UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

M.B., a minor by and through her next friend, Kanwar Singh Bedi *Plaintiff,* v. **Rankin County School District**, **and** **Charles Frazier**, Individually and in his Official Capacity as Principal of Northwest Rankin High School, *Defendants*.	Case No. 3:13-cv-00241-DPJ-FKB

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HER MOTION TO ENFORCE CONSENT DECREE AND MOTION FOR CIVIL CONTEMPT

INDEX OF EXHIBITS

I. INTRODUCTION

Plaintiff M.B. hereby seeks enforcement of the terms of the Consent Decree entered in this case on November 22, 2013 ("Consent Decree" or "Decree"). See ECF Dkt. Nos. 63 and 63-1. Defendants identified above being (i) the Rankin County School District (the "School District") and (ii) the principal of Northwest Rankin High School ("NRHS"), Charles Frazier ("Frazier") individually and in his official capacity as principal (collectively, the "Defendants"), have violated the terms of the Consent Decree by inviting a pastor to deliver a prayer at a school-sponsored event and by including a prayer in a school-sponsored event. These actions violated the terms of the Consent Decree, which prohibits the School District from, *inter alia*, endorsing religion or coercing students to participate in religious exercises, *infra.*

As discussed in more detail below, it is well settled that a Consent Decree is subject to enforcement by a motion: (i) to reopen the case for the limited purpose of enforcing the Consent Decree; and/or (ii) for an order directing compliance with the terms of the Consent Decree; and/or, (iii) for contempt for failing to abide by the Consent Decree; and (iv) for an award of attorneys' fees and costs. *See, e.g.*, *United States v. City of Jackson, Mississippi*, 318 F. Supp. 2d 395, 397, 419 (S.D. Miss. 2002) *aff'd sub nom. United States v. City of Jackson, Miss*., 359 F.3d 727 (5th Cir. 2004) ("Before this court is a motion . . . asking this court to hold the defendant City of Jackson, Mississippi . . . in civil contempt and to grant to the United States appropriate supplemental relief. . . . the City has violated a permanent injunction ordered by this court in a Consent Decree . . . The motion of the United States for civil contempt and summary judgment is hereby granted"); *Turner v. Mandalay Resort, Inc*., 2006 WL 571864 (N.D. Miss. 2006).

Plaintiff requests that the Court reopen the case for the limited purpose of enforcing the Consent Decree, order Defendants to comply with the Consent Decree, hold Defendants in civil contempt, impose sanctions on Defendants and award Plaintiff damages. Finally, Plaintiff requests an award of attorneys' fees and costs incurred in enforcing the Consent Decree, *infra.*

II. STATEMENT OF FACTS

On April 24, 2013, M.B., the Plaintiff ("Plaintiff"), filed suit against Defendants pursuant to 42 U.S.C. § 1983, challenging the constitutionality of Defendants' practice of including

proselytizing Christian sermons and prayers in school assemblies. (Dkt.1) (M.B. Decl. ¶¶3-39).[1] The School District began holding the assemblies on April 9, 2013, which was the assembly for the senior class. (M.B. Decl. ¶¶32-39) (Am. Compl. ¶¶11-31; Ans. Dkt. 9 ¶¶11-31). Each assembly included a proselytizing Christian sermon and a Christian prayer. (M.B. Decl. ¶3); (Am. Compl. ¶¶24-28; Ans. ¶¶24-28). The second assembly, which took place on April 10, was for the junior class and was the one that Plaintiff was required to attend. (M.B. Decl. ¶¶3-9); (Am. Compl. ¶17; Ans. ¶17) (Dkt.63 Consent Decree). On April 19 and April 22, the school held the third and fourth assemblies, which were for the freshman class and sophomore class, respectively. (Am. Compl. ¶¶20-21; Ans. ¶¶20-21). Each of the four assemblies was held during the school day during class time on school grounds and was supervised by school employees. (M.B. Decl. ¶3) (Am. Compl. ¶¶22-23; Ans. ¶¶22-23). Each assembly included prayer, the same Christian video and a similar religious discussion, let by students affiliated with the Pinelake Baptist Church. (M.B. Decl. ¶3) (Am. Compl. ¶¶24-28; Ans. ¶¶24-28).

Senior Assembly. On April 9, Principal Frazier sent an e-mail message to all faculty members at 8:04 a.m. instructing them to send students to a mandatory assembly in the Performing Arts Building ("PAB"). The school did not inform the students what the presentation at would be about or who would be delivering it. The students were only told that attendance was required. (Am. Compl. ¶¶32-34; Ans. ¶¶32-33). Once the students and faculty arrived in the PAB, a speaker affiliated with the Pinelake Baptist Church ("PBC") started to give a presentation about finding hope in Jesus Christ. After about a minute of introductory comments, a video presentation was played for the students. (*Id.* at ¶¶35-37). The video profiled four young men it claimed had once led troubled lives. (*Id.* at ¶38). About five minutes into the video, each of the speakers explained how turning to God and Jesus Christ solved their problems and recommended that other students turn to Jesus as well. (*Id.* at ¶¶46-50). The video concluded with applause from the audience, which included teachers and administrators. (Am. Compl. ¶¶51-52; Ans. ¶52). The speaker then told the students in the audience that Jesus could help them

[1] On May 29, 2013, Plaintiff filed an Amended Complaint ("Am. Compl.") to substitute her former next friend with her father as next friend. (Dkt. 5).

too, and launched into a proselytizing sermon about the supposed miracles and power of Jesus Christ. He urged those in the audience who were non-Christians to "just be open" to Jesus. He closed with a Christian prayer. At no time did any school official turn off the video or ask the speaker to stop proselytizing or praying. (Am. Compl. ¶¶32-76; Ans. ¶¶32-76).

Junior Assembly. On April 10, the school held a similar assembly for the junior class, consisting of the same video and a similar sectarian presentation. (Am. Compl. ¶¶77-89; Ans. ¶¶77-79). This assembly also took place during homeroom. (*Id.*). The students were called out of class sometime around 9:40 a.m. and were told to go directly to the PAB. The school did not inform the students of the nature of the presentation beforehand. (*Id.*). Because Plaintiff was informed by some of her senior friends that the assembly would be a proselytizing Christian presentation, she and a few of her friends attempted to go to the library or another classroom to study. (*Id.*). However, a school official intercepted them and required them to remain in the PAB for the assembly. (*Id.*). (*See also* M.B. Decl. ¶¶3-31).

