



February 9, 2015

Via Email

Dr. John L. Ruis, Ed.D., Superintendent
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Nassau County School District
1201 Atlantic Avenue
Fernandina Beach, FL 32034

Mrs. Natasha Drake, Principal; Natasha.drake@nassau.k12.fl.us
Yulee High School
85375 Miner Road
Yulee, FL 32097

Re: Constitutional Violation

Dear Dr. Ruis and Mrs. Drake,

Our office recently received a complaint from two students with regard to what is correctly perceived as a constitutional violation that is occurring under the authority of your school and school district. We have been informed that religious messages are being delivered over the PA system at Yulee High School every morning for the past few weeks. The students report that the morning announcements, following the moment of silent and Pledge of Allegiance, now conclude with the religious message: “God bless America.” Apparently, a school-selected student reads the morning announcements over the PA system based on a script approved by a school official.

It is inappropriate and unlawful for a public school to start the school day with an official statement over the intercom stating “God Bless America,” for such a statement affirms God-belief, validates a theistic worldview, and is invidious toward atheists and other nonbelievers. The students in question are atheists and do not believe in any god. Every day these students must witness the State, through its public schools, define patriotism in a way that portrays God-belief as consistent with ideal patriotism and disbelief as something less. Indeed, the daily validation of the religious views of God-believers resigns atheists to second-class citizens. Because attendance is mandatory, the students have no way of avoiding this daily message either. The purpose of this letter is to inform you that such religious messages violate the Establishment Clause of the First Amendment and must therefore be stopped immediately. As the Supreme Court has made clear:

School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents “that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.” [citation omitted] The delivery of such a message -- over the school's public address system, by a speaker representing the student body, under the supervision of school faculty [violates the Establishment Clause].

Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 309-10 (2000).

The American Humanist Association (AHA) is a national nonprofit organization with over 400,000 supporters and members across the country, including many in Florida. The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring separation of church and state. Our legal center includes a network of cooperating attorneys from around the country, including Florida, and we have litigated constitutional cases in state and federal courts from coast to coast.

The First Amendment's Establishment Clause “commands a separation of church and state.” *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). It requires the “government [to] remain secular, rather than affiliate itself with religious beliefs or institutions.” *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 610 (1989). Not only must the government not advance, promote, affiliate with, or favor any particular religion, it “may not favor religious belief over disbelief.” *Id.* at 593 (citation omitted). Indeed, the Establishment Clause “create[s] a complete and permanent separation of the spheres of religious 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.” *McCullum v. Bd. of Educ.*, 333 U.S. 203, 231 (1948). In “no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart.” *Id.*

To comply with the Establishment Clause, a government practice must pass the *Lemon* test,¹ pursuant to which it must: (1) have a secular purpose; (2) not have the effect of advancing or endorsing religion; and (3) not foster excessive entanglement with religion. *Allegheny*, 492 U.S. at 592. Government action “violates the Establishment Clause if it fails to satisfy any of these prongs.” *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987). In applying these general principles to the context of public schools, the Supreme Court has emphasized that courts must defend the wall of separation with an even greater level of vigilance because “there are heightened concerns with protecting freedom of conscience from [even] subtle coercive pressure in the elementary and secondary public schools.” *Lee v. Weisman*, 505 U.S. 577, 592 (1992). *See also Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000).

The school's actions fail the purpose prong of *Lemon* because there is no conceivable secular purpose for permitting religious messages to be made over the school's PA system. When the government sponsors an “intrinsically religious practice” it “cannot meet the secular purpose prong” of the *Lemon* test. *Jager v. Douglas County Sch. Dist.*, 862 F.2d 824, 829-30 (11th Cir. 1989). A religious purpose may be inferred where, as here, “the government action

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

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 Jewish and Christian faiths”); *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); *Karen B. v. Treen*, 653 F.2d 897, 901 (5th Cir. 1981) (no secular purpose in authorizing teacher-initiated prayer at the start of school day) *aff’d*, 455 U.S. 913 (1982); *Mellen v. Bunting*, 327 F.3d 355, 373 (4th Cir. 2003); *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”).

Regardless of the purposes motivating it, the school’s actions fail *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 v. Jaffree*, 472 U.S. 38, 56 n.42 (1985) (quotation marks omitted). The Establishment Clause prohibits “official preference” for “religion over nonreligion.” *Allegheny*, 492 U.S. at 605. 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).² By way of example, in *Granzeier v. Middleton*, 955 F. Supp. 741, 746-47 (E.D. Ky. 1997), *aff’d*, 173 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.”

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].” *Board 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”). The Supreme Court has stated that:

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

School Dist. v. Ball, 473 U.S. 373, 390 (1985) (internal citation omitted). In *Ahlquist v. City of Cranston*, 840 F. Supp. 2d 507 (D. R.I. 2012), the court held that a prayer affixed to the wall of the auditorium in one of the City of Cranston’s public high schools was unconstitutional. The fact that the mural was longstanding did not mitigate its religious effect. The court opined: “The Prayer Mural espouses important moral values, yet it does so in the context of religious

² See *Larkin v. Grendel’s Den*, 459 U.S. 116, 125-26 (1982) (“The mere appearance of a joint exercise of legislative authority by Church and State provides a significant symbolic benefit to religion in the minds of some by reason of the power conferred. It does not strain our prior holdings to say that the statute can be seen as having a ‘primary’ and ‘principal’ effect of advancing religion.”) (emphasis added).

