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August 23, 2015

Via Email

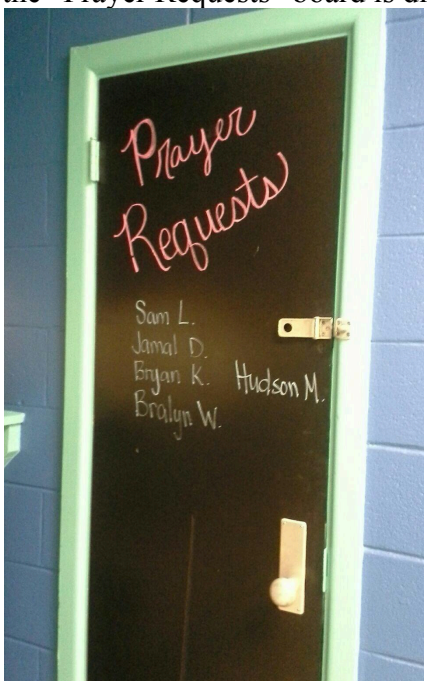
Tess R. Smith, Superintendent tess.smith@lamarcountyschools.org
Lamar County School District
424 Martin Luther King Dr.
Purvis, MS 39475

Dr. Patrick Gray, patrick.gray@lamarcountyschools.org
Principal, Oak Grove Middle School

Mr. Robin Ryder, robin.ryder@lamarcountyschools.org
8th Grade Asst. Principal, Oak Grove Middle School

Dear Dr. Gray, Mr. Ryder, and Ms. Smith,

An Oak Grove Middle School parent has contacted our office to request assistance with regard to what is correctly perceived as a constitutional violation. Specifically, a teacher has created a "Prayer Requests" board in her public school classroom (8th Grade Math & homeroom), which has been prominently displayed on the classroom door since the start of the school year. A photograph of the "Prayer Requests" board is displayed below.



The teacher, Randi Rogers, witnessed the student take a picture of her "Prayer Requests" board and confronted the student after class. Ms. Rogers accused the student of "disrespecting" the teacher's religion and that even if having the word "prayer" was illegal, she would continue to write names on the prayer board of those for whom she would be praying. Ms. Rogers said that if the student didn't like it, she could move to another part of the classroom.

The teacher's actions in displaying the "Prayer Requests" board, which she seems to acknowledge is illegal, and her insistence on continuing to take prayer requests and keep the board up (even if she must remove the word "prayer") violates the Establishment Clause of the First Amendment. As such, we hereby demand that the School District promptly remove the board from the door and provide us with written assurances that: (1) there will be no other unmarked place in the room where it is understood that prayer requests can be made or listed; and (2) public school teachers will not use their classrooms to take prayer requests or otherwise promote and endorse religion. If corrective steps are not taken immediately, our organization will pursue the matter through litigation in federal court.

The American Humanist Association (AHA) is a national nonprofit organization with over 460,000 supporters and members across the country, including many in Mississippi. The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring a separation of church and state. Our legal center includes a network of cooperating attorneys from around the country, including Mississippi, and we have litigated constitutional cases in state and federal courts from coast to coast, including Mississippi.

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). 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). 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.*

The Supreme Court "has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools." *Edwards v. Aguillard*, 482 U.S. 578, 583-84 (1987). *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 303 (2000l); *Lee v. Weisman,* 505 U.S. 577, 592 (1992). The Court has specifically ruled: 1) that a school must not place its stamp of approval on prayers; and 2) that including prayers school-sponsored events (and obviously in the classrooms) unconstitutionally coerces students to participate in religious activity. *Santa Fe*, 530 U.S. at 308; *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). The Supreme Court has issued numerous decisions "of considerable parentage that prohibits prayer in the school classroom or environs." *Id.* at 164.[1] The same is true of the Fifth Circuit.[2] "[S]chool officials have long been prohibited by the Establishment Clause from inserting religious exercises into school activities." *S.D. v. St. Johns Cnty. Sch. Dist*., 632 F. Supp. 2d 1085, 1093 (M.D. Fla. 2009).

The Establishment Clause "absolutely prohibit[s] government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith." *School Dist. v. Ball*, 473 U.S. 373, 385 (1985). "The State must be certain… that subsidized teachers do not inculcate religion." *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971). School Districts must not 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). *See Bishop v. Aronov*, 926 F.2d 1066, 1073 (11th Cir. 1991) ("a teacher's [religious] speech can be taken as directly and deliberately representative of the school"); *Roberts v. Madigan*, 921 F.2d 1047, 1056-58 (10th Cir. 1990) (a teacher's display of a Bible in his classroom "had the primary effect of communicating a message of endorsement of a religion").[3] School districts "have a constitutional duty" to "direct teachers to 'refrain from expression of religious viewpoints in the classroom and like settings.'" *Marchi*, 173 F.3d at 475 (citing *Lemon*, 403 U.S. at 619).