The assembly began with opening remarks by a speaker who mentioned in his introduction that he had spoken with Principal Frazier a few months prior about putting on the Christian Assemblies, and that they had worked together to develop their theme. (Am. Compl. ¶¶ 90-129; Ans. ¶¶90-126, 128-129). After the introduction, the lights were dimmed and the video started. (*Id.*). Once the video ended, one of the speakers who had appeared in the video walked up to the stage and delivered a presentation to the students. (*Id.*). This presentation was substantially the same as the one delivered to the senior class. It involved extensive Christian proselytizing and ended with a sectarian prayer. (*Id.*). According Plaintiff, "the assembly became a sermon; lecturing that we could only find hope through the existence of Jesus Christ." During the presentation, some students attempted to leave but they were barred from exiting by school staff. (*Id.*). (*See also* M.B. Decl. ¶¶3-31).

Freshman and Sophomore Assemblies. On April 11, the American Humanist Association sent a letter to Defendants advising them that the assemblies were unconstitutional and requesting that they be stopped. However, on Friday April 19, and Monday April 22, the school held the freshman and sophomore assemblies, respectively. The assemblies consisted of a similar

Christian presentation and the same video. They were similarly held on school property during class hours and were monitored and supervised by faculty and staff. These assemblies were also announced by the school through the e-mail system. (Am. Compl. ¶¶130-144; Ans. ¶¶130-143).

The Consent Decree. On November 22, 2013, the parties entered into a binding Consent Decree that was subsequently approved by this Court on that date. (Dkts. 63 & 63-1; Exh. 1 attached hereto).[2] The Consent Decree awarded Plaintiff reasonable attorneys' fees and provided, *inter alia*, the following terms: (1) the School District's assembly M.B. attended violated the Establishment Clause of the First Amendment; (2) an order prohibiting Defendants from violating the Establishment Clause in the future; and (3) an order providing: "The School District shall comply with the provisions of its Religion in Public Schools Policy attached hereto as Exhibit 'A.'" (*Id.*). By adoption of and incorporation by reference of the Religion in Public Schools Policy (hereafter "Policy"), the Consent Decree also contains the following term: "school activities conducted during instructional hours should neither advance, endorse or inhibit any religion; should be primarily for secular purposes and should not obligate or coerce any person into participation in a religious activity." (C.D. at Exh. A). A term of Consent Decree provides that this Policy demonstrates that the School District "is to fully comply with the Establishment Clause of the First Amendment to the United States Constitution." (C.D. ¶5). This Court further issued a text order mandating: "The School District shall comply with the provisions of its Religion in Public Schools Policy attached hereto as Exhibit 'A.'" (Dkt. 63).

Violation of Consent Decree. On April 17, 2014, Defendants violated said Consent Decree by holding an awards ceremony ("Awards Ceremony") on campus and during class hours that included a prayer by a Christian Reverend. (M.B. Decl. ¶¶41-42) (Exhs. 2-5). The event started at approximately 9:00 a.m. (*Id.*). The Awards Ceremony was held to give recognition to students having an ACT score of above 22, which included M.B. (M.B. Decl. ¶43) (Exh.3, Exh.8). The event was organized and sponsored by the School District and was held at Brandon High School. (*Id.* at ¶¶45-54) (Exhs.2-5, Exh.8). The School District's website promoted the event (Exhs.4-5, Exh.8).

[2] Citations to the Consent Decree hereafter are referenced as ("C.D.")

Students who received such awards were excused from their classes to attend the Awards Ceremony. (M.B. Decl. ¶¶45-56). The School District superintendent, School Board members, and the high school principals presided over the event. (*Id.* at ¶¶48-51) (Exh.2). The program for the Awards Ceremony, which was distributed to the students, stated in part: "Rankin County School District." (M.B. Decl. ¶¶53-55) (Exh.2). Next to the School District's name was an image of the School District's logo. (*Id.*). The second page of the Program provided that an "Invocation" was to be given by "Rev. Rob Gill." Below Rev. Rob Gill's name were the words: "St. Marks United Methodist Church, Brandon." (*Id.*).

The School District also issued a memo regarding "important events" to students at Brandon High School with the following instructions: "April 17-2014 – ACT Awards Ceremony, 9 a.m., for all students with an ACT of 22 and above in Multipurpose Room; *please dress in church attire.*" (M.B. Decl. ¶58) (Exh.3) (emphasis added). Consequently, many students showed up wearing an "Easter Sunday dress or church dress." (M.B. Decl. ¶59) (Exh.8).

After the students were seated, they were told to stand up for the prayer and the Pledge of Allegiance. (M.B. Decl. ¶¶62-63). They were then told to bow their heads to pray. (*Id.*). The prayer referred to "God" several times and alluded to Jesus. (*Id.* at ¶¶64-65). The Christian Reverend said in the prayer, "we are not only celebrating death, but also life." (*Id.*). Because the event was held days before Easter, this was obviously a reference to the resurrection of Jesus Christ. (*Id.*). Students could see the principals and other school officials standing and bowing their heads in prayer. (*Id.* at ¶¶68-69). The School District recorded the event. Under existing law, the prayer at the Awards Ceremony constituted both "endorsement" of religion and "coercion" to participate in religious exercises, *infra* at IV.

III. THIS COURT RETAINS JURISDICTION TO ENFORCE THE CONSENT DECREE.

This Court has continuing jurisdiction to enforce the Consent Decree. "A consent decree 'embodies an agreement of the parties' and is also 'an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.'" *Frew ex rel. Frew v. Hawkins*, 540 U.S.

431, 437 (2004). Once "the district court enters the settlement as a judicial consent decree ending the lawsuit, the settlement takes on the nature of a judgment." *Ho v. Martin Marietta Corp*., 845 F.2d 545, 548 (5th Cir. 1988). Thus, a consent decree "will be enforced as any injunction is enforced." *S.E.C. v. AMX, Int'l, Inc*., 7 F.3d 71, 75 (5th Cir. 1993). *See also LULAC v. City of Boerne*, 659 F.3d 421, 436 (5th Cir. 2011); *Cook v. Ochsner Foundation Hospital*, 559 F.2d 270, 272 (5th Cir. 1977); *Hook v. State of Ariz., Dept. of Corrections*, 972 F.2d 1012, 1014 (9th Cir. 1992) ("[a] district court retains jurisdiction to enforce its judgments, including consent decrees."). "Federal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, a consent decree may be enforced." *Thompson v. United States HUD*, 404 F.3d 821, 833-834 (4th Cir. 2005). *See Waffenschmidt v. Mackay*, 763 F.2d 711, 716 (5th Cir. 1985) ("Courts possess the inherent authority to enforce their own injunctive decrees . . . Courts do not sit for the idle ceremony of making orders and pronouncing judgments, the enforcement of which may be flouted, obstructed, and violated with impunity, with no power in the tribunal to punish the offender.")

