



November 26, 2012
VIA FACSIMILE AND U.S. MAIL

Little Rock School District
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Terry Elementary School
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Re: Terry Elementary School Trip to See "A Charlie Brown Christmas"

Superintendent Holmes and Principal Register:

We recently learned that the Little Rock School District received a complaint from the Arkansas Society of Freethinkers regarding an upcoming theatrical performance that students at Terry Elementary School have the opportunity to attend. A local church is putting on a matinee performance of a stage version of "A Charlie Brown Christmas" on December 14, 2012. In a letter sent home to parents, teachers explained that the trip to see the production is optional and that students who do not attend would be able to sit in on another class so as not to be deprived of an educational opportunity. The letter explained that the purpose of the trip is to "expose your child to the amazing world of theater productions and enhance your child's creative imagination in the area of dramatic arts." The letter further explained that the play included a discussion of the Christian origin of Christmas "through some of the songs and scenes."

We write to encourage you not to give in to the demands of the Arkansas Society of Freethinkers. Through its annual broadcast on network television, "A Charlie Brown Christmas" has reached an iconic status in our nation similar to that associated with many other Christmas traditions. There is no violation of the so-called "separation of church and state" by allowing children to learn about theater through observing a stage version of this beloved program that contains the same religious elements as the television version.

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.

Students may hear and sing religious Christmas carols during school activities such as choir, Christmas programs, and even field trips to see a theatrical production, 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 lower court has ever ruled that public schools must ban students from being exposed to

the performance of 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 Court of Appeals (whose jurisdiction includes Arkansas) 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. The Sioux Falls School District also had an opt-out policy stating that "students and staff members should be excused from participating in practices which are contrary to their religious beliefs." *Id.* at 1317, n.6. 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) (holding that a state statute requiring the permanent posting of the Ten Commandments in public school classrooms violated the First Amendment because the legislature did not have a secular purpose). 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 passages from the Bible, such as Luke 2:1-20 (which are the passages quoted in "A Charlie Brown Christmas"), with a variety of teaching methods.

Given that schools themselves may organize and sponsor Christmas programs and performances (including a performance of "A Charlie Brown Christmas") and study the historical origins of Christmas, schools may likewise organize a field trip to see a third-party theatrical performance where students hear Christmas carols and learn the historical origin of Christmas. Furthermore, as explained in the letter sent home with students, the field trip has a clear secular purpose of exposing children "to the amazing world of theater productions" and enhancing the students' "creative imagination in the area of dramatic arts," thus satisfying the test used by the Eighth Circuit Court of Appeals in *Florey*.

We hope that you will resist the demands of the Arkansas Society of Freethinkers who seek to deprive students of the opportunity to participate in this educational (and constitutional) trip to see "A Charlie Brown Christmas." If you have any questions regarding the constitutionality of the trip, or would like our assistance in responding to any legal action filed to stop the trip from occurring, we would be happy to discuss the situation with you further.

Cordially,



David A. Cortman, Senior Counsel
Jeremy D. Tedesco, Senior Legal Counsel
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