

# FREEDOM FROM RELIGION *foundation*

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

June 4, 2013

**SENT VIA FAX & US MAIL  
(937) 748-3956**

Dr. Kelly Kohls  
President  
Springboro Community City Schools Board of Education  
1685 S Main St  
Springboro OH 45066

Re: “Controversial Issues” and “Religious/Patriotic Ceremonies and Observances”  
Policies

Dear Dr. Kohls and Members of the Board:

I am writing on behalf of the Freedom From Religion Foundation (“FFRF”) to urge the Board to reject recent proposals that would inject religion into Springboro Community City Schools. We were contacted by several concerned parents, residents and taxpayers regarding the “Controversial Issues” and the “Religious/Patriotic Ceremonies and Observances” policies. FFRF, as you may recall from our previous correspondence with the Board, is a national nonprofit organization representing over 19,000 members across the country including over 500 in Ohio. FFRF’s purpose is to protect the constitutional principle of separation between state and church.

It is our information and understanding that the Board of Education (“Board”) is considering policies affecting religion in the public schools. First, our complainants inform us that the Board is considering additions to Policy 2240 – Controversial Issues. We are informed the Board is also considering revisions to Policy 8800 concerning Religious/Patriotic Ceremonies and Observances. We understand these policies may be considered at the Board’s meetings in June.

These policies violate constitutional principles, particularly under the Establishment Clause, and we urge the Board to reject them. We will examine each policy in turn.

### ***Policy 2240- Controversial Issues***

It is our information and understanding that the Board is considering additions to Policy 2240 concerning “controversial issues.” Among the additions are “controversial issues” that implicate religion, such as “pro-life/abortion” and “contraception/abstinence.” The addition also includes “evolution/creation.”

Back in 2011, FFRF wrote to the Board and urged them to reject proposals that inject creationism into the curriculum. At that time, the Board correctly rejected such proposals. We view this new addition to the “controversial issues” list to be no more constitutional than the one considered in 2011. In fact, it appears to be a ploy to once again inject religious teachings into the public school system in Springboro. This unconstitutional policy must be rejected.

As outlined to the Board in 2011, public schools are prohibited from teaching creationism or “intelligent design.” Courts have routinely found that such teachings are religious and unconstitutional. It makes no difference that creationism will be taught under the guise of “controversial issues.” The Supreme Court in *Edwards v. Aguillard*, 482 U.S. 578 (1987), struck down a Louisiana state statute that required a “balanced treatment” for creationism and evolution.

Other federal courts also have continually struck down efforts to teach creationism as an alternative to evolution. See *Frelter v. Tangipahoa Parish Bd. of Educ.*, 201 F.3d 602 (5th Cir. 2000)(Disclaimer read before teaching evolution violated Establishment Clause); *Pelozo v. Capistrano Unified Sch. Dist.*, 37 F.3d 517 (9th Cir. 1994)(School could prohibit teacher from teaching creationism, finding that “to permit him to discuss his religious beliefs with students during school time on school grounds would violate the Establishment Clause.”); *Webster v. New Lenox Sch. Dist. No. 122*, 917 F.3d 1004 (7th Cir. 1990)( School board could limit teacher’s comments on creationism because board had the responsibility to ensure that the teacher was not “injecting religious advocacy into the classroom.”); *Kitzmiller v. Dover Area Sch. Dist.*, 400 F.Supp.2d 707 (M.D. Pa. 2005)(policy requiring students to hear statement that intelligent design is alternative to Darwin’s theory of evolution violates the Establishment Clause).

Given the history of attempts by the Board to inject creationism religious teachings into the school curriculum, it is unlikely any court would find Policy 2240 constitutional. We ask the Board to reject such an irresponsible proposal to include religious dogma into the curriculum.

### ***Policy 8800 – Religious/Patriotic Ceremonies and Observances***

It is our further information and understanding that the Board is also considering revisions to Policy 8800 concerning Religious/Patriotic Ceremonies and Observances. This policy, like Policy 2240, includes unconstitutional provisions that should be rejected.

#### Moment of Silence Provision

This provision states “[a]t the discretion of the Superintendent, a moment of silence may be provided each school day for prayer, reflection, or meditation upon a moral, philosophical or patriotic theme.” Although the policy also contains a sentence that indicates no student may be compelled to participate in this policy, FFRF remains concerned that the policy unconstitutionally promotes prayer by a school district.

As you are certainly aware, the Supreme Court has continually struck down formal and teacher or school-led prayer in public high schools. *See, e.g., Engel v. Vitale*, 370 U.S. 421 (1962) (declared prayers in public schools unconstitutional); *Abington Township Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (declared unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *See also Lee v. Weisman*, 505 U.S. 577 (1992) (ruled prayers at public high school graduations an impermissible establishment of religion). Even when student-initiated, the Supreme Court has found these prayers unconstitutional. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (struck down a school policy that authorized students to vote on whether to hold a prayer at high school football games). A moment of silence "for prayer, reflection, or meditation" is constitutionally suspect. *See Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturned law requiring daily "period of silence not to exceed one minute ... for meditation or daily prayer."). Rather than inviting the question of whether this proposal is an attempt by school officials to re-introduce prayer into the public schools, the Board should just abandon this provision.

#### Discussion of Religion in the Classroom

The policy states that "[d]iscussions of religion initiated by students are encouraged. District staff may participate in such discussions to introduce facts, but should avoid presenting personal opinions."

It is a fundamental principle of Establishment Clause jurisprudence that a public school may not advance, prefer or promote 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). This provision is problematic because it "encourages" religion by the District and puts public school employees in a position that may abridge their constitutional duties to remain neutral towards religion. Thus, the provision should be deleted.

