FREEDOM FROM RELIGION *foundation*

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November 24, 2017

SENT VIA EMAIL & U.S. MAIL
gardenhourc@k12tn.net

Dr. Corey Gardenhour
Director of Schools
Elizabethton City Schools
804 South Watauga Ave
Elizabethton, TN 37643

Re: Unconstitutional Prayer at Elementary School Open House

Dear Dr. Gardenhour:

I am writing to you once more on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Elizabethton City Schools, and again involving Principal Travis Hurley. As you may recall, FFRF is a national nonprofit organization with over 30,000 members across the country, including nearly 400 members in Tennessee and a regional chapter in Knoxville. FFRF's purposes are to protect the constitutional separation between state and church, and to educate the public on matters relating to nontheism.

A concerned District parent reported that an open house, held at East Side Elementary School on August 22, 2017, featured yet another school-sponsored prayer, again at the apparent direction of Principal Hurley. It is our understanding that at the open house, Principal Hurley invited up three young girls to speak. He introduced each girl individually, telling the audience their name and what they would be reading. The first girl read a secular inspirational quote; the second led the crowd in the Pledge of Allegiance; and the third recited a Christian prayer.

We write to remind you, as we did in April, that Elizabethton City Schools may not schedule prayer during school-sponsored events. To do so plainly violates the Establishment Clause of the First Amendment.

As you know, it is unlawful for any school-sponsored event to include prayer. The Supreme Court has continually struck down formal and school-led prayer in public schools. *See, e.g., Engel v. Vitale*, 370 U.S. 421 (1962) (declaring prayers in public schools unconstitutional); *Abington Twp. Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (declaring unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *Lee v. Weisman*, 505 U.S. 577 (1992) (ruling prayers at public school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily one minute "period of silence . . . for meditation or daily prayer").

Even when student-initiated, the Supreme Court has found prayers taking place at school-sponsored events unconstitutional. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (striking down a school policy that authorized students to vote on whether to hold a prayer at high school football games). In all of the aforementioned cases, the Supreme Court struck down school-sponsored prayer in public schools because it constitutes a government

endorsement of religion, which violates the Establishment Clause of the First Amendment and interferes with the personal conscience of students and their parents.

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.* The Court stated that in this context, "Regardless of the listener's support for, or objection to, the message, an objective . . . student will unquestionably perceive the inevitable . . . prayer as stamped with her school's seal of approval." *Id.*

Please note that it is no defense to assert that participation in the prayer was "voluntary." The Supreme Court has summarily rejected arguments that voluntariness excuses a constitutional violation. *See Lee*, 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."); *Schempp*, 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"); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) ("VMI cannot avoid Establishment Clause problems by simply asserting that a cadet's attendance at supper or his or her participation in the supper prayer are 'voluntary.' ").

Courts have continually reaffirmed that the rights of minorities are protected by the Constitution. It makes no difference how many people want prayer or wouldn't be offended by prayer at school events, because "fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Id.* at 304-05 (quoting *W.Va. Bd. of Educ. 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 District has a duty to remain neutral toward religion. By including prayers at school-sponsored events, the District abridges that duty and alienates the 38% of young Americans who are not religious.[1]

In your April 28, 2017 letter to FFRF Legal Director Rebecca Markert, you said you hoped that our letter would "help guide [Principal Hurley] in his decisions in the future." It appears to have done no such thing. We ask that you discontinue prayer at all future school-sponsored activities. All District staff, and Principal Hurley in particular, should be reminded of their First Amendment obligations and instructed accordingly. Please inform us in writing of the steps you are taking to remedy this violation.

Sincerely,

Colin E. McNamara, Esq.
Robert G. Ingersoll Legal Fellow
Freedom From Religion Foundation

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[1] Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (2017), available at: https://www.prri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf