

FREEDOM FROM RELIGION *foundation*

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June 14, 2013

SENT VIA FAX & U.S. MAIL

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Re: Religious Music at Concert Held in Church

Dear Superintendents Freeman, Rivera, Orndorff, and Becker:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to object to the unconstitutional nature of the High School Choral Festival held on April 14. We were contacted by a concerned parent. FFRF is a national nonprofit organization representing over 19,000 members across the country, including more than 650 members in Pennsylvania. Our purpose is to protect the constitutional principle of separation between state and church.

It is our information and understanding that choirs from Manheim Township High School, Pequea Valley High School, McCaskey High School, and Hempfield High School performed in a choral festival held at First Presbyterian Church in Lancaster on April 14, 2013. We understand that the Chancel Choir of First Presbyterian Church also performed. We also understand that nearly all of the songs performed were religious in nature. We are also informed that plates were passed around for people to give an offering for the church's "Upstairs Downstairs" series. In addition, we understand that the program for this concert advertised other church events and the church itself.

We understand that the following religious songs were performed at the concert:

- "How Can I Keep From Singing," a traditional Christian hymn.
- "Psalm 42," a contemporary song based on a biblical verse which includes lines such as "my soul does thirst for the living God" and "He is my help, He is my God."
- "Salmo 150," a contemporary song in Latin based on a biblical verse which begins with a line translating to "Praise God in his sanctuary," and continues with various other reasons to "praise" God.
- "Precious Lord," a song whose refrain is "Take my hand, precious Lord, / Lead me home."

- “Lux Aeterna,” a contemporary song described as a “traditional sacred text [which] is a solemn prayer for God’s mercy to shine on those who inhabit Heaven with him” on a website selling the song’s sheet music.¹
- “The Ground from Sunrise Mass,” a contemporary song in Latin which includes translated lyrics such as “Blessed is he who comes in the name of the Lord.”
- “Entreat Me Not to Leave,” a contemporary song based on the biblical verse Ruth 1:16 which includes the lyrics “Thy people shall be my people / And thy God my God.”
- “Nobody Knows the Trouble I’ve Seen,” a song which includes lyrics such as “Nobody knows the trouble I’ve seen / Nobody knows but Jesus.”
- “Exultate Deo,” a Latin song whose opening lines translate to “Rejoice unto God our helper / Sing aloud unto the God of Jacob.”
- “Jauchzet dem Herren,” the German version of Psalm 100 which includes lyrics such as “Serve the Lord with joy / Come into His presence with rejoicing / Recognize that the Lord is God.”

We will address the constitutional violations posed by this concert in turn.

First, it is well settled that public schools may not advance or endorse 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 Twshp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).

Religious Music

It is wholly inappropriate for public school teachers to teach songs of Christian worship in a public school setting. Nearly all of the music in the program had a devotional message and thus would be appropriate in a church setting, but not at a public school concert. There are a multitude of secular songs that would be appropriate in this setting. Though there may be some instances where singing religious songs in a public school setting might be permissible, schools should exercise caution when teaching impressionable students songs that are so devotional in nature, especially when so many appear to be contemporary compositions, and not the traditional classical pieces that are generally more acceptable.

Teaching impressionable students pervasively Christian music in a public school violates the First Amendment. Many federal 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’s disallowing the playing of “Ave Maria” at graduation was permissible because an observer could have viewed it as the district’s preference for one religion over another).

A federal Pennsylvania court, whose opinions are binding on all of your schools, addressed religious choirs in a 1993 case, *Sease v. School Dist. of Philadelphia*, 811 F.Supp. 183 (E.D. Pa.). In that case, a school employee led an extra-curricular gospel choir, which almost exclusively performed songs containing references to God or Jesus and sometimes performed in churches, similar to the concert at issue here. *Id.* at 184. When the school attempted to bring the choir into compliance with the law, asking to review the choir’s repertoire before they could practice on school property and instructing that a school employee could not lead the choir, the choir sued. *Id.* at 187. The court said that choir’s

¹ <http://www.jwpepper.com/3701671.item>

actions were clearly primarily religious, and that therefore employee involvement constituted school sponsorship of the group in violation of the Equal Access Act. *Id.* at 191. If such extent of school involvement is impermissible in an extracurricular setting, surely it is even more egregiously impermissible in a curricular setting.

