

# FREEDOM FROM RELIGION *foundation*

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September 15, 2011

To: District Superintendent

From: Annie Laurie Gaylor and Dan Barker  
FFRF Co-Presidents

Re: Memo on Illegality of Prayers at School-Sponsored Events; Athletic Games and Graduations

We are writing to you to outline the current state of the law regarding prayers at public schools, including athletic games and graduation ceremonies. The Freedom From Religion Foundation (FFRF) is a national nonprofit organization with over 17,000 members in every state across the country including members in Kentucky. Our purpose is to protect the constitutional principle of separation between state and church.

Our organization made headlines recently after we received a complaint from a local Kentucky resident regarding school-organized prayer at high school football games. FFRF sent a letter summarizing the law to the Superintendent of Bell County Schools on August 9, 2011, advising him of the illegality of the District's actions and requesting that prayer be stopped. Amy Peabody, an attorney with the Kentucky Department of Education, confirmed for the school district FFRF's understanding of the law was correct and affirmed that the pre-game prayer was an "unconstitutional endorsement of religion by the school district at this school." She added that she "would recommend that the school district cease this activity immediately." As a result, the Superintendent of Bell County Schools correctly halted prayers at the high school's football games.

Since the Bell County complaint, our Legal Department continues to receive complaints from parents and students across Kentucky about prayer at school-sponsored functions, particularly football games and other athletic events. Therefore, we are concerned that such violations may be commonplace in Kentucky. We encourage you to investigate and ensure schools in your district are adhering to Establishment Clause precedent and safeguarding students' rights of personal conscience.

## ***Prayers at School-Sponsored Events Are an Unconstitutional Endorsement of Religion***

It is illegal for a public school to organize, sponsor, or lead prayers at public high school events. The Supreme Court has continually struck down formal teacher or school-led prayer in public schools. See, e.g., *Abington Township Sch. Dist. v. Schempp*, 374 U.S. 203 (1963)(declared unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *Engel v. Vitale*, 370 U.S. 421 (1962)(declared prayers in public schools unconstitutional); See also *Lee v. Weisman*, 505 U.S. 577 (1992)(ruled prayers at public high school graduations an

impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985)(overturned law requiring daily “period of silence not to exceed one minute ... for meditation or daily prayer.”); *Jager v. Douglas County Sch. Dist.*, 862 F.2d 825 (11th Cir. 1989), *cert. denied*, 490 U.S. 1090 (1989)(holding unconstitutional pre-game invocations at high school football games). In each of the aforementioned cases, federal courts have struck down prayer in public schools because it constitutes a government endorsement of religion, in violation of the Establishment Clause of the First Amendment.

It is important to realize that litigation against prayer and bible-reading in the public schools was typically brought by religious parents, often Roman Catholics, which was even the case in the Supreme Court’s most recent decision against devotions in schools, *Santa Fe v. Doe*, 530 U.S. 290, 308 (2000) challenging sports prayer. If you are going to have devotions, whose devotions? Which denomination, which church, which beliefs will be “blessed” by a school district? Inevitably, such actions exclude many students. In one such early case brought by Roman Catholic parents, *Weiss v. District Board*, a Supreme Court of Wisconsin justice wisely noted what the brouhaha in your District exemplifies:

“There is no such source and cause of strife, quarrel, fights, malignant opposition, persecution, and war, and all evil in the state, as religion. Let it once enter our civil affairs, our government would soon be destroyed. Let it once enter our common schools, they would be destroyed.” 44 N.W. 967, 981 (1890).

### ***Prayer at Athletic Events***

In addition, the Supreme Court has specifically struck down pre-game invocations even when they are student initiated. *See generally Santa Fe*, 530 U.S. at 308 (struck down a school policy that authorized students to vote on whether to hold a prayer at high school football games). In *Santa Fe Indep. Sch. Dist.*, the Supreme Court found the school district policy of allowing student-initiated prayer at football games to be unconstitutional. *Id.* at 320. The Court reasoned that because the football game was still a school-sponsored event, the fact that a student was leading the prayer did not cure the constitutional violation. *Id.* at 307. A prayer taking place at a “regularly scheduled school-sponsored function conducted on school property” would lead an objective observer to perceive it as state endorsement of religion. *Id.* at 308. The Court stated that in this context, “[r]egardless of the listener’s support for, or objection to, the message, an objective Santa Fe High School student will unquestionably perceive the inevitable pregame prayer as stamped with her school’s seal of approval.” *Id.* The prayers taking place at Kentucky area public schools are governed by the holding of *Santa Fe Indep. Sch. Dist.*

### ***Prayer at Graduation Ceremonies***

Furthermore, the Supreme Court has continually struck down prayers at public school graduations. *See Lee*, 505 U.S. 577 (declaring unconstitutional clergy-delivered prayers at a public school graduation). School officials may not invite a student, teacher, faculty member, or clergy to give any type of prayer, invocation, or benediction at a public high school graduation. The Supreme Court has settled this matter - high school graduations must be secular to protect the freedom of conscience of all students.

