

FREEDOM FROM RELIGION *foundation*

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January 21, 2011

Reecha Black
264 E. Park St.
Alamo, TN 38001

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RE: Prayer at Athletic Events

Dear Reecha Black:

I am writing to alert you to serious constitutional concerns involving prayer, sometimes including student-led prayer, at high school athletic events. FFRF is a national nonprofit organization with about 16,000 members across the country including nearly 200 in Tennessee. Our purpose is to protect the constitutional principle of separation between state and church.

I am writing to you to outline the current state of the law regarding prayer at athletic events, because of concerns that these violations are commonplace in Tennessee, and, to urge you to investigate and ensure schools in your district are adhering to the law.

It is well settled that public schools cannot offer prayer at school-sponsored events. Our organization made headlines in Tennessee last fall after we received a complaint from a high school student about school-organized prayer at her high school football games. FFRF sent a letter outlining the law to the superintendent of Hamilton County Schools in October 2010 and requested the prayer be stopped. The superintendent correctly took prompt action to cease all illegal prayer at district athletic events. Since then our Legal Department continues to receive complaints from parents and students across Tennessee about prayer at school sponsored functions, particularly football games and other athletic events.

It is illegal for a public school to organize, sponsor, or lead prayers at public high school athletic 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.

In addition, the Supreme Court has specifically struck down pre-game invocations even when they are student initiated. See generally *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (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. 530 U.S. 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 Tennessee area public schools are likely governed by the holding of *Santa Fe Indep. Sch. Dist.*

It is no defense that attendance at athletic events is voluntary. Courts have rejected arguments that voluntariness can protect a religious activity from the requirements of the First Amendment. Public school children cannot be forced to choose between their First Amendment rights and their right to participate in public school events. See generally *Lee v. Weisman*, 505 U.S. 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."). 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...").

Furthermore, 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 Indep. Sch. Dist.*, 530 U.S. at 309-10 (quoting *Lynch v. Donnelly*, 465 U.S. 668 (1984)) (O'Connor, J., concurring).

This country was founded in part on the need to keep church 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 embrace individuals of other religions and how to respect secular establishments. This can only be accomplished through the maintenance of strict neutrality towards religion at any school sponsored event or activity.

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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 their 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. Furthermore, children, who are our most vulnerable citizens, should not be forced to stand and assert the rights that they are only beginning to learn about. Instead, it is our responsibility to protect them and teach them about their constitutional rights.

Of course 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 prayer simply has no relationship to the types of prayers complained about by our members. Prayers at athletic events are school sponsored and bear the imprint of the state. They can hardly be confused with the spontaneous and personal prayer of an individual student.

The Constitution exists 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?

If you have any questions or concerns, please let me know. Thank you for taking the time to read this letter and for protecting the freedom of conscience of all district students, parents and visitors.

Sincerely,

Annie Laurie Gaylor
Annie Laurie Gaylor

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