Appignani Humanist Legal Center

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Via U.S. Mail
Dr. Saul Hinojosa
Superintendent of Schools
Somerset Independent School District
7791 6th Street
P.O. Box 279,
Somerset, TX 78069
Email: saul.hinojosa@sisdk12.net

Sara Gonzales,
Principal
Somerset Early Childhood Elementary
19930 Touchstone,
Somerset, TX 78069
Email: sara.gonzales@sisdk12.net

Dear Dr. Hinojosa and Ms. Gonzales,

Our office was recently notified of a flagrant constitutional violation that is occurring under the authority of your school and school district. This email serves as an official notice of the unconstitutional activity and a formal demand you terminate this and any similar illegal activity immediately.

Specifically, a parent of an elementary student at Somerset Early Childhood Elementary was affronted by a massive sign in the library espousing Biblical creationism. The display, in large font, proclaims, "In the beginning God created..." and depicts the Earth below the text. A photo of this display is attached herein. Because this school-sponsored Biblical creationism display emphatically violates the Establishment Clause, you should expect litigation to follow unless corrective steps are taken immediately. Indeed, because of the well-settled nature of the law on this issue, you should anticipate being held *personally* liable for damages. *See generally M.B. v. Rankin Cty. Sch. Dist.*, 2015 U.S. Dist. LEXIS 117289 (S.D. Miss. 2015) (in a case brought by the AHA, the court awarded the student $7,500 for past Establishment Clause violations, $57,367 in attorneys' fees, and ordered the district to pay an additional $10,000 for every violation thereafter).

The American Humanist Association ("AHA") is a national nonprofit organization with tens of thousands of members across the country, including many in Texas. We have litigated dozens of church-state separation cases in federal courts from coast to coast including in Texas and the Fifth Circuit.

The First Amendment's Establishment Clause "commands a separation of church and state." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). The Establishment Clause "absolutely prohibit[s] government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith." *School Dist. v. Ball*, 473 U.S. 373, 385 (1985). The Supreme Court "has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools," *Edwards v. Aguillard*, 482 U.S. 578, 583-84 (1987), where "there are heightened concerns with protecting freedom of conscience from [even] subtle coercive pressure." *Lee v. Weisman*, 505 U.S 577, 592 (1992). *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 303 (2000) (student-led, student-initiated prayers before high school football games unconstitutional); *Lee*, 505 U.S. at 592. In *Lee*, the Court held that a public school's inclusion of a nonsectarian prayer in a graduation ceremony violated the Establishment Clause even though students were not required to participate in the prayer. 505 U.S. at 586. This is because "State exerts great authority and coercive power . . . because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure." *Edwards*, 482 U.S. at 584.

As the Fifth Circuit noted in 1993, "*Lee* is merely the most recent in a long line of cases carving out of the Establishment Clause what essentially amounts to a *per se* rule prohibiting public-school-related or -initiated religious expression or indoctrination." *Doe v. Duncanville Indep. Sch. Dist*., 994 F.2d 160, 165 (5th Cir. 1993). *E.g., Wallace v. Jaffree*, 472 U.S. 38, 40-42 (1985) (moment of silence to start school day unconstitutional); *Stone v. Graham*, 449 U.S. 39 (1980) (posting of Ten Commandments on classroom walls unconstitutional); *Sch. Dist. Abington v. Schempp*, 374 U.S. 203, 205 (1963) (daily scripture readings unconstitutional); *Engel v. Vitale*, 370 U.S. 421, 422-23 (1962) (school prayer unconstitutional); *Karen B.*, 653 F.2d 897, *summarily aff'd*, 455 U.S. 913 (1982) (prayers by students and teachers in classroom unconstitutional).

Indeed, the Supreme Court's cases place an *affirmative duty* upon public schools to "be certain . . . that subsidized teachers do not inculcate religion." *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971). Any "[s]chool sponsorship of a religious message is impermissible." *Santa Fe*, 530 U.S. at 309-10. The Fifth Circuit has also made clear that public schools may not endorse religion. *See Ingebretsen v. Jackson Pub. Sch. Dist*., 88 F.3d 274, 280 (5th Cir. 1996); *Doe v. Duncanville Indep. Sch. Dist*., 70 F.3d 402 (5th Cir. 1995); *Karen B v. Treen*, 653 F.2d 897 (5th Cir. 1981).

Religious displays in public schools are forbidden pursuant to directly-applicable precedent established by the Supreme Court, the U.S. District Court of Texas, and other federal courts. *E.g.*, *Stone*, 449 U.S. at 41 (Ten Commandments display in public school unconstitutional); *Doe v. Aldine Indep. Sch. Dist*., 563 F. Supp. 883, 888 (S.D. Tex. 1982) (religious text display violated the Establishment Clause); *Washegesic v. Bloomingdale Pub. Sch*., 33 F.3d 679 (6th Cir. 1994) (portrait of Jesus Christ in public school held unconstitutional); *Ahlquist v. City of Cranston*, 840 F. Supp. 2d 507 (D. R.I. 2012) (prayer mural held unconstitutional); *Joki v. Bd. of Educ. of Schuylerville Cent. Sch. Dist*., 745 F. Supp. 823, 829-30 (N.D. N.Y 1990) (religious painting in public school unconstitutional). *See also Greater Houston Chapter of ACLU v. Eckels*, 589 F. Supp. 222 (S.D. Tex. 1984), *reh'g denied*, 763 F.2d 180 (5th Cir. 1985) (war memorial containing crosses and Star of David in public park unconstitutional); *Roberts v. Madigan*, 921 F.2d 1047, 1056-58 (10th Cir. 1990) (a teacher's display of a Bible in his classroom "had the primary effect of communicating a message of endorsement of a religion"). In *Doe v. Aldine Indep. Sch. Dist*.,

