MIKE JOHNSON
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FREEDOM GUARD
DEFEND THE FOUNDATIONS. CONTEND FOR THE FAITH.

September 25, 2015

Via U.S. Mail and Email
Superintendent D.C. Machen, Jr.
Bossier Parish Schools
P.O. Box 2000
Benton, LA 71006-2000

RE: ACLU demand letter concerning Airline High School

Dear Superintendent Machen,

This correspondence is being submitted in direct response to the demand letter you were sent yesterday from the ACLU of Louisiana. That letter accuses Airline High School and its principal, Mr. Jason Rowland, of engaging in an unlawful "pattern of religious proselytization," and demands that your office take immediate action to stamp out all references to religion throughout the school district. The ACLU's claims have no merit, and ***we will happily defend you and our Bossier Parish Schools free of charge*** if you simply ignore the ACLU and affirm the constitutional rights at issue.

As you know, Freedom Guard is a not-for-profit public interest law firm headquartered in Louisiana and dedicated to the defense of religious liberty and traditional American values. Our organization exists to educate citizens and the government about important constitutional rights, particularly the freedom of religious expression. Over the past two decades, our attorneys have successfully litigated these issues in federal and state courts nationwide, and we have also been called upon frequently to assist and successfully defend the State of Louisiana and its various divisions against numerous high-profile court challenges by activist organizations such as the ACLU. We have been routinely involved in many landmark cases nationwide concerning the rights to free speech and religious expression in the context of public schools.

As you remember, it was almost exactly ten years ago that we successfully defended the Bossier school system against the last frivolous lawsuit filed against it by the ACLU. In *McBride v. Bossier Parish School Board*, the ACLU sued the district and school officials in federal court because a Bossier elementary school permitted the display of a Nativity scene during the Christmas season, and allowed a voluntary Christian club to meet during recess. Three things are as true today as they were back then: 1) Bossier Parish school officials have repeatedly shown their resolve to respect the law and the religious beliefs of all of their students and personnel; 2) the ACLU's campaign of fear, intimidation and misinformation deserves to be exposed and vigorously confronted; and 3) we will happily perform that service for our Bossier schools again *pro bono.*

CURRENT CLAIMS

The letter released by the ACLU to the media yesterday alleges that Airline High School has "engaged in a pattern of religious proselytization by establishing 'prayer boxes' with Christian symbols throughout the school and by religious messages in newsletters posted on the school's website." As usual, the ACLU is wrong on both the facts *and* the law.

LEGAL ANALYSIS

The First Amendment to the United States Constitution fully protects the speech at issue. The ACLU's complaints rest on a false interpretation of the so-called "separation of church and state." While the Supreme Court has used the phrase in various opinions, groups like the ACLU have twisted it to suggest that anything remotely religious must be completely censored and silenced. Due to such efforts, the U.S. Court of Appeals for the Sixth Circuit has declared "[t]his extra-constitutional construct has grown tiresome. The First Amendment does not demand a wall of separation between church and state." *ACLU of Ky. v. Mercer Cnty.*, 432 F.3d 624, 638 (6th Cir. 2005). Indeed, the oft-repeated "misleading metaphor" does not appear *anywhere* in the Constitution or the debates surrounding it. *See, e.g., Wallace v. Jaffree*, 472 U.S. 38, 91-114 (1985) (Rehnquist, J., dissenting) (tracing debates surrounding the formation and ratification of the First Amendment).

Contrary to the ACLU's earnest desire, our federal courts have made clear the Constitution "do[es] not call for total separation between church and state." *Friedman v. Bd. of Cnty. Comm'rs of Bernalillo Cnty*., 781 F.2d 777, 790 (10th Cir. 1985); *accord Utah Gospel Mission v. Salt Lake City Corp.*, 425 F.3d 1249, 1261 (10th Cir. 2005) ("Total separation between church and state is not possible in an absolute sense."); *Brown v. Gilmore*, 258 F.3d 265, 274 (4th Cir. 2001). Instead, the Establishment Clause "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any." *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984). The Constitution merely "requires the state to be a neutral in its relations with . . . religious believers and non-believers; it does not require the state to be their adversary." *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 18 (1947); *see also Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (noting that private religious speech is not a "First Amendment orphan"). Thus, nothing in the First Amendment requires government entities, like public school schools, to embark on a search and destroy mission for all things "religious." The ACLU's suggestion in this regard is plainly wrong.