Indeed, any action by a school official that amounts to "inviting or encouraging students to pray violates the First Amendment." *Herdahl v. Pontotoc Cnty. Sch. Dist*., 933 F. Supp. 582, 591 (N.D. Miss. 1996). The courts have been virtually unanimous in holding that faculty-led and faculty-participation in prayers with students is unconstitutional. *See Karen B*, 653 F.2d 897; *Borden v. Sch. Dist.*, 523 F.3d 153, 174 (3rd Cir. 2008) (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); (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*)

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[1] *See Santa Fe*, 530 U.S. at 294 (student prayers at football games unconstitutional); *Lee*, 505 U.S. at 580-83 (1992) (prayers at graduation ceremonies unconstitutional); *Wallace v. Jaffree*, 472 U.S. 38, 40-42 (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); *Sch. Dist. Abington v. Schempp*, 374 U.S. 203, 205 (1963) (daily scripture readings unconstitutional); *Engel v. Vitale*, 370 U.S. 421, 422-23 (1962) (school prayer unconstitutional); *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).

[2] *See Doe v. Sch. Bd*., 274 F.3d 289, 294 (5th Cir. 2001) (statute authorizing prayer in classrooms unconstitutional); *Doe v. Santa Fe Indep. Sch. Dist*., 168 F.3d 806, 816 (5th Cir. 1999), *aff'd*, 530 U.S. 290 (2000) (graduation and football prayers unconstitutional); *Ingebretsen v. Jackson Pub. Sch. Dist*., 88 F.3d 274, 280 (5th Cir. 1996) (prayers at school-sponsored events unconstitutional); *Doe v. Duncanville Indep. Sch. Dist*., 70 F.3d 402, 407 (5th Cir 1995) (*Duncanville II*) (school officials' supervision of student-initiated and student-led prayers preceding basketball games violated Establishment Clause); *Duncanville I*, 994 F.2d at 163; *Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981), *aff'd*, 455 U.S. 913 (1982); *Hall v. Board of Sch. Comm'rs,* 656 F.2d 999, 1003 (5th Cir. 1981) (permitting students to conduct morning devotional readings over the school's public address system violated Establishment Clause); *Meltzer v. Bd. of Pub. Instruction,* 548 F.2d 559, 574 (5th Cir. 1977) (en banc) (same). *See also Herdahl v. Pontotoc County Sch. Dist.*, 933 F. Supp. 582, 591 (N.D. Miss. 1996) (same).

[3] *See also Bell v. Little Axe Indep. Sch. Dist*., 766 F.2d 1391, 1396-97 (10th Cir. 1985) (finding unconstitutional endorsement when teachers "participat[ed] in religiously-oriented meetings involving students").

(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 at school functions unconstitutional).[4]

In fact, even "permit[ting] [a teacher] to discuss his religious beliefs with students during school time on school grounds would violate the Establishment Clause." *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994). Where, as here, teacher "conduct endorses a particular religion" it "infringes on the rights of others and must be prohibited." *Roberts*, 921 F.2d at 1057 (citation omitted).

To comply with the Establishment Clause, a government practice must pass the *Lemon* test,[5] 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). In addition to the *Lemon* test, in *Lee*, the Supreme Court formulated the separate "coercion test," declaring, "*at a minimum*, the [Establishment Clause] guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Id.* at 587 (emphasis added).

As shown below, the teacher's actions are unconstitutional pursuant to each prong of the *Lemon* test as well as the separate coercion test.

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 v. Harland*, 370 F.3d 1252, 1285 (11th Cir. 2004). *See also Santa Fe*, 530 U.S. at 309-10 ("infer[ring] that the specific purpose of the policy" permitting but not requiring student-led prayers was religious thus failing the purpose prong); *Karen B. v. Treen*, 653 F.2d 897, 901 (5th Cir. 1981) (no secular purpose in authorizing teacher-initiated prayer at the start of school day)

[4] *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).