As opposed to private settlement agreements, therefore, consent judgments do not require parties to file separate lawsuits each time the other party violates a provision of the judgment. Rather, the court that enters a consent judgment retains subject matter jurisdiction for enforcement purposes. *Floyd v. Ortiz*, 300 F.3d 1223, 1226 (10th Cir. 2002). Stated differently, a district court may assert jurisdiction to enforce terms of a consent decree even after a case is closed. *Florida Ass'n for Retarded Citizens, Inc. v. Bush*, 246 F3d 1296, 1298 (11th Cir. 2001) ("Also, we do not agree with the district court's assertion that the plaintiffs should seek relief, to which they allege that they are entitled by virtue of the existing consent decree, by bringing a new lawsuit. Not only would that require the parties and the courts to waste judicial resources re-litigating issues which have been dealt with, it would also deny the plaintiffs the benefit of the bargain which was reached in the original consent decree and which the defendants obliged themselves to provide."); *Hook v. Arizona*, 972 F2d 1012, 1014 (9th Cir. 1992). Indeed, the Supreme Court's opinion in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381 (1994), makes abundantly clear that a "court may assert jurisdiction in order to enforce the terms

of a consent decree ***after a case is closed***." (emphasis added). *See also Local Number 93, Int'l. Assoc. of Firefighters, AFL-CIO v. City of Cleveland*, 478 U.S. 501, 524 n.13 (1986) (noting that benefits of consent decrees include avoiding re-litigation of facts, flexibility of enforcement procedures available to courts, and channeling of litigation to single forum); *CitiFinancial Corp. v. Harrison*, 453 F.3d 245, 250 (5th Cir. 2006).

Federal courts in Mississippi have left no room for doubt on this either. They have held that the "'proper method to enforce compliance with the . . . consent decree would be to file a contempt motion in the' case in which the consent decree was entered, 'not a separate complaint creating a new cause of action.'" *Jackson v. Lowndes Cnty. Sch. Dist.*, CIVA1:08CV178-SA-JAD, 2010 WL 91245, *7 (N.D. Miss. 2010) (citation omitted). Finally, it is well settled that a district court may "reopen an administratively closed case *sua sponte*." *United States v. Texas*, 457 F.3d 472, 476 (5th Cir. 2006). Accordingly, this motion to reopen the case for the purpose of enforcing the Consent Decree is properly before this Court.

IV. DEFENDANTS VIOLATED THE CONSENT DECREE BY ADVANCING AND ENDORSING RELIGION AND BY COERCING STUDENTS TO PARTICIPATE IN RELIGIOUS ACTIVITY.

A. The Consent Decree requires Defendants to comply with the Establishment Clause.

The Consent Decree contains the following term: "school activities conducted during instructional hours should neither advance, endorse or inhibit any religion; should be primarily for secular purposes and should not obligate or coerce any person into participation in a religious activity." (C.D. ¶7(a); Exh. A). The Consent Decree provides that this Policy requires the School District "to fully comply with the Establishment Clause of the First Amendment to the United States Constitution." (C.D. ¶5). Defendants have further interpreted this Policy as follows:

> The Religion Policy explicitly states that during instructional hours the School District will not allow activities that "advance, endorse or inhibit any religion," that school activities should be primarily for secular purposes, and should not coerce any person into participation in a religious activity.

(Defendants' Motion for Summary Judgment, Dkt. 20, p.4). In their motion, Defendants called it "a clear and unambiguous policy on religion which complies with the United States Constitution and applicable law." (*Id.* at 4-5). They further stated: "The Rankin County School District has

implemented an unambiguous policy requiring that school activities be conducted in a constitutional manner." (*Id.* at 5). Accordingly, in interpreting the Consent Decree and the terms of the Policy specifically, it necessary for the Court to look Establishment Clause jurisprudence.[3]

B. Establishment Clause Jurisprudence

It is difficult to conceive of a more flagrant Establishment Clause violation than what is presented in the case *sub judice*. The "Constitution mandates that the government remain secular, rather than affiliate itself with religious beliefs" or "'favor religious belief over disbelief.'" *County of Allegheny v. ACLU*, 492 U.S. 573, 610, 593 (1989) (citation omitted). To comply with the Establishment Clause, a governmental practice must pass the *Lemon* test,[4] 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. *Id.* 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 Court has specifically ruled that the state must not place its stamp of approval on prayers by authorizing them at school-sponsored events, or coerce students to attend events where prayers are delivered. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 294 (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) ("*Duncanville I*").

The Supreme Court has issued numerous decisions "of considerable parentage that prohibits prayer in the school classroom or environs." *Id.* at 164.[5] The same is true of Fifth

[3] This is particularly true because it was Defendants' position that the Policy mooted Plaintiffs' claim for injunctive relief *under the Establishment Clause,* asserting that any such relief would be "superfluous" in light of the Policy. (Dkt. 20 at pp. 5-6).

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

[5] *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) (school prayer and meditation unconstitutional); *Sch. Dist. Abington v. Schempp*, 374 U.S. 203,

Circuit cases. *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) (classroom prayers by students and teachers unconstitutional); *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).

It is well settled that prayers offered at public school graduation ceremonies violate the Establishment Clause. *Lee*, 505 U.S. at 590-92 (nonsectarian prayer at graduation held unconstitutional); *Santa Fe*, 168 F.3d at 816 (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 held unconstitutional); *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1104 (9th Cir. 2000) (same); *ACLU v. Black Horse Pike Regional Bd. of Educ.*, 84 F.3d 1471, 1488 (3d Cir. 1996) (same); *Harris v. Joint School 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) (same); *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, *19-20 (W.D. Ky. 2006) (same); *Ashby v. Isle of Wight County Sch. Bd.*, 354 F. Supp. 2d 616, 629-30 (E.D. Va. 2004) (prohibiting religious song

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205 (1963) (daily scripture readings unconstitutional); *Engel v. Vitale*, 370 U.S. 421, 422-23 (1962) (school prayer unconstitutional). *See also Allegheny*, 492 U.S. at 590 n.40.

