

FREEDOM FROM RELIGION *foundation*

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October 1, 2020

SENT VIA U.S. MAIL AND EMAIL
sclugston@ptisd.org

Steve Clugston
Superintendent
Pine Tree ISD
1701 Pine Tree Road
Longview, Texas 75608

Re: Unconstitutional school involvement in “See You at the Pole”

Dear Superintendent Clugston:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation that occurred in Pine Tree ISD (the District). FFRF is a national nonprofit organization with more than 32,000 members across the country, including over 1,300 members in Texas. FFRF’s purpose is to protect the constitutional principle of separation between state and church and to educate the public on matters relating to nontheism.

A concerned local resident contacted us to report that Pine Tree Birch Elementary School used its official government Facebook page to promote a See You at the Pole event that occurred on September 23, 2020.¹ This posting describes the event as a “national day of student prayer” and indicates that the event is “hosted by Pine Tree Birch Elementary School.”

We write to request that the District refrain from all future endorsement of religious events, as it appears to have done here by advertising the event on social media. See You at the Pole, like other allegedly student-run events, may not constitutionally be promoted or endorsed by a government entity like the District or its employees.

It is well settled that public schools may not advance, prefer or promote religion. *See 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). Yet advancing, preferring, and promoting religion is exactly what a school district does when its employees post religious messages on official public social media pages. These proselytizing messages give the appearance of District endorsement of religion over nonreligion, and Christianity over all other faiths. This “[s]chool sponsorship of a religious message is impermissible because it sends the ancillary message to . . . nonadherents that they are outsiders, not full members of the political community and an accompanying message to adherents that they are insiders,

¹ See Enclosures.

favored members of the political community.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309–310 (2000) (internal quotations omitted).

Public school employees are government actors and subject to the strictures of the Establishment Clause’s separation of church and state. To that end, “a school can direct a teacher to ‘refrain from expressions of religious viewpoints in the classroom and like settings.’” *Helland v. South Bend Comm. Sch. Corp.*, 93 F.3d 327 (7th Cir. 1993) (quoting *Bishop v. Arnov*, 926 F.2d 1066, 1077 (11th Cir. 1991)). Many federal courts around the country have prohibited religious messages or conduct by school employees. *See, e.g. Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954 (9th Cir. 2011) (restricting teacher’s display of religious posters in the classroom), *cert. denied*, 132 S.Ct. 1807 (2012); *Lee v. York*, 484 F.3d 687 (4th Cir. 2007) (upholding school district’s removal of religious postings on classroom bulletin boards). *Roberts v. Madigan*, 702 F. Supp. 1505, 1513 (D. Colo. 1989), *aff’d*, 921 F.2d 1047 (10th Cir. 1990) (upholding school district requirement that a teacher refrain from reading the Bible silently during reading period and displaying other religious items in his classroom).

Furthermore, federal courts have upheld restrictions on the posting of religious materials by government entities because such restrictions exist to avoid an Establishment Clause violation. The Ninth Circuit Court of Appeals has stated that the “government has a greater interest in controlling what materials are posted on its property than it does in controlling the speech of the people who work for it.” *Tucker v. Department of Education*, 97 F.3d 1204, 1214 (9th Cir. 1996); *see also Berry v. Department of Social Services*, 447 F.3d 642, 651 (9th Cir. 2006) (“materials posted on the walls of the corridors of government offices may be interpreted as representing the views of the state.”)

In *Berry*, the court upheld restrictions on displays of religious materials in workspaces, even private cubicles or offices, because public access to the area could cause someone to “reasonably interpret the presence of visible religious items as a government endorsement of religion.” *Berry*, 447 F.3d at 652. These restrictions clearly extend beyond the brick and mortar. They are just as applicable to the District’s webpage and any social media pages, including those utilized by school employees, which a reasonable viewer would assume represents the views of the school district these employees represent.

The Supreme Court recently described the power of social media sites as “the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017) (internal quotations omitted). Government entities must be particularly diligent not to entangle religious messages with official government pronouncements made in this important modern medium.

When District staff plan, promote, or participate in See You At The Pole events, they not only violate the First Amendment, but they alienate students, teachers, and parents whose religious beliefs are inconsistent with the message being promoted by the school. These

practices exclude the 35 percent of Americans who are not Christian, which includes the 26 percent who are not religiously affiliated.² Any religious events must be entirely student-initiated, student-promoted, and student-run. While the District cannot prohibit students from organizing or participating in a prayer event, the Supreme Court has stated that public school staff members must refrain from participating in the religious activities of students while acting within their governmental roles to avoid any perception of government endorsement of religion. *Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 253 (1990).

Even See You at the Pole's official website recognizes that adults should not be involved in their events:

See You at the Pole™ is a student-led event. Strong student leadership is crucial. Adult volunteers and parents should not lead the See You at the Pole™ gathering. Many well-meaning adults take over and take away from the students by trying to lead out in the prayers at the flagpole. This is not the intention for See You at the Pole™, nor is it legal for adults to lead. Please step back or stay away and let the students grow and learn in their faith by leading.

The best place for an adult to pray on the day of See You at the Pole™ is not on campus with the students, but at alternate locations.³

District staff must not plan, promote (as here), or participate in any future "See You at the Pole" events, nor can they encourage students to put on such events. Any religious events must be truly student-initiated and student-run, without promotion by the school. Please inform us in writing of the steps you are taking to ensure this constitutional violation does not recur.

Sincerely,



Brendan Johnson, Esq.
Robert G. Ingersoll Legal Fellow
Freedom From Religion Foundation

Enclosures

² *In U.S., Decline of Christianity Continues at Rapid Pace*, PEW RESEARCH CENTER (Oct. 17, 2019), available at <https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace/>.

³ <http://syatp.com>, click "adults."



WED, SEP 23 AT 6:45 AM

See You At The Pole

Birch Elementary School · Longview



Interested



Going



Share ▼



More



Public · Hosted by **Pine Tree Birch Elementary School**



Birch Elementary School

815 Birch, Longview, TX 75604 · 1.8 mi

Details

We will meet at the front circle drive-thru at the flag pole at 6:45 a.m.

See You at the Pole grew from the initiative of a youth group in Texas in early 1990. During a ministry retreat, the teens were led to pray at and for several local schools. They shared the story of their profound experience at a youth conference that summer, impacting thousands of other students. In September 1990, more than 56,000 teens on 1,200 campuses participated in the first See You at the Pole event. The movement has continued to grow and is now an international event, taking place in many countries around the world.

Other

Hosted by



Pine Tree Birch Elementary School