

FREEDOM FROM RELIGION *foundation*

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Robert M. Frankhouser, Jr.
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Re: Religious Music at Concert Held in Church

Dear Mr. Frankhouser and Mr. Litts:

Thank you for your letters dated July 19. We appreciate the responses. However, we write again because we disagree with your characterization of the Choral Festival and with your assertion that you cannot address our complaint without knowing the identity of our complainant.

It should be unnecessary for us to divulge the identity of our complainants. Your Districts can easily confirm that our allegations regarding the Choral Festival are accurate. FFRF would not be pursuing this issue at all if it had not been brought to our attention by someone who attended the Festival and was offended by its religious content. Complainants often contact us rather than the administration on these matters so that there is no negative interaction between the complainant and administrators at the school. In fact, the plaintiff in one of the cases you cite in your letters, Rachel Bauchman, spoke at FFRF's 1996 convention about the constant stream of threats, accusations, religious slurs, rumors, intimidation, and other harassment that she was subjected to as a result of speaking out against the Christian nature of her choir classes and concerts.¹ Complainants justifiably want to avoid being similarly harassed in their communities.

Notwithstanding the above, one of our complainants has agreed to be identified. His name is [REDACTED] Mr. [REDACTED] has two children attending school in the Manheim Township School District, including a Manheim Township High School student who performed at the Choral Festival. We trust this satisfies your concerns regarding standing.

This Festival was a concert series put on by the church, not the school. Public high school students performed religious songs in the sanctuary of a church, underneath a large cross, in a program sponsored and organized by this church, at which donations for the church were solicited. This is comparable to the overwhelming religiosity of the graduation ceremony at issue in *Doe ex. rel. Doe v. Elmbrook Sch. Dist.*, in which the Seventh Circuit held that "the sheer religiosity of the space created a likelihood that high school students and their younger siblings would perceive a link between church and state. That is, the activity conveyed a message of endorsement." The court also noted that an observer "could reasonably conclude that the District would only choose such a proselytizing environment aimed at spreading religious faith...if the

¹ Rachel Bauchman, "Rachel Bauchman Versus Utah," *Freethought Today*, October 1996, available at <http://ffrf.org/legacy/fitoday/1996/oct96/bauchman.html>

District approved of the Church's message.” *Id.* at 854. The graduation ceremony at issue in *Elmbrook* “had the unfortunate side effect of fostering the very divisiveness that the Establishment Clause was designed to prevent.” *Id.* at 856.

FFRF is not alleging that using religious choral music in a public school setting is *per se* unconstitutional. Much of the classical canon and many choral pieces by the most renowned composers are indeed religious. However, we are not talking about one of Mozart’s Masses or Handel’s *Messiah* here. Four of the ten religious songs performed at the Festival were written by people born after 1970, according to the program. Songs like “How Can I Keep from Singing” and “Nobody Knows the Trouble I’ve Seen” are traditional as hymns in a Christian context, not as choral pieces in a secular public school context. Asserting that “a wide variety of music was performed” is absurd. A large majority of songs were religious.

The level of entanglement between the Districts and the church in this case surpasses that of the schools involved in any of the cases both of you cite. (Incidentally, we note that *Sease v. School Dist. of Philadelphia*, 811 F.Supp. 183 (E.D. Pa. 1993), was not discussed in either of your letters, even though it is the only case any of us has raised specifically dealing with religious music in schools that is binding on your Districts.) The Festival was not simply several schools using First Presbyterian Church as a convenient venue, it was a joint production of the schools and the church. The Festival was touted as part of the church’s “Upstairs Downstairs Series” of concerts, and the series’ logo is prominently displayed on the cover of the program. The Chancel Choir of First Presbyterian Church performed at the concert, directed by Pequea Valley High School’s choir director. The welcome was given by Alisa Bair, Director of Worship and the Arts for the church. Most egregious of all, donations for the church were solicited during the Festival. A Pequea Valley student played the guitar while this offertory was passed around. Mr. Frankhouser stated that “Money collected at the conclusion of the performances was a pass-the-hat good-will donation to benefit other musicians performing in the concert series” and “were not solicited to benefit the mission of the church or for any religious purpose.” Even if the offertory, which actually occurred in the middle of the program, was for the benefit of the concert series, it is still extremely problematic. The concert series’ website describes itself as “focused on the mission to nurture God’s artists and their creative work”—and mentions that to donate, people should make checks out to “First Presbyterian Church.”² Donations solicited for a church’s concert series of “God’s artists” with checks to be made out to the church can hardly be said to have a secular purpose.

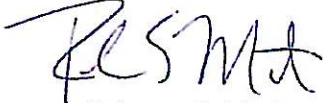
The intermingling among the church, church staff, the church’s choir, and the high school choirs at the Choir Festival was completely inappropriate. Most of the songs performed were hymns or contemporary arrangements of bible verses set to music, not the sort of traditional sacred music generally protected by courts. And this religious music was all performed in a church instead of one of the presumably four auditoriums available at the high schools or a secular community space. The Festival, viewed in its entirety, clearly evinces unacceptable promotion of Christianity by the Districts.

Even if you maintain that the song and venue choices were completely permissible, it is undeniable that many of the Districts’ students and parents are not Christians, and were therefore

² http://www.fjplive.org/media/USDS_Winter_Spring_2012_2013.pdf

ostracized by the pervasively religious Festival. As the nonbelieving population continues to grow, the Districts will alienate more children with their religious music choices—unless, of course, they cease requiring young, impressionable public school children to act like a church choir. Any number of secular songs could avoid this exclusion and would be much more appropriate in a public school setting. We therefore renew our request that you instruct the Districts to cease teaching religious songs to public school children to perform in churches, or in choral festivals organized by churches, and guarantee that attendees of secular school concerts will not be solicited for donations to a church's programs. We await your written reply.

Sincerely,

A handwritten signature in black ink, appearing to read 'RSM', written in a cursive style.

Rebecca S. Markert
Staff Attorney

RSM:mez