



October 3, 2013

Dear Superintendent:

Over the past several weeks the American Civil Liberties Union of Tennessee (ACLU-TN) has learned that a number of public high schools across the state are sponsoring prayer at their football games. I am sharing the information below in the hope that you will commit to protecting religious freedom for all your students, including your athletes, and their families who attend the games.

As you know, the First Amendment prohibits government policies and practices “respecting an establishment of religion, or prohibiting the free exercise thereof.” Both the First Amendment’s Establishment Clause and the Free Exercise Clause operate to protect the religious liberty and freedom of conscience of all Americans. It is well settled that school faculty, coaches, administrators or invited clergy may not lead students in prayer or conduct a prayer during a school event. Lee v. Weisman, 505 U.S. 577 (1992).

The Supreme Court has also taken up the specific practice of prayer at public school football games, ruling that a Texas school district policy permitting its student body to vote at the beginning of each school year whether to have prayers before football games also violates the Establishment Clause. Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000).

First, the Court rejected the argument that the decision to allow students to vote on the question of prayer relieves the school district of any constitutional responsibility if the students voted in favor of prayer. As the Court explained:

“[t]hese invocations are authorized by a government policy and take place on government property at government-sponsored school-related events.” Id. at 303.

Second, the Court concluded that the school district’s ongoing and unconstitutional purpose had been to preserve the practice of prayer at football games, even though the wording of the school’s policy had changed during the course of the litigation to omit any specific reference to “prayer.”

Third, the Court held that the school district’s policy was facially unconstitutional regardless of the outcome of any particular student vote because it allowed the

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majority to determine the religious rights of the minority through an election. The Court wrote:

“Such a system encourages divisiveness along religious lines and threatens the imposition of coercion upon those students not desiring to participate in a religious exercise. Simply by establishing this school-related procedure, which entrusts the inherently nongovernmental subject of religion to a majoritarian vote, a constitutional violation has occurred.” *Id.* at 317.

Contrary to protests voiced by those who desire to use the public schools as a forum for promoting their particular religious beliefs, the Supreme Court’s holding in Santa Fe is not anti-religious and does not interfere with the rights of students, guaranteed by the Free Exercise Clause, to worship and pray according to the dictates of their own consciences. The absence of school-endorsed prayer from a public school’s athletic event does not impose any burden on the ability of students to personally affirm their religious beliefs.

In conclusion, the state may neither prefer nor prohibit religious exercise but rather must remain neutral. “School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are non-adherents ‘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 (citing Lynch v. Donnelly, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)).

Like you, we want to preserve the sanctity of everyone’s religious freedom, including their ability to choose whether and when to pray. Like you, we do not want to see taxpayers, students and parents in your school district ostracized and excluded if they do not wish to participate in unconstitutional, state-endorsed prayer at athletic events.

Please reproduce and share this letter with your schools’ principals. I welcome any questions or comments you may have and can be reached at 615-320-7142.

With wishes for a productive school year,

Hedy M. Weinberg
Executive Director