



June 19, 2014

Cecelia English
Superintendent, Morongo Unified School District
5715 Utah Trail
Twentynine Palms, CA 92277
cecelia_english@morongo.k12.ca.us

Jared Mecham
Executive Director, Hope Academy Charter
57725 Twentynine Palms Highway, #403
Yucca Valley, CA 92284
jmecham@hopeacademycharter.org

Re: Unconstitutional Graduation Sermon

Dear Ms. English & Mr. Mecham,

It has come to our attention that Hope Academy Charter (“Hope Academy”), a public charter school under your authority, incorporated a religious sermon by a Christian clergy member into its recent graduation ceremony. This action represents a clear breach of the Establishment Clause of the United States Constitution, multiple provisions of the California Constitution, the charter school provisions of the California Education Code, and the academy’s own charter and policies. This letter demands assurances that the academy and the Morongo Unified School District (“the district”) will take immediate action to avoid further such violations.

The American Humanist Association (AHA) is a national nonprofit organization with about 28,000 members and supporters, over 180 local chapters and affiliates, and over 270,000 online supporters across the country. 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.

I. Background

On May 28, 2014, Hope Academy held its graduation at Copper Mountain College in Joshua Tree, California. Hope Academy invited a Christian clergy member to deliver an

invocation to the graduating class.¹ The clergy member wore traditional vestments, including a clerical collar and a black tunic. The cleric went on to deliver a religious sermon at the public school graduation ceremony.

Speaking from a lectern for more than five minutes, the cleric conveyed a sermon about the value and history of salt that matched almost word-for-word a 2010 entry from a sermon blog.² He added to those comments a theological discussion of table salt that closely mirrored a passage from another sermon posted online in 2005.³ At one point, the cleric commented on the significance of salt in Christian theology, noting that an “overturned salt cellar ... conspicuously placed in front of Judas” in Leonardo da Vinci’s *The Last Supper* conveyed “a subtle message to people about the purity of his loss.”⁴ As he preached he also told members of the graduating class that he would “be praying for you” and that “God will continue to bless you, watch over you, and keep you as you work to prove you continually are worth your salt.”

II. Governing Law & Policies

a. *The Establishment Clause*

The Religion Clauses of the First Amendment to the United States Constitution provide: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The first of the two clauses, “commonly called the Establishment Clause, commands a separation of church and state.” *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). The Establishment Clause 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). Not only may 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). See *Bd. of Educ. v. Grumet*, 512 U.S. 687, 716 (1994) (O’Connor J., concurring). 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. Although “coercion is not necessary to prove an Establishment Clause violation,” its presence “is an obvious indication that the government is endorsing or promoting religion.” *Lee v. Weisman*, 505 U.S. 577, 604 (1992) (Blackmun, J., concurring).

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.”

¹ https://www.youtube.com/watch?v=7C_rz7vkLWA (last visited June 17, 2014). Jason Bolt, a school official, posted the remarks on YouTube, and described the video as “Hope Academy **Invocation** 5 28 14.” (*Id.*) (bold added).

² Terry Dashner, *How Valuable Is Salt?*, Dailysermonillustration’s Blog (Jan. 15, 2010), http://dailysermonillustration.wordpress.com/2010/01/15/illustration_id5282/.

³ Aubrey Vaughan, *Meeting the world.*, Sermon Central (Feb. 2005), <http://www.sermoncentral.com/sermons/meeting-the-world-aubrey-vaughan-sermon-on-sharing-your-faith-92467.asp?Page=4>.

⁴ Salt is indeed a recurring theme in both the old and new testaments of the Bible. See: *What does salt symbolise, in the Bible?*, The Bible Pages (Apr. 23, 2014), <http://www.biblepages.net/go14.htm>

McCollum v. Bd. of Educ. of Sch. Dist. No. 71, Champaign Cnty., 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.*

With these principles in mind, the Supreme Court has specifically ruled: 1) that the state must not place its stamp of approval on prayers by authorizing them at school-sponsored events, and 2) that including prayers at public school graduations—or even less formal and completely voluntary events such as football games—unconstitutionally coerces students to participate in religious activity. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000); *Lee*, 505 U.S. at 590-92. Indeed, *Lee* and *Santa Fe* are “merely the most recent in a long line of cases carving out of the Establishment Clause what essentially amounts to a per se rule prohibiting public-school-related or -initiated religious expression or indoctrination.” *Doe v. Duncanville Indep. Sch. Dist.*, 994 F.2d 160, 165 (5th Cir. 1993). “[T]he Supreme Court consistently has rejected any form of prayer, however inoffensive or nonsectarian, in the public schools.” *Bennett v. Livermore Unified Sch. Dist.*, 193 Cal. App. 3d 1012, 1018 (Cal. App. 1st Dist. 1987).

