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September 8, 2015

Via Email

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David Smith, bsmith@rabun.k12.ga.us
Chairman, Board of Education, Rabun County

Bryan Edwards, bedwards@rabun.k12.ga.us
Principal, Rabun County Elementary School

Lisa Patterson, lpatterson@rabun.k12.ga.us
Principal Rabun County Primary School

Re: Constitutional Violations at Rabun County School District

Dear Ms. Williams, Mr. Smith, Mr. Edwards, and Ms. Patterson,

A Rabun County School District parent has contacted our office to request assistance with regard to what is correctly perceived as a series of constitutional violations occurring under the authority of your schools (Rabun County Primary School and the Rabun County Elementary School) and School District. The parent reports that Principal Lisa Patterson has led the student body of Rabun Primary in a Christian-specific prayer at several annual graduation ceremonies. The parent also reports that administrator-initiated prayers were delivered at the second grade graduation ceremonies at Rabun County Elementary School. In addition, there is a sign displaying "Jesus" on the grounds of the Rabun County Board of Education's offices, as shown below:

The graduation prayers and the Jesus sign are clear violations of the Establishment Clause of this First Amendment. As such, we hereby demand that the School District promptly remove the Jesus sign from school property and provide us with written assurances that: (1) prayers will no longer be delivered at school-sponsored events, including graduation ceremonies, and (2) that public school property will not be used to endorse Christianity. 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 Georgia. 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 Georgia, and we have litigated constitutional cases in state and federal courts from coast to coast, including Georgia.

On May 19, 2014, the parent attended the Second Grade Graduation for Rabun County Elementary School, held at the Rabun County Middle School auditorium. The event included class presentations of awards, musical performances by students, and culminated with a 4-5 minute Christian-specific prayer by Principal Lisa Patterson, using the words "God" and "Lord" multiple times and ending with "In Jesus' name we pray, Amen." The parent was understandably upset, as he is a non-Christian and has raised his children as non-theists.

On May 29, 2015, the parent attended the Kindergarten Graduation for Rabun County Primary School, held it the cafeteria. The event included presentation of awards by both the school (for academics) and local community organizations (for behavior), and included a 3-minute long, Christian-specific prayer by Principal Lisa Patterson, using the words "God" and "Lord" multiple times and ending with "In Jesus' name we pray, Amen." At this point, the parent was very upset and voiced his objections to Superintendent Williams. During the meeting, the parent noticed a "Jesus" sign outside the Rabun County Board of Education Building. Ms. Williams offered no explanation for the practice, other than to simply say that she would meet with the BOE attorneys and get back to the parent. By July 15, the parent had not heard back from Ms. Williams and so he called her office and left her a voice message. Soon thereafter, he received a voicemail from Ms. Williams, stating in part: "It is a personnel matter, and I know you know that because it's personnel, it's confidential, so I cannot divulge information about how it was handled. I can tell you that it has been handled and we will not be having that issue anymore." Due to the vagueness of Ms. Williams message, and the severity of the repeated constitutional violations, the parent is not convinced that the issue has been resolved.

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). 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 (2000); *Lee v. Weisman,* 505 U.S. 577, 592 (1992). 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 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); *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").[1] 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).

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, or conducting them, at school-sponsored events; and 2) that including prayers school-sponsored events (such as assemblies and graduations) 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. *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." *Duncanville*, 994 F.2d at 165. The Supreme Court has issued numerous decisions "of considerable parentage that prohibits prayer in the school classroom or environs." *Id.* at 164.[2]

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[1] *See also 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); *Doe v. Duncanville Indep. Sch. Dist*., 70 F.3d 402 (5th Cir. 1995) (school's practice of allowing coaches to participate in student prayers during athletic events violated Establishment Clause); *Doe v. Duncanville Indep. Sch. Dist.*, 994 F.2d 160, 163 (5th Cir. 1993) (*Duncanville I*) (school officials' supervision of student-initiated and student-led prayers preceding basketball games violated Establishment Clause); *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"); *Steele v. Van Buren Public Sch. Dist.*, 845 F.2d 1492, 1493 (8th Cir. 1988) (permitting teachers to conduct prayer at school functions unconstitutional); *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"). *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).