563 F. Supp. 883, 884 (S.D. Tex. 1982), for instance, the Texas district court held that a prayer posted "in raised block letters on the wall over the entrance to the gymnasium at Aldine Senior High School" violated the Establishment Clause. The court reasoned: "the posting of the words alone is unconstitutional in light of *Stone v. Graham*[.]" *Id.* at 885 n.2.

Additionally, the Supreme Court in *Schempp* specifically ruled that reading "verses from the Bible" to public school students during school hours violated the Establishment Clause. 374 U.S. at 207, 224. It was irrelevant that the "student reading the verses from the Bible may select the passages and read from any version he chooses," and that an objecting "student may absent himself from the classroom." *Id.* at 224. The Fifth Circuit and other federal courts have similarly made clear that public schools cannot subject captive students to Bible-readings during school hours, even when the readings are student-led and student-initiated. *See Hall v. Board of Sch. Comm'rs of Conecuh County*, 656 F.2d 999, 1000 (5th Cir. 1981) (permitting students to conduct morning devotional readings over public address system held unconstitutional); *Lubbock Civil Liberties Union v. Lubbock Indp. Sch. Dist.*, 669 F.2d 1038 (5th Cir. 1982) (same); *Meltzer*, 548 F.2d at 574 (same); *Breen v. Runkel*, 614 F. Supp. 355, 361 (W.D. Mich. 1985) ("the establishment clause prohibits prayer and Bible reading in the classroom"); *Ala. Civil Liberties Union v. Wallace*, 331 F. Supp. 966, 970 (M.D. Ala. 1971) ("The practice of conducting Bible reading in the public schools of Alabama violates the First Amendment"); *Goodwin v. Cross Cty. Sch. Dist.*, 394 F. Supp. 417, 424, 426 (E.D. Ark. 1973) ("Although employees of the School District do not participate in the selection or reading of Bible verses or recitation of the Lord's Prayer, it is done with the approval of school officials and obviously supervised by teachers" in "contravention of the First Amendment"); *see also Busch v. Marple Newtown Sch. Dist*., 2007 U.S. Dist. LEXIS 40027, at *40 (E.D. Pa. May 31, 2007) (a visiting parent "reading of the Bible to the kindergarten class could easily have been interpreted . . . as endorsed by the school."). In this instance, the Bible passage, Genesis 1, was selected by the school rather than a student, and is emblazoned in a public location where students are forced to encounter the message.

Moreover, it is significant that the Bible quote selected by your school officials espouses the anti-evolution "creation" story found in Genesis 1. It is settled law that teaching creationist or similar ideas in any guise in public schools violates the Establishment Clause. *See Epperson v. Arkansas*, 393 U.S. 97 (1968) (holding that a statute that forbids the teaching of evolution in public schools violates the Establishment Clause); *Edwards*, 482 U.S. 578 (holding that a statute requiring the teaching of creationism alongside evolution in public schools violates the Establishment Clause); *Freiler v. Tangipahoa Parish Bd. of Educ*., 185 F. 3d 337, 346 (5th Cir. 1999) (holding that a required disclaimer to be read before evolution lessons in public schools that states that they were "not intended to influence or dissuade the Biblical version of Creation" and that urged students "to exercise critical thinking and gather all information possible and closely examine each alternative" violates the Establishment Clause because it "protect[s] and maintain[s] a particular religious viewpoint"); *Webster v. New Lenox Sch. Dist.*, 917 F.2d 1004, 1008 (7th Cir. 1990) (upholding school board's prohibition on the teaching of creation science to junior high students); *Kitzmiller v. Dover Area Sch. Dist*., 400 F. Supp. 2d 707 (M.D. Pa. 2005) (holding that it was unconstitutional to teach Intelligent Design as an alternative to evolution in public school); *see also Hall v. Bd. of Sch. Comm'rs,* 656 F.2d 999, 1002 (5th Cir. 1981) ("The use of the textbook, with its fundamentalist perspective, comes close to being a per se violation of the establishment clause.").

Lastly, the fact that this Bible creationism display is directed at elementary students makes this already-egregious constitutional violation even more disturbing. The "symbolism of a union between church and state is most likely to influence children of tender years." *Sch. Dist. v. Ball*, 473 U.S. 373, 390 (1985). *See also Berger v. Rensselaer Cent. Sch. Corp*., 982 F.2d 1160, 1170 (7th Cir. 1993) ("If the Supreme Court [in *Lee*] was concerned about the coercive pressures on fourteen-year-old Deborah Weisman, then we must be even more worried about the pressures on ten- and eleven-year-old fifth graders").

It is my expectation that the religious display will be taken down immediately in light of this courtesy warning. We will not sue if the display is promptly removed. To avoid litigation brought by entities or individuals other than AHA, I recommend that you enact a policy to ensure this will not happen again. If you have any questions, please don't hesitate to reach out.

Sincerely,

Monica L. Miller