In *Lee*, for example, the Court held that a public school’s inclusion of a nonsectarian prayer in a graduation ceremony was unconstitutionally coercive, even though the event was technically voluntary and students were not required to participate in the prayer. *Lee*, 505 U.S. at 586. A school’s “supervision and control of a . . . graduation ceremony places public pressure, as well as peer pressure” on students, the Court observed. *Id.* at 593. Students opposed to the prayer are placed “in the dilemma of participating . . . or protesting.” *Id.* The Court concluded that a school “may not, consistent with the Establishment Clause, place primary and secondary school children in this position.” *Id.*

The facts in this case are indistinguishable from *Lee*. “A school official . . . decided that an invocation and a benediction should be given; this is a choice attributable to the State, and from a constitutional perspective it is as if a state statute decreed that the prayers must occur.” *Id.* at 587. The school official “chose the religious participant,” here a Christian clergy member (in *Lee*, a rabbi), “and that choice is also attributable to the State.” *Id.* The “potential for divisiveness over the choice of a particular member of the clergy to conduct the ceremony is apparent.” *Id.* The “potential for divisiveness is of particular relevance here though, because it centers around an overt religious exercise in a secondary school environment where . . . subtle coercive pressures exist and where the student had no real alternative which would have allowed her to avoid the fact or appearance of participation.” *Id.* at 588.

In fact, the sermon delivered at Hope Academy’s graduation was more egregious than the non-sectarian prayer in *Lee* because of its proselytizing elements and overtly Christian overtones. *See, e.g., Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 984 (9th Cir. 2003) (“permitting a **proselytizing speech** at a public school’s graduation ceremony would amount to coerced participation in a religious practice”).

In addition to unconstitutionally coercing school children, the school’s actions clearly violated the Establishment Clause pursuant to the *Lemon* test by endorsing and advancing religion. Even when graduation invocations or proselytizing speeches are student-initiated and student-led, which is quite clearly not the case here, federal circuit courts, including the Ninth

Circuit where California sits, have been nearly unanimous in concluding such prayers violate the Establishment Clause because they impermissibly advance and endorse religion. *See Doe v. Santa Fe Indep. Sch. Dist.*, 168 F.3d 806, 816 (5th Cir. 1999), *aff'd*, 530 U.S. 290 (2000) (permitting students to deliver sectarian prayers at graduations violated Establishment Clause); *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 983 (9th Cir. 2003) (student-delivered religious speech at graduation is unconstitutional); *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1104 (9th Cir. 2000) (holding that merely “allowing the students to engage in sectarian prayer . . . as part of the graduation ceremony would amount to government sponsorship of . . . religious practices”); *ACLU v. Black Horse Pike Reg’l Bd. of Educ.*, 84 F.3d 1471, 1488 (3d Cir. 1996) (school policy that “permits a student to give a sectarian, proselytizing address” at graduation violates Establishment Clause); *Harris v. Joint Sch. Dist. No. 241*, 41 F.3d 447, 454 (9th Cir. 1994), *judgment vacated on other grounds*, 515 U.S. 1154 (1995), 62 F.3d 1233 (9th Cir. 1995) (“there was ‘no meaningful distinction between school authorities actually organizing the religious activity and officials merely ‘permitting’ students to direct the exercises” and thus, the graduation prayers were unconstitutional) (citation omitted).⁵ Federal district courts, including those in the Ninth Circuit, and California courts have similarly ruled that graduation prayers are unconstitutional.⁶

⁵ *See also Nurre v. Whitehead*, 580 F.3d 1087, 1098 (9th Cir. 2009), *cert. denied*, 130 S. Ct. 1937 (2010); *Corder v. Lewis Palmer Sch. Dist. No. 38*, 566 F.3d 1219, 1231 (10th Cir. 2009), *cert. denied*, 130 S. Ct. 742 (2009).

