

FREEDOM FROM RELIGION *foundation*

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SENT BY MAIL AND EMAIL TO: hiled@lickingvalley.k12.oh.us

Mr. David Hile
Superintendent, Licking Valley Local School District
1379 Licking Valley Road, N.E.
Newark, OH 43055

Re: Unconstitutional Religious Display at Licking Valley High School Band Performance

Dear Superintendent Hile:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a constitutional violation involving Licking Valley High School. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation of state and church. FFRF represents more than 21,000 members across the country, including members in Ohio.

We received a report that Licking Valley High School's (LVHS) band performed at this year's Sweet Corn Festival in Millersport, Ohio. We understand that all band members wore T-shirts featuring the word "Salvation" across the chest and performed "Salvation is Created" by Pavel Tchesnokov at the parade.

It is well settled that public schools may not advance, prefer or promote religion. *See 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 Twshp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). Advancing, preferring, and promoting religion is precisely what LVHS does when it allows its marching band to preform in religious regalia.

Public schools have a constitutional obligation to remain neutral toward religion, regardless of popular opinion or majority vote. Even if the T-shirts were only intended to reference the song by Pavel Tchesnokov, such a display would nonetheless be constitutionally objectionable. The word "Salvation," and the song "Salvation is Created" (itself based on Psalm: 74)¹, cannot be divorced of their religious implications without being rendered meaningless.

When a public school allows its marching band to display religious messages, like "Salvation," during performances, they unconstitutionally entangle the school with religion. Licking Valley Local School District students and community members might reasonably presume that the marching band and its message of "Salvation" *is* sponsored by the Licking Valley Local School District (LVLS D).

The Supreme Court has repeatedly noted, "School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are

¹ "Salvation is Created" is a choral work composed in 1912 by Pavel Tchesnokov. The original Russian text "Спасение соделал еси посреде земли, Боже, Аллилуия." translates roughly to "Salvation is made in the midst of the earth, O God. Alleluia." Pavel Tchesnokov based this piece on Psalm: 74, which begins "O God, why have you rejected us forever?"

nonadherants 'that they are outsiders, not full members of the political community, and an accompanying message to adherants that they are insiders, favored members of the political community.'" *Santa Fe Indep. Sch. Dist.*, 530 U.S. at 309 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)).

Additionally, courts have continually held that school districts may not display religious messages or iconography. *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. Bloomingdale Public Schools*, 813 F. Supp. 559 (W.D. Mich. 1993), *aff'd*, 33 F. 3d 679 (6th Cir. 1994) (ruling that a picture of Jesus may not be displayed in a public school). FFRF and the ACLU of Ohio recently sued and settled a lawsuit over a Jesus portrait in a Jackson, Ohio public school.

Asking students to promote religious messages is also a usurpation of parental authority - parents have the right to direct the religious, or non-religious, upbringing of their children, not public schools. Public school employees cannot distribute, ask students to wear, or themselves don religious T-shirts. Doing so during official events alienates those non-Christian members of your community whose religious beliefs are inconsistent with the message being promoted by the school. It is particularly inappropriate for the almost 20% of the U.S. population who identify as non-religious, including 32% of the population under 30.²

High School students already feel significant peer pressure. They must not be subjected to similar pressure from public school staff, especially to wear religious messages because their teacher asked them to, or because most of their classmates supported the message. LVLSD is responsible for protecting all of its students' rights of conscience. By allowing LVHS's marching band to promote Christian messages during sanctioned performances, the school is sending a message to non-Christian students that they are outsiders. LVLSD must ensure that it does not sponsor or appear to sponsor a Christian message.

To avoid future violations of the Establishment Clause, LVLSD must ensure that all its teachers, coaches and administrators are aware of the full extent of the constitutional requirements concerning school sponsorship of religion. FFRF asks that you immediately take action to ensure that future school sanctioned performances at LVHS do not include the display of religious messages. Please inform us in writing at your earliest convenience of the steps the District is taking to remedy this violation.

Sincerely,



Rebecca S. Markert
Staff Attorney

RSM:jki

² Pew Research Center, *Nones on the Rise: One-in-Five Adults Have No Religious Affiliation*, The Pew Forum on Religion & Public Life (October 9, 2012), available at <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>.