at graduation prevented Establishment Clause violation); *Deveney v. Bd. of Educ. of Cnty. of Kanawha*, 231 F. Supp. 2d 483, 485-88 (S.D. W.VA. 2002) (student-led prayer at graduation unconstitutional); *Skarin v. Woodbine Cmty. Sch.,* 204 F. Supp. 2d 1195, 1198 (S.D. Iowa 2002) (Lord's Prayer at graduation unconstitutional); *Appenheimer v. Sch. Bd.*, 2001 WL 1885834, *6-9 (C.D. Ill. 2001) (student-led prayers at graduation unconstitutional); *Gearon v. Loudoun County Sch. Bd*., 844 F. Supp. 1097, 1099 (E.D. Va. 1993) (same); *Lundberg v. W. Monona Cmty. Sch. Dist*., 731 F. Supp. 331, 333, 345-46 (N.D. Iowa 1989) (permitting prayers at graduation is unconstitutional); *Graham v. Central Cmty. Sch. Dist.*, 608 F. Supp. 531 (S.D. Iowa 1985) (same); *Committee for Voluntary Prayer v. Wimberly*, 704 A.2d 1199 (D.C. 1997) (prayer at public school events unconstitutional); *Sands v. Morongo Unified Sch. Dist*., 53 Cal. 3d 863 (Cal. 1991), *cert. denied*, 505 U.S. 1218 (1992) (graduation prayers unconstitutional); *Bennett v. Livermore Unified Sch. Dist.*, 193 Cal. App. 3d 1012 (1st Dist. 1987) (same).[6]

Courts have also held that prayer at awards ceremonies and school assemblies are unconstitutional. *Ingebretsen*, 88 F.3d at 280 (assemblies and other school sponsored events); *See A.M. v. Taconic Hills Cent. Sch. Dist*., 510 Fed. Appx. 3, 7-8 (2d Cir. 2013), *cert. denied*, 134 S. Ct. 196 (2013) (awards ceremony); *Collins v. Chandler Unified Sch. Dist*., 644 F.2d 759, 760-63 (9th Cir. 1981) (student assembly); *S.D. v. St. Johns County Sch. Dist*., 632 F. Supp. 2d 1085, 1100 (M.D. Fla. 2009) (same); *Golden v. Rossford Exempted Vill. Sch. Dist*., 445 F. Supp. 2d 820, 823-25 (N.D. Ohio 2006) (same). *See also Mellen v. Bunting*, 327 F.3d 355, 367, 370-72 (4th Cir. 2003) (supper prayers at military school violated Establishment Clause).

Courts, including the Supreme Court, have even ruled that student-led prayers delivered at purely voluntary events such as football games, violate the Establishment Clause. *See Santa Fe*, 530 U.S. at 316; *Duncanville II*, 70 F.3d at 407 (prayers at basketball games unconstitutional); *Duncanville I,* 994 F.2d 160; *Borden v. Sch. Dist.*, 523 F.3d 153, 174 n.16 (3rd

[6] *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); *Warnock v. Archer*, 443 F.3d 954 (8th Cir. 2006) (affirming contempt order on school district for violating injunction prohibiting it from orchestrating or supervising prayers at graduation ceremonies); *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 violated the Establishment Clause).

Cir. 2008); *Jager v. Douglas County Sch. Dist*., 862 F.2d 824, 830 (11th Cir. 1989) (student-led prayers at football games unconstitutional); *Doe v. Aldine Indep. Sch. Dist.*, 563 F. Supp. 883, 866-88 (S.D. Tex. 1982).

Given the clarity of the jurisprudence and the "unambiguous" command of the Consent Decree, it shocks the conscience that the School District included a prayer, delivered by a Christian pastor, at a formal school-sponsored event.

C. The School District's Awards Ceremony Endorsed and Advanced Religion in Violation of the Consent Decree and Establishment Clause.

There is no question that the prayer delivered at the Awards Ceremony endorsed and advanced religion in violation of the Consent Decree and Establishment Clause. *See Taconic Hills*, 510 Fed. Appx. 3 at 7-8, *cert. denied*, 134 S. Ct. 196 (2013) ("The Ceremony constituted 'school-sponsored expressive activities'" in which "a reasonable observer would perceive [the student's religious] speech as being endorsed by the Middle School," because "the Ceremony was set to occur 'at a school-sponsored assembly, to take place in the school [auditorium].'") (citation omitted). *See also Ingebretsen*, 88 F.3d at 277 (permitting "nonsectarian, nonproselytizing student-initiated voluntary prayer" during "noncompulsory school-related student assemblies" violated Establishment Clause). Defendants admitted that the Junior Assembly violated the Establishment Clause. (C.D. ¶7). Yet the Awards Ceremony was arguably more unconstitutionally egregious, *infra*.

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 prayer at the school's Awards Ceremony endorsed religion in violation of the Establishment Clause. 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. A prayer, "because it is religious, . . . advance[s] religion." *Hall v. Bradshaw*, 630 F.2d 1018, 1021 (4th Cir. 1980). *See also Holloman v. Harland*, 370 F.3d 1252, 1288 (11th Cir. 2004) ("facilitating any prayer clearly fosters and endorses religion over nonreligion."). Therefore, nearly every case involving graduation prayers held that such prayers

unconstitutionally advance or endorse religion in violation of *Lemon's* second prong.[7]

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 prayer 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. (M.B. Decl. ¶¶48-51) (Exh.2). Moreover, unlike the prayers in *Santa Fe*, the prayer delivered at the School District's event was neither student-initiated nor student-led. (*Id.* at ¶42) (Exh.2). Rather, the School District invited a pastor to deliver the prayer, which was also printed on the program delivered to the students. (*Id.*). And, unlike the football games in *Santa Fe*, the Awards Ceremony occurred during the regular school day, during class time. 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 fact, the Fifth Circuit ruled that merely *permitting* students to deliver sectarian prayers at high school graduations violates the Establishment Clause pursuant to the endorsement analysis. *Santa Fe*, 168 F.3d at 817. In *Santa Fe*, the school argued that its policy was constitutional because it "permits but does not require prayer." *Id.* at 818 n.10. The Fifth Circuit rejected this argument, observing that "such 'permission' undoubtedly conveys a message . . . that the government endorses religion." *Id.* at 817-18. The court went on to note that even if prayers were "spontaneously initiated[,]" school "officials are present and have the authority to stop the prayers." *Id*.[8] The court concluded that "student-selected, student-given, sectarian, proselytizing [prayers at school events] violate both the *Lemon* test and the endorsement test." *Id.* at 818. Likewise, in *Ingebretsen*, the Fifth Circuit held a statute unconstitutional, which provided

[7] *See Cole*, 228 F.3d at 1103-04; *Santa Fe*, 168 F.3d at 817; *Black Horse*, 84 F.3d at 1486; *Harris*, 41 F.3d at 458; *Gossage*, 2006 U.S. Dist. LEXIS 34613 at *19-20; *Deveney*, 231 F. Supp. 2d at 487; *Skarin*, 204 F. Supp. 2d at 1198; *Appenheimer*, 2001 WL 1885834 at *6; *Gearon*, 844 F. Supp. at 1102; *Lundberg*, 731 F. Supp. at 345; *Graham*, 608 F. Supp. at 536; *Wimberly*, 704 A.2d at 1203; *Sands*, 53 Cal. 3d at 876.