⁶ *See Workman v. Greenwood Cmty. Sch. Corp.*, 2010 U.S. Dist. LEXIS 42813, *27 (S.D. Ind. 2010) (school’s practice “permitting a student-led prayer at [the graduation] represents a clear violation of the Establishment Clause”); *Doe v. Gossage*, 2006 U.S. Dist. LEXIS 34613, *1, *19-20 (W.D. Ky. 2006) (“allowing [student] prayer at the high school graduation ceremony” violated Establishment Clause because “[d]espite the hands-off approach as to the content of the remarks, the school officials still maintain certain control over the ceremony”); *Ashby v. Isle of Wight County Sch. Bd.*, 354 F. Supp. 2d 616, 629-30 (E.D. Va. 2004) (“the decision not to allow the students to [deliver a religious song] was necessary to avoid violating the Establishment Clause”); *Deveney v. Bd. of Educ.*, 231 F. Supp. 2d 483, 485-88 (S.D. W.Va. 2002) (ordering school board “enjoined and restrained from allowing . . . the presentation of an invocation [by a student] . . . at the graduation exercises for St. Albans High School”); *Skarin v. Woodbine Cmty. Sch. Dist.*, 204 F. Supp. 2d 1195, 1198 (S.D. Iowa 2002) (“[t]he singing of ‘The Lord’s Prayer’ by the Woodbine High School choir at the school graduation ceremony. . . violates the Establishment Clause” as the “Supreme Court cases [] bar prayer from public school graduation ceremonies”); *Appenheimer v. Sch. Bd.*, 2001 WL 1885834, *1, *6-9 (C.D. Ill. 2001) (holding that “allowing student-led prayer violates the First Amendment” and enjoining school board “from having a student-led prayer at its commencement ceremony”); *Gearon v. Loudoun County Sch. Bd.*, 844 F. Supp. 1097, 1098-100 (E.D. Va. 1993) (“permitting prayer in a . . . high school graduation is a violation of the Establishment Clause” even if the “remarks” are “student-initiated, student-written and student-delivered”); *Lundberg v. W. Monona Cmty. Sch. Dist.*, 731 F. Supp. 331, 333, 345-46 (N.D. Iowa 1989) (“an invocation and benediction at a public high school graduation ceremony violates the establishment-of-religion clause”); *Graham v. Central Community School Dist.*, 608 F. Supp. 531, 537 (S.D. Iowa 1985) (holding that the school district’s “inclusion of a religious invocation and a religious benediction as part of its graduating ceremonies violates the Establishment Clause” and enjoining the school district “from including in its graduating ceremonies . . . any religious invocation or religious benediction.”); *Committee for Voluntary Prayer v. Wimberly*, 704 A.2d 1199 (D.C. 1997) (initiative to allow prayer at public school events unconstitutional); *Sands v. Morongo Unified Sch. Dist.*, 53 Cal. 3d 863, 878-79 (1991), *cert. denied*, 505 U.S. 1218 (1992) (“the practice of including religious invocations and benedictions at public high school graduation ceremonies inevitably and impermissibly conveys a message that the District

As a result of this well-settled jurisprudence, “a constitutional violation inherently occurs when, in a secondary school graduation setting, a prayer is offered, regardless of who makes the decision that the prayer will be given and who authorizes the actual wording of the remarks.” *Gearon v. Loudoun Cnty. Sch. Bd.*, 844 F. Supp. 1097, 1099 (E.D. Va. 1993) (permanently enjoining school from permitting prayers to be offered at graduations).

The second prong of *Lemon* asks whether, irrespective of the school’s purpose, the practice “conveys a message of endorsement” of religion. *Santa Fe*, 168 F.3d at 817. There is no doubt that the invocation at the graduation endorsed and advanced religion in violation of the Establishment Clause. Whenever an invocation “occurs at a school-sponsored event . . . the conclusion is inescapable that the religious invocation conveys a message that the school endorses” it. *Jager v. Douglas County Sch. Dist.*, 862 F.2d 824, 831-32 (11th Cir. 1989).