[2] *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

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).

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). The Supreme Court recently reiterated that "[o]ur Government is prohibited from prescribing prayers to be recited in our public institutions[.]" *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1822 (2014). This is especially so "in the context of a graduation[.]" *Id.* at 1827 (citing *Lee*). In such a setting, the Court held, "a religious invocation [i]s coercive as to an objecting student." *Id.* at 1827.

Federal circuit courts have been nearly unanimous in concluding that prayers delivered at primary and secondary public school graduations violate the Establishment Clause, *even* when they are student-initiated and student-led. *See Lee*, 505 U.S. at 590-92; *Doe v. Santa Fe Indep. Sch. Dist*., 168 F.3d 806, 816 (5th Cir. 1999), *aff'd*, 530 U.S. 290 (2000); *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 983 (9th Cir. 2003); *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1104 (9th Cir. 2000); *ACLU v. Black Horse Pike Regional Bd. of Educ*., 84 F.3d 1471, 1488 (3d Cir. 1996); *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).[3] Federal district courts and state courts have been similarly unanimous in holding that prayers at public school graduations are unconstitutional.[4] These cases make clear that the inclusion of prayer in a graduation ceremony "inevitably and impermissibly conveys a message that the District favors or prefers the religious beliefs expressed by the invocation and benediction speakers." *Sands*, 53 Cal. 3d at 878-79.

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 this test to public school activity, the

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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)

[3] *See also Nurre v. Whitehead*, 580 F.3d 1087, 1098 (9th Cir. 2009); *Corder v. Lewis Palmer Sch. Dist. No. 38*, 566 F.3d 1219, 1231 (10th Cir. 2009); *Warnock v. Archer*, 443 F.3d 954 (8th Cir. 2006); *Carlino v. Gloucester City High Sch.*, 57 F. Supp. 2d 1 (D.N.J. 1999), *aff'd* 44 Fed. Appx. 599 (3rd Cir. 2002). *Cf. Adler v. Duval Cty. Sch. Bd*., 250 F.3d 1330, 1342 (11th Cir. 2001) (upholding policy allowing student-initiated, student-led messages at graduation ceremonies on its face because of "the complete absence . . . of code words such as 'invocation' unequivocally connoting religion.").

[4] *See Workman v. Greenwood Cmty. Sch. Corp*., 2010 U.S. Dist. LEXIS 42813, *27 (S.D. Ind. 2010) ("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 Cnty. Sch. Bd.*, 354 F. Supp. 2d 616, 629-30 (E.D. Va. 2004); *Deveney v. Bd. of Educ. of Cnty. of Kanawha*, 231 F. Supp. 2d 483, 485-88 (S.D. W.VA. 2002) (student-led prayer); *Skarin v. Woodbine Cmty. Sch.*, 204 F. Supp. 2d 1195, 1198 (S.D. Iowa 2002); *Appenheimer v. Sch. Bd.*, 2001 WL 1885834, *6-9 (C.D. Ill. 2001); *Gearon*, 844 F. Supp. at 1099; *Lundberg v. W. Monona Cmty. Sch. Dist*., 731 F. Supp. 331, 333, 345-46 (N.D. Iowa 1989); *Graham v. Central Cmty. Sch. Dist.*, 608 F. Supp. 531 (S.D. Iowa 1985); *Committee for Voluntary Prayer v. Wimberly*, 704 A.2d 1199 (D.C. 1997); *Sands v. Morongo Unified Sch. Dist*., 53 Cal. 3d 863 (1991); *Bennett v. Livermore Unified Sch. Dist.*, 193 Cal. App. 3d 1012 (1st Dist. 1987).

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

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). In *Lee*, the Court held that a 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. 505 U.S. at 586. The Court reasoned that a school's "supervision and control of a . . . graduation ceremony places public pressure, as well as peer pressure" on students. *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.*

Notably, in *Santa Fe*, the Supreme Court held that even student-initiated, student-led prayers at football games, which were *completely voluntary*, violated the Establishment Clause under the coercion test. 530 U.S. at 310. The school district argued that the policy was "distinguishable from the graduation prayer in *Lee* because it does not coerce students." *Id.* at 310. The Court rejected this contention, observing 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.

