

FREEDOM FROM RELIGION *foundation*

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

December 30, 2013

Ms. Carole Smith
Superintendent, Portland Public Schools
501 N Dixon St
Portland, OR 97227

Re: Public school students' participation in religious event held in a church

Dear Superintendent Smith:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a constitutional concern regarding the District taking public school chorale students to perform in a church for the financial benefit of that church. FFRF is a nationwide nonprofit organization with nearly 20,000 members across the country, including a local chapter, FFRF Portland. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that earlier this month the Madison, Wilson, Cleveland, and Grant High School choirs, and the Jackson and Lane Middle School choirs performed at an event called "Festival of Lights." Other public schools performed as well, up to five each night. We understand that this festival took place at a venue called "The National Sanctuary of Our Sorrowful Mother, The Grotto" – "a National Catholic Shrine dedicated to Mary" and that the concert is in a church, "the Chapel of Mary."¹ A concerned parent informs us that this event involved numerous displays of religious iconography and is hosted, in part, by a friar. We also understand that The Grotto, a private religious outfit charges an entrance fee. With 62 acres, a 600-seat chapel, 500,000 lights, 155 concerts, and \$9.00 a person, we wonder how much they are making off the public school choirs.

The concerts take place in The Grotto's chapel, and "a magnificent display of nativity sets from around the world [were] on display for viewing and individual sets [were] available for purchase in the Grotto's Visitor Complex."² The Grotto's website describes this year's theme as: "Angels on High." We are informed that no choirs were allowed to perform on Christmas Eve since the chapel was being prepared for Mass, which speaks to the religious nature of the performance space.

It is well settled that public schools may not advance or endorse religion. *See generally, 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); and *Engel v. Vitale*, 370 U.S. 421 (1962). In order to avoid the perception of school endorsement of a religious message, schools must not participate in overtly religious events. School sponsorship of a religious message is impermissible "because it sends the ancillary message to members of the

¹ <http://www.thegrotto.org/about-us/mission/> (Last visited December 27, 2013).

² <http://www.thegrotto.org/christmas/> (Last visited December 27, 2013).

audience who are nonadherents ‘that they are outsiders, not full members of the political community and 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 (2001) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 690) (1984) (O’Connor, J., concurring). This sort of entanglement between religion and public education excludes nonreligious students and younger Americans, who are the least religious population in the country: 1-in-3 Americans aged 18-29 are not religious.³

When schools ask students to attend school-sponsored events in churches, any reasonable student will think that the school is endorsing the religion of the church. Any court looking at the practice will “as[k] whether, irrespective of government’s actual purpose, the practice under review in fact conveys a message of endorsement or disapproval. An affirmative answer . . . should render the challenged practice invalid.” *Lynch* at 690.

Taking public school students to church, a place covered with religious iconography, is an endorsement of that church’s religion. “Regardless of the purpose of school administrators in choosing the location, the sheer religiosity of the space [can create] a likelihood that high school students and their younger siblings [will] perceive a link between church and state. That is, the activity [will convey] a message of endorsement.” *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 853 (7th Cir. 2012).

The environment in churches is often “pervasively Christian, obviously aimed at nurturing Christian beliefs and gaining new adherents among those who set foot inside the church.” *Id.* at 853. A school runs the risk of appearing to endorse religious iconography such as crosses because “there is no doubt that a sectarian message is conveyed by a cross prominently displayed in a house of worship.” *Id.* at 852. The same is true for nativities and other religious symbols. When a school takes students to a house of worship it appears to be endorsing the sectarian messages displayed in violation of the Establishment Clause.

The Seventh Circuit Court continued:

True, the District did not itself adorn the Church with proselytizing materials, and a reasonable observer would be aware of this fact. But that same observer could reasonably conclude that the District would only choose such a proselytizing environment aimed at spreading religious faith—despite the presence of children, the importance of the graduation ceremony, and, most importantly, the existence of other suitable graduation sites—if the District approved of the Church’s message. *Id.* at 853-54.

Like the space in *Elmbrook*, The Grotto’s Chapel of Mary is a highly religious space. For instance, some chorale groups perform next to the pulpit which features a quote from the (Catholic) Douay-Rheims Bible, Matthew 28:19, “Teach Ye All Nations,” referring to Jesus’ command to his followers to spread his message. The quote, in full, reads:

³ “Nones on the Rise: One-in-Five Adults Have No Religious Affiliation,” Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012) available at <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>

And Jesus coming, spoke to them, saying: All power is given to me in heaven and in earth. Going therefore, teach ye all nations; baptizing them in the name of the Father, and of the Son, and of the Holy Ghost. Teaching them to observe all things whatsoever I have commanded you: and behold I am with you all days, even to the consummation of the world.⁴

The stage is also flanked by two religious statues, one on either side. Murals depict different moments in the life of Jesus, Mary and Joseph, the Via Matris or seven sorrows of Mary, and the massive center mural is named “The Coronation of the Blessed Virgin Mother in Heaven.”⁵ Visitors sit in pews marked with crosses and the building is crowned by a golden dome and cross.

The chapel also features “The Stations of The Cross that ... depict the painful scenes of Good Friday, the [day] on which Jesus was crucified.”⁶ A 25-foot tall stained glass window depicting “the Resurrection of Christ,” rounds out the religious iconography.

We understand that a crucifix directly behind the choral groups was covered up this year, but that the statues, murals, 25-foot stained-glass windows, Stations of the Cross, and other crucifixes were not. Any reasonable public school student would be justified in thinking that their school was endorsing the religious message, as the *Elmbrook* decision recognized.

The District must remember that courts in this country are “particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. Families entrust public schools with the education of their students, 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 v. Aguillard*, 482 U.S. 578, 583-84 (1987).

The District cannot remedy this constitutional violation by claiming that this event is voluntary. Courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See generally, Lee*, 505 U.S. at 596 (“It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.”); *Schempp*, 374 U.S. at 288 (Brennan, J., concurring) (“... the availability of excusal or exemption simply has no relevance to the establishment question ...”); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) (“... 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.’”). Only if this is a genuine student-led, student-run, non-curricular club, is voluntariness factor worth considering.

We also understand that there is a \$9 entrance fee to attend the Festival of Lights, all of which goes to the church. This raises concerns under the Oregon Constitution art. I, § 5: “No money shall be drawn from the Treasury for the benefit of any religious, or theological institution, nor

⁴ Matthew 28:18-20.

⁵ <http://www.thegrotto.org/gardens/the-chapel-of-mary/>

⁶ <http://www.thegrotto.org/gardens/the-chapel-of-mary/> An image of the chapel can be seen here: http://iheartlivinginportlandoregon.files.wordpress.com/2010/11/img_1647.jpg

shall any money be appropriated for the payment of any religious services in either house of the Legislative Assembly.” Having the public schools perform for the financial benefit of a church violates this principle. *See, e.g., Dickman v. School Dist. No. 62C, Oregon City, Clackamas County*, 232 Or. 238, (1961) *cert. denied* 371 U.S. 823.

We are certain that there are many other venues in the community—assisted living homes, community parks, and other district schools—that would welcome a performance by choirs in your district. Of course, if the choir is a non-curricular student club, this may not be an issue. Please promptly inform us in writing of the steps you are taking to protect the rights of conscience of your non-Christian and nonreligious students and to avoid the perception of district sponsorship of the religious message.

Sincerely,



Andrew L. Seidel
Staff Attorney

ALS:jki:mez