In *Santa Fe*, the Supreme Court ruled that even student-initiated, student-led prayers at high school football games, where attendance is completely voluntary, result in “both perceived and actual endorsement of religion” in violation of the Establishment Clause. 530 U.S. at 305, 310. As in *Santa Fe*, the invocation here was “delivered to a large audience assembled as part of a regularly scheduled, school-sponsored function.” *Id.* at 307. Students were under the supervision and direction of school officials. Moreover, unlike in *Santa Fe*, the invocation delivered at Hope Academy’s ceremony was neither student-initiated nor student-led. Rather, the School District invited a religious leader to deliver the invocation, thus violating well-settled Establishment Clause jurisprudence pursuant to *Lee*. In this context, “an objective observer” would inevitably “perceive [the prayers] as a state endorsement of prayer.” *Id.* at 308 (internal quotation marks omitted).

Moreover, a public school graduation invocation violates the Establishment Clause irrespective of its duration. *See Sands*, 809 P.2d at 815 (Cal. 1991) (citing *Jager*, 862 F.2d at 832) (“The brevity of the invocations is similarly insufficient to dispel the apparent message of government endorsement.”). Because a prayer inherently advances religion, it falls within the limitations of the Establishment Clause even when it is brief. *See id.*; *see also Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 225 (1963) (“[I]t is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment.”).

b. The California Constitution

The California Constitution also demands separation of church and state in its Establishment Clause. Cal. Const. art. I, § 4 (“The Legislature shall make no law respecting an establishment of religion.”). Additional provisions in the California Constitution go further still, adding more bricks to the wall of separation.

favors or prefers the religious beliefs expressed by the invocation and benediction speakers . . . and is therefore unconstitutional.”); *Bennett*, 193 Cal. App. 3d at 1020 (“the inclusion of a religious invocation at a high school graduation violates the First Amendment.”).

The “No Preference” Clause found in Article I, section 4 is “more expansive” than the Federal Establishment Clause. *Am. Family Ass’n v. City & Cnty. of San Francisco*, 277 F.3d 1114, 1123 (9th Cir. 2002). California courts and the Ninth Circuit “have interpreted [it] as censuring so much as even the *appearance* of religious partiality.” *Murphy v. Bilbray*, 782 F. Supp. 1420, 1438 (S.D. Cal. 1991) (emphasis added); *see also Hewitt v. Joyner*, 940 F.2d 1561, 1567 (9th Cir. 1991) (county’s ownership of park containing statues of biblical figures and scenes from the New Testament, violated clause “not only may a governmental body not prefer one religion over another, it also may not appear to be acting preferentially”); *Fox v. City of Los Angeles*, 587 P.2d 663, 665 (Cal. 1978) (illumination of cross on city hall violated No Preference Clause). Referring to this clause, the Attorney General’s office has said, “It would be difficult to imagine a more sweeping statement of the principle of government impartiality in the field of religion.” *Feminist Women’s Health Ctr. v. Philibosian*, 203 Cal. Rptr. 918, 926 (Cal. App. 1984) (quoting 25 Op.Cal.Atty.Gen. 316, 319 (1955)).

The California Constitution is yet more explicit in prohibiting religious activities in an educational setting. Article IX, section 8 states in part “nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.” The Attorney General’s office has read this provision to prohibit prayers as part of the curriculum in public schools. 25 Op.Cal.Atty.Gen. 316, 319 (1955).

Article XVI, section 5 adds that “[n]either the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever....” This provision “was intended to insure the separation of church and state and to guarantee that the power, authority, and financial resources of the government shall never be devoted to the advancement of religious or sectarian purposes.” *Cal. Educ. Facilities Auth. v. Priest*, 526 P.2d 513, 520-21 (Cal. 1974) (citing *Gordon v. Bd. of Educ.*, 178 P.2d 488, 493 (Cal. App. 1947)).

c. The California Education Code

The California Education Code emphasizes that charter schools, as entities supervised and funded by the state, are likewise forbidden from organizing or engaging in any religious activities. Charter schools are part of the state’s public school system and fall under the exclusive control of officers of the public schools. Cal. Educ. Code § 47615(a)(1)-(2) (West 2014). As such, they are subject to the California Constitution’s numerous prohibitions against publicly-funded activity of a religious nature, such as a graduation prayer. *See supra* Part II.b.

