

FREEDOM FROM RELIGION *foundation*

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November 1, 2017

SENT VIA EMAIL & U.S. MAIL: lbyars@rcs.rome.ga.us

Mr. Louis Byars
Superintendent
Rome City Schools
508 East Second Street
Rome, GA 30161

Re: Religious Marching Band Routine

Dear Superintendent Byars:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a constitutional violation occurring in Rome City Schools. FFRF is a national nonprofit organization with more than 29,000 members across the country, including over 400 members in Georgia and a state chapter. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

It is our understanding that the director of the Rome High School marching band chose a Christian worship theme for 2017. We understand that the 2017 performance is called, "Alleluia!," which literally means "Praise ye Yah," a short form of "Praise Yahweh" or simply "Praise the Lord." The performance features church windows as field props, and includes flags with the names of multiple books from the Bible written on them. Please see the enclosed photos. We also understand that the musical selection includes biblically inspired songs such as, "Praise Ye The God of Gold," "Sing Aloud to God Our Strength," and "Come Thou Fount of Every Blessing."

We write to ensure that the Rome High School marching band no longer incorporates religion into its future performances.

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.

Rome 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.¹ Younger Americans are the least religious population in the country: one-in-three millennials—those born after 1981—are not religious.² It is a statistical certainty that there are nonreligious students in the Rome 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. 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 the band’s director 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 to promote 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

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

² *Id.*

