

FREEDOM FROM RELIGION *foundation*

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**SENT VIA FAX & U.S. MAIL
(865) 988-6732**

Wayne Miller
Superintendent
Lenoir City Schools
2145 Harrison Ave
Lenoir City TN 37771

Rosemary Quillen
School Board President
Lenoir City Schools
2145 Harrison Ave
Lenoir City TN 37771

Re: Egregious Constitutional Concerns Occurring at Lenoir City High School

Dear Mr. Miller and Ms. Quillen:

Our national organization, which works to protect the constitutional principle of separation between state and church, has been in contact with you over the last year regarding other constitutional concerns at Lenoir City High School, namely, prayer in an algebra classroom and a nativity scene on school property. Unfortunately, we contact you again regarding additional egregious constitutional violations occurring at this school.

We have been contacted by many local Lenoir City residents and taxpayers as well as many Tennessee members of FFRF reporting serious allegations of censorship of atheist viewpoints, illegal prayer at school-sponsored functions, teachers proselytizing students, and school board prayer. We will address these issues in turn.

Censorship of Atheist Student's Opinion Piece

It is our understanding that a school newspaper article written by Krystal Myers, a student at Lenoir City High School, was censored by the administration. The article, entitled "No Rights: The Life of an Atheist," addressed multiple unconstitutional endorsements of religion by the school, and it addressed the negative treatment to which Ms. Myers' believes atheists are subjected. It is our understanding that past editorials and newspaper articles have addressed religious topics. Given that the school has allowed religious opinions and numerous other articles to be published in the school newspaper in the past, restriction of Ms. Myers' article is impermissible viewpoint discrimination. Lenoir City Schools should not have censored this article and should be mindful of the free speech rights of students in the future.

Prayer at School-Sponsored Events

In January 2011, FFRF's Co-Presidents sent a memo on the law regarding prayer at school-sponsored events. You were a recipient of this memo. Therefore, it is disturbing that allegations of prayer at Lenoir City Schools during the 2011-2012 school year have surfaced.

It is our information and understanding that prayers have occurred at graduation ceremonies in the recent past. We understand prayers given at these events are routinely sectarian. If true, this practice constitutes an egregious violation.

As you are undoubtedly aware, the Supreme Court has continually struck down prayers at school-sponsored events, including public school graduations. *See Lee v. Weisman*, 505 U.S. 577 (1992)(declaring unconstitutional clergy-delivered prayers at a public school graduation). Even if student-initiated, school officials may not invite a student, teacher, faculty member, or clergy to give any type of prayer, invocation, or benediction at a public high school graduation. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000)(holding that student-delivered prayers at high school football games violate the Establishment Clause). The Supreme Court has settled this matter—high school graduations must be secular to protect the freedom of conscience of all students.

It is our further understanding that prayer before athletic events is “encouraged by teachers and coaches,” and students feel compelled to participate against their conscience. In particular, Ms. Myers has indicated that these prayers occur before swim meets and “at all of the home football games using the public address system.”

It is illegal for a public school athletic coach to be leading his/her team in prayer. The Supreme Court has continually struck down formal and teacher or school-led prayer in public schools. *See, e.g., Abington Township Sch. Dist. v. Schempp*, 374 U.S. 203 (1963)(declared unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *Engel v. Vitale*, 370 U.S. 421 (1962)(declared prayers in public schools unconstitutional); *See also Wallace v. Jaffree*, 472 U.S. 38 (1985)(overturned law requiring daily “period of silence not to exceed one minute ... for meditation or daily prayer.”); *Jager v. Douglas County Sch. Dist.*, 862 F.2d 825 (11th Cir. 1989), cert. den., 490 U.S. 1090 (1989)(holding unconstitutional pre-game invocations at high school football games). In all of the aforementioned cases, the federal courts have struck down prayer in public schools because it constitutes a government-endorsement of religion, which violates the Establishment Clause of the First Amendment.

More importantly, the Supreme Court has struck down pre-game invocations even when they are student initiated. *See generally, Santa Fe Indep. Sch. Dist.*, at 308. In *Santa Fe*, the Supreme Court found the school district policy of allowing student-initiated prayer at football games to be unconstitutional. *Id.* at 320. The Court reasoned that because the football game was still a school-sponsored event, the fact that a student was leading the prayer did not cure the constitutional violation. *Id.* at 307. A prayer taking place at a “regularly scheduled school-sponsored function conducted on school property” would lead an objective observer to perceive it as state endorsement of religion. *Id.* at 308. The Court stated that in this context, “[r]egardless

of the listener's support for, or objection to, the message, an objective Santa Fe High School student will unquestionably perceive the inevitable pregame prayer as stamped with her school's seal of approval." *Id.*

