

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

June 13, 2017

SENT VIA FAX & U.S. MAIL: carljohnson@bishopcolvin.com

Mr. Carl Johnson
Bishop, Colvin, Johnson & Kent LLC
1920 First Avenue North
Birmingham, AL 35203

Re: Multiple Constitutional Violations

Dear Mr. Johnson:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding multiple constitutional violations occurring in Jefferson County Schools. It is my understanding that you currently represent the Jefferson County Board of Education and that we've resolved constitutional issues with you in the past. I hope that we can resolve these new issues as well. As you may recall, FFRF is a national nonprofit organization with more than 29,000 members across the country, including members in Alabama. Our purpose is to protect the constitutional principle of separation between state and church.

In the past few months, we've received complaints from multiple Jefferson County residents about constitutional violations occurring in Jefferson County Schools.

A local resident reported that until very recently Hueytown High included a "class chaplain" position on its student council, whose duties were described as "responsible for devotional or inspirational messages at meetings, programs, banquets, and graduation." We understand that this position was initially eliminated for the Class of 2018, but that after backlash from parents it was reinstated with a new name, "class inspirational speaker." As far as we know, the duties of this position remain the same. We also understand that this year's class chaplain gave an invocation at the 2017 Hueytown High graduation ceremony that began, "Dear God," and ended, "In Jesus' name, amen." Please see the enclosed photo.

A concerned parent reported that Nichole Hill, choral director at Pleasant Grove High School, makes proselytizing religious statements each year during the spring concert. We understand that the theme of the concert is always gospel music and her prayer and statements at the concert indicate that she has a religious motivation behind her decision to teach gospel songs. During this year's concert, she prayed, "It's only by His blood are we healed. It's only by His one are we one, by His blood. He is everything. Thank-you for praising and worshipping with us tonight." She also said, "Parents, thank-you. You trust me everyday to take care of your kids and to love them like I do my own. You trust me to lead them in song and give them the opportunity through music, God has opened the door because music came from the church, that I get to witness and love on these kids with God's love, so thank you for trusting me."

It was also reported that the Hueytown Middle School Cheerleaders sold religious t-shirts to raise money for cheer camp. We understand that these shirts said, “BE FEARLESS, 2 TIMOTHY 1:7.” Please see the enclosed photo.

Class “inspirational speaker” and graduation prayer

The Supreme Court has continually struck down prayers at school-sponsored events, including public school graduations. *See Lee v. Weisman*, 505 U.S. 577 (1992) (declaring unconstitutional clergy-delivered prayers at a public school graduation). School officials may not invite a student, teacher, faculty member, or clergy to give any type of prayer, invocation, or benediction at a public high school graduation. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (holding that a school’s policy allowing student-delivered prayers at high school football games violates the Establishment Clause). The Supreme Court has settled this matter—high school graduations must be secular to protect the freedom of conscience of all students.

The same reasoning applies to all school-sponsored events. 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.* at 308. 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.* When school officials provide an opportunity for a designated “class chaplain” or “inspirational speaker” to pray at a school-sponsored event, the student is delivering a government message.

The courts have continually reaffirmed that the rights of minorities are protected by the Constitution. It makes no difference how many students want prayer at school events. As the Supreme Court has said, “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 scheduling prayers at graduation and other school-sponsored events, the District abridges that duty and alienates the 35% of young Americans who are not religious.¹

Religious music and remarks by choral director

It is wholly inappropriate for a public school teacher to teach songs of Christian worship in a public school setting and to include prayer and religious remarks at a public school choral concert. Though there may be some instances where singing religious songs in a public school setting might be permissible, Mrs. Hill’s statements show that she has been teaching religious songs in order to promote religion to her students. This is alarming because the District has an obligation under the law to make certain that “subsidized teachers do not inculcate religion.” *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971). Certainly, “a school can direct a teacher to ‘refrain from expressions of religious viewpoints in the classroom and like settings.’” *Helland v.*

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

S. Bend Comm. Sch. Corp., 93 F.3d 327 (7th Cir. 1993) (quoting *Bishop v. Arnov*, 926 F.2d 1066, 1077 (11th Cir. 1991)). The Supreme Court has recognized that “[f]amilies entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.” *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

Please note that it is not a violation of the free speech rights of teachers when a school district regulates what they teach to students while acting in their official capacities. Teachers have access to a captive audience of students due to their position as public educators. Therefore, the District has a duty to regulate religious proselytizing during school-sponsored activities. “Because the speech at issue owes its existence to [his] position as a teacher, [the School District] acted well within constitutional limits in ordering [the teacher] not to speak in a manner it did not desire.” *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1807 (2012) (upholding decision of school board to require a math teacher to remove two banners with historical quotes referencing “God”); *see also Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (“We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”).

