

FREEDOM FROM RELIGION *foundation*

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

September 3, 2015

SENT VIA U.S. MAIL AND EMAIL
wsmith@k12.wv.us

Mr. William A. Smith
Superintendent
2850 5th Avenue
Huntington, WV 25702

Re: Painting of Jesus in Altizer Elementary School

Dear Superintendent Smith:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to request that you remove unconstitutional religious iconography hanging in Altizer Elementary School (AES). We were contacted by a concerned citizen. FFRF is a national nonprofit organization with more than 22,700 members across the country, including many members in West Virginia. FFRF's purpose is to protect the constitutional principle of separation between religion and government.

It is our understand that AES has a painting of Jesus leading a flock of sheep hanging in its entry hallway. The painting is prominently displayed and easily visible by students during the school day. A picture of the painting is enclosed for your review.

This is an egregious violation of the First Amendment. Courts have specifically held that public schools may not display paintings of Jesus. *Washegesic v. Bloomington Public Schools*, 813 F. Supp. 559 (W.D. Mich. 1993), *aff'd*, 33 F. 3d 679 (6th Cir. 1994) (ruling that a painting of Jesus may not be displayed in a public school). A similar situation occurred at Jackson Middle School in Jackson, Ohio. FFRF and the ACLU of Ohio filed a lawsuit on behalf of a Jackson Middle School student that resulted in a settlement for the permanent removal of the portrait of Jesus and a \$95,000 check, including attorney's fees, against Jackson City School District. If the District had not settled when it did, its costs would almost certainly have been several times higher.

As you are certainly aware, the display of religious messages in the school setting violates the Establishment Clause of the First Amendment. The Supreme Court has held that public schools may not display religious messages or iconography. *See generally Stone v. Graham*, 449 U.S. 39 (1980) (ruling that the Ten Commandments may not be displayed on school walls). Other courts agree. *See, e.g., Ahlquist v. City of Cranston ex rel. Strom*, 840 F. Supp. 2d 507 (D.R.I. 2012) (ruling that prayer mural in a school auditorium violated the Establishment Clause).

Cabell County Schools may not display Christian or other religious messages in its schools. The Supreme Court has stressed the importance of protecting public school students from these types of messages. In *Santa Fe Indep. Sch. Dist. v. Doe*, the Supreme Court struck down a school district policy that authorized students to vote on whether to hold a prayer at high school football games. 530 U.S. 290 (2000). The court reasoned that because the prayers were part of a regularly scheduled school-sponsored function on school property, an objective observer would perceive them as state endorsement of religion. *Id.* at 308. Upon seeing a painting of Jesus hanging in the hallway at AES, an objective observer would have no doubt that it had the district's stamp of approval.

“[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.’” *Id.* at 309–10. When a district promotes religion over nonreligion, it impermissibly turns non-believing students, parents, and staff into outsiders. This is especially likely considering 23% of Americans are nonreligious, including about 35% of millennials—those born after 1981.¹ The potential to exclude and alienate is great.

It is illegal for AES or any other Cabell County public school to post religious images in its hallways, or anywhere else within its schools. We request that you immediately remove the Jesus painting and review all school facilities for compliance with the First Amendment. Please respond in writing so that we may assure our complainant that the District has ceased its illegal conduct.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick Elliott', with a large, stylized flourish at the end.

Patrick Elliott
Staff Attorney

PCE:cal

Enclosure

¹ *America's Changing Religious Landscape*, Pew Research Center (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

