

# FREEDOM FROM RELIGION *foundation*

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

December 10, 2019

**SENT VIA FAX & U.S. MAIL TO: 573-751-0774**

The Honorable Eric Schmitt  
Attorney General, State of Missouri  
Supreme Court Building  
207 W. High St.  
P.O. Box 899  
Jefferson City MO 65102

Re: Your December 3, 2019 letter to Cameron R-1 School District

Dear Mr. Attorney General:

I am writing on behalf of the Freedom From Religion Foundation regarding your letter of December 3, 2019, to the Superintendent of the Cameron R-1 School District. FFRF would like to correct the many erroneous claims, half-truths, and outright factual errors contained in your letter.

FFRF is not “an extreme anti-religion organization that seeks to intimidate local governments into surrendering their citizens’ religious freedom and to expunge any mention of religion from the public square.” We are a national nonprofit organization with 30,000 members across the country, including more than 400 members in Missouri. We have a four-star rating and a perfect score from Charity Navigator, something only 77 of the 1.4 million charities in the U.S. can claim. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism. In other words, FFRF upholds the First Amendment.

We did not write to Cameron R-1 School District concerning “voluntary prayer outside of football games,” as the first sentence of your letter mistakenly claimed. We received a complaint from a local resident advising us that head football Coach Jeff Wallace and his assistant coach, David Stucky, have been preaching to students, holding bible studies, and praying with students as part of school functions. We were informed that Coach Wallace even brought in outside preachers to proselytize to students, as well.

This conduct is unquestionably illegal. Perhaps you were misinformed about the facts of the case. If not, your letter shows either a disturbing ignorance of the U.S. Constitution or a deliberate attempt to subvert the protections it contains. The Missouri Attorney General is obligated to know the law and uphold it.

The Supreme Court’s decisions you cite allowing legislative prayer in *Town of Greece v. Galloway* and *Marsh v. Chambers* have no bearing on whether public school officials can lead students in prayer or engage in religious activities with students. In fact, most federal appellate courts have found that opening

public school board meetings with prayer violates the Establishment Clause, directly refuting your contention that *Greece* and *Marsh* would in any way allow public school officials to lead students in prayer. See *FFRF v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132 (9th Cir. 2018), *petition for review en banc denied*, No. 16-55425 (9th Cir., Dec. 26, 2018); *Doe v. Indian River School District*, 653 F.3d 256 (3d Cir. 2011), *cert. denied*, 132 S. Ct. 1097; *Bacus v. Palo Verde Unified Sch. Dist.*, 52 Fed. Appx. 355 (9th Cir. 2002); *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999).

Your reliance on *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819 (1995), and *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993), to support the idea that school officials can lead students in prayer and bible study is similarly misplaced. *Rosenberger* addressed viewpoint discrimination in college funding, and *Lamb's Chapel* addressed whether a private religious group could use district property to show a religious movie after school hours with no sponsorship by the school. The Court explained, “[t]he showing of this film series would not have been during school hours, would not have been sponsored by the school, and would have been open to the public, not just to church members. The District property had repeatedly been used by a wide variety of private organizations. Under these circumstances, as in *Widmar*, there would have been no realistic danger that the community would think that the District was endorsing religion or any particular creed, and any benefit to religion or to the Church would have been no more than incidental.” *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. at 395. School officials leading students in prayer and bible study, on the other hand, is an endorsement by the school of a particular religion, and an egregious one at that.

**The Constitution clearly prohibits public school officials from leading students in prayer and engaging in religious activities with students.**

The Supreme Court has continually struck down teacher- or school-led prayer in public schools. See, e.g., *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (holding student-led prayer over the loudspeaker before football games unconstitutional. “Regardless of the listener’s support for, or objection to, the message, an objective Santa Fe High School student will unquestionably perceive the inevitable pregame prayer as stamped with her school’s seal of approval” because it occurred at a “regularly scheduled school-sponsored function conducted on school property.”); *Lee v. Weisman*, 505 U.S. 577 (1992) (finding prayers at public high 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”); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (holding school-sponsored devotional Bible reading and recitation of the Lord’s Prayer unconstitutional); *Engel v. Vitale*, 370 U.S. 421 (1962) (declaring school-sponsored prayers in public schools unconstitutional).

The facts of this case do not make this a close call, nor is this an esoteric legal principle. This is basic constitutional law, a bedrock principle that has been repeatedly upheld.

**The prohibition on school-sponsored prayer actually promotes religious freedom.**

This constitutional obligation is critical to ensuring successful public schools, and to ensuring that the state does not trespass on the religious freedom rights of conscience of students and families. The Supreme Court has stated it most eloquently: “Families 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).

The Cameron coach is imposing his personal religion on a captive audience of public school athletes. He is violating their First Amendment rights, not exercising his own. And it is no defense that students may not be required to participate in his bible studies or prayers. Courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See, generally, Lee v. Weisman*, 505 U.S. 577, 596 (1992) (“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 Twp. 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.’”).