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. *See also Doe v. Aldine Independent School Dist.*, 563 F. Supp. 883, 884 (S.D. Tex. 1982).

In this case, the religious messages delivered to students in public school classrooms unconstitutionally endorse religion over non-religion. *See Santa Fe*, 530 U.S. at 309; *Stone v. Graham*, 449 U.S. 39, 41 (1980); *Washegesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679 (6th Cir. 1994), *cert. denied*, 514 U.S. 1095 (1995) (ruling that portrait of Jesus Christ in public school hallway was unconstitutional). 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.” 449 U.S. at 42. *See also Johnson v. Poway Unified School Dist.*, 658 F. 3d 954, 957 (9th Cir. 2011) (upholding school’s decision to require teacher to remove classroom banners that were religious, such as “God Bless America”); *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”).

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 religious messages here are “delivered to a large audience assembled as part of a regularly scheduled, school-sponsored function.” *Id.* at 307. Students are under the supervision and direction of school officials. Moreover, unlike in *Santa Fe*, the objecting students here are required to listen to the religious messages, as school attendance is mandatory while attendance at football games is not. In this context, “an objective observer” would inevitably “perceive [the messages] as a state endorsement,” *id.* at 308, “indicating to everyone that the religious message is favored and to nonadherents that they are outsiders.” *Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 853 (7th Cir. 2012). “[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.” *Washegesic*, 33 F.3d at 684.

That the religious messages are student-led and possibly student-initiated (although we understand that school officials draft the script) is irrelevant. In *Hall v. Board of Sch. Comm'rs of Conecuh County*, 656 F.2d 999, 1003 (5th Cir. 1981) the court held that a school violated the Establishment Clause by “permitting students to conduct morning devotional readings over the school’s public address system.” And in *Meltzer v. Board of Public Instruction*, 548 F.2d 559, 574 (5th Cir. 1977), *aff'd on reh'g*, 577 F.2d 311 (1978) (en banc), a school board adopted a resolution permitting but not requiring public school students to read “inspirational” selections from the Bible over the public address system each morning. The court made a point to note that the “selections are normally selected and read by students.” *Id.* Notwithstanding the student-initiated nature of the messages, the court concluded that “it is the daily Bible reading to students in a ‘captive audience’ situation over the public address system each morning, which is violative

of the First and Fourteenth Amendments.” *Id.* See also *Goodwin v. Cross County School District No. 7*, 394 F. Supp. 417, 424 (E.D.Ark.1973).

Likewise, in *Herdahl v. Pontotoc County Sch. Dist.*, 933 F. Supp. 582, 585 (N.D. Miss. 1996) the school allowed a religious club to deliver morning prayers and devotionals over a school-wide intercom system during classroom hours. Finding the practice unconstitutional, the court issued an injunction. It was irrelevant that the prayers were voluntary. The court explained, “[a]lthough the student members of the Aletheia Club expressed their views voluntarily, the students to whom these views were broadcast did not voluntarily choose to be there Such practices over a school intercom broadcast to captive audiences of students are clearly not meetings and are not ‘voluntary in the truest sense of the word.’” *Id.* at 588. The court further noted that “[t]he case law in this country has consistently recognized that the conduct of such morning devotionals broadcast by students over a school intercom system is an unconstitutional practice.” *Id.* at 589 (citing *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 223-26 (1963); *Hall v. Board of Sch. Comm'rs of Conecuh County*, 656 F.2d 999, 1000 (5th Cir. 1981); *Meltzer*, 548 F.2d at 574; *Herdahl*, 887 F. Supp. at 905). Importantly, the court observed that “even if the defendants established a limited open forum for student speech over the intercom, devotionals and sectarian prayer broadcast over the public school loudspeaker would still violate the First Amendment.” *Id.* at 598.³

The third *Lemon* prong, the question of excessive government entanglement with religion, is also violated here, as it is obviously inappropriate for a public school to be inexplicably promoting religion and God-belief. 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.” *McCullum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948).⁴ 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 religious messages 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. 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).⁵

³ As is clear from the above, the school has no basis to assert that the religious messages are “private” speech delivered in a public forum for speech. *Id.* See also *Santa Fe*, 530 U.S. at 308. Of course, even assuming, *arguendo*, a public forum was created, the school would have to allow atheist students to declare over the loudspeaker “No Gods Bless America!” or “Satan Bless America!” lest it be in violation of the Free Speech Clause.

⁴ See also *Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144, 175 n.36 (3d Cir. 2002) (“‘Entanglement’ still matters, however, . . . in the rare case where government delegates civic power to a religious group.”).

⁵ 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

In *Lee*, the Court held that a public school’s inclusion of a nonsectarian prayer in a graduation ceremony was unconstitutionally coercive, even though the event was technically voluntary and students were not required to participate in the prayer. *Id.* at 586. A school’s “supervision and control of a . . . graduation ceremony places public pressure, as well as peer pressure” on students, the Court observed. *Id.* at 593. Students opposed to the prayer are placed “in the dilemma of participating . . . or protesting.” *Id.* The Court concluded that a school “may not, consistent with the Establishment Clause, place primary and secondary school children in this position.” *Id.* Here as in *Lee*, “the student[s] ha[ve] no real alternative which would have allowed [them] to avoid” confrontation with the religious message. *Id.* at 588.

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 this and any similar illegal activity immediately.

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.

Very truly yours,
Monica Miller, Esq.

24 (“government endorsement of religion, in the absence of coerced participation, still violates the Establishment Clause.”).