

# FREEDOM FROM RELIGION *foundation*

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December 5, 2023

**SENT VIA EMAIL AND U.S. MAIL:**

**dscotthickamatty@gmail.com**

D. Scott Hickam  
Counsel  
Lake Hamilton School District  
211 Hobson Ave Ste C  
Hot Springs, AR 71913

Re: Unconstitutional Marching Band Show Theme

Dear Mr. Hickam:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation that occurred at Lake Hamilton High School. FFRF is a national nonprofit organization with more than 40,000 members across the country, including members in Arkansas. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

Several concerned members of the Lake Hamilton School District community have contacted FFRF to report that the Lake Hamilton Power Band's halftime and competition show for the 2023 season, entitled "Revival", contained inappropriate and unconstitutional religious themes and messaging. It is our understanding that the show was themed after the Christian practice of holding "tent revivals." The show contained several religious hymns, all of which were exclusively Christian in nature, and props carried by band and color guard members contained messages such as "sinners beware" and "repent now." Other visuals from the show included references to fire and brimstone preaching that is typically found at a Christian revival, and during the show's closer, props are moved to create a Latin cross, an explicit symbol of Christianity.<sup>1</sup>

We write to ensure that future performances by student groups in the Lake Hamilton School District are free from religious coercion.

It is a violation of the Constitution for any school representative to promote a religious message to students. It is well settled that public schools may not violate the First Amendment rights of students by showing favoritism towards or coercing belief or participation in religion. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *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 Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *McCullum v Bd. of Ed.*, 333 U.S. 203 (1948). In *Lee*, the Supreme Court extended the prohibition of school-sponsored religious activities beyond the classroom to all school

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<sup>1</sup> <https://www.youtube.com/watch?v=Hg6op5QnROA>

functions. Turning a school-sponsored marching band performance into a religious event violates the constitutional separation of religion and government.

Lake Hamilton School District has a responsibility to ensure that performances by school-sponsored groups do not impermissibly favor religion over nonreligion. 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*, 530 U.S. at 309–10 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)).

Religion is a divisive force in public schools. Choosing a religious theme and props for marching band performances alienates those non-Christian students, teachers, and members of the public whose religious beliefs are inconsistent with the message being promoted by the school, including the nearly one in three Americans who now identify as religiously unaffiliated.<sup>2</sup> These students certainly should be commended for their hard work that led them to the semi-finals of Bands of America Grand Nationals, but there are plenty of appropriate secular alternatives that the band director could select that would utilize their clear work ethic and talent more appropriately.

Student musicians are especially susceptible to coercion. Students know that band directors and staff have direct control over opportunities such as solos, features, chair and ensemble placement, and leadership positions, directly affecting students’ opportunities for college scholarships as well as admission to college music programs, which are notoriously competitive. When members of the band staff promote their personal religion to students through their programming choices, the student musicians will no doubt feel that agreeing with their directors’ religious viewpoint and participating in religious activities is essential to pleasing their coach and being viewed as a team player. It is unrealistic and unconstitutional to put student musicians to the choice of allowing their constitutional rights to be violated in order to maintain good standing in the eyes of their coach and peers or openly dissenting at the risk of retaliation from their directors or bandmates.

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

Sincerely,



Kat D. Grant

*Equal Justice Works Fellow (sponsored by the Wm. Collins Kohler Foundation)*  
*Freedom From Religion Foundation*

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<sup>2</sup> Gregory A. Smith, *About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated*, PEW RESEARCH CENTER (Dec. 14, 2021), available at [www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/](http://www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/).