The courts have continually reaffirmed that the rights of minorities are protected by the Constitution. (The non-religious is the fastest-growing segment of the U.S. population by religious identification — at 15% by national average, according to the American Religious Identification Survey 2008, Trinity College). It makes no difference how many students want prayer or wouldn't be offended by prayer at their graduation ceremony. As the Supreme Court has said, "fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 304-305 (2000) (quoting *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 638 (1943)). "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *Barnette*, 319 U.S. at 638. The School District has a duty to remain neutral toward religion. By scheduling such graduation prayers, the District abridges its duty to remain neutral.

### ***Voluntary Attendance by Students is No Defense***

It is no defense to claim that attendance at athletic events or graduation ceremonies is voluntary. Courts have rejected arguments that voluntariness can protect a government-fostered religious activity from the requirements of the First Amendment. "If citizens are subjected to state-sponsored religious exercises, the state disavows its own duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people." *Lee*, 505 at 592. Public school children cannot be forced to choose between their First Amendment rights and their right to participate in public school events. *Id.* at 596 ("It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice."). "The Constitution, moreover, demands that the school may not force this difficult choice upon these students for it is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice." *Santa Fe*, 530 U.S. at 312. Furthermore, the Supreme Court has asserted that voluntariness has no bearing on the constitutionality of a religious practice in a public school. *Abington Sch. Dist.*, 374 U.S. at 288 (Brennan, J., concurring) ("Thus, the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question...").

The transmission of religious beliefs is reserved to the private sector. School endorsement of prayer is particularly troubling for those parents and students who are nonbelievers or who hold religious beliefs other than those of the prayer organizers. The "[s]chool 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 accompanying message to adherents that they are insiders, favored members of the political community.'" *Santa Fe* 530 U.S. at 309-10 (quoting *Lynch v. Donnelly*, 465 U.S. 668 (1984))(O'Connor, J., concurring).

### *Religiously Neutral Environment at Public School Events*

This country was founded in part on the need to keep religion and government separate. This principle is all the more important as our collective diversity grows. It is also paramount as parents are increasingly concerned about violence, bullying and hate crimes in public schools. In order to serve and protect all of America's children, public schools must be vigilant in their efforts to provide a religiously neutral environment. We must show our children how to accept individuals of other religions and of no religion and how to respect our secular public education system. This can only be accomplished through the maintenance of strict neutrality toward religion at any school-sponsored event or activity.

Needless to say, children may pray individually according to their own desires, when and if they wish, throughout the school day, so long as it is not disruptive. This type of personal conduct simply bears no relationship to government-fostered, promoted or endorsed prayers which our courts have ruled impermissible. Prayers imposed by the schools over loud speakers at athletic events and other school-sponsored events bear the imprint of the state.

The Bill of Rights exists in part to protect minorities from the tyranny of the majority. The genius of the Constitution is found in its ability to protect our nation's minorities from the shifting will of the majority. There are some matters of conscience, such as religious freedom, that our nation's founders deemed too precious to submit to popular vote. Any argument for majority rule in the realm of the First Amendment fails to account for the varying religious majorities in our diverse nation. Should school districts around the country pray to different gods according to the demography of their constituents?

To paraphrase George Santayana, those who do not learn from history are doomed to repeat it. In their respective struggles for their constitutional rights, the plaintiff children in landmark Supreme Court cases suffered immense persecution at the hands of the classmates and community members. We must prevent this type of religious persecution from recurring in our public schools. Public schools must be a safe and neutral learning environment for children of all faiths and of no faith. Furthermore, children, who are our most vulnerable and impressionable citizens, should not be forced to come forward to protest violations of rights that they are only beginning to learn about. Instead it is our responsibility to protect students by teaching them about their constitutional rights, and by safeguarding these rights.

If you have any questions or concerns, please let us know. We would be pleased to discuss this matter with you or your staff. Thank you for taking the time to read this letter and for protecting the freedom of conscience of all district students, parents and visitors.