As the Supreme Court in *Lee* explained, "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." 505 U.S. at 596. Students feel immense pressure to act like their instructors and peers. Public school staff and administrators should be aware of these concerns and ensure that all students are made to feel welcome in all programs.

Events in Church

The problems with the music are vastly compounded by the fact that the concert was held in a church. The intermingling of your public schools and First Presbyterian Church, to the point where a joint concert was held with the church in its sanctuary, sends a strong message of approval of the church to impressionable students. The school must be cognizant of the religious messages and iconography that confront students who enter this location.

Other school districts that have used churches for school functions have had the practice struck down by the courts. *See Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840 (7th Cir. 2012) (overturning prior opinion and holding that a school's graduation held in a church violated the Establishment Clause), petition for cert. filed., No. 12-755.; *Does v. Enfield Public Sch.*, 716 F. Supp. 2d 172 2010 (D. Conn. 2010) ("By choosing to hold graduations at [a church], [a school] sends the message that it is closely linked with [the church] and its religious mission, that it favors the religious over the irreligious, and that it prefers Christians over those that subscribe to other faiths, or no faith at all."), *Musgrove v. Sch. Bd. of Brevard Co.*, 608 F. Supp. 2d 1303 (M.D. Fla. 2005) (ruling that plaintiffs had demonstrated likelihood of success on the merits of their claim that holding public high school graduations in a church violates the Establishment Clause).

The selection of a church for a choir concert gives the appearance of the school's preference for religion over nonreligion and Christianity over all other faiths. Any religious messages and iconography that students are exposed to are problematic. The "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 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, 309-10 (2001) (quoting *Lynch v. Donnelly*, 465 U.S. at 668) (O'Connor, J., concurring).

Furthermore, this practice forces students, who may be of varying faiths or none at all, to enter a house of worship in order to perform in a required concert. The school should not place students in this position.

Advertising and Offertory

Allowing a church unique access to advertise to and solicit money from students and their friends and families is highly inappropriate. Even if participation in the concert were voluntary, it would not be a valid safeguard. Courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See, generally, Lee v. Weisman*, 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.”); *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 288 (1963) (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”); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) (“VMI cannot avoid Establishment Clause problems by simply asserting that a cadet’s attendance at supper or his or her participation in the supper prayer are ‘voluntary.’”).

Supreme Court Justice Blackmun wrote, “it is not enough that the government restrain from compelling religious practices, it must not engage in them either.” *Lee v. Weisman*, 505 U.S. 577, 604 (1992) (Blackmun, J., concurring). Federal law dictates that public employees refrain from participating in religious activities in their governmental role to avoid any perception of government endorsement of religion and/or excessive entanglement with religion. Schools may not expose students in their charge to predatory adults attempting to convert them or seek donations from them. The advertisements on the back of the event program are inappropriate for the same reasons. Your districts’ participation in this event indicates sponsorship of these activities.

Conclusion

There are certainly non-Christian and nonreligious families in your districts. Your districts appear to be indifferent to the increasingly pluralistic society in which we live and unsympathetic to those who are excluded by its promotion of a single viewpoint. This is unacceptable. A public school should be eager to set an example of tolerance and inclusion, and not promoting Christianity to the exclusion of all other worldviews, especially considering that one-third of Americans under 30 are now religiously unaffiliated. *Pew Forum on Religion and Public Life*, October 2012. In the future, your districts should be mindful of the fact that not all of its families are Christian or even religious at all, and work to celebrate instead of stifle that diversity.

We request that you instruct schools in your districts to immediately cease teaching sectarian songs to impressionable children in public schools and ensure that no future concerts or other school-sponsored events are held in a church. District events must also not include any sort of partnership with a church, such as a joint concert. School publications, such as event programs, must remain free of religious advertisements, and donations for churches or other religious groups must not be solicited. We expect a prompt written response from each district informing us of the steps that you will take to resolve these many constitutional violations so that we may inform our complainant.

Sincerely,



Rebecca S. Markert
Staff Attorney

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