As shown below, including prayer in public school graduations for young students, and especially prayer initiated and delivered by a principal, is unconstitutional pursuant to each prong of the *Lemon* test as well as the separate coercion test. The prayers bear "the imprint of the State and thus put school-age children who objected in an untenable position." *Lee*, 505 U.S. at 590. The "Jesus" sign also fails constitutional muster under the *Lemon* 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*, 370 F.3d at 1285 (teacher's practice of initiating silent prayer with her students violated Establishment Clause). *See also Santa Fe*, 530 U.S. at 309 ("infer[ring] that the specific purpose of the policy" permitting but not requiring student-led prayers was religious thus failing the purpose prong); *Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff'd*, 472 U.S. 38 (1985). When the government sponsors an "intrinsically religious practice," such as prayer, it "cannot meet the secular purpose prong" of the *Lemon* test. *Jager v. Douglas Cnty. Sch. Dist.*, 862 F.2d 824, 829-30 (11th Cir. 1989). Thus Principal Patterson's actions of leading the elementary school student body in prayer, specifically using the words "God," "Lord," and the phrase "In Jesus' name we pray, Amen," are plainly unconstitutional under the first prong of *Lemon*. *See Holloman*, 370 F.3d at 1285-86 (teacher's participation in silent prayer with students "during the school day" lacked secular purpose); *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"); *Karen B.*, 653 F.2d at 901 (no secular purpose in authorizing teacher-initiated prayer at the start of school day).[6]

Yet, regardless of the purposes motivating the prayers, the School District's actions fail *Lemon's* effect prong. The "effect prong asks whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval [of religion]." *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985) (quotation marks omitted). The "prohibition against governmental endorsement of religion 'preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred.'" *Allegheny*, 492 U.S. at 593 (citation omitted). Whether "the key word is 'endorsement' 'favoritism,' or 'promotion,' the essential principle remains the same. The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief[.]" *Id.* at 593-94. It is well settled that schools cannot "sponsor the . . . religious practice of prayer." *Santa Fe*, 530 U.S. at 313.

There is no question that an elementary school official actively "facilitating any prayer clearly fosters and endorses religion over nonreligion, and so runs afoul of the First Amendment. *Holloman*, 370 F.3d at 1288. Whenever a prayer "occurs at a school-sponsored event . . . the conclusion is inescapable that the religious invocation conveys a message that the school endorses" it. *Jager*, 862 F.2d at 831-32. The policy challenged in *Santa Fe* allowed the senior class to elect students to deliver a "brief invocation and/or message" at football games. 530 U.S. at 296-97. Despite the fact that any message would be student-led and student-initiated, the Supreme Court found the policy unconstitutional as it "involves both perceived and actual endorsement of religion." *Id.* at 305, 310. Here, unlike in *Santa Fe*, the prayers here are *not* even student-initiated and rather than being a voluntary football game, the prayers are delivered at graduation ceremonies to a captive audience of students and parents. In this context, "an objective observer" would inevitably "perceive [the prayers] as a state endorsement of prayer." *Id*. at 308 (internal quotation marks omitted).

"A religious service under governmental auspices necessarily conveys the message of approval or endorsement. Prevailing doctrine condemns such endorsement, even when no private party is taxed or coerced in any way." *Doe v. Crestwood*, 917 F.2d 1476, 1478 (7th Cir. 1990). Indeed, numerous cases have specifically held that the second prong of *Lemon* is violated when faculty (or administrators) merely participate in prayer with students. *See Holloman*, 370 F.3d at 1286-87; *Borden v. Sch. Dist.*, 523 F.3d 153, 176-77 (3d. Cir. 2008) (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 (permitting teacher to lead students in prayer failed second prong).

