Appignani Humanist Legal Center

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October 11, 2019

Via Email
Kimberly Lingenfelter, Superintendent
Cherokee Community School District
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Valery Fuhrman, Principal
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Re: Notice of Unconstitutional Field Trip

Dear Ms. Lingenfelter and Ms. Fuhrman:

A concerned parent of a Cherokee Community School District ("District") student has contacted our office to request assistance with regard to a serious constitutional violation that is occurring under your authority at Roosevelt Elementary School ("RES"). Specifically, RES plans to take first-graders to Northwestern College, a private Christian college affiliated with the Reformed Church in America, next Thursday, October 17, 2019, during instructional hours.[1] The purpose of this field trip is to view a production of "Jonah and the Giant Fish," a play based on the Book of Jonah from the Hebrew bible. (See enclosed copy of permission slip). This letter serves as official notice that the slated field trip violates the Establishment Clause of the First Amendment pursuant to decades of firmly established precedent and demands both that this particular trip be cancelled and written assurances that the District will not take students on religious field trips in the future.

The American Humanist Association ("AHA") is a national nonprofit organization with over 34,000 members across the country, including many in Iowa. The Appignani Humanist Legal Center, the AHA's legal arm, has litigated dozens of church-state separation cases in state and federal courts nationwide, including courts within the Eighth Circuit Court of Appeals, which has jurisdiction over Iowa. *Orsi v. Martin,* 4:18-cv-00343 (E.D. Ark., filed May 23, 2018) (case pending); *Jane Doe, et al v. Joplin Pub. Sch. Dist.*, 3:15-cv-05052, Doc. 58 (W.D. Mo., Mar. 9, 2017); *Am. Humanist Ass'n v. Baxter Cty.*, 2015 U.S. Dist. LEXIS 153162 (W.D. Ark. Nov. 12,

[1] "Statement of Christian Identity," Northwestern College, official website. (https://www.nwciowa.edu/faith/Christian-identity-statement) (last accessed Oct. 10, 2019).

2015); *Am. Humanist Ass'n v. Fayette R-III Sch. Dist.*, 2:13-cv-04242 (W.D. Mo. 2013). The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring separation of church and state.

From information that is readily available online, the performance is intended to convey a serious religious message. The event description reads: "When God floats the idea that Jonah travel to Ninevah, Jonah dives into deep trouble." Per Northwestern College's description, the play has been "adapted from the Bible by Dr. Tom Boogaart,"[2] an ordained minister and retired professor at Western Theological Seminary.[3] Dr. Boogaart has explicitly stated that his purpose behind adapting Old Testament stories into plays is to "help churches deepen their theology . . . and their concept of worship."[4]

The First Amendment's Establishment Clause "commands a separation of church and state." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). It requires the "government [to] remain secular, rather than affiliate itself with religious beliefs or institutions." *Cty. of Allegheny v. ACLU, Greater Pittsburgh Chapter*, 492 U.S. 573, 610 (1989). The government may not "place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling nonadherents to support the practices or proselytizing of favored religious organizations and conveying the message that those who do not contribute gladly are less than full members of the community." *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 9 (1989). *See also Americans United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 422 (8th Cir. 2007) (state funding of a Christian program for inmates violated Establishment Clause); *Steele v. Van Buren Pub. Sch. Dist.*, 845 F.2d 1492, 1493 (8th Cir. 1988) (permitting teachers to conduct prayer at school functions unconstitutional); *Stark v. St. Cloud State Univ*., 802 F.2d 1046, 1052 (8th Cir. 1986) (public university giving unrestricted public funds to private parochial schools unconstitutional).

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).[5] In "no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart." *McCollum v. Bd. of Educ.*, 333 U.S. 203, 231 (1948). To that end, the Supreme Court has placed an affirmative duty upon public school districts to "be certain . . . that subsidized teachers do not inculcate religion." *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971).

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[2] "Children's Show School Performance: Jonah and the Giant Fish," Northwestern College. (https://www.nwciowa.edu/calendar/events/19055D27357/childrens-show-school-performance-jonah-and-the-giant-fish--) (last accessed Oct. 10, 2019).

[3] "Tom Boogaart: Dennis & Betty Voskuil Professor of Old Testament (retired)," Western Theological Seminary, (https://www.westernsem.edu/faculty/boogaart/) (last accessed Oct. 10, 2019).

