

FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL & U.S. MAIL: bjlerles@dltj.com

Mr. William R. Jerles, Jr., Esq.
Daniel, Lawson, Tuggle & Jerles, L.L.P.
912 Main Street
P.O. Box 89
Perry, GA 31069

Re: Multiple Constitutional Concerns

Dear Mr. Jerles:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to bring to your attention another constitutional concern in Houston County Schools, and to request a response to the numerous letters we have written to you over the past few years.

Religious Marching Band Routine

A local complainant reports that the director of the Perry High School marching band chose a Christian theme for the band's 2017 performances. We understand that this theme is "Paradise Lost: The Story of Adam and Eve," and that not only is the story directly derived from the bible, but passages from the bible are read allowed as part of this performance. Videos of the performance show students kneeling in prayer, and arranged into the shape of a Latin cross. Please see the enclosed photos.

We write to ensure that the Perry 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.

Houston County 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 a Christian theme, biblical passages, and Christian 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 Perry 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.

Unaddressed Concerns

It is my understanding that we first wrote to Houston County Schools regarding a constitutional issue on June 4, 2012. As the attorney for the district, you promptly responded to our concerns in a letter dated June 7, 2012. Since receiving your response on behalf of the district, we have written to you numerous times to bring additional Establishment Clause violations to the attention of the district, but we have not received any response regarding if or how the district has addressed our concerns or those of our complainants. We wrote in 2013 regarding an after-school prayer club at an elementary school that was being led by teachers, and in 2017 regarding coaches engaging in religious activities with their students, churches distributing religious materials to students during the school day, and Latin crosses displayed in classrooms and offices. We have also sent follow-up letters on these issues.

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.*

FFRF writes to school districts to allow them to investigate and correct violations as quickly and easily as possible, particularly in cases where the law is clear, such as when coaches are inviting in pastors to proselytize to students, churches are proselytizing to students on school grounds, and Latin crosses are displayed in classrooms.

We would much prefer to resolve issues through correspondence. If the school district shares this desire, please let us know the steps that have been taken to address our concerns, past and present, so that we may notify our complainants.

Sincerely,



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

Enclosures