"Student Prayer Boxes"

The Supreme Court has repeatedly affirmed that teachers and students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (holding that the wearing of armbands by students to show disapproval of Vietnam hostilities was constitutionally protected speech). Student speech claims are evaluated by the courts "'in light of the special characteristics of the school environment,'" *Morse v. Frederick*, 551 U.S. 393, 394 (2007) (quoting *Tinker*, 393 U.S. at 506), and the evaluation begins "by categorizing the student speech at issue." *Morgan v. Swanson*, 659 F.3d 359, 375 (5th Cir. 2011).

When the speech at issue is clearly the private expression of a student, and cannot be construed to be "school-sponsored" speech, school officials are required by the First Amendment "to tolerate particular student speech" that "happens to occur on the school premises." *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 270–71 (1988). Indeed, "[s]chool officials may only restrict such private, personal expression to the extent it would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,' or 'impinge upon the rights of other students.'" *Morgan*, 659 F.3d 359, 376 (quoting *Tinker*, 393 U.S. at 509; *Hazelwood*, 484 U.S. at 271; and *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir.1966)). Accordingly, public school students

enjoy every right to share their religious beliefs with their peers and in appropriate school assignments, to pray, evangelize, read scripture, and invite other students to participate in such activities so long as these activities are voluntary, student-initiated, and not disruptive or coercive.

Since student prayer is private speech, students may engage in it at school without the school's endorsement or prior approval. *See Adler v. Duval County Sch. Bd.*, 206 F.3d 1070, 1082 (11th Cir. 2000); *Jones v. Clear Creek Indep. Sch. Dist.*, 977 F.2d 963, 969 (5th Cir. 1992); *Chandler v. Siegelman*, 230 F.3d 1313, 1317 (11th Cir. 2000). As noted, students may pray at school on their own or in groups during non-instructional time so long as it is not disruptive or coercive. This includes praying as a team before a game or practice, as long as it is genuinely a student-led and initiated activity. *See Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 405 (5th Cir. 1995) (noting that while coaches were not permitted to lead or participate in prayer, students could still do so.)

Under the federal Equal Access Act (and the First Amendment), secondary school students may form religious clubs and meet on campus if the school receives federal funds and the school allows other non-curriculum related clubs to meet during non-instructional time. 20 U.S.C. § 4071, *et seq.* Moreover, religious clubs must be given equal access to all school facilities, resources, and equipment that are available to other non-curriculum related clubs. *Board of Educ. of Westside Community Schs. v. Mergens*, 496 U.S. 226, 247 (1990); *Prince v. Jacoby*, 303 F.3d 1074, 1085-91 (9th Cir. 2002).

In the case at hand, Airline Principal Jason Rowland affirms he has learned that the "prayer boxes" scorned by the ACLU are apparently the idea of the school's Fellowship of Christian Athletes (FCA) club, and are a completely student-led, student-initiated project. Mr. Rowland has not yet seen any such box on display in the school, but notes that he certainly would not and could not prohibit such a religious display if the FCA, like any other student organization, follows all applicable school policies and procedures for the posting of club displays.

Ironically, it is the demand of the ACLU here that would violate the First Amendment. If a school official actually followed the advice of the ACLU and targeted for censorship just the religious expression on campus, that action itself would be a blatant violation of the students' fundamental rights. It is well-established that government discrimination against certain viewpoints, including religious ones, is unconstitutional. *See, e.g., Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829, 831 (1995). The Establishment Clause "forbids hostility toward any [religion]." *See, e.g., Lynch*, 465 U.S. at 673 (noting that the Establishment Clause "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any"); *Good News Club v. Milford Cent.Sch.*, 533 U.S. 98, 108 (2001) (noting that government hostility toward religion is just as forbidden as religious endorsement); *Rosenberger*, 515 U.S. at 846 ("[F]ostering a pervasive bias or hostility to religion . . . undermine[s] the very neutrality the Establishment Clause requires."). Clearly, members of the FCA club at Airline are fully within their rights to solicit prayer requests from their fellow students, and ***such positive activity is something that all reasonable citizens should applaud, encourage and support***, rather than target for legal attack.

Use of the Phrase "God Bless"

The second claim of offense by the ACLU is that "[t]he September 2015 Message posted to the Airline High website closes with the phrase 'The Future Starts Today – May God Bless You All –

Jason Rowland, Principal, AHS.'" The ACLU describes this simple closing as a "particularly egregious" example of "unlawful religious coercion" by a school employee that must be immediately rectified with all "necessary measures." Of course, their alarm is as misplaced as it is ridiculous.