[4] Joan Huyser-Honig and Jeff Barker, "Let Story Form Your Worship: Old Testament and lectionary dramas," Calvin Institute of Christian Worship (https://worship.calvin.edu/resources/resource-library/let-story-form-your-worship-old-testament-and-lectionary-dramas/) (last accessed Oct. 10, 2019).

[5] *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Stone v. Graham*, 449 U.S. 39 (1980); *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *McCollum v. Bd. of Educ*., 333 U.S. 203 (1948).

In applying the Establishment Clause to public school activity, the Supreme Court has emphasized that courts must defend the wall of separation with greater vigilance because "there are heightened concerns with protecting freedom of conscience from [even] subtle coercive pressure in the elementary and secondary public schools." *Lee v. Weisman*, 505 U.S. 577, 592 (1992).[6] These concerns are further exacerbated with children of early elementary school age. 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). The U.S. Court of Appeals for the Eighth Circuit has readily recognized these same concerns. *See Stark*, 802 F.2d at 1051 ("Adults often can separate the power of the state from the prophecy of the church in instances where impressionable children cannot."). Elementary school students are "vastly more impressionable than high school or university students." *Bell v. Little Axe Indep. Sch. Dist*., 766 F.2d 1391, 1404 (10th Cir. 1985).[7]

In *Lee*, the Supreme Court formulated the "coercion test," which declares that, "*at a minimum*, the [Establishment Clause] guarantees that government may not coerce anyone to support or participate in religion or its exercise." 505 U.S. at 587 (emphasis added). In *Lee*, the Court held that a school's inclusion of a nonsectarian prayer in a graduation ceremony was unconstitutionally coercive even though the event was technically voluntary, and students were not required to participate in the prayer. *Id.* at 586. The Court reasoned that a school's "supervision and control of a . . . graduation ceremony places public pressure, as well as peer pressure" on students. *Id.* at 593. Students opposed to the religious practice are placed "in the dilemma of participating . . . or protesting." *Id.* The Supreme Court was abundantly clear that public schools "may not, consistent with the Establishment Clause, place primary and secondary school children in this position." *Id.*

Indeed, coercion—both direct and indirect—has been at the heart of the Supreme Court's Establishment Clause jurisprudence in the context of public schools from its earliest major decisions. In *Engel v. Vitale*, the Supreme Court declared: "When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." 370 U.S. 421, 430-31 (1962). In *Wallace v. Jaffree,* the Court noted that this "comment has special force in the public-school context." 472 U.S. 38, 60 n.51 (1985) (citing *Engel*). Justice Kennedy, joined by Justice Scalia, agreed that the "inquiry with respect to coercion" must be "whether the

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[6] In *Town of Greece v. Galloway*, Justice Kennedy, the author of *Lee*, reaffirmed this heightened protection for students, noting that they are readily susceptible to indoctrination and peer pressure. 134 S. Ct. 1811; 1823,1826-27 (2014).

[7] *See also Walz v. Egg Harbor Twp. Bd. of Educ*., 342 F.3d 271, 277 (3d Cir. 2003) (explaining that in "an elementary school" the line "between school-endorsed speech and merely allowable speech is blurred" and that "[w]hile 'secondary school students are mature enough and are likely to understand that a school does not endorse or support speech that it merely permits on a nondiscriminatory basis,'" elementary students "are different.") (citation omitted); *Peck v. Upshur Cty. Bd. of Educ*., 155 F.3d 274, 283 (4th Cir. 1998) (equal access policy violated Establishment Clause "in the elementary schools" but not high schools, reasoning: "because children of these ages may be unable to fully recognize and appreciate the difference between government and private speech" the school's "policy could more easily be (mis)perceived as endorsement rather than as neutrality."); *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").

government imposes pressure upon a student to participate in a religious activity. This inquiry, of course, must be undertaken with sensitivity to the *special circumstances that exist in a secondary school* where the line between voluntary and coerced participation may be difficult to draw." *Bd. of Educ. v. Mergens*, 496 U.S. 226, 261-62 (1990) (Kennedy, J., concurring in part) (emphasis added).