Furthermore, even a public school coach's participation in a team's prayer circle is illegal and inappropriate. It is unconstitutional for public school employees to participate in the religious activities of their students. *See, e.g., Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 253 (1990)(indicating that public school faculty may not participate in any student-led religious meetings); *Culbertson v. Oakridge Sch. Dist.*, 258 F.3d 1061 (10th Cir. 2001)(held a school district policy allowing teachers to distribute religious literature violated the Establishment Clause because it creates an impression of school endorsement of religion). In fact, Supreme Court Justice Blackmun has stated, "it is not enough that the government restrain from compelling religious practices, it must not engage in them either..." *Lee v. Weisman*, at 604. It is clear that federal law dictates government employees should refrain from actively participating in religious activities while acting within their governmental role to avoid any perception of government endorsement of religion and/or excessive entanglement with religion.

More notably, federal courts have specifically held public school coaches' participation in their team's prayer circles unconstitutional. *See, e.g., Borden v. Sch. Dist. of the Township of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008), *cert. denied*, 129 S.Ct. 1524 (U.S. Mar. 2, 2009)(No.08-482)(declaring the coach's organization, participation and leading of prayers before football games unconstitutional); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402(5th Cir. 1995)(declaring basketball coach's participation in student prayer circles an unconstitutional endorsement of religion). In *Borden*, the Third Circuit Court of Appeals held the high school football coach, who had an extensive history of organizing, leading and participating in prayers before games, was unconstitutional because it violated the Establishment Clause. *Borden*, 523 F.3d at 174. In that case, the court stated that the coach's involvement in the prayer by 'taking a knee' and 'bowing his head' during the prayers, even when student-led, "would lead a reasonable observer to conclude he was endorsing religion." *Id.* at 176. The court continued, "if while acting in their official capacities, [school district] employees join hands in a prayer circle or otherwise manifest approval and solidarity with the student religious exercises, they cross the line between respect for religion and the endorsement of religion." *Id.* at 178 (quoting *Duncanville*, 70 F.3d at 406).

The court in *Borden* also rejected the coach's argument that the school district's policy of prohibiting its employees from engaging in prayer with students violated the employees' right to free speech. *See id.* at 174. In fact, the court found that the school district had a right to adopt guidelines restricting this activity because of its concern about potential Establishment Clause violations. *See id.*

Teachers Proselytizing

Ms. Myers' article addresses several concerning actions taken by teachers in Lenoir High School. Specifically, the article states, "One teacher has made her religious preferences known by wearing [a] t-shirt depicting the crucifix," and "strong encouraged us [students] to join [a religious club] and be on the group's leadership team." In addition, Ms. Myers' article states that

“One teacher has Bible verses occasionally as the teacher’s ‘Quote of the Day’ for students.” These allegations are troubling and should be addressed.

No public school employee should be imposing his/her religious beliefs on students. In fact, public school employees have a duty to remain neutral toward religion while acting in their official capacities. Moreover, you have an obligation under the law to make certain that “subsidized teachers do not inculcate religion.” *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971). Certainly, “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). Your school district should make certain that its teachers are not unlawfully and inappropriately indoctrinating students in religious matters.

School Board Prayer

It is our understanding and information that the Lenoir City School Board opens their meetings with prayer that are begun by invoking “ ‘Our Heavenly Father,’ and end with ‘In Jesus’ name we pray.’ ”

It is beyond the scope of a public school board to schedule prayer as part of its monthly meetings. Federal courts have struck down school board practices that include this religious ritual. *See Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999) (finding that a school board’s practice of opening its meetings with prayers violated the Establishment Clause). The Board compounds the violation when a majority of prayers are to Jesus. Such prayerful practices demonstrate the Board’s unconstitutional endorsement not only of religion over nonreligion but also Christianity over all other faiths. *See Doe v. Tangipahoa Parish Sch. Bd.*, 473 F.3d 188 (5th Cir. 2006), *dismissed on other grounds*, 494 F.3d 494 (5th Cir. 2007) (finding a school boards practice of opening meetings with sectarian prayer unconstitutional); *Bacus v. Palo Verde Unified Sch. Dist.*, 52 Fed.Appx. 355, 2002 WL 31724273 (C.A. 9 (Cal.)) (finding that a school board violated the Establishment Clause in allowing prayers “in the name of Jesus”).