The Supreme Court has always acknowledged that simple references to God, even by officials of the state, are an essential part of our culture and deep religious heritage in this country and are in no way a violation of the Constitution. This has been a consistent principle in First Amendment jurisprudence. As famously noted by the Supreme Court a generation ago, "We are a religious people whose institutions presuppose a Supreme Being. . . When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs." *Zorach v. Clauson*, 343 U.S. 306, 313-14 (1952).

The *Zorach* Court held that the Establishment Clause thus does not prohibit "[p]rayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a national holiday; 'so help me God' in our courtroom oaths-these and all other references to the Almighty that run through our laws, [and] our public rituals . . . [including] the supplication with which the Court opens each session: 'God save the United States and this Honorable Court.'" *Id.*, at 312-13. In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Supreme Court upheld the tradition of legislative prayers and noted the practice "is deeply embedded in the history and tradition of this country. " *Id.* at 786. In fact, the Court noted that agreement was reached on the final language of the Bill of Rights on September 25, 1789, three days *after* those same members of Congress authorized opening prayers by paid chaplains. *Id.* at 788. Clearly then, "To invoke divine guidance on a public body . . . is not, in these circumstances, an 'establishment' of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country." *Id.* at 792. Those beliefs help define who we are as a nation.

In *Lynch*, the Supreme Court affirmed that "[o]ur history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders." Justice O'Connor specified that such official references encompass "government practices embracing religion, including Thanksgiving and Christmas holidays, congressional and military chaplains and the congressional prayer room, the motto, the Pledge of Allegiance, and presidential proclamations for a National Day of Prayer." 465 U.S. at 693 (concurring opinion). She further explained: "Those government acknowledgments of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society. For that reason, and because of their history and ubiquity, those practices are not understood as conveying government approval of particular religious beliefs." *Id.*

As recently as last summer, the Supreme Court reiterated the age-old principle in our jurisprudence that "untutored devotion to the concept of neutrality" must not lead to "a brooding and pervasive devotion to the secular." *Town of Greece, NY v. Galloway*, No. 12–696, 2014 WL 1757828, *11-12 (2014) (internal citations omitted). And yet, that "brooding and pervasive devotion to the secular" is precisely what the ACLU is demanding here.

Back in 1979, when the radical atheist Madalyn Murray O'Hair claimed to be offended by the National Motto and sought to have it struck down as unconstitutional, our federal Fifth Circuit made abundantly clear the phrase "In God We Trust" is perfectly lawful and appropriate to be imprinted on our coins and currency, shared among our people, and openly displayed with pride. *O'Hair v. Blumenthal*, 588 F.2d 1144 (5th Cir. 1979). The Supreme Court made the same affirmation a few years later in *Lynch,* and further noted another appropriate "example[ ] of reference to our religious heritage [is] found …in the language ***'One nation under God,'*** as part of the Pledge of Allegiance to the American flag. That ***pledge is recited by thousands of public school children***—and adults—every year." *Lynch,* 465 U.S. at 676 (emphasis added). Clearly, a similar reference in a principal's email closing follows this same appropriate tradition.

In his famous Farewell Address in 1796, President George Washington admonished, "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports." If we have reached a day in America where a public school administrator is no longer allowed to utter the phrase "God Bless You," we are in deep trouble indeed. Fortunately, we are aware of no court in our jurisdiction that has gone so far as to find such an innocuous reference to our religious heritage to be a violation of the Constitution.

CONCLUSION

The fine people of Bossier Parish cherish our history and traditions and we take great pride in our high performing schools. Just because an activist organization in New Orleans trolls the internet in search of something to be offended by does not mean than any constitutional line has been crossed here or that any behavior should be modified. To the contrary, the ACLU should be told its activists are wrong yet again on the facts and the law.

I reiterate our pledge: If the ACLU attempts to take this charade any further, we will be delighted to defend Bossier Parish Schools, Principal Rowland, and any other involved parties in the matter free of charge. Indeed, it would be our great honor to do so.

Thank you for your uncompromising stand, your principled leadership of our schools, and your many years of dedicated public service to our kids. We stand ready to assist as needed.

Very sincerely yours,

Mike Johnson
CEO and Chief Counsel, FREEDOM GUARD
La. State Representative, District 8

cc: Mr. Jason Rowland, Principal, Airline High School
Mr. Jon K. Guice, BPSB attorney
Mr. Neal L. Johnson, BPSB attorney