But the *Lee* "coercion test" represents only the floor of constitutional infirmity, not the ceiling. To comport with the Establishment Clause, governmental activity must always: (1) have a secular purpose; (2) not have the effect of advancing or endorsing religion; and (3) not foster excessive entanglement with religion. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Walz v. Tax Comm'n*, 397 U.S. 664, 669-70 (1970); *accord Allegheny*, 492 U.S. at 592.[8] Government action "violates the Establishment Clause if it fails to satisfy any of these prongs." *Edwards*, 482 U.S. at 583.

Regardless of the test applied here, this much is clear: a public elementary school scheduling a field trip to a sectarian university to see a play adapted from the Old Testament for an avowedly evangelistic purpose violates the Establishment Clause on multiple levels. It is a "tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice." *Lee*, 505 U.S. at 596. It is also axiomatic that the government cannot "influence a person to go to . . . church." *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947). The Establishment Clause is clearly violated when "the government directs students to attend a pervasively Christian, proselytizing environment." *Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 855 (7th Cir. 2012). As such, the courts have consistently ruled that the use of sectarian venues for school activities violates the Establishment Clause. *Warnock v. Archer*, 380 F.3d 1076, 1081 (8th Cir. 2004); *Elmbrook*, 687 F.3d 840; *Joplin*, 3:15-cv-05052, Doc. 58 (W.D. Mo., Mar. 9, 2017); *Am. Humanist Ass'n v.*

[8] These discrete requirements were enshrined in *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971) into what is now known as the "*Lemon* test." But these requirements long predate *Lemon*. *See Schempp*, 374 U.S. at 222 ("[W]hat are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment" violates "the Constitution."); *Torcaso v. Watkins*, 367 U.S. 488, 489-90 (1961) (invalidating law because "the purpose or effect" favored god-believers over atheists). The *Lemon* test remains binding within the Eighth Circuit. The portions of the Supreme Court's opinion in *Am. Legion v. Am. Humanist Ass'n*, that criticized *Lemon* and proposed that courts "look[] to history for guidance"—Parts II-A and II-D—failed to garner a majority. 139 S. Ct. 2067, 2079-82; 2087-89 (2019). *See Id.* at 2094 (Kagan, J., concurring in part) ("I do not join part II-A."). And although Part II-B outlined four considerations that "counsel against efforts" to apply *Lemon* in certain cases and "toward application of a presumption of constitutionality," these words do not overrule *Lemon* or other Supreme Court cases requiring a governmental secular purpose. *Id.* at 2082-83. *See Agostini v. Felton*, 521 U.S. 203, 237-38 (1997) (lower courts must not "conclude our more recent cases have, by implication, overruled an earlier precedent"). The plurality opinion in *Am. Legion* merely eschewed *Lemon* in a case involving a longstanding war memorial. The Court did not overrule *Lemon* in any other context. *See Am. Legion*, 139 S. Ct. at 2081 n.16. ("While we do not attempt to provide an authoritative taxonomy of the dozens of Establishment Clause cases that the Court has decided since [1947], most can be divided into six rough categories: (1) religious references or imagery in public monuments, symbols, mottos, displays, and ceremonies; (2) religious accommodations and exemptions from generally applicable laws; (3) subsidies and tax exemptions; (4) religious expression in public schools; (5) regulation of private religious speech; and (6) state interference with internal church affairs. A final, miscellaneous category, including cases involving such issues as Sunday closing laws and church involvement in governmental decision-making might be added. We deal here with an issue that falls into the first category.") (internal citations omitted).

Greenville Cty. Sch. Dist, 6:13-cv-02471 (D. S. C., Dec. 12, 2017); *Does 1 v. Enfield Pub. Sch.*, 716 F. Supp. 2d 172, 200 (D. Conn. 2010); *Musgrove v. Sch. Bd.*, 608 F. Supp. 2d 1303, 1305 (M.D. Fla. 2005) (holding a graduation ceremony "in a religious institution . . . [is] contrary to Supreme Court precedent"); *Spacco v. Bridgewater Sch. Dep't*, 722 F. Supp. 834, 842 (D. Mass. 1989) (ruling that students could not attend classes in facilities owned by a church). These cases are "consistent with well-established doctrine prohibiting school administrators from bringing church to the schoolhouse." *Elmbrook*, 687 F.3d at 850 (citation omitted).