Oftentimes, local school board meetings are attended by students who are directly affected by the policies and decisions made at the board meetings. This raises additional concerns given the line of cases prohibiting prayer at public school events. The Supreme Court has continually and consistently struck down prayer by school officials in the public schools. *See, e.g., Abington Township Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (declared unconstitutional devotional Bible reading and recitation of the Lord’s Prayer in public schools); *Engel v. Vitale*, 370 U.S. 421 (1962) (declared prayers in public schools unconstitutional); *See also Lee v. Weisman*, 505 U.S. 577 (1992) (ruled prayers at public high school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturned law requiring daily “period of silence not to exceed one minute ... for meditation or daily prayer.”); *Jager v. Douglas County Sch. Dist.*, 862 F.2d 825 (11th Cir. 1989), cert. den., 490 U.S. 1090 (1989) (holding unconstitutional pre-game invocations at high school football games). In all of the aforementioned cases, the federal courts have struck down prayer in the public school context because it constitutes a government-endorsement of religion, which violates the Establishment Clause of the First Amendment.

Certainly, a public school board is an essential part of the public school system. *See Coles v. Cleveland Bd. of Educ.*, 171 F.3d at 381 (“...the school board, unlike other public bodies, is an integral part of the public school system.”) Public school boards exist to set policies, procedures and standards for education within a community. The issues discussed and decisions made at these meetings are wholly school-related affecting the daily lives of district students and parents. In striking down the board’s prayers in *Coles v. Cleveland Bd. of Educ.*, the Sixth Circuit found prayers at school board meetings to be squarely within the context of school prayer cases. The court noted, “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.” 171 F.3d at 377. Therefore, prayer at public school board meetings is no different than a prayer given at other school district events and is unconstitutional. Lenoir City Schools are within the Sixth Circuit, and *Coles* directly confirms that sectarian prayers at school board meetings are unconstitutional

Finally, prayer at public school board meetings is unnecessary, inappropriate and divisive. Calling upon Board members, as well as parents and students of the school, to rise and pray is coercive, embarrassing and beyond the scope of our secular school system. Board members are free to pray privately or to worship on their own time in their own way. The school board, however, ought not to lend its power and prestige to religion, amounting to a governmental endorsement of religion that excludes the 15% of the U.S. population that is nonreligious (Religious Identification Survey 2008). Lenoir City Schools are within the Sixth Circuit, which has held that sectarian prayers at school board meetings are unconstitutional. Therefore, Lenoir City Schools must discontinue the practice of scheduling an invocation as part of its meetings. By hosting prayer, which shows preference for Christianity, the Board is inappropriately imposing its religious beliefs on the parents and students who attend meetings for school business.

Student Safety Concerns

Finally, we are deeply concerned about reports of harassment and threats against Ms. Myers. We understand that some students have posted disparaging and threatening remarks on Twitter, and are concerned that the harassment will continue. The Lenoir High School student handbook provides that, “it shall be a violation of this policy for any employee or any student to discriminate against or harass a student through disparaging conduct or communication that is sexual, racial, ethnic or religious in nature.” Lenoir High School has placed on itself the responsibility of protecting students, like Ms. Myers, who may be harassed for their religious views. We ask that the school be mindful of its stated policy and actively protect its students with minority views from discriminatory statements and harassment.

Conclusion

All of these actions by the school district – scheduling prayers at events, allowing teachers to proselytize students, including prayer at school board meetings, displaying inherently Christian symbols during December – lead anyone in the Lenoir City Schools community to believe that the school district is endorsing religion. This “[s]chool sponsorship of religious message[s] 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

accompanying message to adherents that they are insiders, favored members of the political community.” *Santa Fe*, 530 U.S. at 309-10 (2001)(quoting *Lynch v. Donnelly*, 465 U.S. at 668)(O’Connor, J., concurring). These actions undeniably turn any non-believing or non-Christian Lenoir City High School student, teacher, staff member, or visitor into an outsider.

The “laundry list” of constitutional violations that has surfaced since our original letter of complaint regarding prayer by one teacher is incredibly concerning and deeply troubling. It appears that Lenoir City Schools has countenanced and turned a blind eye to well-known violations and has chosen to only address the issues brought to its attention rather than remedying the entirety of the problem. It is very clear that a religious atmosphere has been directed and cultivated in the school district. The allegations set forth herein are egregious violations of the Establishment Clause.

Lenoir City Schools are not exempt from the constitutional requirement that church and state be kept separate. Lenoir City Schools must remedy all of the constitutional violations discussed above immediately to prevent any further action by FFRF. Specifically, we require written assurances that the District is:

- 1) Discontinuing the practice of scheduling or promoting prayer at school sponsored events.
- 2) Taking action to ensure no public school teacher or employee is abusing his/her position to indoctrinate a captive group of young students.
- 3) Discontinuing the practice of opening School Board meetings with prayer in direct violation of Sixth Circuit precedent.

We request a written reply regarding the steps you are taking to address these serious constitutional violations so that we may notify our multiple complainants.

Sincerely,



Rebecca S. Markert
Staff Attorney

cc: Steven Millsaps, Principal Lenoir City High School

RSM: dtc