



HARTMAN UNDERHILL
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ATTORNEYS AT LAW

Direct e-mail: bobf@hublaw.com

August 28, 2013

Ms. Rebecca S. Markert
Staff Attorney
Freedom From Religion Foundation
P.O. Box 750
Madison, WI 53701

Dear Ms. Markert:

As you know, this firm serves as Solicitor for the Manheim Township School District (the "School District"). We are in receipt of your letter of August 16, 2013, which responds to our letter of July 19, 2013.

While it appears you may have identified an actual complainant against the School District, your legal and factual analysis of the choral performance broadly and inaccurately attributes the alleged actions of the church to the Manheim Township School District. Only those actions directly attributable to the School District are within the proper scope of analysis of this situation. Under such review, the School District maintains that it acted appropriately.

Your characterization of the music performed by the School District is plainly inaccurate. The School District's chorus performed four pieces. Two of them, *EarthSong* by Frank Ticheli and *Desh (An Indian Raga)* arranged by Ethan Sperry, are non-sacred, completely secular pieces. The other two pieces were *Exultate Deo* by Alessandro Scarlatti (performed in Latin) and *Jauchzet dem Herren* by Heinrich Schütz (performed in German). Contrary to your assertions, not only do these sacred pieces have significant historical value, but they also provided the entirely secular purpose of teaching important musical concepts, such as performing *a capella* and singing in Latin and German. Federal Courts are clear that the instruction and performance of sacred music is permissible due to the predominance of sacred music within the body of general choral music literature, particularly where such sacred music maintains significant historical value and provides the opportunity for

Ms. Rebecca S. Markert
Staff Attorney
Freedom From Religion Foundation
August 28, 2013
Page 2

instruction of important skills and concepts. As such, your argument regarding the content of the music performed by the School District's chorus is entirely without merit.

You are equally inaccurate in your statement that the "level of entanglement between the School District and the church in this case surpasses that of the schools involved in any of the cases" discussed in the our July 19, 2013 letter. The School District was invited by another district's choral director to attend a high school choral festival featuring four different high school choirs. This performance provided the School District's choir students the opportunity to perform in a different setting with exceptional acoustics, the opportunity to assess other high school choirs and the opportunity to perform with choral peers. Notably, the School District's choir performed during a public concert, open to any member of the public, and not during a religious ceremony. No School District employees or students engaged in any religious activities during the performance. Contrary to your assertion of entanglement, the actions of the School District do not even rise to the level of conduct discussed in the existing case law, conduct which you claim is inappropriate yet multiple Federal Circuit Courts assessed as permissible.¹

In no way did the School District interact with the Church in a manner that could even remotely deem the performance a "joint production" between the School District and the church. The School District did not perform with the church choir or otherwise share its performance with any representative acting on behalf of the church. Likewise, the School District was not invited by the Church to participate in a religious event; rather, the School District was invited by another public school teacher to participate in a high school choral music festival. The School District had no control over any of the details of the event

¹ It is unfathomable that you can assert that the conduct of the School District surpasses the conduct found in the existing case law. Within that body of law, conduct which the Federal Circuit Courts of this Country found permissible includes: a public school choir's open recognition of John Rutter's *The Lord Bless You and Keep You* as its theme song, which was sung at the end of every Friday rehearsal, at the end of every performance, during choral competitions and on group bus rides; another public school choir's performance of the same piece in multiple churches; hosting a public school choir's final concert of the year in a church; a public school choir director's comment to an audience thanking the "heavenly father" for the opportunity to work with the students; and a public school choir director's teaching style of encouraging students to focus on the meaning of the religious text of the music. Based upon the facts found within this body of case law, in combination with the Third Circuit's affirmation that the establishment clause recognizes that neutrality towards religion is quite distinct from hostility towards religion, it is nearly disingenuous for you to assert that the actions of the School District surpass the actions of those other districts.

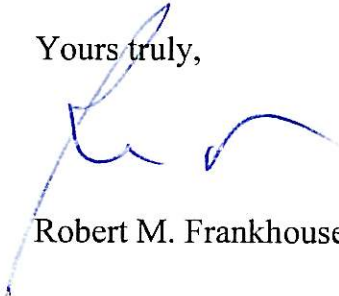
Ms. Rebecca S. Markert
Staff Attorney
Freedom From Religion Foundation
August 28, 2013
Page 3

outside of its musical selection, nor did the School District engage in any planning of the event with the church. The School District did not contribute financially to the church, nor did the School District receive any financial benefit from the church. The School District did not work with the church to develop any of the promotional materials for the performance, nor did the School District grant formal permission for the use of its name within those materials. Instead, the School District merely consented to participate in a high school choral festival taking place at an acoustically excellent facility during a concert that was open to the public. When viewed in light of the totality of the facts, the actions of the School District represent the type of mere interaction between church and state that has never been unlawful.

Simply stated, the School District is not required by law to eliminate the instruction of or performance of music simply because it is sacred. The School District has acted appropriately at all times.

I trust this addresses your concerns and concludes this dialog.

Yours truly,



Robert M. Frankhouser, Jr.

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cc: Dr. Gene Freeman, Superintendent



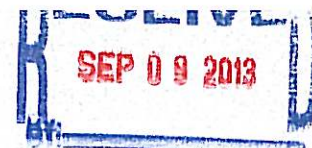
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JEFFREY D. LITTS

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September 6, 2013

Rebecca S. Markert, Esquire
Freedom From Religion Foundation
P. O. Box 750
Madison, WI 53701

Dear Ms. Markert:

We confirm receipt of your August 16, 2013 correspondence. We appreciate your written confirmation that no students or parents of school-aged children within the Hempfield and Pequea Valley School Districts have raised any objection with you regarding our clients' respective high school choral programs.

As we previously indicated, we do not wish to engage in an academic debate over constitutional issues. Since no one within Hempfield or Pequea Valley has approached your Foundation concerning the allegations made in your correspondence, we do not feel it is necessary or appropriate to continue this dialogue in the absence of an actual legal controversy.

That being said, our clients are sensitive to the diversity of religious viewpoints within their respective communities, and appreciate the potential First Amendment issues that sometimes may arise within the public school setting.

Sincerely,

Jeffrey D. Litts

JDL:jms:140265.1

cc: Dr. Brenda Becker, Superintendent, Hempfield School District
Dr. Erik Orndorff, Superintendent, Pequea Valley School District
John Bowden, Director of Business Operations, Pequea Valley School District