

FREEDOM FROM RELIGION *foundation*

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September 25, 2018

SENT VIA EMAIL & U.S. MAIL: kayla@morallaw.org

Roy Moore
President Emeritus
Foundation for Moral Law
P.O. Box 4086
Montgomery, AL 36103

Re: Misinforming school districts regarding school-sponsored prayer

Dear Mr. Moore:

We're writing on behalf of the Freedom From Religion Foundation regarding the Foundation for Moral Law's deceptive press conference and memorandum encouraging Alabama public schools to violate students' rights and the Constitution by broadcasting prayer over the loudspeaker before high school football games.

On September 21, 2018, FML held a press conference where you and other representatives of FML encouraged Alabama public schools to risk legal and financial liability by continuing to broadcast prayer over the loudspeaker before football games in defiance of well-established Supreme Court precedent. FML also announced that it had sent a memo to all Alabama school district superintendents erroneously informing them that they can skirt the Constitution by simply claiming that these school-sponsored prayers are student-led.

This memo and news conference came in response to school attorneys advising and educating the school boards they represent about how best to comply with well-established precedent. Critically, their advice protects the religious freedom of every citizen. Your memo seeks to grant the Christian majority a privileged status and relegate others to second-class citizens.

At the press conference, you stated that these school boards are "being advised by attorneys who don't understand the content of the law," which is ironic given your well-established track record of putting your religious views before the law even after repeated warnings and reprimands by multiple federal courts on several different occasions. At that time, you were only risking your own career and reputation. This time, you are encouraging public school districts to assume financial and legal risks in order to advance your agenda of using the government to unconstitutionally promote Christianity.

Your purpose, as was the case with your Ten Commandments monument and your erroneous and mischievous claim that marriage equality didn't apply in Alabama, is to establish Christianity as the paramount law of the land. The United States was first among nations to adopt a godless constitution, whose only references to religion are exclusionary, such as that there shall be no religious test for public office. The wise framers placed sovereignty not in a divinity, but in "We, the People." They explicitly repudiated the kind of theocracy you have misspent your life seeking to promulgate by undermining the principles in our secular Constitution.

Your memo places this theocratic purpose up front, opening with a bible verse, Matthew 5:16, which is about letting your light shine. This passage is so close to a relevant verse, that we wondered if you accidentally transposed the numbers in Matthew 6:5-6? In that passage, Jesus explicitly condemns public prayer as hypocrisy and counsels that supplicants pray in secret. As a devout Christian, you might consider heeding this portion of the Sermon on the Mount.

FML erroneously claims that FFRF's goal "is to drive religious expression out of the public arena." Our goal of course is to protect the constitutional principle of separation between church and state by ensuring that government actors, including public schools, are following well-settled Establishment Clause jurisprudence. Students, parents, and community members are all free to pray at football games, but public school districts cannot endorse those prayers by broadcasting them over the loudspeaker and "employ[ing] the machinery of the State to enforce a religious orthodoxy." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000). Notably, in *Santa Fe* the litigants were Catholics and Mormons protesting the majority Baptist prayer.

Your memo also erroneously states that FFRF "insists that prayers at public school football games violate the First Amendment to the U.S. Constitution..." It is the *Supreme Court* that "insists" that public schools adhere to the Establishment Clause, and that "insists" on protecting student freedom of conscience. FML can bury its head in the sand and deny court precedent, but it is reckless and unethical to then counsel public school officials to do the same. In *Santa Fe*, the Supreme Court struck down invocations given over the loudspeaker at public school athletic events, even when student-led, because prayers at a "regularly scheduled school-sponsored function conducted on school property" inevitably lead objective observers to perceive it as state endorsement of religion. *Id.* at 308.

FML erroneously claims that the 11th Circuit Court of Appeals rulings in *Adler v. Duval Cty. Sch. Bd.* and *Chandler v. Siegelman* permit school districts to set up a scheme for broadcasting prayer before football games. Neither of these post-*Santa Fe* cases support that conclusion. These cases discussed student speech rights, not situations in which public school districts have been and continue to actively encourage and endorse prayer before high school football games.

In *Adler*, the 11th Circuit Court of Appeals held that a school could allow students to deliver unvetted, unedited, unrestricted messages — which could have been about anything, including prayers — at the graduation ceremony. *Adler v. Duval Cty. Sch. Bd.*, 250 F.3d 1330 (11th Cir. 2001). The court would not have permitted those open messages if the “policy was found to be nothing more than the product of *repeated* efforts by the school district to inject prayer and other religious activities into school events...” *Id.* at 1340. Your “advice” to school districts to adopt such a policy to promote religion expressly flouts *Adler*.

In *Chandler*, the 11th Circuit held that school districts are prohibited “from taking affirmative steps to create a vehicle for prayer to be delivered at a school function.” *Chandler v. Siegelman*, 230 F.3d 1313, 1315 (11th Cir. 2000). Yet that is exactly what FML is asking school districts to do. Telling school districts that they can continue to host pre-game prayers over the loudspeaker, based on *Chandler* deliberately distorts *Chandler’s* holding that “[s]o long as the prayer is *genuinely student-initiated*, and not the product of any school policy which actively or surreptitiously encourages it, the speech is private and it is protected.” *Id.* at 1317.

In sum, your open, public push to promote the infliction of prayer upon captive audiences of students violates the strictures laid out in *Santa Fe*, *Adler*, and *Chandler*. Any school district that adopts your course of action would be violating this precedent and students’ constitutional rights, and lay itself open to legal liability.

There is no deprivation of anyone’s religious freedom when the government properly refuses to hand believers a governmental megaphone to impose prayer on other people’s children at school events. Keeping divisive religious ritual out of public schools protects the rights of all and ensures equality. Students who wish to pray are free to do so individually or privately.

Do you realize, Mr. Moore, that your theocratic work is in a sense treasonous? You are seeking to undermine our secular Constitution by governmental fiat to inflict your personal religious beliefs upon everyone else. We are sorry to see you continue your shameful and ignorant posturing.

Very truly,



Dan Barker & Annie Laurie Gaylor
Co-Presidents

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