[5] The test is derived from *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

aff'd, 455 U.S. 913 (1982); *Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff'd*, 472 U.S. 38 (1985); *Jager v. Douglas County Sch. Dist*., 862 F.2d 824, 830 (11th Cir. 1989) (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."); *Peloza 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").[6]

In a similar case involving teacher-led prayer, the Fifth Circuit soundly ruled: "since prayer is a primary religious activity in itself, its observance in public school classrooms has, if anything, a more obviously religious purpose than merely displaying a copy of a religious text in the classroom." *Treen*, 653 F.2d at 901. In *Holloman*, the Eleventh Circuit ruled in an even more analogous case, that a teacher's actions in "collecting prayer requests," gave "the practice of praying . . . her implicit imprimatur" and thus violated the Establishment Clause pursuant to the first prong of the *Lemon* test. *Holloman*, 370 F.3d at 1285. Clearly then, Ms. Roger's "Prayer Request" board fails the purpose test as well. Her actions not only endorse Christianity but also "religions believing in prayer [over] those religions that do not." *Jager*, 862 F.2d at 831-32.

Yet, regardless of the purposes motivating it, the teacher'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 on questions of religious belief[.]" *Id.* at 593-94.

Even the "**mere appearance** of a joint exercise of authority by Church and State provides a significant symbolic benefit to religion," and, therefore, has the impermissible primary effect of advancing religion. *Larkin v. Grendel's Den*, 459 U.S. 116, 126-27 (1982). The Supreme Court has stated that:

> an important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices.

School Dist. v. Ball, 473 U.S. 373, 390 (1985) (internal citation omitted). 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*, 173 F.3d at 477.

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[6] *See also McCreary County v. ACLU of Ky.*, 545 U.S. 844, 862-63 (2005); *Stone v. Graham*, 449 U.S. 39, 41 (1980); *North Carolina Civil Liberties Union v. Constangy*, 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).

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*, 530 U.S. at 309-10 (holding that student-initiated, student-led prayers at public high school football game were unconstitutional). 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 successfully 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. Here, unlike in *Santa Fe*, the prayers here are *not* even student-initiated and rather than being a voluntary football game, the prayer requests are made in the formal classroom to a captive audience of students. In this context, "an objective observer" would inevitably "perceive [the prayers] as a state endorsement of prayer." *Id*. at 308 (internal quotation marks omitted).

In *Holloman*, the Eleventh Circuit ruled that the teacher's "prayer requests" violated the second prong of *Lemon* because "the effect of her behavior was clearly to promote praying, a religious activity. Praying is perhaps the 'quintessential religious practice,' see *Treen*, 653 F.2d at 901, and to explicitly call for prayer requests, . . . has the effect of both endorsing religious activity, as well as encouraging or facilitating its practice." 370 F.3d at 1286. Likewise, the Fifth Circuit in *Treen* concluded that the effect prong of *Lemon* was violated by "encouraging observance of a religious ritual in the classroom." 653 F.2d at 901. The court added that "[t]he result is the same even though Jefferson Parish students must affirmatively request to participate in the prayer observance, for an Establishment Clause violation does not depend upon the presence of actual governmental coercion." *Id.* at 902.

Faculty involvement in prayer with student is even unconstitutional outside the formal classroom setting. In *Duncanville*, the Fifth Circuit explicitly held that high school basketball coaches' mere participation in the Lord's Prayer with players during practices and after games was "an unconstitutional endorsement of religion." 70 F.3d at 406. The Fifth Circuit explained that the "prayers take place during school-controlled, curriculum-related activities . . . During these activities DISD coaches and other school employees are present as representatives of the school and their actions are representative of DISD policies." *Id.* As such, the court ruled: "DISD representatives' participation in these prayers improperly entangles it in religion and signals an unconstitutional endorsement of religion." *Id.* Similarly, in *Borden*, the Third Circuit held that a high school football coach unconstitutionally endorsed religion when he bowed his head and took a knee while his team prayed. 523 F.3d 153. The court held that "joining hands in prayer or demonstrating some approval of or solidarity with students' prayer" is unconstitutional. *Id.* at 167.

Teachers must not even participate in student-led, student-initiated prayers. *See Holloman*, 370 F.3d at 1286-87; *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); *Duncanville*, 70 F.3d at 405-06 (coach's participation in prayer was "an unconstitutional endorsement."); *Karen B.,* 653 F.2d at 899. 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.

Finally, the teacher's actions foster 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."). Like the Establishment Clause generally, the prohibition on excessive government entanglement with religion "rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere." *McCollum v. Bd. of Educ*., 333 U.S. 203, 212 (1948).[7] In this situation, "where the underlying issue is the deeply emotional one of Church-State relationships, the potential for seriously divisive political consequences needs no elaboration." *Comm. for Public Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 797 (1973).

