



January 8, 2013
VIA FACSIMILE AND U.S. MAIL

Chambersburg Area School District
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Re: Christmas Performance by the CASHS Glee Club

Superintendent Padasak and Principal Chapel:

By way of introduction, Alliance Defending Freedom is an alliance-building legal ministry that advocates for the right of people to freely live out their faith. Alliance Defending Freedom frequently assists students, teachers, and public schools in understanding their rights and responsibilities concerning seasonal religious expression.

We recently learned that the School District received a complaint from the Freedom From Religious Foundation (FFRF) regarding the selection of songs included in the Christmas performance by the CASHS Glee Club at its annual Christmas program. The production included "The Song of Christmas" which incorporates excerpts from traditional Christmas carols, other music selections, narration, and a nativity to tell the story of the birth of Jesus Christ. The performance was one of several put on by the Glee Club each year, and according to the Glee Club's own website, the group sings "a wide variety of musical styles: classical, world music, jazz, pop, contemporary, a cappella, sacred, and secular." However, FFRF complains that the inclusion of traditional Christmas carols and a historical retelling of the Christmas story at the Club's Christmas concert amounted to a violation of the so-called "separation of church and state."

We write to encourage you not to give in to the demands of FFRF who seeks to censor the many traditional Christmas carols that have been sung across the world for hundreds of years simply because those songs contain religious references. There is no violation of the so-called "separation of church and state" by allowing high school students to learn about the many different songs, traditions, and stories celebrated during Christmas as part of an overall secular educational program.

Students may hear and sing religious Christmas carols during school activities such as choir and Christmas programs without offending the Constitution. *See, e.g., Florey v. Sioux Falls Sch. Dist.*, 619 F.2d 1311, 1319 (8th Cir. 1980); *Clever v. Cherry Hill Twp. Bd. of Educ.*, 838 F. Supp. 929 (D.N.J. 1993). In *McGowan v. Maryland*, the Supreme Court held that some

government involvement with religion does not violate the Establishment Clause if it has a secular purpose and effect. 366 U.S. 420, 445 (1961). Thus, no court has ever ruled that public schools must prevent students from being exposed to religious Christmas carols. In *Florey v. Sioux Falls School District*, a case involving a school policy permitting public performances of religious music, dramas, and poetry as long as they were part of the school's educational efforts, the Eighth Circuit held that schools may observe religious holidays without violating the Establishment Clause if doing so furthers a secular program of education. 619 F.2d at 1329. The court approved the school's stated educational purpose of advancing "the students' knowledge of society's cultural and religious heritage, as well as the provision of an opportunity for students to perform a full range of music, poetry and drama." *Id.* at 1314. Other federal appeals courts have reached similar results concerning the singing of religious songs in public schools. See *Bauchman v. West High Sch.*, 132 F.3d 542 (10th Cir. 1997); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995).

Moreover, students may learn about the religious origins of Christmas as part of school activities without offending the Constitution. The Supreme Court held in *Stone v. Graham* that "the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like." 449 U.S. 39, 42 (1981). The Eighth Circuit defined "the term 'study' to include more than mere classroom instruction; public performance may be a legitimate part of secular study." *Florey*, 619 F.2d at 1316. Therefore, school officials may constitutionally present Christmas songs and carols that contain religious references when included with a variety of secular songs and carols.

Here, it is clear that the Glee Club class learned and performed a variety of musical styles and songs as part of the course curriculum, including both sacred and secular songs. The inclusion of a single song—"The Song of Christmas"—among the many types of music performed by the group does not violate the Establishment Clause of the Constitution. Furthermore, requiring schools to censor all songs and carols that contain religious references would, as one court stated, "give students a truncated view of our culture" because "much of our artistic tradition has a religious origin." *Florey v. Sioux Falls Sch. Dist.* 49-5, 464 F. Supp. 911, 916 (D.S.D. 1979).

We hope that you will continue to resist the demands of FFRF who seeks to deprive students of the opportunity to participate in this educational (and plainly constitutional) Christmas performance of traditional songs and carols. If you have any questions regarding the constitutionality of the Glee Club school performance, or would like our assistance in responding to any legal action filed to challenge the inclusion of the songs, we would be happy to discuss the situation with you further.

Cordially,



David A. Cortman, Senior Counsel
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