



1777 T Street NW, Washington DC 20009-7125 | T 800.837.3792 202.238.9088 | F 202.238.9003 | legal@americanhumanist.org | www.humanistlegalcenter.org

November 18, 2014

Via Email:

Mr. Mickey Fabre, Principal; mfabre@stmary.k12.la.us
Morgan City High School
2400 Tiger Drive
Morgan City, LA 70380

Donald W. Aguillard, Superintendent; daguillard@stmary.k12.la.us
St. Mary Parish Schools
474 Hwy 317
Centerville, LA 70522

Re: Constitutional Violation

Dear Dr. Aguillard and Mr. Fabre,

A student from Morgan City High School has contacted our office to request assistance with regard to what is correctly perceived as a serious constitutional violation that has occurred under the authority of your school and school district. In particular, on November 11, 2014, Morgan City High School held an hour-long Veterans Day Assembly, on campus (in the auditorium) and during school hours (first block), which opened with a Christian prayer led by an adult. In addition, the students were instructed to stand and bow their heads for the prayer.

Attendance at the assembly was required and the students were not given prior notice that a prayer would be included as part of the assembly. The student in question felt compelled to stay at the assembly despite her sincere objection to school-sponsored prayers, because she feared the school would punish her if she attempted to leave. (Apparently, teachers have punished students in the past for exercising their constitutional right to sit out the Pledge of Allegiance.) The purpose of this letter is to advise you that this practice of including prayer in school-sponsored events must immediately cease, and that our organization will pursue the matter through litigation in federal court if it does not. We specifically demand assurances from the school district that prayer will no longer be included in such school-sponsored events in the future.

The American Humanist Association (AHA) is a national nonprofit organization with over 350,000 supporters and members across the country, including many in Louisiana. 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 Louisiana, 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). Courts "pay particularly close attention to whether the challenged governmental practice either has the purpose or effect of 'endorsing' religion." *Id.* at 592. 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 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." *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).

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 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. 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).

The Supreme Court has issued numerous decisions "of considerable parentage that prohibits prayer in the school classroom or environs." *Id.* at 164.² The same is true of Fifth 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.

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

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) (school prayer and meditation 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). *See also Allegheny*, 492 U.S. at 590 n.40.

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).

Courts have specifically held that the inclusion of prayer in a school assembly is 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); *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).

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 County Sch. Dist.*, 862 F.2d 824, 829-30 (11th Cir. 1989). *See Stone v. Graham*, 449 U.S. 39, 41 (1980); *Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff'd* 472 U.S. 38 (1985); *North Carolina Civil Liberties Union v. Constangy*, 947 F.2d 1145, 1150 (4th Cir. 1991); *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).³ A religious purpose may be inferred in this instance since “the government action itself besp[ea]ks the purpose . . . [because it is] patently religious.” *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 862-63 (2005).

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 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). *See also Santa Fe*, 530 U.S. at 309-10 (“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); *Jager v. Douglas County Sch. Dist.*, 862 F.2d 824, 830 (11th Cir. 1989) (where school officials sponsor or participate in an “intrinsically religious practice” such as prayer, even if

³ *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).

student-led, it “cannot meet the secular purpose prong.”). Consequently, the school’s inclusion of a Christian prayer in a school-sponsored assembly violates the Establishment Clause under the first prong of the *Lemon* test.

Yet, regardless of the purposes motivating it, 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. Accordingly, schools cannot “sponsor the . . . religious practice of prayer,” *Santa Fe*, 530 U.S. at 313, or otherwise 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).

A religious activity is “state-sponsored,” and therefore unconstitutional, if “an objective observer . . . w[ould] perceive official school support for such religious [activity].” *Board of Educ. v. Mergens*, 496 U.S. 226, 249-50 (1990). See, e.g., *Santa Fe*, 530 U.S. at 309-10 (holding that student-initiated, student-led prayers at public high school football game were unconstitutional). Any action by a school official that amounts to “inviting or encouraging students to pray violates the First Amendment.” *Herdahl v. Pontotoc County Sch. Dist.*, 933 F. Supp. 582, 591 (N.D. Miss. 1996).

A prayer, “because it is religious, . . . advance[s] religion.” *Hall*, 630 F.2d at 1021. 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. Clearly, the assembly was “school sponsored” as it occurred on campus, during school hours (during first block), and the principal spoke at the event.

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. Moreover, unlike in *Santa Fe*, the prayer delivered at the Veterans Day Assembly was neither student-initiated nor student-led. Rather, the School District invited an adult to deliver the prayer, thus violating well-settled Establishment Clause jurisprudence pursuant to *Lee*. In this context, “an objective observer” would inevitably “perceive [the prayers] as a state endorsement of prayer.” *Id.* at 308 (internal quotation marks omitted).

Finally, the school’s inclusion of a prayer at the assembly fostered 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.”); *Hall*, 630 F.2d at 1021 (prayer on a state map fostered unconstitutional entanglement); *Jabr v. Rapides Parish Sch. Bd.*, 171 F. Supp. 2d 653, 661 (W.D. La. 2001) (“[t]eachers, who did not actively participate in Bible distribution, but merely observed non-school personnel distribute the material, became excessively entangled with religion in violation of the Establishment Clause.”). 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 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. 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

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.* The facts here are indistinguishable from *Lee*. “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.* at 587. The school official “chose the religious participant” 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.* And indeed, “the student had no real alternative which would have allowed her to avoid the fact or appearance of participation.” *Id.* at 588.

⁴ *See also Tenaflly Eruv Ass’n v. Borough of Tenaflly*, 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.”) (citations omitted).

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

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. To avoid legal action, we kindly demand that the School District provide us with written assurances that prayer will not be included in future school-sponsored events.

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.