The fact that the school-official-led prayers are directed to elementary students makes the practice even more egregious and distinguishable from the few cases upholding graduation prayers

[6] *See also 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).

since *Lee*.[7] "Elementary schoolchildren are vastly more impressionable than high school or university students and cannot be expected to discern nuances which indicate whether there is true neutrality toward religion on the part of a school administration." *Bell v. Little Axe Indep. Sch. Dist.*, 766 F.2d 1391, 1404 (10th Cir. 1985).[8]

Finally, the school's inclusion of a prayer at the graduation ceremonies fosters excessive entanglement with religion, thus violating the Establishment Clause under *Lemon's* third prong. *See Duncanville*, 70 F.3d at 406 (faculty's participation in "prayers improperly entangle[d] [the school] in religion"); *Karen B.*, 653 F.2d at 902 (permitting teachers to lead prayers would result in "excessive governmental entanglement with religion."); *Mellen v. Bunting*, 327 F.3d 355, 375 (4th Cir. 2003) (university's sponsorship of prayer failed "*Lemon's* third prong."); *Constangy*, 947 F.2d at 1151-52 (when "a judge prays in court, there is necessarily an excessive entanglement of the court with religion."). 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*, 333 U.S. at 212. 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.[9] 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. The facts here are nearly indistinguishable from *Lee.* "A school official … decided than 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. The main difference here is that the school official did not choose "the religious participant," the school official *was* "the religious participant." *Id.* Further, in this instance it is elementary school children who are being exposed to religious activity. The "concerns animating the coercion

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[7] *See, e.g.*, *Adler v. Duval County Sch. Bd.*, 250 F.3d 1330, 1331-32 (11th Cir. 2001); *Chaudhuri v. Tennessee*, 130 F.3d 232, 239 (6th Cir. 1997) (upholding *university's* moment of silence at graduations, noting "[w]e may safely assume that doctors of philosophy are less susceptible to religious indoctrination than children are."); *Tanford v. Brand*, 104 F.3d 982, 985-86 (7th Cir. 1997) (nonsectarian invocation at *university* graduation upheld as "'University students . . . are less impressionable than younger students'") (citation omitted).

[8] *See also Peck v. Upshur Cnty. Bd. of Educ.*, 155 F.3d 274, 288 n* (4th Cir. 1998) (equal access policy allowing the limited display of religious and non-religious materials by private groups was unconstitutional "in the elementary schools" but not in the high schools); *Morgan v. Swanson*, 659 F.3d 359, 382 (5th Cir. 2011); *Walz v. Egg Harbor Twp. Bd. of Educ.*, 342 F.3d 271, 277-79 (3d Cir. 2003).

[9] 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." *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."); *Carlino,* 57 F. Supp. 2d at 24 ("government endorsement of religion, in the absence of coerced participation, still violates the Establishment Clause.").

principle are at their strongest because of the impressionability of young elementary-age children." *Peck v. Upshur Cnty. Bd. of Educ.*, 155 F.3d 274, 287 n.* (4th Cir. 1998).

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. at 598. The prayers are "state-directed" in light of the "school district's supervision and control" of the event. *Lee*, 505 U.S. at 593. 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." *Collins*, 644 F.2d at 762. In *Lassonde*, the Ninth Circuit held that the Establishment Clause required a school to censor a religious graduation speech, observing that "[e]ven if a disclaimer were given, and even if it could dissolve governmental 'entanglement' sufficiently, a disclaimer could not address the other ground underlying both *Cole* and *Lee*: permitting a proselytizing speech at a public school's graduation ceremony would amount to coerced participation in a religious practice." 320 F.3d at 984-85. Regardless "of any offered disclaimer, a reasonable dissenter still could feel that there is no choice but to participate in the proselytizing in order to attend high school graduation." *Id.*

In *Cole*, the Ninth Circuit held that including a "sectarian, proselytizing speech as part of the graduation ceremony also would have constituted District coercion of attendance and participation in a religious practice[.]" 228 F.3d at 1103-1104. The Third Circuit reached the same conclusion in *Black Horse*, holding that even if the school district divorced itself from the prayers by way of a disclaimer, the effect of any prayer would still be coercive, reasoning: "the Board cannot sanction coerced participation in a religious observance merely by disclaiming responsibility for the content of the ceremony." 84 F.3d at 1482. The court in *Gearon*, similarly concluded that "[a] high school graduation, and certainly one's right and desire to attend, is an important ingredient of school life - as much so as attending class." 844 F. Supp. at 1099-1100. To "involuntarily 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 from graduation, given the options the student has. The Establishment Clause does not permit this to occur." *Id.*

In view of the above, it is plain that the graduation prayer practice is unconstitutional and something more than a perfunctory voice message claiming in vague language that the situation has been "handled," *supra*, is needed to ensure that this practice will forever be enjoined.

