

FREEDOM FROM RELIGION *foundation*

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October 11, 2011

**SENT VIA U.S. MAIL & FAX
(904) 284-6525**

Ben Wortham, Superintendent
School District of Clay County
900 Walnut St.
Green Cove Springs, FL 32043

Re: Unconstitutional Prayer Event Before School

Dear Mr. Wortham:

I am writing on behalf of District residents, parents and concerned citizens and Florida members of the Freedom From Religion Foundation (FFRF) to object to a school-sanctioned prayer gathering at a school in your district. We urge you to immediately cease all school involvement with and promotion of these events. FFRF is a national nonprofit organization, which works to protect the constitutional principle of separation between state and church. We represent over 17,000 members across the country, including over 800 in Florida.

It is our information and understanding that a "Prayer Around the Flagpole" event takes place every Monday at 8:15 on the grounds of Clay Hill Elementary School. It is our further understanding that area pastors sponsor the prayer session. Principal Davis wrote the following in a newsletter published September 30, 2011:

"The event takes place every Monday at 8:15 at the flag pole next to the office and is sponsored by our area Pastors. This is not to be confused with the "Pray around the flagpole" which is annual on the 4th Wednesday in September. Our pray around the school's flagpole event is to pray for the nation, for each other, and for the school. Many outstanding people are leading information session to our congress for them to understand the first amendment. Pastor Steven Andrew states; "Our children need God back in schools,' and he is calling Christians nation-wide to bring back the Holy Bible and Christian prayer to schools. The First Amendment was for Christianity, not other religions. The First Amendment says, "Congress shall make no law ...prohibiting the free exercise of [Christian] religion." [T]he Constitution says, "The year of our Lord" and "except Sundays." Our Founding Fathers fought for God's unalienable rights of Christian life, liberty and the pursuit of happiness. Freedom comes from obeying God. Let's get active to bring back the Holy Bible and Christian prayer to schools." Our prayer around the flagpole gathering are permissible because they are community led and take place outside of class time."

Despite disclaimers that this is a “community led” event and therefore is permissible, the unabashed promotion of the event in the school newsletter and the repeated use of the possessive “our” would lead any reasonable observer to infer that the event is directly sponsored by Clay Hill Elementary and the School District of Clay County. It is grossly inappropriate for principals, teachers, other public school employees, or outside adults to actively participate in or promote student-run religious organizations and activities.

Not only is it inappropriate, it is also 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*, 505 U.S. 577, 604 (1992)(Blackmun, J., concurring). 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.

Moreover, “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2001)(quoting *Lee v. Weisman*, 505 U.S. at 589). In *Lee v. Weisman*, the Supreme Court extended the prohibition of school sponsored prayers beyond the classroom to all school functions (holding prayers at public school graduations an impermissible establishment of religion). Thus, a prayer event taking place on school property with administrative endorsement is well within the protections of the Establishment Clause.

Given the location, the timing, and the promotional materials, a reasonable observer will perceive Prayer Around the Flagpole as being “stamped with her school’s seal of approval.” *Santa Fe*, 530 U.S. at 307. The program is especially concerning given the young age of many of the students who are invited by their principal to attend. Allowing outside adults with a religious mission access to the student body gives the appearance that Clay Hill Elementary endorses the program’s message. The “[s]chool sponsorship of a religious message 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 Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2001)(quoting *Lynch v. Donnelly*, 465 U.S. at 668)(O’Connor, J., concurring).

The Constitution’s prohibition against school-sponsored religious messages cannot be overcome by claiming such activities are “voluntary.” As the Supreme Court said in *Engel*, “Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of students is voluntary can serve to free it from the limitations

of the Establishment Clause” 370 U.S. at 430. In *Schempp*, the Court said the offending religious practices were not “mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause.” 374 U.S. at 224-25. It makes no difference if the school requires students to opt-in to religious programming. *See Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981)(Finding required express written permission by parents for students to participate in prayer did not cure Establishment Clause violations).

Finally, the brazen and shameless historical and factual errors stated in the newsletter are highly concerning. That a faculty member of an elementary school—a principal, no less—would attempt to pass such egregiously false information off as fact displays an utter lack of respect for the school environment and the education of the hundreds of children entrusted to his care. That the First Amendment states Congress “shall make no law respecting an establishment of religion” is enough to show the Framers intended the United States to be a wholly secular nation. The Framers deliberately adopted the first godless constitution, whose only references to religion are exclusionary. All students are equal under the law. The principal’s promotion of Pastor Andrew’s bigoted and ignorant remarks raises serious concerns about his professionalism.

On behalf of our local complainants, we respectfully request that the District immediately cancel the Prayer Around the Flagpole events this week and investigate whether any other sectarian messages are being instilled in the children at Clay Hill Elementary. The school’s involvement in the program violates the Establishment Clause. We would appreciate hearing from you immediately regarding the steps the District is taking to resolve this matter.

Sincerely,



Stephanie Schmitt
Staff Attorney

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