[8] *See also Lassonde*, 320 F.3d at 984 ("if the school had not censored the [religious] speech, the result would have been a violation of the Establishment Clause.").

in part that "nonsectarian, nonproselytizing student-initiated voluntary prayer shall be *permitted* during compulsory or noncompulsory school-related student assemblies." 88 F.3d. at 277 (emphasis added). The court reasoned that the "statute's effect is to advance religion over irreligion because it gives a preferential, exceptional benefit to religion." *Id.* at 279. *See also Karen B.*, 653 F.2d at 902 (policy permitting student-initiated prayers failed *Lemon's* second prong even though participation was "wholly voluntary"). The Third and Ninth Circuits similarly held, even prior to *Santa Fe*, that school districts could not delegate authority to students to decide whether or not to have a prayer, as this is a decision the school itself could not make. *Black Horse*, 84 F.3d at 1483; *Harris*, 41 F.3d at 455. *A fortiori*, the School District's actions here, in *inviting* a pastor to deliver a prayer at its school-sponsored event, violate the Establishment Clause pursuant to the endorsement analysis of *Lemon*.

D. The School District's Awards Ceremony Coerced Students to Participate in a Religious Activity, in Violation of the Consent Decree and Establishment Clause.

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. 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 [school event] places public pressure, as well as peer pressure" on students. *Id.* at 593. "This pressure, though subtle and indirect, can be as real as any overt compulsion." *Id.* Objecting students are placed "in the dilemma of participating, with all that implies, or protesting." *Id.* The Court in *Lee* concluded that the "State may not, consistent with the Establishment Clause, place primary and secondary school children in this position." *Id.*

Notably, in *Santa Fe*, the Court went further, holding that student-initiated, student-led prayers at football games, where attendance was completely voluntary, failed the coercion test. 530 U.S. at 310. Likewise, many courts, including the Fifth Circuit, have ruled held that student-

led prayers at graduations[9] and other school events such as assemblies,[10] fail the coercion test too.

The School District's "involvement in the school prayers challenged today violates these central principles" articulated in *Lee. Lee*, 505 U.S. at 587. That "involvement is as troubling as it is undenied." *Id.* 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.* A school official "chose the religious participant, here" a Christian pastor, "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.

The School District's "role did not end with the decision to include a prayer and with the choice of a clergyman." *Id.* The School District distributed programs to the students informing them that an "invocation" would be delivered by a Reverend of a particular Methodist church. (M.B. Decl. ¶42) (Exh.2). Students were told to wear "church attire." (*Id.* at ¶59). Many students complied with this instruction. (*Id*). The event took place during class time. Indeed, students were excused from their classes to attend this event held on a School District campus multipurpose room. (*Id.* at ¶¶45-46). The students were told to "stand" for the prayer, and were also told to "bow their heads" for the prayer. (*Id.* at ¶¶62-63). Students could also see their principals and other school officials participating in the prayer. (¶¶68-69).

As in *Lee*, the "prayer exercises in this case" are "improper because the State has in every practical sense compelled attendance and participation in an explicit religious exercise." 505 U.S.

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[9] *See Lassonde*, 320 F.3d at 983; *Cole*, 228 F.3d at 1104; *Santa Fe*, 168 F.3d at 818; *Black Horse*, 84 F.3d at 1480; *Harris*, 41 F.3d at 457; *Workman*, 2010 U.S. Dist. LEXIS 42813 at *16-17; *Gossage*, 2006 U.S. Dist. LEXIS 34613 at *20-21; *Deveney*, 231 F. Supp. 2d at 485-88; *Gearon*, 844 F. Supp. at 1099; *Wimberly*, 704 A.2d at 1202-03.

[10] *Ingebretsen*, 88 F.3d at 279 (statute permitting student prayer in school assemblies "is also unconstitutional under the 'coercion test,'" as it would "allow prayers to be given by any person . . . at school functions where attendance is compulsory").

at 598. Under *Lee*, unconstitutional coercion occurs when: "(1) the government directs (2) a formal religious exercise (3) in such a way as to oblige the participation of objectors." *Santa Fe*, 168 F.3d at 814. Each of these elements are met in this case, *infra.*

The first element is met because the prayer was "state-directed" in light of the "school district's supervision and control" of the event. *Lee*, 505 U.S. at 593. *See also Santa Fe*, 530 U.S. at 301-02 (football games are school-sponsored events). Second, the prayer clearly constituted a formal "religious exercise" as in *Lee. See also Karen B.*, 653 F.2d at 901 (stating that because "prayer is a primary religious activity in itself, its observance in public school classrooms has . . . a[n] obviously religious purpose"). The final element is met because the prayers "oblige the participations of objectors." *Lee*, 505 U.S. at 593. The "ceremony [is] a school-sponsored function" that students receiving a particular ACT score were "expected to attend." *Lassonde*, 320 F.3d at 985. *Lee* makes clear that the "First Amendment prohibits [a school] from requiring religious objectors to alienate themselves from the [school] community in order to avoid a religious practice." *Mellen*, 327 F.3d at 372 n.9 (citing *Lee*, 505 U.S. at 596).

In *Santa Fe*, the school district argued that its policy permitting uncensored student-led, student-initiated remarks, which could include prayers, was "distinguishable from the graduation prayer in *Lee* because it does not coerce students." 530 U.S. at 310. The Supreme Court rejected this contention, first holding that the student-initiation did not "insulate the school from the coercive element of the final message." *Id.* Next, the Court observed that even "if we regard every high school student's decision to attend a home football game as purely voluntary, we are nevertheless persuaded that the delivery of a pregame prayer has the improper effect of coercing those present." *Id*. at 311-12. *See also Collins*, 644 F. 2d at 761 (holding that a school's granting of "permission for students to conduct prayers [to open assemblies] cannot be saved from constitutional attack merely because attendance at school assemblies is voluntary").[11]

[11] *Accord Aldine*, 563 F. Supp. at 886-887 ("the fact that participation in a religious activity is not obligatory will not prevent a constitutional conflict"); *St. Johns County*, 632 F. Supp. 2d at 1096 ("Even if it is established that attendance at the Assembly was voluntary, 'the argument that option of not attending the [Assembly] excuses any inducement or coercion in the [Assembly] itself… lacks all persuasion.' *Weisman*, 505 U.S. at 595.") (alterations in original).

To "subject a student at such an event to a display of religion that is offensive or not agreeable to his or her own religion or lack of religion is to constructively exclude that student. . . The Establishment Clause does not permit this." *Gearon*, 844 F. Supp. at 1099-100. *See also Collins*, 644 F.2d at 762 (students "must either listen to a prayer chosen by a select group of students or forego the opportunity to attend a major school function. It is difficult to conceive how this choice would not coerce a student"). That is precisely what the School District has done in this case, and will likely continue to do so in the absence of judicial intervention.

