

FREEDOM FROM RELIGION *foundation*

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October 16, 2018

SENT VIA EMAIL & U.S. MAIL: johnny.mcdaniel@lcss.us

Johnny McDaniel
Director of Schools
Lawrence County School System
700 Mahr Avenue
Lawrenceburg, TN 38464

Re: Multiple Constitutional Violations

Dear Director McDaniel:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding multiple constitutional violations recently reported in the Lawrence County School System. We are still awaiting a response to our September 12, 2018 letter regarding staff members organizing and participating in a religious club at Summertown High School.

A concerned parent has reported that New Prospect Elementary hosts a religious display in its gym, and that staff members at New Prospect Elementary have been organizing and promoting religious events at the school.

Unconstitutional Religious Display

Our complainant reports that the New Prospect Elementary gym has text painted on the wall that says, "GOD FIRST, OTHERS SECOND, SELF THIRD FCA." Please see the enclosed photo.

The District violates the Constitution when it allows its schools to display religious symbols or messages. Courts have continually held that school districts may not display religious messages or iconography in public schools. *See, e.g., Stone v. Graham*, 449 U.S. 39 (1980) (ruling that the Ten Commandments may not be displayed on classroom walls); *Lee v. York County*, 484 F.3d 689 (4th Cir. 2007) (ruling that a teacher may be barred from displaying religious messages on classroom bulletin boards); *Washegesic v. Bloomington Pub. Schs.*, 33 F. 3d 679 (6th Cir. 1994) (ruling that a picture of Jesus may not be displayed in a public school).

Please note that it is legally immaterial whether the display was funded by the District or by private donors. "[T]he mere posting of the [religious display] under the auspices of the [District] provides the 'official support of the State . . . Government' that the Establishment Clause prohibits." *Stone*, 449 U.S. at 42 (holding that "[i]t does not matter that the posted copies of the Ten Commandments are financed by voluntary private contributions") (quoting *Abington Twp. Sch. Dist. v. Schempp*, 374 U.S. 203, 222 (1963)).

Religion is a divisive force in public schools. 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 Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)).

This religious display is particularly inappropriate given that about 38% of Americans born after 1987 are not religious.¹ This display alienates those nonreligious students, families, teachers, and members of the public whose religious beliefs are inconsistent with the message being promoted by the school.

In recognition of the District's constitutional obligation not to promote religion, please remove this display from New Prospect Elementary immediately.

Unconstitutional Organization and Promotion of Religious Events

Our complainant also reports that New Prospect Elementary staff members organized and promoted a religious "See You at the Pole" event on September 26, 2018. Please see the enclosed screenshots, which show the school promoting this religious event and inviting parents to participate on its official Facebook page.

Public schools have a constitutional obligation not to promote religion. It is well settled that a public school employee may not lead, direct, or encourage students to engage in prayer. The Supreme Court has continually struck down formal and teacher or school-led prayer in public schools. *See, e.g., Engel v. Vitale*, 370 U.S. 421 (1962) (holding teacher-led prayer in public schools unconstitutional); *Schempp*, 374 U.S. 203 (holding devotional Bible reading and recitation of the Lord's Prayer in public schools unconstitutional); *Lee v. Weisman*, 505 U.S. 577 (1992) (ruling prayers at public school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily "period of silence not to exceed one minute . . . for meditation or daily prayer.").

It is even unconstitutional for public school employees to participate in the religious activities of their students. *See, e.g., Borden v. Sch. Dist. of the Twp. of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008), *cert. denied*, 129 S.Ct. 1524 (2009) (declaring a coach's organization of, participation in, and leading of prayers before games unconstitutional); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995) (declaring coach's participation in student prayer circles an unconstitutional endorsement of religion).

In *Borden*, the court stated that even a school employee's involvement in the prayer by "taking a knee" and "bowing his head" during student-led prayers "would lead a reasonable observer to conclude he was endorsing religion." 523 F.3d at 176. The court continued, "if while acting in their official capacities, [school district] employees join hands in a prayer circle or otherwise manifest approval and solidarity with the student religious exercises, they cross the line between respect for religion and the endorsement of religion." *Id.* at 178 (quoting *Duncanville*, 70 F.3d at 406). It is clear that government employees must refrain from actively participating in religious activities while acting within their governmental role to avoid any perception of government endorsement of religion and/or excessive entanglement with religion.

Furthermore, it is unconstitutional for District staff to plan, promote, or participate in religious events like See You At The Pole. Doing so alienates non-Christian students, teachers, and parents whose religious beliefs are inconsistent with the message being promoted by the school staff. Any religious events must be entirely student-initiated and student-run. While the District cannot prohibit students from organizing or participating in a prayer event, the Supreme Court has stated that public school staff members must refrain from participating in the religious activities of students while acting within their governmental roles to avoid any perception of government endorsement of religion. *Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 253 (1990).

¹ Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at www.ppri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.

Even See You at the Pole's official website recognizes that adults should not be involved in their events:

See You at the Pole™ is a student-led event. Strong student leadership is crucial. Adult volunteers and parents should not lead the See You at the Pole™ gathering. Many well-meaning adults take over and take away from the students by trying to lead out in the prayers at the flagpole. This is not the intention for See You at the Pole™, nor is it legal for adults to lead. Please step back or stay away and let the students grow and learn in their faith by leading.

The best place for an adult to pray on the day of See You at the Pole™ is not on campus with the students, but at alternate locations.²

Lawrence County School System staff must not plan, promote, or participate in any future "See You at the Pole" events, nor can they encourage students to put on such events. Any religious events must be truly student-initiated and student-run. Please inform us in writing of the steps you are taking to ensure these constitutional violations will not recur.

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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

Enclosures

² <http://syatp.com>, click "adults."

**God
First,
Others
Second,
Self
Third.
FCA**

ROSS





New Prospect School



September 25 at 1:29 PM · 🌐

See You at the Pole is tomorrow at 7:15 am. Students in grades K-8th are invited. Parents you are welcome to attend! Will be held inside if raining.



5

3 Shares



New Prospect School



September 26 at 12:59 PM · 🌐

See You at the Pole was moved inside today. Thank you to those who participated! Big thank you to their leader, Mrs. Suzanne!

