

# FREEDOM FROM RELIGION *foundation*

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**SENT VIA U.S. MAIL: [joe.kitchens@westernheights.k12.ok.us](mailto:joe.kitchens@westernheights.k12.ok.us)**

Joe Kitchens  
Superintendent  
Western Heights Public Schools  
8401 SW 44th St.  
Oklahoma City, OK 73179

Re: Unconstitutional School Prayer

Dear Mr. Kitchens:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding repeated constitutional violations occurring in the Western Heights High School (WHHS) band program. We were contacted by a concerned local community member. FFRF is a national nonprofit organization with 26,000 members across the country, including many members in Oklahoma. Our purpose is to protect the constitutional principle of separation between state and church.

Our complainant reported that the Western Heights Jet Pride Marching band has performed routines based on religious themes for several years. The band's 2014 performance at the OBA Marching Championships interpreted Daniel 3, starting with the passage "2,600 years ago in the city of Babylon, three men stood in defiance of the king. A choice was given them, worship the golden image of Nebuchadnezzar or be thrown in a blazing furnace." Videos showing the performance are available online.<sup>1</sup> The narrator reads from the bible again: "Shadrach, Meshach and Abednego replied, 'Oh Nebuchadnezzar, if we are thrown into the blazing furnace the God whom we serve is able to save us, but even if he doesn't, we will never worship your statute of gold.'"

The Jet Pride Marching Band's 2015 routine included quotes from the Book of Isaiah and Psalms. It is our understanding that the performances at the OBA marching championships and the OSSAA Western Regionals included the passages:

- "Sing to the Lord for he has done glorious things. Let this be known to all the world,"
- "Sing the glory of his name; make his praise glorious,"
- "Glorious and majestic are his deeds and his righteousness endures forever," and
- "Praise be to his glorious name forever; may the whole earth be filled with his glory. Amen and Amen."<sup>2</sup>

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<sup>1</sup> See e.g., <https://www.youtube.com/watch?v=zVU5O0USENA>

<sup>2</sup> Recordings available at [https://www.youtube.com/watch?v=KQ6\\_Lppu2iQ](https://www.youtube.com/watch?v=KQ6_Lppu2iQ);  
<https://www.youtube.com/watch?v=ZXARcR7bnSE>

The 2016 routine was entitled “The Four” and was based on the Book of Revelations. The performance includes the biblical passages:

- “And I saw, and behold a white horse; and he that sat on him had a bow,”
- “And there went out another horse that was fiery red; and power was given to him that sat thereon to take peace from the earth,”
- “And I behold, and lo a black horse; and he that sat on him had a pair of balances in his hand,”
- “And I looked, and behold a pale horse; and his name that sat on him was Death, and Hell followed with him.”<sup>3</sup>

It is our understanding that “The Four” was performed at various marching band competitions and for multiple high school football halftime shows.<sup>4</sup>

Long ago, the Supreme Court declared reading bible passages unconstitutional. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (declaring unconstitutional devotional Bible reading and recitation of the Lord’s Prayer in public schools). Bible reading is unconstitutional, and these performances crossed that line.

Western Heights Public Schools have a responsibility to ensure that performances by school-sponsored groups do not impermissibly promote religion over nonreligion or Judeo-Christianity over all minority faiths. The Supreme Court has repeatedly noted that “[s]chool 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 an 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 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)).

Religion is a divisive force in public schools. Creating marching band routines based around biblical passages alienates those non-Christian students, teachers, and members of the public whose religious beliefs are inconsistent with the message being promoted by the school. It is particularly inappropriate given that over 20% of the U.S. population identifies as non-religious.<sup>5</sup> Younger Americans are the least religious population in the country: one-in-three millennials—those born after 1981—are not religious.<sup>6</sup>

While courts have held that sometimes religious music may be included as part of a broader secular program for its historic and cultural value, that is not the case here. Performing only religious music and the reading of biblical passages before the music even begins, as happens in several performances, violates the Constitution. Courts have reviewed religious music in public

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<sup>3</sup> *Revelations* 6:2-6:8

<sup>4</sup> Available at <https://www.youtube.com/watch?v=QIbjIV95UN0> (OSSAA Western Regionals); <https://www.youtube.com/watch?v=1kY8wNHhTHY> (OBA Marching Championship Finals); <https://www.youtube.com/watch?v=Bq3SmryVWuc> (Bixby Invitational Tournament of Bands); <https://www.youtube.com/watch?v=QFRQEIGHrjM> (October 20, 2016 halftime performance); <https://www.youtube.com/watch?v=7w9xKPFY8SI> (October 7, 2016 halftime performance).

<sup>5</sup> *America’s Changing Religious Landscape*, Pew Research Center (May 12, 2015), available at [www.pewforum.org/2015/05/12/americas-changing-religious-landscape/](http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/).

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

schools and held that its use must comport with the Establishment Clause. *See e.g., Nurre v. Whitehead*, 580 F.3d 1087, 1097 (9th Cir. 2009) (school district was permitted to disallow the playing of “Ave Maria” at graduation because an observer could have viewed it as the district’s preference for one religion over another).

In addition to this letter, we will be contacting the Oklahoma Bandmasters Association (OBA) and the Oklahoma Secondary School Activities Association (OSSAA) to ensure that public school marching bands performing religiously themed pieces in future competitions will be disqualified.

Please ensure that the district is not impermissibly promoting religion in school-sponsored performances. The district should remind its faculty and staff of their constitutional obligation to remain neutral toward religion while acting in their capacity as district employees. The marching band must not be used as a mouthpiece to promote anyone’s personal religion. Please investigate and inform us in writing of the steps the district is taking to remedy this violation.

Sincerely,



Andrew Seidel  
Staff Attorney

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