In addition to violating the Establishment Clause under the *Lemon* test, *supra*, the school's actions are also unconstitutional under the "coercion test" established by the Supreme Court in *Lee.* The Supreme Court has made clear that "[i]t is beyond dispute that, at a minimum, the [Establishment Clause] guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Lee*, 505 U.S. at 587.[8] In *Lee*, 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. *Id.* 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.* Here, as in *Lee*, "[a] school official . . . decided that an invocation . . . 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. But unlike in *Lee* where the graduation ceremony was technically voluntary, the student here has no choice at all; classroom attendance is mandatory.

It should go without saying that "students' right to the free exercise of their religion is not infringed when they are prohibited from group religious activity during school time[.]" *Bell*, 766

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[7] *See also Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144, 175 n.36 (3d Cir. 2002) ("'Entanglement' still matters, however, . . . in the rare case where government delegates civic power to a religious group.") (citations omitted).

[8] "[C]oercion is not necessary to prove an Establishment Clause violation." *Id.* at 604 (Blackmun, J., concurring). *See Schempp*, 374 U.S. at 223 ("a violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended."); *Santa Fe*, 168 F.3d at 818 ("we are not required to determine that such public school prayer policies also run afoul of the Coercion Test.").

F.2d at 1400 n.6. And "'[a] public school teacher's in class conduct is not protected by the First Amendment.'" *Lee v. York Co. Sch. Div*., 484 F. 3d 687, 695 (4th Cir. 2007) (citation omitted) (school did not infringe on teacher's rights when it ordered him to remove articles detailing religious missionary activities from a classroom bulletin because they bore the imprimatur of the school). The School District would be permitted to restrict the teacher's speech even if it fell "short of an establishment violation" because "even the appearance of proselytizing by a [teacher] should be a real concern to the [District]." *Bishop v. Aronov*, 926 F.2d 1066, 1077 (11th Cir. 1991). But because a "clear establishment violation exist[s]," there is no need for further "evaluation." *Id.* (citing *Roberts*, 921 F.2d at 1053-56). *See Borden*, 523 F.3d at 174 n.16.[9]

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 and its officials may be sued under 42 U.S.C. § 1983 for damages, an injunction, and attorneys' fees. *See Steele*, 845 F.2d at 1495 ("Based on the Board's failure to act and [the principal's] tacit approval of [the teacher's] conduct, the …[school] district had a custom or policy allowing prayer in school."). This letter serves as an official notice of the unconstitutional activity and demands that the School District: (1) remove the Prayer Requests Board; (2) ensure that no other part of the classroom is used to make "prayer requests;" (3) inform all teachers in the District that they must refrain from using public school classrooms to promote religion and prayer specifically.

We are most hopeful that you will recognize the concerns raised by this letter and address them properly. To avoid legal action, please respond within seven (7) days. We thank you in advance for your attention to this matter.

Very truly yours,
Monica L. Miller, Esq.

[9] Importantly, many courts have upheld a school district's decision to remove religious items from a teacher's classroom over free exercise and free speech objections. *See Johnson v. Poway Unified School Dist*., 658 F. 3d 954, 957 (9th Cir. 2011) (rejecting First Amendment challenge by teacher to school requiring that he remove classroom banners that read "In God We Trust," "One Nation Under God," "God Bless America," and "God Shed His Grace on Thee," and "All men are created equal, they are endowed by their CREATOR"); *Lee v. York Co. School Div*., 484 F. 3d 687 (4th Cir. 2007) (rejecting First Amendment challenge by teacher to school requiring that he remove from the classroom a "National Day of Prayer poster, featuring George Washington kneeling in prayer," newspaper articles about religion in politics and newsletters about local missionaries); *Downing v. West Haven Board of Ed.*, 162 F.Supp.2d 19 (D. Conn. 2001) (school board's response to teacher wearing "Jesus 2000" shirt was appropriate and did not violate teacher's First Amendment rights because the school would risk Establishment Clause violation). *See also Marchi* , 173 F.3d at 477 (2d Cir. 1999) (upholding school's cease and desist directive to teacher, and rejecting free exercise claim of teacher who shared his religious conversion experience with his students, because "that risks giving the impression that the school endorses religion" and it has a "compelling interest in avoiding Establishment Clause violations"); *Peloza*, 37 F.3d at 522 (9th Cir. 1994) (school district's interest in avoiding violation of Establishment Clause justified prohibiting teacher from discussing religion with students before and after class and holding that to "permit [a teacher] to discuss his religious beliefs with students during school time on school grounds would violate the Establishment Clause"); *Roberts v. Madigan*, 921 F.2d 1047, 1056-58 (10th Cir. 1990) (teacher could be prohibited from reading Bible during silent reading period, and from stocking two books on Christianity on shelves, because these could leave students with the impression that Christianity was officially sanctioned)