#### U.S. and Ohio State Mottoes Posted in District Schools

The policy contains a provision that would require "[t]he mottoes of the United States of America ("In God We Trust") and the State of Ohio ("With God, All Things Are Possible") [to be] displayed in an appropriate manner in a classroom, auditorium, or cafeteria of a school building..." The provision also provides this should be the case if these displays are *donated*. These types of displays, particularly in the context of a public school where young, impressionable schoolchildren are compelled to attend, raise constitutional concerns. Thus, again, the required displays of these mottoes, even if donated by private individuals or organizations, should be rejected.

First and foremost, the history of these mottoes evidences a religious purpose and meaning. "In God We Trust" is a Johnny-come-lately first adopted during the Cold War as a reaction to the purported "godlessness" of communism. America's original motto was purely secular, i.e., "E Pluribus Unum" ("from many come one"), which was selected by Thomas Jefferson, John Adams, and Benjamin Franklin.

Likewise, the Ohio state motto “With God, All Things Are Possible” is a Christian reference, which is explicitly excerpted from the New Testament of the Christian Bible in Matthew 19:26.

There is no place in a public school for religious messages. Displaying these religious messages in a public school is particularly concerning as it creates an association between faith in a god and patriotism. Young, impressionable students are apt to believe that the school endorses the religious message of the poster.

For those students and parents who don’t believe in a god or have beliefs contrary to a monotheistic faith, posting “In God We Trust” or “With God All Things Are Possible” in their school is offensive. Public schools should strive to be welcoming to families of all faiths and non-faith. There is no need to place “In God We Trust” or “With God All Things Are Possible” prominently in view of young students at your school. This message alienates non-believers, turns them into outsiders of their community, and usurps parental authority. It is the right of parents to discuss their faith or non-belief with their own children in ways they find appropriate.

It is important to note that courts are vigilant in protecting public school children from religious influence by school authorities. Even messages that may be displayed in other public settings might be unconstitutional when displayed in a public school because young school children are impressionable and their attendance at school is required.

#### Constitution Day

The policy requires its public schools to annually celebrate Constitution Day on September 17<sup>th</sup>. Unfortunately, the policy requires the day to be celebrated with presentations by religious groups such as “NCCS, the Institute for the Constitution, and Hillsdale College...” Presentations by these groups with inherently religious agendas in public schools would implicate the Establishment Clause.

The Institute for the Constitution advocates for “The American View.” “The American View of government is that there is a God, the God of the Bible, our rights come from Him...”<sup>1</sup> Hillsdale College is a private college that operates the Allan P. Kirby Jr. Center for Constitutional Studies and Citizenship. Its courses on the constitution frequently invoke religion. As the ACLU of Ohio pointed out to you last month, this group has made statements like

“America’s Founders constructed an institutional separation between church and state. This separation does not entail the separation of religion and politics. In misapplying Jefferson’s ‘wall of separation’ metaphor, the Supreme Court in the twentieth century turned the First Amendment’s bar against congressional action on church-state matters into a mandate for national action by the Court.”<sup>2</sup>

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<sup>1</sup> <http://www.theamericanview.com/> (last accessed June 3, 2013)

<sup>2</sup> Constitution 101: The Meaning and history of the Constitution, Hillsdale College, <https://online.hillsdale.edu/page.aspx?pid=1278>

Furthermore, the National Center for Constitutional Studies (NCCS) is widely known as a conservative, religious group. The group is founded by Cleo Skousen, an extremely conservative Mormon more widely known for virulent anti-communism and conspiracy theories than as a historian.<sup>3</sup> The NCCA sells books and other materials for teaching history and the Constitution, such as *The 5000 Year Leap*, on its website. The website touts the “28 fundamental beliefs of the Founding Fathers which they said must be understood and perpetuated by every people who desired peace, prosperity, and freedom”<sup>4</sup> laid out in *The 5,000 Year Leap* by Skousen. These include “Without religion the government of a free people cannot be maintained,” “All things were created by God,” “God has revealed a code of divine law,” and “The United States has a manifest destiny to eventually become a glorious example of God's law under a restored Constitution that will inspire the entire human race.”<sup>5</sup>

Much of these the publications do not present an accurate reflection of history. For example, Skousen’s *The 5,000 Year Leap* apparently asserts that “the Founders were not indulging in any idle gesture when they adopted the motto ‘In God We Trust.’”<sup>6</sup> In fact, the motto the Founders supported was “E Pluribus Unum”—out of many, one. “In God We Trust” was only made the official motto in 1956 by President Eisenhower at the height of fear of “godless” communism, and didn’t appear in any official capacity at all until nearly a century after the Founders’ time.

Aligning the District with organizations that are religious and provide historically inaccurate and misleading information is irresponsible. The Board should reject such presentations, which distort and dishonor our entirely secular and godless Constitution, as part of Constitution Day.

### ***Conclusion***

For the aforementioned reasons, the policies currently under consideration by the Springboro Community City Schools Board of Education must be rejected. Thank you in advance for your time and consideration.

Sincerely,



Rebecca S. Markert  
Staff Attorney

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<sup>3</sup> Alexander Zaitchik, “Fringe Mormon Group Makes Myths with Glenn Beck’s Help.” *Southern Poverty Law Center*. (<http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2011/spring/fringe-mormon-group-makes-myths-with-glenn-becks-help>).

<sup>4</sup> *National Center for Constitutional Studies*. (<http://www.nccsstore.com/5000-Year-Leap/productinfo/5000YL>).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*