Courts have reviewed religious music in public schools and held that its use must comport with the Establishment Clause. *See Nurre v. Whitehead*, 580 F.3d 1087, 1097 (9th Cir. 2009) (school district was permitted to disallow the playing of “Ave Maria” at graduation because an observer could have viewed it as the district’s preference for one religion over another); *Sease v. Sch. Dist. of Philadelphia*, 811 F. Supp. 183, 192 (E.D. Pa. 1993) (“Clearly, a school employee’s participation in, or sponsorship of, a public school gospel choir during school hours would be a violation of the Establishment Clause.”). Mrs. Hill’s public prayer and comments illustrate that her use of religious music is not for secular purposes but to promote her religious beliefs, and thus is unconstitutional.

Religious t-shirts

It is illegal for school-run group to raise funds by selling shirts decorated with bible verses. Public schools must remain neutral on matters of religion. Publishing a bible verse on shirts that are sold to raise money for the school impermissibly entangles the school and district with a religious point of view, violating the principle that state and church must remain separate. It sends the message that the district prefers not only religion over nonreligion, but Christianity over all other faiths. This “[s]chool sponsorship of a religious message is impermissible because it sends the ancillary message to . . . 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 (O’Connor, J., concurring)).

Even if students selected the bible verse, or if school employees did not physically sell the shirts, this is illegal. Schools must avoid even the *appearance* of religious endorsement. *See, e.g., Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 787 (1995) (Souter, J., concurring) (“Effects matter to the Establishment Clause, and one, principal way that we assess

them is by asking whether the practice in question *creates the appearance* of endorsement to the reasonable observer.”) (emphasis added).

We ask that the District take immediate action to ensure that school-sponsored events do not include scheduled prayer or religious statements by either school-designated students or teachers. If the school is designating a speaker then that speaker is delivering a government message. The District must ensure that Mrs. Hill is not promoting or endorsing religious beliefs to her students and she must cease praying and promoting religion at school-sponsored events. We ask that the District investigate Mrs. Hill’s music curriculum to ensure it is not being used to promote religious belief. School fundraisers must not include religious messages. We further request a written response outlining the steps the District plans to take to address these constitutional concerns so that school-sponsored prayers and religious messages do not recur at future school functions.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Line", written in a cursive style.

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

Enclosures

***Processional: "Pomp and Circumstance"** E. Elgar
HHS Band

***Invocation.....** Michael Cashaw, Jr.
Senior Class Chaplain

***"Star Spangled Banner"** Francis Scott Key
...led by: Charlie Bryant, Joshua Edmonson, Christopher Rosser and Bradley Wilson

Welcome Joseph Garner
Principal

Introduction of Speaker Amber Underwood
Senior Class President

Greetings Dr. Anna Vacca
Jefferson County Board of Education

***It's So Hard to Say Goodbye to Yesterday*** Vocalease
HHS Chamber Choir
Charlie Bryant, Soloist
Bradley Wilson, Director

Awards and Special Recognition Joseph Garner
Principal

Honor Graduates Representative Speech..... Carson Raygan

Presentation of Diplomas Joseph Garner
Assisted by Ryan Howard

***Alma Mater** Graduates

Presentation of the Graduates of 2017..... Joseph Garner

***Recessional.....** HHS Band

***Please Stand**

To ensure the dignity of commencement, we ask that you take all pictures from your seats, being careful not to obstruct the view of others. Out of respect, turn off all cell phones. Please hold your applause until all graduates have received their diplomas.

— BE — 

FEARLESS

 2 TIMOTHY 1:7