Of course, "an Establishment Clause violation does not depend upon the presence of actual governmental coercion." *Karen B.*, 653 F.2d at 902. *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."); *Carlino,* 57 F. Supp. 2d at 24 ("government endorsement of religion, in the absence of coerced participation, still violates the Establishment Clause."). As the Supreme Court made clear in *Engel*, "[n]either the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of students is voluntary can serve to free it from the limitations of the Establishment Clause." 370 U.S. at 430. The Court reiterated this in *Schempp*, holding that the unconstitutionality of the religious exercises was not "mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause." 374 U.S. at 224-25.

The fact that the School District in this case did coerce students, including Plaintiff, to participate in the quintessential religious exercise – prayer – simply makes their actions more egregiously unconstitutional.

V. THE COURT MAY ENFORCE THE CONSENT DECREE THROUGH CIVIL CONTEMPT AND FURTHER INJUNCTIVE RELIEF.

A. Civil Contempt

There "can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt." *Shillitani v. United States*, 384 U.S. 364, 370 (1966).

Accord Spallone v. United States, 493 U.S. 265, 276 (1990); *Reynolds v. McInnes*, 338 F.3d 1201, 1208, (11th Cir. 2003) (consent decrees, like all injunctions, are to be enforced through trial court's civil contempt power); *Cooper v. Noble*, 33 F.3d 540, 545 (5th Cir. 1994). *See also* Fed. R. Civ. P. 70 (e). The Fifth Circuit has also made it abundantly clear that "[c]ourts have, and must have, the inherent authority to enforce their judicial orders and decrees in cases of civil contempt." *Cook v. Ochsner Foundation Hospital*, 559 F.2d 270, 272 (5th Cir. 1977). *Accord United States v. Alcoa, Inc*., 533 F.3d 278, 287 (5th Cir. 2008). Indeed, it is well-settled law that "the power to punish for contempt is an inherent power of the federal courts." *In re Bradley*, 588 F.3d 254, 265 (5th Cir. 2009).

Civil contempt has three elements: (1) a court order is in effect; (2) the order requires certain conduct by the defendant; and (3) the defendant has failed to comply with the court's order. *Id*. at 267. When seeking a civil contempt order, a movant must show these requirements by clear and convincing evidence. *Lyn–Lea Travel Corp.v. American Airlines, Inc*., 283 F.3d 282, 291 (5th Cir. 2002). In this case, Plaintiff has demonstrated each of these elements by clear and convincing evidence.

First, there is clearly an effective court order in the form of a consent decree. *See Frew v. Hawkins*, 540 U.S. 431, 437 (2004); *Viator v. Miller*, 136 Fed. Appx. 615, 615-16 (5th Cir. 2005) (contempt proper for violation of consent decree); *United States v. City of Jackson*, 359 F.3d 727, 731 (5th Cir. 2004) (same); *United States v. Chromalloy Am. Corp*., 158 F.3d 345, 349 (5th Cir. 1998) (a consent decree is "an enforceable judicial order"); *Baylor v. United States Dep't of Housing and Urban Dev*., 913 F.2d 223, 225 (5th Cir.1990) (holding that "[a] consent decree is a judicial order"); *Ho v. Martin Marietta Corp*., 845 F.2d 545, 547 (5th Cir. 1988).

Second, the Consent Decree requires certain conduct by Defendants, *viz.,* complying with the Establishment Clause, refraining from endorsing or advancing religion and from coercing students to participate in religious activity. (C.D. ¶5 (a), Exh. A); (Dkt. 63).

Third, as shown above, Defendants clearly failed to comply with the Consent Decree by violating the Establishment Clause, endorsing and advancing religion, and by coercing students, including Plaintiff, to participate in religious activity during school hours, *supra.* Thus, they are

in contempt of court. This is true even if they did not *intend* to violate the Consent Decree. Willfulness is not an element of civil contempt. *McComb v. Jacksonville Paper Co*., 336 U.S. 187, 191 (1949) ("An act does not cease to be a violation of a law and of a decree merely because it may have been done innocently."); *Perry v. O'Donnell*, 759 F.2d 702, 705 (9th Cir. 1985) ("civil contempt may be established even though the failure" is "unintentional."). The "sole question is whether a party complied with the district court's order." *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983). "[G]ood faith" does "not immunize a party." *McLean v. Cent. States, Se. & Sw. Areas Pension Fund*, 762 F.2d 1204, 1210 (4th Cir. 1985). Indeed, the "law is firmly established" that "good faith is not a defense to civil contempt." *Goya Foods, Inc. v. Wallack Mgmt. Co*., 290 F.3d 63, 76 (1st Cir. 2002).

A "person fails to act as ordered by the court" and is thus liable in civil contempt "when he fails to take 'all the reasonable steps within [his] power to insure compliance with the [court's] order.'" *Cuviello v. City of Stockton*, 2009 U.S. Dist. LEXIS 4896, *21-22 (E.D. Cal. 2009) (citing *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 406 (9th Cir. 1976)). *See United States v. Ryan*, 402 U.S. 530, 534 (1971); *United States v. Darwin Constr. Co*., 873 F.2d 750, 754-755 (4th Cir. 1989) ("To avoid a finding of contempt, Darwin had 'to make in good faith all reasonable efforts to comply'") (citation omitted); *Workers Pension Trust Fund of Local Union 58, IBEW v. Gary's Elec*., 340 F.3d 373, 379 (6th Cir. 2003). Thus, "unless a respondent introduces some evidence to suggest that he has made *all reasonable efforts* to comply," he "will not rebut the prima facie showing of non-compliance." *United States v. Hayes*, 722 F.2d 723, 725 (11th Cir. 1984) (emphasis added).

Defendants have not taken all reasonable efforts to comply – far from it in fact. As discussed in more detail above, Defendants' actions in inviting a Christian Reverend to deliver a prayer at a formal school sponsored event violated the Establishment Clause under well-settled Supreme Court precedent. Accordingly, Defendants are in contempt. *See Williamson v. Recovery Ltd. P'ship*, 467 Fed. Appx. 382, 402 (6th Cir. 2012) (parties' "failure to take meaningful steps to ensure compliance with the Consent Order solidly underpins the contempt judgment"). The

remedies for this are discussed below.

