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Re: School Graduation Held in Church and Including Prayers Is Unconstitutional

The parents of a student at Mountain View Elementary School (“MVS”) recently informed us that her child’s fifth grade graduation ceremony took place in a church and included prayers as part of the ceremony. The school’s actions were clearly unconstitutional.

The American Humanist Association (“AHA”) is a national nonprofit organization with over 20,000 members and 125,000 supporters across the country, including in South Carolina. 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.¹

The Supreme Court has long made clear that the Establishment Clause “erected a wall between church and state” which “must be kept high and impregnable.” *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 18 (1947). To do so, “the Constitution mandates that the government remain secular, rather than affiliate itself with religious beliefs or institutions.” *County of Allegheny v. ACLU*, 492 U.S. 573, 610 (1989). The school’s practice of holding public school graduations in a church and including prayer as an official part of the ceremony affiliates it with Christianity in violation of these principles.

First, holding a public school graduation (for young and impressionable elementary students, no less) in a place of worship such as a Christian church, adorned with overtly sectarian symbols, is itself unconstitutional. See *Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 851 (7th Cir. 2012) (en banc) (ruling that holding a public high school graduation in a church violated the Establishment Clause). The Establishment Clause is violated where, as here, “the government directs students to attend [an

¹ The very first sentence of the Bill of Rights mandates that the state be secular: “Congress shall make no law respecting an establishment of religion.” This provision, known as the Establishment Clause, “build[s] a wall of separation between church and State.” *Reynolds v. United States*, 98 U.S. 145, 164 (1878). The Establishment Clause applies to the states pursuant to the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

event in] a pervasively Christian, proselytizing environment.” *Id.* at 855.²

Second, the prayers included in the graduation ceremony are also unconstitutional. The Supreme Court has made clear that the inclusion of even nonsectarian prayers delivered by private parties as part of a public school graduation ceremony is unconstitutional. See *Lee v. Weisman*, 505 U.S. 577 (1992) (graduation prayers unconstitutional) and *Mellen v. Bunting*, 327 F.3d 355, 376 (4th Cir. 2003) (explaining that the “Establishment Clause plainly forbids public schools from sponsoring an official prayer for young children”).³ In fact, “any kind of prayer [in secondary and elementary schools is] unconstitutional because of the impressionability of children,” and therefore the government “is prohibited from sponsoring prayer in its elementary and secondary schools.” *Mellen* at 321 n. 4, 366.

Furthermore, it does not matter whether the person delivering the prayer is a school official, the school’s chosen speaker or a student. Whenever a prayer is part of “a school-sponsored event . . . the conclusion is inescapable that [it] . . . conveys a message that the school endorses the religious invocation.” *Jager v. Douglas County Sch. Dist.*, 862 F.2d 824, 831-32 (11th Cir. 1989) *cert. denied*, 490 U.S. 1090 (1989); see also *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 303 (2000) (student-led prayers preceding school football games violated Establishment Clause). It is sufficient that the MVS *permitted* them to occur at a school-sponsored event such as the graduation.⁴

Because MVS has committed multiple constitutional violations, the school district may be sued in federal court under 42 U.S.C. § 1983, which provides that the court may not only issue an injunction

² See also *Carlino v. Gloucester City High Sch.*, 57 F. Supp. 2d 1 (D.N.J. 1999), *affirmed* 44 Fed. Appx. 599 (3d Cir. 2002) (principal’s significant involvement with a baccalaureate service violated the Establishment Clause); *Spacco v. Bridgewater Sch. Dep’t*, 722 F.Supp. 834 (D. Mass. 1989) (students could not attend classes in facilities owned by a church, based in part on the students passing “beneath a large cross” to enter the facility, along with the existence of religious flyers that the students confronted upon entry).

³ See also *Doe v. Santa Fe Indep. Sch. Dist.*, 168 F.3d 806, 816 (5th Cir. 1999), *aff’d* 530 U.S. 290 (2000); *Guidry v. Broussard*, 897 F.2d 181 (5th Cir. 1990); *Nurre v. Whitehead*, 580 F.3d 1087 (9th Cir. 2009), *cert. denied*, 130 S. Ct. 1937 (2010); *Corder v. Lewis Palmer Sch. Dist. No. 38*, 566 F.3d 1219 (10th Cir. 2009), *cert. denied*, 130 S. Ct. 742 (2009); *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 983 (9th Cir. 2003), *cert. denied*, 540 U.S. 817 (2003); *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1104 (9th Cir. 2000), *cert. denied* 532 U.S. 905 (2001) (“allowing the students to engage in sectarian prayer and proselytizing as part of the graduation ceremony would amount to government sponsorship of, and coercion to participate in, particular religious practices.”); *ACLU v. Black Horse Pike Regional Bd. of Educ.*, 84 F.3d 1471, 1488 (3d Cir. 1996). See also *Warnock v. Archer*, 443 F.3d 954 (8th Cir. 2006) (affirming a contempt order on school district for violating injunction prohibiting them from orchestrating or supervising prayers at graduation ceremonies); *Workman v. Greenwood Cmty. Sch. Corp.*, 2010 U.S. Dist. LEXIS 42813, *14-15 (S.D. Ind. 2010); *Doe v. Gossage*, 2006 U.S. Dist. LEXIS 34613, *19-20 (W.D. Ky. 2006); *Ashby v. Isle of Wight County Sch. Bd.*, 354 F. Supp. 2d 616 (E.D. Va. 2004); *Deveney v. Bd. of Educ.*, 231 F. Supp. 2d 483, 485-88 (S.D. W. Va. 2002); *Skarin v. Woodbine Cmty. Sch.*, 204 F. Supp. 2d 1195, 1198 (S.D. Iowa 2002) (issuing injunction prohibiting school choir from singing Lord’s Prayer at graduation ceremony); *Gearon v. Loudoun County Sch. Bd.*, 844 F. Supp. 1097 (E.D. Va. 1993); *Lundberg v. W. Monona Cmty. Sch. Dist.*, 731 F. Supp. 331, 333 (N.D. Iowa 1989); *Graham v. Central Cmty. Sch. Dist.*, 608 F. Supp. 531 (S.D. Iowa 1985); *Lemke v. Black*, 376 F. Supp. 87, 89-90 (E.D. Wis. 1974); *Committee for Voluntary Prayer v. Wimberly*, 704 A.2d 1199 (D.C. 1997); *Bennett v. Livermore Unified Sch. Dist.*, 193 Cal. App. 3d 1012 (1st Dist. 1987).

⁴ See also *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 278 (5th Cir. 1996), *cert. denied*, 519 U.S. 965 (1996) (holding that a school’s policy of permitting student-initiated prayer at even non-compulsory school events violated the Establishment Clause); *Hall v. Board of Sch. Comm’rs*, 656 F.2d 999, 1003 (5th Cir. 1981) (school violated the Establishment Clause by “permitting students to conduct morning devotional readings over the school’s public address system”); *Meltzer v. Bd. of Pub. Instruction*, 548 F.2d 559, 574 (5th Cir. 1977) *aff’d on reh’g*, 577 F.2d 311 (1978) (en banc), *cert. denied*, 439 U.S. 1090 (1979) (school policy permitting students to read their selections from the Bible over the public address system each morning was unconstitutional).

stopping your illegal conduct, but may award damages and require you to pay the plaintiff's attorneys fees and expenses.

If you are interested in avoiding such litigation, please notify us in writing, within two weeks of the date of this letter, that you will no longer hold graduation or other school events in churches or include prayers as part of graduation ceremonies.

Sincerely,

Monica Miller, Esq.
William Burgess, Esq.
American Humanist Association