Karen B.*, 653 F.2d at 899 (permitting teacher to lead students in prayer failed second prong). In *Holloman*, the Eleventh Circuit reiterated that “[s]chool personnel may not facilitate prayer simply because a student requests or leads it.” 370 F.3d at 1287. In *Duncanville*, the Fifth Circuit held that when high school basketball coaches recited the Lord’s Prayer with players during practices and after games, the coaches’ participation was “an unconstitutional endorsement of religion.” 70 F.3d at 406. Likewise, in *Borden*, the Third Circuit recently held that a high school football coach was in violation of the Establishment Clause when he bowed his head and took a knee while his team prayed. 523 F.3d 153.

As in the above cases, actions of head football coaches have placed CHS in violation of the Establishment Clause. We have received reports that CHS coaches have joined players in prayer while standing in a circle, hands interlocked.<sup>4</sup> At times, the head coach has led the prayers, which is an egregious violation of the Establishment Clause, *supra*. This involvement in prayer “as a participant, an organizer, and a leader” would unquestionably “lead a reasonable observer to conclude that he was endorsing religion.” *Borden*, 523 F.3d at 176. A similar conclusion was reached in *Duncanville* where a basketball coach recited the Lord’s Prayer with his players during practices and after games. 70 F.3d at 404. The Fifth Circuit ruled that an injunction was necessary because the coach’s participation was “an unconstitutional endorsement of religion.” *Id.* at 405-06.

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<sup>4</sup> See enclosed: "Photo 1. Team Prayer" for an example of coaching staff’s unconstitutional involvement in team prayers.

Unfortunately, the school's actions in unconstitutionally advancing and endorsing religion do not end with the prayers. Further violating the Constitution, a citation to Galations 6:9 was placed at the bottom of workout log sheets given to players,<sup>5</sup> and the citation and text of Proverbs 27:17 was written in giant letters on a banner used for a football team pregame entrance.<sup>6</sup> Such inclusion of Bible verses in football team documents and promotional materials unconstitutionally "convey[s] a message that religion or a particular religious belief is favored." *Allegheny*, 492 U.S. at 610. Indeed, the inclusion of Bible verses in team documents and banners, along with coaches joining players in a circle of prayer, would undoubtedly "lead a reasonable observer to conclude that [CHS] was endorsing religion." *Borden*, 523 F.3d at 176. Such actions not only endorse Christianity but also "religions believing in prayer [over] those religions that do not." *Jager*, 862 F.2d at 831-32.

Finally, the faculty's participation in the football prayers fosters excessive entanglement with religion, thus violating the Establishment Clause under *Lemon's* third prong. See *Duncanville*, 70 F.3d at 406 (faculty's participation in "prayers improperly entangle[d] [the school] in religion"); *Karen B.*, 653 F.2d at 902 (permitting teachers to lead prayers would result in "excessive governmental entanglement with religion."); *Mellen v. Bunting*, 327 F.3d 355, 375 (4th Cir. 2003) (university's sponsorship of prayer failed "*Lemon's* third prong."); *Constangy*, 947 F.2d at 1151-52 (when "a judge prays in court, there is necessarily an excessive entanglement of the court with religion."); *Hall*, 630 F.2d at 1021 (prayer on a state map fostered unconstitutional entanglement); *Jabr v. Rapides Parish Sch. Bd.*, 171 F. Supp. 2d 653, 661 (W.D. La. 2001) ("[t]eachers, who did not actively participate in Bible distribution, but merely observed non-school personnel distribute the material, became excessively entangled with religion in violation of the Establishment Clause.").

In view of the aforementioned authorities, it is clear that the School District is in violation of the Establishment Clause. As such, the School District may be sued under 42 U.S.C. § 1983 for damages, an injunction, and attorneys' fees. This letter serves as an official notice of the unconstitutional activity at CHS and demands that CHS terminate this and any similar illegal activity immediately. To avoid legal action, we kindly ask that you notify me in writing within two weeks of receipt of this letter setting forth the steps you will take to rectify this constitutional infringement. Thank you for turning your attention to this important matter.

Sincerely,

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<sup>5</sup> See enclosed: "Photo 2 Workout Log Sheet."

<sup>6</sup> See enclosed: "Photo 3 Pregame Banner."



Photo 3. Pregame Banner