A charter school must also be “nonsectarian in its programs, admission policies, employment practices, and all other operations....” Cal. Educ. Code § 47605(d)(1) (West 2014). A school’s charter may be denied or revoked for failure to comply with this provision. *Wilson v. State Bd. of Educ.*, 89 Cal. Rptr. 2d 745, 757 (Cal. Ct. App. 1999) (citing Cal. Educ. Code §§ 47605, 47607 (West 2014)); *see also Liberty Family Acad. Charter Sch. v. North Monterey Cnty. Unified Sch. Dist.*, No. H034551, 2012 WL 129821, at *1 (Cal. Ct. App., Jan. 12, 2012)

(“Among the findings in support of revocation of the charter was that School was providing religious instruction to children”).

d. Academy Charter & Governing Board Policies

The academy’s charter, effective July 1, 2011 through June 30, 2016, states that the academy will be “nonsectarian in its program, admission policies, employment practices, and all other operations”⁷

III. Summary of the Violations

In allowing a speaker to deliver an extended graduation sermon featuring Christian themes and a clear religious blessing, Hope Academy violated the Establishment Clause of the U.S. Constitution, multiple provisions of the California Constitution, the California Education Code, and the terms of the academy’s own charter and governing board policies.

The content of the speaker’s sermon went well beyond the nonsectarian graduation prayer found unconstitutional by the Court in *Lee*. *See Lee* 505 U.S. at 586. His remarks included (1) a reference to salt, which is a notable symbol in Judeo-Christian faith traditions; (2) a discussion of *The Last Supper*, which portrays a key moment in the Christian narrative of Jesus; and (3) the use of the words “God” and “praying” as part of a final blessing. These utterances conspired to make the speech an unambiguous sectarian prayer, particularly in light of its similarities to previously published Christian sermons. For a publicly-funded charter school to arrange for and permit its delivery at graduation was therefore unconstitutionally coercive, whether or not attendance at the event was mandatory. *See Lee* 505 U.S. at 586.

That the speaker appeared in a clerical collar indicating his status as a religious authority figure serves to underscore the constitutional breach, as courts have widely held that even student-led and student-initiated graduation prayers are unconstitutional. *See, e.g., Santa Fe*, 168 F.3d 806, 816 (5th Cir. 1999). The sermon’s considerable length—more than five minutes—was also egregious, given that even a brief prayer is sufficient to constitute a violation of the Establishment clause. *See, e.g., Sands*, 809 P.2d at 815.

In the same respects that Hope Academy’s conduct violated the Establishment Clause, it also breached the California Constitution. In allowing a Christian sermon to be delivered, Hope Academy (1) manifested the appearance of religious partiality in violation of Article I, section 4, *see, e.g., Murphy*, 782 F. Supp. at 1438; (2) incorporated prayer into its educational programming in violation of Article IX, section 8, *see* 25 Op.Cal.Atty.Gen. 316, 319 (1955); and (3) advanced a sectarian purpose with public funding in violation of Article XVI, section 5, *see, e.g., Priest*, 526 P.2d at 520-21.

Nor is Hope Academy exempt from the above restrictions by virtue of its charter status. As the academy is part of the state’s public school system and under the control of public officers, *see* § 47615(a)(1)-(2), it is bound by the same constitutional provisions as traditional

⁷ Charter of Hope Academy (Mar. 15, 2011), available at <http://morongousd-ca.schoolloop.com/file/1232370369053/6640910639732588738.rtf>.

public schools. Further, the academy's actions permitting the sermon violated the express statutory requirement that charter schools be "nonsectarian in [their] programs, . . . practices, and all other operations. . ." § 47605(d)(1).

Hope Academy's conduct even violated the terms own charter, which likewise states that the school will be "nonsectarian in its program, admission policies, employment practices, and all other operations . . ." Allowing the sermon to be delivered also ran afoul of the governing board's policy that "[s]chool programs and activities shall be free without discrimination based on . . . religion[.]"

IV. Required Action

In view of the foregoing, this letter demands immediate assurances that Hope Academy and the Morongo Unified School District will cease to arrange for or otherwise permit the delivery of sermons and prayers at all school-sponsored and -organized functions. Such restriction is to apply regardless of the venue, the duration of the prayer, or the identity of the speaker.

I ask that you please notify me in writing within two weeks of receipt of this letter setting forth the steps the academy and the district will take to avoid future constitutional violations. Thank you for turning your attention to this important matter.

Sincerely,

Monica Miller, Esq.
mmiller@americanhumanist.org