FREEDOM FROM RELIGION *foundation*

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March 13, 2019

SENT VIA EMAIL & U.S. MAIL
dtebo@hamiltonschools.us

David Tebo
Superintendent
Hamilton Community Schools
4815 136th Avenue
Hamilton, MI 49419

Re: School Event in Church

Dear Superintendent Tebo:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding several constitutional violations occurring in Hamilton Community Schools. FFRF is a national nonprofit organization with more than 31,000 members across the country, including nearly 800 members in Michigan. FFRF's purposes are to protect the constitutional separation between state and church, and to educate the public on matters relating to nontheism.

We have been contacted by multiple Hamilton Community Schools students and parents who reported the following:

1. Hamilton High School regularly holds choir performances in several area churches. We understand that Women's Chorale and Honors Choir instructor Holly Israels has integrated students directly into the Sunday worship services at these churches, essentially asking them to take the place of the church's own gospel choir for a handful of events per year. After performing the opening hymns, students are directed to sit in the front row of pews for the duration of the roughly hour-long sermon before performing the closing hymns. One student, who identifies as non-religious, told us of their extreme discomfort during these sermons, especially when the content strayed into "derogatory messages regarding people in the LGBT community." Our student complainant further reports that Ms. Israels "fully participate[s] in all worship activities during the sermon." Finally, we understand that these performances are for-credit and mandatory, and as such, a choir student who refuses to participate in this religious service may lose points off their final grade or face other disciplinary action. We have heard from one student who elected to drop the class rather than be forced to choose between their grade-point average and their freedom of conscience.

2. Hamilton High School allows a youth pastor to enter the school during the school day to speak to students. We understand Pastor Scott Davis of Haven Reformed Church can be seen talking with students during the lunch period "a couple times every week." We understand that Mr. Davis does not limit himself to conversing with students who are members of his church, but also sits down with other students and initiates conversation. A student complainant further reports that Mr. Davis has entered classrooms on occasion as well. In one particular instance, our complainant reports that Mr. Davis entered a classroom to ask students if they would go on the "Colorado Challenge," a youth field trip organized by his church.

3. The Hamilton Community Schools Board of Education begins its public meetings with prayer. We understand school board members lead these prayers themselves.

We write to request that Hamilton Community Schools take immediate action to remedy these myriad violations of the First Amendment.

1. <u>It is unconstitutional to coerce students into attending a church service.</u>

In effect, the District has repeatedly compelled choir students into participating in a worship service. Nothing more needs to be proven to establish that the District has violated the First Amendment. *See Lee v. Weisman,* 505 U.S. 577, 604 (1992) (Blackmun, J., concurring) ("Although… proof of government coercion is not necessary to prove an Establishment Clause violation, it is sufficient."). The Supreme Court has repeatedly held that public schools may not compel or coerce students into participating in any religious observance. *See Santa Fe Indep. Sch. Dist. v. Doe,* 530 U.S. 290, 312 (2000); *Lee,* 505 U.S. at 593; *Sch. Dist. of Abington Twp. v. Schempp,* 374 U.S. 203 (1963); *Engel v. Vitale,* 370 U.S. 421 (1962).

Please note, however, that merely allowing students to leave during the sermon and come back for the final performance does nothing to remedy the violation. The Supreme Court considered—and flatly rejected—this same argument in *Lee*, reasoning that "the State may no more use social pressure to enforce orthodoxy than it may use direct means." *Lee*, 505 U.S. at 578. Any student who objects must either submit to a religious exercise that they do not believe in, or openly protest, thereby making a spectacle of themselves before their peers. "[T]he State may not, consistent with the Establishment Clause, place primary and secondary school children in this position." *Id.* at 593. While *Lee* concerned the constitutionality of prayers at a public school graduation, the same coercive pressure found in that context is substantially amplified in the present case, where students' presence at the church is for-credit and mandatory, and the students are being used as part of the worship service.

While the coercive aspect of this case makes the violation more stark, this violation is not remedied by simply making these school-sponsored performances "voluntary." Because the Establishment Clause is concerned primarily with government endorsement of religion—which need not take the form of direct coercion—courts have summarily rejected arguments that merely asserting "voluntariness" will excuse a constitutional violation. *See generally Sch. Dist. of Abingdon Twp. v. Schempp*, 374 U.S. 203, 288 (1963) (Brennan, J., concurring) ("… the availability of excusal or exemption simply has no relevance to the establishment question"); *Mellen*, 327 F.3d at 372 ("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.'"); *Jager v. Douglas Cty. Sch. Dist.*, 862 F.2d 825, 832 (11th Cir. 1989) (". . . whether the complaining individual's presence was voluntary is not relevant to the Establishment Clause analysis . . . The Establishment Clause focuses on the constitutionality of the state action, not on the choices made by the complaining individual.").

Even under less egregious facts, holding a school-sponsored event in a church raises constitutional concerns. 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) (holding that a school's graduation held in a church violated the Establishment Clause); *Does v. Enfield Pub. Sch.*, 716 F. Supp. 2d 172 (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 Cty.*, 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).