Of course, the law also means that students are allowed to pray on their own time in their own way. For instance, a student is perfectly free to bow her head and say a prayer before or after a football game, or at any other time and in any manner that it is not disruptive or coercive to others. That has always been the case. No court has decided otherwise, and no one—certainly not the Freedom From Religion Foundation—is advocating that students’ individual religious liberties be curtailed. But religious freedom doesn’t give school officials the right to impose their religious beliefs upon students by leading prayers, preaching, and holding bible studies.

#### **School staff cannot use their position to impose religion on other people’s children**

The neutrality duty is so important that “a school can direct a teacher to ‘refrain from expressions of religious viewpoints in the classroom and like settings.’” *Helland v. S. Bend Comm. Sch. Corp.*, 93 F.3d 327 (7th Cir. 1993) (quoting *Bishop v. Arnov*, 926 F.2d 1066, 1077 (11th Cir. 1991)). Put another way, teachers and other school officials, like coaches, are not permitted to abuse their public positions to promote their personal religion.

Given the legal ignorance exhibited in your letter to Cameron Schools, we’ll risk reiterating this point: There is no violation of the free speech rights of teachers and football coaches when a school district regulates what they say and do with students while acting in their official capacities. School officials have access to a captive audience of students due to their position as public educators. Therefore, schools have a duty to regulate religious proselytizing during the school day and 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.”).

Religious liberty is one of America's greatest achievements. But that liberty is guaranteed by our secular government. There is no such thing as freedom *of* religion without a government that is free *from* religion. True freedom of religion can only exist when we divorce the awesome power religion holds over the supposed eternal life, from the power government undeniably has in everyday life. In short, a secular government is a prerequisite for religious freedom.

Imagine for a moment if this coach were imposing a non-Christian prayer on these students. Imagine the coach brought in an imam to tell the students to pray to Allah. Or imagine a coach who led the students in a prayer to Satan? These thought experiments should be repellant to any constitutionally literate citizen, not because of which deity the prayers are directed at, but because a government official is abusing his power and violating the rights of schoolchildren.

As attorney general, you should not be encouraging citizens to violate the law, much less encouraging state employees to violate the rights of conscience of Missouri students. The machinery of the state may not be used to impose religion on other people's children. It is shocking that you suggest otherwise. You took an oath to defend our godless and entirely secular U.S. Constitution, as well as to defend the Missouri Bill of Rights, which instructs that "no human authority can control or interfere with the rights of conscience. . . or show preference for any church, sect or creed of religion, or any form of religious faith or worship." Mo. Const. art. I, § 5.

#### **Distorting and misrepresenting FFRF's legal achievements.**

Your recitation of FFRF's legal history is as misinformed as your understanding of constitutional law. To take the most obvious example, you claim that FFRF lost a case that we won on the merits, *FFRF v. Concord Cmty. School*. In that lawsuit, FFRF and the ACLU of Indiana in fact halted a decades-long abuse in a public school which corralled students to take part in and witness a live nativity pageant as school officials read from the New Testament for 20 minutes. Our litigation ended this violation.<sup>1</sup> Other examples cited are similarly misleading. You also cite a loss regarding a prayerful judge, *FFRF v. Mack*, when in fact the case was mired in a technicality and which, as you must know, has been refiled and is ongoing.

You correctly state that FFRF sent more than 1,000 formal complaint letters last year, but fail to inform the school district that in 2018 and 2019 respectively, FFRF has ended well over 255 entanglements each year between religion and government, over half of them involving violations in our public schools. That's just the beginning. FFRF does not drop complaints and we often end violations well after the initial letter is sent, sometimes years after. In one instance, it took eight years, but Constitutional rights prevailed.

More importantly, when it comes to protecting American students, FFRF is undefeated in the last decade of litigation. In the last 20 years, we've filed and won thirteen of fourteen lawsuits involving religion in

---

<sup>1</sup> After FFRF filed suit, the District ceased its practice of having students participate in the nativity, and made other improvements to the program.

public schools.<sup>2</sup> Some of these were settled and some involved schools quickly capitulating on the major legal arguments even if the case dragged on procedurally.

You fail to inform the school district that FFRF has won nearly 50 lawsuits. And even this number is deceptive because in a further ten cases, the court decision may seem to disagree with FFRF's position, but the end result factually was what FFRF sought. For instance, in *Oliver v. State Tax Commission* (which you label a loss for FFRF) the court ordered the state to permit the plaintiff or other citizens to be allowed to cross out "So help me God" on tax forms in this Missouri county, an alternate remedy we sought.

The nearly 50 wins includes five cases within the past year. In January, the Ninth Circuit Court of Appeals definitively affirmed our lower court victory against religious exercises and prayers at the school board level.<sup>3</sup> Fees were paid out to FFRF and its attorney in excess of **\$282,602**.<sup>4</sup> The U.S. Supreme Court let stand the unanimous decision of the New Jersey Supreme Court halting millions of tax dollars going to repair active houses of worship.<sup>5</sup> FFRF, with Americans United and the ACLU, definitively won our lawsuit at the 11<sup>th</sup> Circuit Court of Appeals on July 8, 2019 against censorship of freethinkers by a county.<sup>6</sup> Last month, the Eastern District Court of Kentucky found in our favor against censorship of an atheistic license plate, and FFRF jointly agreed with Wisconsin Attorney General Josh Kaul to dismiss a challenge to a Wisconsin Department of Justice Chaplaincy program after changes were made to the program that made it more inclusive to a wider range of volunteers, including atheists and non-believers.<sup>7</sup>

---

<sup>2</sup> *Deal v. Mercer Cty. Bd. of Educ.*, 911 F.3d 183 (4th Cir. 2018), *reh'g denied* (Jan. 28, 2019), *cert. denied*, 140 S. Ct. 111 (2019).