B. Monetary Remedies for Contempt

Once "a complainant makes a showing that respondent has disobeyed a decree" he "is entitled as of right to an order in civil contempt imposing a compensatory fine." *Parker v. United States*, 153 F.2d 66, 70 (1st Cir. 1946). *See Vuitton et Fils S. A. v. Carousel Handbags*, 592 F.2d 126, 130 (2d Cir. 1979). Thus, "the Court is *not free* to exercise its discretion and withhold an order awarding compensatory damages." *In re Grand Jury Subpoena*, 690 F. Supp. 1451, 1453 (D. Md. 1988) (emphasis in original). A civil contempt fine, although compensatory, need "not always [be] dependent on a demonstration of 'actual pecuniary loss.'" *Manhattan Indus., Inc. v. Sweater Bee By Banff, Ltd*., 885 F.2d 1, 5 (2d Cir. 1989) (citing *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 455-56 (1990)).

This Court may impose monetary sanctions on Defendants for their violation of the Consent Decree. 18 U.S.C.A. § 401(3) states that "[a] court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as . . . Disobedience or resistance to its lawful writ, process, order, rule, decree, or command." A "contempt sanction is considered civil if it is remedial and for the benefit of the complainant." *Alberti v. Klevenhagen*, 46 F.3d 1347, 1359 (5th Cir. 1995) (internal quotations and citations omitted). In other words, it is civil "if the purpose of the sanction is to coerce the contemnor into compliance with a court order, or to compensate another party for the contemnor's violation." *Lamar Fin. Corp. v. Adams*, 918 F.2d 564, 566 (5th Cir. 1990). Thus, a civil contempt sanction may be used to "enforce compliance with a court order." *United States v. Woodberry*, 672 F. Supp. 2d 761, 765 (S.D. Miss. 2009).

In this case, Plaintiff seeks to impose civil monetary sanctions on Defendants in order to coerce them into complying with the Consent Decree and to compensate Plaintiff for the deprivation of her constitutional rights. In addition to attorneys' fees, *infra*, Plaintiff seeks $1,000 from each Defendant to compensate her for the violation of the Consent Decree (and her constitutional rights) and asks the Court to award her $20,000 for each future violation of the Consent Decree, to coerce Defendants into compliance.

These sanctions are properly characterized as civil because they are coercive and remedial. There is no question that a plaintiff can receive compensatory damages for the violation of her First Amendment rights, especially where, as here, the plaintiff has suffered emotional harm as a result. *See Bell v. Little Axe Independent School Dist*., 766 F.2d 1391, 1408 (10th Cir. 1985) ("we believe that plaintiffs are entitled to recover compensatory damages for the loss of the inherent value of their rights under the Establishment Clause, even if they are unable to demonstrate consequential injury."); *Warnock v. Archer*, 380 F.3d 1076, 1079 (8th Cir. 2004) (affirming trial court's order of $1,000 "in compensatory damages" for Establishment Clause violation). *See also Mickens v. Winston*, 462 F. Supp. 910, 913 (E.D. Va. 1978), *aff'd*, 609 F.2d 508 (4th Cir. 1979) (compensatory damages may be awarded without proof of actual injury since "official racial segregation is inherently injurious . . ."). Compensatory damages for claims brought under § 1983 for violations of constitutional rights "may include not only out-of-pocket loss and other monetary harms, but also such injuries as 'impairment of reputation . . . personal humiliation, and mental anguish and suffering.'" *Memphis Community Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986) (quoting *Gertz v. Robert Welch, Inc*., 418 U.S. 323, 350 (1974)). In this case, Plaintiff suffered mental anguish, emotional distress and embarrassment as a result of Defendants' actions. (M.B. Decl. ¶¶66-72). *See also Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 303 (D.C. Cir. 2006), *cert. denied*, 556 U.S. 1167 (2009) (Establishment Clause violation causes "irreparable harm"); *Parents' Ass'n of P.S. 16 v. Quinones*, 803 F. 2d 1235, 1242 (2d Cir. 1986) (violation of Establishment Clause "'unquestionably constitutes irreparable injury.'"); *Doe v. Pittsylvania County*, 842 F. Supp. 2d 927, 935 (W.D. Va. 2012) ("Every time plaintiff attends a Board meeting and comes in direct contact with an overtly Christian prayer, she experiences a recurring First Amendment injury.").

The $20,000 fine for future violations of the Consent Decree is purely coercive and therefore civil. The sole purpose of the fine is to "secure future compliance," rendering it civil. *United States v. Puente*, 524 Fed. Appx. 119, 122 (5th Cir. 2013). Civil contempt sanctions are "those penalties designed to compel future compliance with a court order," and "are considered to be coercive and avoidable through obedience." *In re Prewitt*, 280 F. Supp. 2d 548, 560 (N.D.

Miss. 2003) (citation omitted). *See Martin's Herend Imports v. Diamond & Gem Trading USA*, 112 F.3d 1296, 1307 (5th Cir. 1997) (monetary sanction was civil where it was "prospective only, and thus conditioned on the contemnor's future compliance with the injunction."). Where "the fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to . . . avoid the fine through compliance." *Crowe v. Smith*, 151 F.3d 217, 227 (5th Cir. 1998) (citation omitted). The fine here is only to be imposed on Defendants if they violate the Consent Decree in the future. To this end, they can completely avoid the fine by complying with the decree and with the Establishment Clause. *See United States v. McMillan*, 53 F. Supp. 2d 895, 908 (S.D. Miss. 1999) ("Therefore, for civil contempt of the Consent Decree, this court imposes on Charles Roy McMillan a fine of $1,000.00 as an appropriate and coercive measure").

Coercive prospective fines are necessary in this case. The Fifth Circuit has recognized that "prospective fines are a strong inducement toward compliance." *Florida Steel Corp. v. NLRB*, 648 F.2d 233, 240 (5th Cir. 1981). Defendants' actions demonstrate a complete disregard of not only of this Court's order but also of Plaintiffs' First Amendment rights. Indeed, this School District is a repeat offender with a long and documented history of Establishment Clause violations. For example, the School District was previously sued for violating the Establishment Clause by requiring school prayers in classrooms while *already under the supervision of a consent decree forbidding such unconstitutional conduct*. *See Doe v. Stegal*, 653 F.2d 180, 185 (5th Cir. 1981).[12] This record of law-breaking underscores the fact that it is quite likely that these Defendants, with their disregard for the constitutional rights of non-Christians and apparent desire to promote their religion in their schools, need to be restrained by the weight of the law and by the threat of sanctions specifically. *Cf. NLRB v. A.W. Thompson, Inc*., 651 F.2d 1141, 1145 (5th Cir. 1981); *NLRB v. Schill Steel Prods., Inc*., 480 F.2d 586, 599 (5th Cir. 1973) (imposing a "compliance fine against the Company of $500 for each day and every violation of the [court's order], and a further compliance fine of $1000 per day each violation . . . continues").