Unfortunately, the School District's actions in unconstitutionally advancing and endorsing religion do not end with the graduation prayers. A "Jesus" display, which amounts to a monument to Christianity, is prominently posted outside the offices of the Board of Education. display plainly violates the Establishment Clause and must be immediately removed. *E.g.*, *See Stone v. Graham*, 449 U.S. 39, 41 (1980) (Ten Commandments display in public school unconstitutional); *ACLU v. Rabun Cnty. Chamber of Commerce, Inc.*, 698 F.2d 1098, 1110 (11th Cir. 1983) (cross displayed in public park held unconstitutional under *Lemon*); *Washegesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679 (6th Cir. 1994) (portrait of Jesus Christ in public school held unconstitutional pursuant to each prong of *Lemon*); *Joki v. Bd. of Educ. of Schuylerville Cent. Sch. Dist.*, 745 F. Supp. 823, 829-30 (N.D. N.Y 1990) (portrait of Jesus in public school unconstitutional)

The display fails the purpose prong of *Lemon* because there is no conceivable secular purpose for displaying an explicitly Christian sign in the parking lot of a public school. When government utilizes "religious symbols . . . its ability to articulate a secular purpose becomes the

crucial focus under the Establishment Clause." *ACLU v. Rabun Cnty. Chamber of Commerce, Inc.*, 698 F.2d 1098, 1110 (11th Cir. 1983) (Christian monument in public park held unconstitutional under *Lemon*) (internal footnote omitted). Many "courts addressing . . . challenges to the maintenance of religious symbols" have ruled that the symbols fail *Lemon* upon the "finding of a religious purpose." *Id.* at 1110 n.23.[10]

A religious purpose may be inferred where, as here, "the government action itself besp[eaks] the purpose . . . [because it is] patently religious." *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 862-63 (2005). *See Stone v. Graham*, 449 U.S. 39, 41 (1980) ("The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature. The Ten Commandments are undeniably a sacred text in the Jewsish and Christian faiths."); *Mellen*, 327 F.3d at 373. "Several courts—including the Supreme Court—have noted that the presence of patently religious symbols . . . suggest that the purpose of erecting a monument is religious motivated." *Am. Humanist Ass'n v. City of Lake Elsinore*, No. 5:13-cv-989-SVW-OP, 2013 U.S. Dist. LEXIS 188202, at *36 (C.D. Cal. July 16, 2013).[11] *See also ACLU of Ohio Found., Inc. v. Deweese*, 633 F.3d 424, 434 (6th Cir. 2011) ("The poster's patently religious content reveals Defendant's religious purpose"); *Gonzales*, 4 F.3d at 1421 (the court could find "no secular purpose served by a crucifix"); *Indiana Civ. Liberties Union, Inc. v. O'Bannon*, 110 F. Supp. 2d 842, 852 (S.D. Ind. 2000) (finding unconstitutional religious purpose based on "the very design"); *Doe v. Cnty. of Montgomery*, 915 F. Supp. 32, 36-37 (C.D. Ill. 1996) ("the sign 'THE WORLD NEEDS GOD' is undeniably a religious message….[and thus lacks a] secular purpose."). Finding a memorial cross unconstitutional pursuant to *Lemon's* purpose prong, the Eleventh Circuit in *Rabun* relied on the fact that the "cross is universally regarded as a symbol of Christianity." 698 F.2d at 1111. Here, as in the many cases cited above, there is no secular purpose "for the display" of Jesus. *Mississippi State*, 652 F. Supp. at 383. Due to its plain religious nature, the "only purpose which can be ascribed to the display of the cross is to either advance or endorse the Christian religion." *Id*.