2. Public schools may not be used a recruiting ground for pastors.

It is inappropriate and unconstitutional for the District to offer pastors unique access to befriend and proselytize students on school property. The District cannot allow its schools to be used as recruiting grounds for churches during the school day. It is well settled that the Establishment Clause bars the "utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith." *McCollum v. Bd. of Educ.*, 333 U.S. 203, 210 (1948).

Allowing church representatives regular access to proselytize and recruit students for religious activities on school grounds is a violation of the Establishment Clause. The courts have protected public school students from overreaching outsiders in similar situations. *See, e.g., Berger v. Rensselaer Sch. Dist.*, 982 F.2d 1160 (7th Cir. 1993) (holding that distribution of bibles by Gideons in school violated Establishment Clause). Courts have granted injunctions against schools for their complacency in such situations. *See, e.g., Roark v. S. Iron R-1 Sch. Dist.* 540 F. Supp.2d 1047, 1059 (E.D. Mo., 2008); *upheld in relevant part by* 573 F.3d 556 (8th Cir. 2009) (holding that school policy allowing evangelical Christian organization to distribute bibles in school violated Establishment Clause).

3. Prayer at school board meetings violates the Establishment Clause.

It is beyond the scope of a public school board to schedule or conduct prayer as part of its meetings. Numerous federal courts of appeal have held that this practice violates the Establishment Clause of the First Amendment—including the Sixth Circuit Court of Appeals, which has jurisdiction over Michigan. *See Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999); *see also Freedom From Religion Found. 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 Sch. Dist.*, 653 F.3d 256 (3d Cir. 2011), *cert. denied sub. nom., Indian River Sch. Dist. v. Doe,* 132 S. Ct. 1097 (2012).

A public school board is an essential part of the public school system. *See Coles*, 171 F.3d at 381 ("[T]he school board, unlike other public bodies, is an integral part of the public school system."). Public school boards set policies, procedures, and standards for education within a community. The issues discussed and decisions made at Board meetings are wholly school-related, affecting the lives of students and parents. The Sixth Circuit noted in *Coles*, "although meetings of the school board might be of a 'different variety' than other school-related activities, the fact remains that they are part of the same 'class' as those other activities in that they take place on school property and are inextricably intertwined with the public school system." *Id.* at 377, *accord Indian River,* 653 F.3d at 275 (where the court held that the school board meetings are "an atmosphere that contains many of the same indicia of coercion and involuntariness that the Supreme Court has recognized elsewhere in its school prayer jurisprudence.").

In the most recent case striking down school board prayer, the Ninth Circuit reaffirmed that Establishment Clause concerns are heightened in the context of public schools "because children and adolescents are just beginning to develop their own belief systems, and because they absorb the lessons of adults as to what beliefs are appropriate or right." *FFRF v. Chino Valley,* 896 F.3d at 1137. The court reasoned that prayer at school board meetings "implicates the concerns with mimicry and coercive pressure that have led us to 'be [ ] particularly vigilant in monitoring compliance with the Establishment Clause.' " *Id.* at 1146 (quoting *Edwards v. Aguillard*, 482 U.S. 578, 583–84 (1987).

It is important to note that the Supreme Court's decision in *Town of Greece v. Galloway*, permitting prayers at local legislative meetings, has no applicability to prayers at public school board meetings. In *Chino Valley*, decided after *Galloway*, the court distinguished a school board from the deliberative legislative bodies considered in *Galloway* and held that a board's prayer practice must be analyzed as a

school prayer case, echoing to the Sixth Circuit's rationale in *Coles*. The Ninth Circuit reasoned that prayers at school board meetings are "not the sort of solemnizing and unifying prayer, directed at lawmakers themselves and conducted before an audience of mature adults free from coercive pressures to participate that the legislative-prayer tradition contemplates. Instead, these prayers typically take place before groups of schoolchildren whose attendance is not truly voluntary and whose relationship to school district officials, including the Board, is not one of full parity." *Chino Valley*, 896 F.3d at 1142 (internal citations omitted).

Conclusion

"[F]amilies 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*, 482 U.S. at 584. Hamilton Community Schools has repeatedly violated that trust. To earn it back, the District must commit to the following:

1. The District will immediately cease holding school-sponsored performances in churches. This practice forces students, who may be of varying faiths or none at all, to enter a Christian house of worship to earn a grade. Simply allowing students to "opt out" is not sufficient. It is inappropriate, coercive and illegal.
2. The District will not allow youth pastors to enter school grounds during the school day to speak with students. Allowing a youth pastor to tour the building and freely interact with students usurps the authority of parents, some of whom surely do not want their children approached by minister's during lunch, let alone during class time. There is no secular purpose behind granting *carte blanche* access to the school to youth pastors.
3. The District will cease holding prayer at its school board meetings. Board members are free to pray privately or to worship on their own time but may not use their public meetings to impose their religious ritual on all in attendance. Students and parents have the right—and often have reason—to participate in school board meetings. It is coercive for nonreligious citizens to be required to make a public showing of their nonbelief or else to display deference toward a religious sentiment in which they do not believe. Prayer at school board meetings constitutes a government endorsement of religion that is inapposite to Constitutional principles.

Please respond in writing detailing the actions that the District will take to remedy these violations. Thank you for your time and attention to this matter.

Sincerely,

Colin E. McNamara, Esq.
Robert G. Ingersoll Legal Fellow
Freedom From Religion Foundation