

# FREEDOM FROM RELIGION *foundation*

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September 21, 2017

**SENT VIA EMAIL & U.S. MAIL: [jmoore@leedsk12.org](mailto:jmoore@leedsk12.org)**

Mr. John J. Moore  
Superintendent  
Leeds City Schools  
P.O. Box 1029  
Leeds, AL 35094

Re: Religious Marching Band Routine

Dear Superintendent Moore:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a constitutional violation occurring at Leeds High School. FFRF is a national nonprofit organization with more than 29,000 members across the country, including members in Alabama. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned parent has reported that the Leeds High School band performs a halftime show that is designed to resemble a Christian church service. We understand the performance features Christian themed music and involves church pews set up on the field to resemble a church service. Please see the enclosed photos. We understand the some of the songs performed during this show include: Will the Circle be Unbroken, I Saw the Light, Swing Low Sweet Chariot, Joyful Joyful We Adore Thee, and Amazing Grace. The concerned parent also reports that Chip Wise, the band director, has said that members of the band who do not support this religious routine can “drop out of band.”

We write to ensure that the Leeds High School band no longer incorporates religion in its performances and that band director Wise is not permitted to promote his personal religious beliefs to students.

It is well settled that public schools may not advance or promote religion. *See generally Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 393 U.S. 97 (1967); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). The Supreme Court has held that “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lee*, 505 U.S. at 589). In *Lee* the Supreme Court extended the prohibition of school-sponsored religious activities beyond the classroom to all school functions, holding prayers at public high school graduations an impermissible establishment of religion. Similarly, turning a school-sponsored marching band performance into a religious event violates the constitutional separation of religion and government.

Leeds City Schools has a responsibility to ensure that performances by school-sponsored groups do not impermissibly promote religion over nonreligion or Judeo-Christianity over all minority faiths. The Supreme Court has repeatedly noted that “[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 an 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, 688 (1984) (O’Connor, J., concurring)).

Religion is a divisive force in public schools. Including Christian themed music and props in a marching band performance alienates those non-Christian students, teachers, and members of the public whose religious beliefs are inconsistent with the message being promoted by the school. It is particularly inappropriate given that over 20% of the U.S. population identifies as non-religious.<sup>1</sup> Younger Americans are the least religious population in the country: one-in-three millennials—those born after 1981—are not religious.<sup>2</sup> It is a statistical certainty that there are nonreligious students in the Leeds High School marching band. Certainly there are plenty of appropriate secular alternatives that the band director may select.

It does not matter whether band practices and performances take place outside of regular instructional time. The message being sent is still one of religious endorsement. It is also legally immaterial that students volunteer to participate in the band and that they could “drop out,” as director Wise callously suggested. The Supreme Court has summarily rejected arguments that voluntariness can mitigate unconstitutional religious promotion. *See generally, 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 . . .”).

Please ensure that the district is not impermissibly promoting religion in school-sponsored performances. The district should remind Wise of his constitutional obligation to remain neutral toward religion while acting in his capacity as a district employee. The marching band must not be used as a mouthpiece to promote anyone’s personal religion. Please inform us in writing of the steps the district is taking to remedy this violation.

Sincerely,



Christopher Line  
Patrick O’Reiley Legal Fellow  
Freedom From Religion Foundation

Enclosures

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<sup>1</sup> *America’s Changing Religious Landscape*, Pew Research Center (May 12, 2015), available at [www.pewforum.org/2015/05/12/americas-changing-religious-landscape/](http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/).

<sup>2</sup> *Id.*