Regardless of the purposes motivating it, the display fails *Lemon's* second 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*, 472 U.S. at 56 n.42 (1985) (quotation marks omitted). The "advancement need not be material or tangible. An implicit symbolic benefit is enough." *Friedman v. Board of County Comm'rs*, 781 F.2d 777, 781 (10th Cir. 1985). Even the "mere appearance of a joint exercise of authority by Church and State

[10] *See McCreary Cnty. v. ACLU of Ky*., 545 U.S. 844 (2005) (Ten Commandments); *Stone v. Graham*, 449 U.S. 39, 41-42 (1980) (same); *Deweese*, 633 F.3d at 434 (same); *ACLU v. Ashbrook*, 375 F.3d 484, 492 (6th Cir. 2004) (same); *Baker v. Adams County/Ohio Valley Sch. Bd*., 86 Fed. Appx. 104 (6th Cir. 2004) (same); *Adland v. Russ*, 307 F.3d 471 (6th Cir. 2002) (same); *Ind. Civ. Liberties Union v. O'Bannon*, 259 F.3d 766, 770-71 (7th Cir. 2001) (same); *Books v. City of Elkhart*, 235 F.3d 292, 304 (7th Cir. 2000) (same); *Washegesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679 (6th Cir. 1994) (portrait of Jesus); *Gonzales*, 4 F.3d at 1421 (cross); *Harris*, 927 F.2d at 1414 (cross); *Rabun*, 698 F.2d at 1110 (cross); *Eckels*, 589 F. Supp. 222 (cross); *Gilfillan*, 637 F.2d at 930 (cross); *Lake Elsinore*, 2014 U.S. Dist. LEXIS 25180, *19 (cross); *Kimbley v. Lawrence Cnty*., 119 F. Supp. 2d 856 (S.D. Ind. 2000) (Ten Commandments); *Mendelson*, 719 F. Supp. 1065 (cross); *Mississippi State*, 652 F. Supp. at 382 (cross); *Libin*, 625 F. Supp. at 399 (cross); *Fox*, 22 Cal.3d 792 (1978) (cross); *CCSCS v. Denver*, 481 F. Supp. 522 (D.C. Colo.1979) (creche); *Ahlquist*, 840 F. Supp. 2d at 522 (prayer mural); *Doe v. Cnty. of Montgomery*, 915 F. Supp. 32, 37 (C.D. Ill. 1996) (religious sign); *Burelle v. Nashua*, 599 F. Supp. 792, 797 (D.N.H. 1984) (creche).

[11] Where, as here, the government sponsors an "intrinsically religious practice," it "cannot meet the secular purpose prong." *Jager*, 862 F.2d at 829-30. *See Jaffree*, 705 F.2d at 1534-35; *Mellen*, 327 F.3d at 373 ("When a state-sponsored activity has an overtly religious character, courts have consistently rejected efforts to assert a secular purpose for that activity."); *Constangy*, 947 F.2d at 1150 (finding religious purpose in judge's practice of opening court sessions with prayer, as it involved "an act so intrinsically religious").

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). By way of example, in *Granzeier v. Middleton*, 955 F. Supp. 741, 746-47 (E.D. Ky. 1997), *aff'd*, 174 F.3d 568 (6th Cir. 1999), the court held that a government sign depicting a small (4-inch) "clip art" cross violated the Establishment Clause—reasoning, "the sign could be, and was in fact, perceived by reasonably informed observers, to be a government endorsement of the Christian religion. The court accepts that this apparent endorsement was not intended, but this made no difference in the observer's perception."

Whenever the government decides to maintain an isolated, Christian symbol that is inherently religious on its property, this has the effect of advancing and endorsing Christianity. *Rabun*, 698 F.2d at 1109. And, a sign that says "Jesus" is "an obviously Christian emblem . . . [that] can have no other . . . effect but to further the cause of the religion it symbolizes. It thus fails to pass constitutional muster under the second part of the test." *ACLU v. Rabun County Chamber of Commerce, Inc.*, 510 F. Supp. 886, 891 (N.D. Ga. 1981), *aff'd*, 698 F.2d 1098 (11th Cir. 1983).

A religious activity is "state-sponsored" and thus unconstitutional if "an objective observer in the position of a secondary school student will perceive official school support for such religious [activity]." *Bd. of Educ. v. Mergens*, 496 U.S. 226, 249-50 (1990). *See Santa Fe*, 530 U.S. at 308 (holding that student prayers delivered as part of a school-sponsored function are "stamped with [the] school's seal of approval").

In this case, the sign in the school board's parking lot that prominently and exclusively displays the name of the central figure of the Christian religion—"Jesus"—unconstitutionally "convey[s] a message that religion or a particular religious belief is favored." *Allegheny*, 492 U.S. at 610. Such an overt Christian display "lead[s] a reasonable observer to conclude that [the school] [is] endorsing religion." *Borden*, 523 F.3d at 174-76. There is no question that such a monument placed on the school board's property is "state-sponsored" and thus, prohibited by the Establishment Clause. *See Stone*, 449 U.S. at 41; *Washegesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679 (6th Cir. 1994).[12] Holding that a portrait of Jesus displayed in a public school violated the Establishment Clause, the Sixth Circuit in *Washegesic* explained: "Christ is central only to Christianity, and his portrait has a proselytizing, affirming effect that some non-believers find deeply offensive. . . . [I]t [i]s a governmental statement favoring one religious group and downplaying others. It is the rights of these few [non-adherents] that the Establishment Clause protects." *Id.* at 684. In *Stone*, the Supreme Court recognized that:

> [p]osting of religious texts on the wall serves no such educational function. If the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments. However desirable this might be as a matter of private devotion, it is not a permissible state objective under the Establishment Clause.

[12] *See also Robinson v. City of Edmond*, 68 F.3d 1226, 1228 (10th Cir. 1995) (holding that a city seal that contained four quadrants, only one of which depicted a Latin cross had the unconstitutional effect of endorsing religion); *Ellis v. La Mesa*, 990 F.2d 1518, 1525 (9th Cir. 1993) (cross on city seal unconstitutional); *Harris v. City of Zion*, 927 F.2d 1401, 1414 (7th Cir. 1991), *cert. denied*, 505 U.S. 1218 (1992) (same); *ACLU v. City of Stow*, 29 F. Supp. 2d 845 (N.D. Ohio 1998) (same).

449 U.S. at 42. *See also 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").[13]

In *Ahlquist v. City of Cranston*, 840 F. Supp. 2d 507 (D. R.I. 2012), the court held that a prayer mural affixed to the wall of the auditorium in one of the City of Cranston's public high schools was unconstitutional. The court opined: "The Prayer Mural espouses important moral values, yet it does so in the context of religious supplication. The retention of the Prayer Mural is no doubt a nod to Cranston West's tradition and history, yet that nod reflects the nostalgia felt by some members of the community who remember fondly when the community was sufficiently homogeneous that the religion of its majority could be practiced in public schools with impunity." *Id.* at 522.

Similarly, in *Doe v. Aldine Indep. Sch. Dist*., 563 F. Supp. 883, 884 (S.D. Tex. 1982), the court held that a prayer posted "in raised block letters on the wall over the entrance to the gymnasium at Aldine Senior High School" violated the Establishment Clause. The prayer was also recited and sung by students at athletic contests, pep rallies and graduation ceremonies. The court explained that "[e]ach of these practices, under the circumstances of this case, is proscribed by the first amendment." *Id.* at 885 n.2. Notably, the court suggested that the printed prayer was even more unconstitutional than the recitation and singing of the prayer, explaining: "Though the act of posting the prayer on the gymnasium wall is distinct from the initiation of its singing and recitation, the court proceeds with the analysis as though both acts are part of the same religious practice. It would seem, however, that the posting of the words alone is unconstitutional in light of *Stone v. Graham*[.]" *Id.*

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. This letter serves as an official notice of the unconstitutional activity and demands that the School District terminate these and any similar illegal activity immediately. To avoid legal action, we demand that the School District provide us with written assurances that prayer will not be included in future school-sponsored events, and that the aforementioned sign will be permanently removed from District property.

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

Sincerely,

Monica L. Miller, Esq.

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[13] *Cf. Johnson v. Poway Unified Sch. 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," "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 Bd. of Educ.*, 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).