[12] Prior to bringing this lawsuit, Plaintiff's counsel apprised Defendants by letter that their assemblies for the junior and senior classes violated the Establishment Clause. Defendants nevertheless *subsequently* proceeded to hold the religious assemblies for the sophomore and freshmen classes the following week.

C. Further Injunctive Relief

Remedies for contempt are not limited to monetary fines. The court may also issue further injunctive relief. *See NLRB v. Trailways, Inc*., 729 F.2d 1013, 1024 (5th Cir. 1984); *Bigsby v. Runyon*, 950 F. Supp. 761, 770-71 (N.D. Miss. 1996) (imposing injunctive relief after finding defendants in contempt); *Alliance to End Repression v. City of Chicago,* 2000 U.S. Dist. LEXIS 6342 (N.D. Ill. 2000) ("civil contempt, [] is not merely a remedy, but an action by which other remedies are possible. The remedies available in a civil contempt proceeding go beyond the finding of civil contempt itself. A finding of contempt may entail injunctive relief to bring about compliance with the previous order, as well as compensatory damages.").

Independent of contempt, consent judgments may be enforced by all legal and equitable means available to the court, including injunctive relief. *See Parker v. Ryan*, 960 F.2d 543, 546 (5th Cir. 1992) ("District courts have an inherent authority to enforce their injunctions, and to preserve their ability to render judgment") (internal citation omitted); *Spallone v. United States*, 493 U.S. 265, 276 (1990) (the "court has an additional basis for the exercise of broad equitable powers."); *Cook v. City of Chicago*, 192 F.3d 693, 695 (7th Cir. 1999) (when consent decree is violated, injured party must ask for equitable remedy). As the Seventh Circuit explained, remedies for a violation of a consent decree include both "a contempt judgment" and commonly, "a supplementary order." *Id. See, e.g.*, *Wisconsin Hospital Asso. v. Reivitz*, 820 F.2d 863, 869 (7th Cir. 1987); *Thompson v. Edward D. Jones & Co*., 992 F.2d 187, 189 (8th Cir. 1993) ("It is clear that the district court has the authority to issue an injunction enforcing the Final Judgment of Dismissal and Order which embody the terms of the settlement agreement.").

Courts possess the inherent power to assure that their orders are carried out. *See Chambers v. NASCO, Inc*., 501 U.S. 32, 43-44, 47 (1991); *People of Porto Rico v. Rosaly y Castillo*, 227 U.S. 270, 276 (1913). Specifically, district "courts have wide discretion to enforce decrees and to implement remedies for decree violations." *United States v. Alcoa, Inc*., 533 F.3d 278, 286 (5th Cir. 2008). Defendants have violated the terms of the Consent Decree that they admit are "clear and unambiguous." (Dkt. 20, p.4-5). It follows that Defendants *willfully* violated the Consent Decree and the Establishment Clause. Nevertheless, if Defendants claim in response

to this motion, that the Consent Decree is in any way unclear to them (which of course would be wholly inconsistent with their admission as to the unconstitutionality of the Junior Assembly and with their strong statements regarding the clarity of the Policy), this Court should order further injunctive relief to make clear that Defendants are not to include prayer, proselytizing religious sermons, or other religious elements (such as "church attire") at school-sponsored events.

VI. PLAINTIFF IS ENTITLED TO ATTORNEYS' FEES AND COSTS INCURRED IN ENFORCING THE CONSENT DECREE.

Plaintiff asks the Court award her reasonable attorneys' fees and costs incurred in enforcing the Consent Decree. This Court has both inherent authority and statutory authority to award attorneys' fees in this action to enforce the Consent Decree. *Cook v. Ochsner Foundation Hospital*, 559 F.2d 270, 273 (5th Cir. 1977) (court has "inherent authority of a court to award attorneys' fees in a civil contempt proceeding"). The Court's inherent enforcement power includes the authority to award attorneys' fees and costs incurred by the party enforcing the agreement. *Id. See Seven Arts Pictures, Inc. v. Jonesfilm*, 512 Fed. Appx. 419, 422 (5th Cir. 2013) ("The court's discretion to impose sanctions includes the authority to award damages n2 and attorney's fees"); *United States v. Alcoa, Inc*., 533 F.3d 278, 287-288 (5th Cir. 2008); *United States v. City of Jackson*, 359 F.3d 727, 734 (5th Cir. 2004); *TNT Marketing, Inc. v. Agresti*, 796 F.2d 276, 278 (9th Cir. 1986).

Additionally, pursuant to 42 U.S.C. § 1988 the Court may award reasonable attorney's fees to the prevailing party in an action brought under 42 U.S.C. § 1983 as is the case here.[13]

An "award of attorney's fees is an appropriate sanction where a party incurs additional expenses as a result of the other party's noncompliance." *Rousseau v. 3 Eagles Aviation, Inc*., 130 Fed. Appx. 687, 690 (5th Cir. 2005). One "theory for allowing attorneys' fees for civil contempt is that civil contempt is a sanction to enforce compliance with an order of the court or

[13] However, the Court need not find Plaintiff to be the "prevailing party" to award attorneys' fees in this action to enforce the Consent Decree. *See Rousseau v. 3 Eagles Aviation, Inc*., 130 Fed. Appx. 687, 690 (5th Cir. 2005) ("The district court's inherent power to sanction does not depend on who prevails; instead, the district court may sanction a party 'to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance.'") (citation omitted).

to compensate for losses or damages sustained by reason of noncompliance." *Cook*, 559 F.2d at 272. Attorneys' fees are proper *irrespective* of whether the disobedience was willful. *Id. See also City of Jackson*, 359 F.3d at 735 (attorneys' fees may be awarded even if the violation was not willful because the Fifth Circuit "has consistently held that good faith is not a defense to a finding of civil contempt."). Here of course, Defendants' actions were willful. They admitted the Consent Decree was "clear and unambiguous" yet violated it anyway. Accordingly, Plaintiff should be awarded reasonable attorneys' fees and costs in an amount determined at the conclusion of this proceeding.[14]

VII. CONCLUSION

Defendants' flagrant violation of not only the Consent Decree but also the Establishment Clause is grounds for civil contempt, sanctions, attorneys' fees and further injunctive relief to effectuate the terms of the Consent Decree. In view of the above, Plaintiff respectfully asks this Court to grant her Motion to Defendants in civil contempt and to award her reasonable attorneys' fees and costs incurred in this proceeding for enforcement and contempt.

Respectfully submitted,
Date: May 6, 2014

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[14] The proper method of calculating attorneys' fees uses the lodestar, multiplying a reasonable hourly rate by a reasonable number of hours expended. *See Hensley v. Eckerhart*, 461 U.S. 424, 433-35 (1983).

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