



February 19, 2020

Via U.S. Mail

Dr. Saul Hinojosa
Superintendent of Schools
Somerset Independent School District
7791 6th Street
P.O. Box 279
Somerset, TX 78069

Ms. Sara Gonzales
Principal
Somerset Early Childhood Elementary
19930 Touchstone
Somerset, TX 78069

cc:

Education Services Center- Region-20
1314 Hines Avenue
San Antonio, TX 78208

Re: Serious Establishment Clause Violation

Dear Dr. Hinojosa and Ms. Gonzales,

I am writing to demand immediate action regarding yet another flagrant constitutional violation that is occurring under the authority of your school and school district. To refresh your memory, just two short months ago, I sent you a warning letter regarding an unconstitutional Biblical creationist display in the library (see a copy of that letter enclosed). It seemed you grasped the gravity of the situation by having the display removed promptly after my letter.¹ Despite being warned of the law and your risk of personal liability,² not even two months after the previous incident, we receive a report of another even more overtly proselytizing Christian classroom

¹ KSAT News, “Somerset ISD takes down biblical religious display after complaint from American Humanist Association,” <https://www.ksat.com/news/local/2019/12/17/somerset-isd-takes-down-biblical-religious-display-after-complaint-from-american-humanist-association/>

² As noted in my previous correspondence, because of the well-settled nature of the law on this issue, you should anticipate being held *personally* liable for damages. See generally *M.B. v. Rankin Cty. Sch. Dist.*, 2015 U.S. Dist. LEXIS 117289 (S.D. Miss. 2015) (in a case brought by the AHA, the court awarded the student \$7,500 for past Establishment Clause violations, \$57,367 in attorneys’ fees, and ordered the district to pay an additional \$10,000 for every violation thereafter).

display. Let me be clear, this display must be removed immediately and if we receive another complaint regarding a school-sponsored Christian display, there will be no courtesy warning. You can and should expect litigation.

Specifically, a parent of an elementary student at Somerset Early Childhood Elementary contacted us regarding a giant classroom door display featuring a large Latin cross with the words: “I always thought LOVE was shaped like a ♥ But LOVE is actually shaped like a †.” A photo of this display is attached herein. Because this school-sponsored display egregiously promotes Christianity and emphatically violates the Establishment Clause, litigation will follow unless corrective steps are taken immediately.

The American Humanist Association (“AHA”) is a national nonprofit organization with tens of thousands of members across the country, including many in Texas. We have litigated dozens of church-state separation cases in federal courts from coast to coast including in Texas and the Fifth Circuit.

The First Amendment’s Establishment Clause “commands a separation of church and state.” *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). 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 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), where “there are heightened concerns with protecting freedom of conscience from [even] subtle coercive pressure.” *Lee v. Weisman*, 505 U.S. 577, 592 (1992). See *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 303 (2000) (student-led, student-initiated prayers before high school football games unconstitutional); *Lee*, 505 U.S. at 592. In *Lee*, the Court held that a public school’s inclusion of a nonsectarian prayer in a graduation ceremony violated the Establishment Clause even though students were not required to participate in the prayer. 505 U.S. at 586. This is because “State exerts great authority and coercive power . . . because of the students’ emulation of teachers as role models and the children’s susceptibility to peer pressure.” *Edwards*, 482 U.S. at 584.

As the Fifth Circuit noted in 1993, “*Lee* is 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). *E.g.*, *Wallace v. Jaffree*, 472 U.S. 38, 40-42 (1985) (moment of silence to start school day unconstitutional); *Stone v. Graham*, 449 U.S. 39 (1980) (posting of Ten Commandments on classroom walls unconstitutional); *Sch. Dist. Abington v. Schempp*, 374 U.S. 203, 205 (1963) (daily scripture readings unconstitutional); *Engel v. Vitale*, 370 U.S. 421, 422-23 (1962) (school prayer unconstitutional).

Indeed, the Supreme Court’s cases place an *affirmative duty* upon public schools to “be certain . . . that subsidized teachers do not inculcate religion.” *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971). Any “[s]chool sponsorship of a religious message is impermissible.” *Santa Fe*, 530 U.S. at 309-10. The Fifth Circuit has also made clear that public schools may not endorse religion. See *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995); *Karen B v. Treen*, 653 F.2d 897 (5th Cir. 1981).

Religious displays in public schools are forbidden pursuant to directly-applicable precedent established by the Supreme Court, the U.S. District Court of Texas, and other federal courts. *E.g.*, *Stone*, 449 U.S. at 41 (Ten Commandments display in public school unconstitutional); *Doe v. Aldine Indep. Sch. Dist.*, 563 F. Supp. 883, 888 (S.D. Tex. 1982) (religious text display violated the Establishment Clause); *Washegesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679 (6th Cir. 1994) (portrait of Jesus Christ in public school held unconstitutional); *Ahlquist v. City of Cranston*, 840 F. Supp. 2d 507 (D. R.I. 2012) (prayer mural held unconstitutional); *Joki v. Bd. of Educ. of Schuylerville Cent. Sch. Dist.*, 745 F. Supp. 823, 829-30 (N.D. N.Y. 1990) (religious painting in public school unconstitutional). *See also* *Greater Houston Chapter of ACLU v. Eckels*, 589 F. Supp. 222 (S.D. Tex. 1984), *reh'g denied*, 763 F.2d 180 (5th Cir. 1985) (war memorial containing crosses and Star of David in public park unconstitutional); *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 *Doe v. Aldine Indep. Sch. Dist.*, 563 F. Supp. 883, 884 (S.D. Tex. 1982), for instance, the Texas district 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 court reasoned: "the posting of the words alone is unconstitutional in light of *Stone v. Graham*[".]” *Id.* at 885 n.2.

Lastly, the fact that this display is directed at elementary students makes this already-egregious constitutional violation even more disturbing. The "symbolism of a union between church and state is most likely to influence children of tender years." *Sch. Dist. v. Ball*, 473 U.S. 373, 390 (1985). *See also* *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160, 1170 (7th Cir. 1993) ("If the Supreme Court [in *Lee*] was concerned about the coercive pressures on fourteen-year-old Deborah Weisman, then we must be even more worried about the pressures on ten- and eleven-year-old fifth graders").

To avoid litigation, please respond to this letter within seven (7) days outlining the steps that you will take to rectify the current violation and how you intend to avoid such violations in the future. Thank you in advance for turning your attention to this important matter.

Sincerely,

Monica L. Miller