*FFRF v. Antelope Valley Union High School District*, 2:16-CV-02487 (C.D. Cal. filed Apr. 12, 2016).

*FFRF v. Concord Cmty. Sch.*, 885 F.3d 1038 (7th Cir. 2018).

*FFRF v. Emanuel Cty. Sch. System*, CV615-013 (S.D. Ga. filed Feb. 9, 2015).

*FFRF v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132 (9th Cir. 2018), *petition for review en banc denied*, No. 16-55425 (9th Cir., Dec. 26, 2018).

*FFRF v. Orange Cty. Sch. Bd.*, 610 F. App'x 844, 848 (11th Cir. 2015)(dismissed, but because the school district agreed to allow FFRF to distribute literature it had previously censored).

*Doe v. Jackson City Sch. Dist.*, 2:13-cv-112 (S.D. Oh. filed Feb. 7, 2013).

*FFRF v. Sch. Dist. Five of Lexington & Richland Ctys.*, (Graduation prayers stopped with a settlement. New policy passed after students graduated to moot their school board prayer challenge.)

*FFRF v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469 (3d Cir. 2016).

*FFRF v. Connellsville Area Sch. Dist.*, 127 F. Supp. 3d 283 (W.D. Pa. 2015).

*Doe v. Sch. Bd. of Giles Cty.*, 7:11cv435 (W. D. Va. filed Sep. 13, 2011).

*Moss v. Spartanburg Cty. Sch. Dist. Seven*, 683 F.3d 599 (4th Cir. 2012).

*Doe v. Porter*, 370 F.3d 558, 561 (6th Cir. 2004).

*FFRF v. Burmaster*, 08CV1861 (Wis. Cir. Ct. Dane County filed April 26, 2008).

<sup>3</sup> *FFRF v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132 (9th Cir. 2018), *petition for review en banc denied*, No. 16-55425 (9th Cir., Dec. 26, 2018).

<sup>4</sup> Dawn Marks, "Community members ask 'where's the lawsuit money?,'" *Champion Newspapers* (June 15, 2019) at [http://www.championnewspapers.com/news/article\\_043bddc6-8ed9-11e9-9626-036cfa721618.html](http://www.championnewspapers.com/news/article_043bddc6-8ed9-11e9-9626-036cfa721618.html); *see also*, Hemant Mehta, "After Vowing to Cover Legal Costs for Preachy School Board, CA Church Won't Pay," *The Friendly Atheist* (June 16, 2019) at <https://friendlyatheist.patheos.com/2019/06/16/after-vowing-to-cover-legal-costs-for-preachy-school-board-ca-church-wont-pay/>.

<sup>5</sup> *Freedom From Religion Found. v. Morris Cty. Bd. of Chosen Freeholders*, 232 N.J. 543, 181 A.3d 992 (2018), *cert. denied*, 139 S. Ct. 909, 203 L. Ed. 2d 425 (2019)

<sup>6</sup> *Williamson v. Brevard Cty.*, 928 F.3d 1296 (11th Cir. 2019).

<sup>7</sup> *Hart v. Thomas*, No. 316CV00092GFVTEBA, 2019 WL 5967947 (E.D. Ky. Nov. 13, 2019); *FFRF v. Kaul*, 2018CV003022 (Wis. Cir. Ct. Dane County filed November 13, 2018).

Contrary to your assertions, FFRF was right to ask the school district to end coach-led prayer at Cameron High School. We will always stand up for the Constitution and the rights of public school students to be free from government-imposed proselytizing.

We urge you to join us in upholding the rights of conscience of a captive audience of students in our public schools to be free from religious proselytizing, devotions or other impositions of religion. The citizens of the state of Missouri should expect nothing less.

Sincerely,



Christopher Line  
*Staff Attorney*  
*Freedom From Religion Foundation*

Cc: Matt Robinson, Superintendent *via* [mattrobinson@cameronschools.org](mailto:mattrobinson@cameronschools.org)  
Michelle Petersen *via* [mpetersen@cameronschools.org](mailto:mpetersen@cameronschools.org)  
Rich Campbell *via* [rcampbell@cameronschools.org](mailto:rcampbell@cameronschools.org)  
Dan Kercher *via* [dkercher@cameronschools.org](mailto:dkercher@cameronschools.org)  
Jackie Peck *via* [jpeck@cameronschools.org](mailto:jpeck@cameronschools.org)  
Mary Tyrrell *via* [mtyrrell@cameronschools.org](mailto:mtyrrell@cameronschools.org)