First, the field trip is unconstitutionally coercive under *Lee*. Nearly every court to address the issue at hand agreed that it is unconstitutionally coercive to use a religious venue for a public school event, especially an event for elementary students. The Seventh Circuit in *Elmbrook* properly found that, in "addition to impermissibly endorsing religion, the District's decision to use Elmbrook Church for [high school] graduations was religiously coercive." *Id.* at 854. *See also Jane Doe, et al v. Joplin Pub. Sch. Dist.*, 3:15-cv-05052, Doc. 58 (W.D. Mo. 2017) (ruling in AHA's favor that sending public school students on a field trip to a Christian sports complex violates Establishment Clause under both the coercion test and the tripartite *Lemon* analysis); [9] *Enfield*, 716 F. Supp. 2d at 200 ("The court concludes that holding [graduations] at First Cathedral would require a conformity of the graduating seniors . . . that is too high an exaction to withstand constitutional scrutiny"); *Spacco*, 722 F. Supp. at 843 (school district renting building from Catholic Church had coercive effect of "influenc[ing] the beliefs and behavior of children who are not being raised as Catholics.").

The Supreme Court's cases make clear that it is unconstitutionally coercive for a public school to "force a student to choose between attending and participating in school functions and not attending only to avoid personally offensive religious rituals." *Skarin v.* Woodbine *Cmty. Sch. Dist*., 204 F. Supp. 2d 1195, 1198 (S.D. Iowa 2002) (citing *Lee*). "[T]he State may no more use social pressure to enforce orthodoxy than it may use direct means." *Lee*, 505 U.S. 577, 580. In *Lee*, the Court observed: "To say that a student must remain apart from the ceremony . . . is to risk compelling conformity in an environment analogous to the classroom setting, where we have said the risk of compulsion is especially high." 505 U.S. at 596. In addition to *Lee*, in *Santa Fe*, the Supreme Court held that the Establishment Clause "will not permit the District 'to exact religious conformity from a student as the price' of joining her classmates at a varsity football game." 530 U.S. at 311-12. *See Freedom from Religion Found., Inc. v. Concord Cmty. Schs*, 885 F.3d 1038, 1048-49 (7th Cir. 2018) ("As in *Lee, Santa Fe,* and *Elmbrook II*, . . . the school had a policy allowing students to opt out of participating in the Spectacular (an option some invoked) is irrelevant, because a choice to participate or miss out on a significant portion of the curriculum *is an unconstitutional one*.") (emphasis added).[10]

As in *Lee* and *Santa Fe*, the students at RES have been "placed in the untenable position of having to choose either to" participate or protest and "thereby risk actual or perceived opprobrium and ostracism from [] administrators and faculty, not to mention from [their] peers."

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[9] Full text of opinion: http://americanhumanist.org/wp-content/uploads/2017/03/SJ-order-Joplin-1.pdf.

[10] *See also Collins v. Chandler Unified Sch. Dist.*, 644 F.2d 759, 760-62 (9th Cir. 1981)\ ("students must either listen to a prayer chosen by a select group of students or forego the opportunity to attend a major school function. It is difficult to conceive how this choice would not coerce a student wishing to be part of the social mainstream and, thus, advance one group's religious beliefs.").

Doe v. Beaumont Indep. Sch. Dist., 173 F.3d 274, 290 (5th Cir. 1999). "Finding no violation under these circumstances would place objectors in the dilemma of participating, with all that implies, or protesting." *Lee*, 505 U.S. at 593. A school may not "place primary and secondary school children in this position." *Id.* Not even when the event is purely voluntary. *Santa Fe*, 530 U.S. at 310-312. *See Schempp*, 374 U.S. at 289-90 ("[E]ven devout children may well avoid claiming their right and simply continue to participate in exercises distasteful to them because of an understandable reluctance to be stigmatized as atheists"). *See also Meltzer v. Bd. of Pub. Instruction of Orange Cty., Fla.*, 548 F.2d 559, 575 (5th Cir. 1977) *on reh'g*, 577 F.2d 311 (5th Cir. 1978) (although Gideon bibles were given only to students whose parents signed confirmation slips, "pressures would be exerted upon non-conforming pupils, thus [violating the Establishment Clause") (citation omitted); *Joplin Cty. Sch. Dist.*, 3:15-cv-05052 at *17 (W.D. Mo. Mar. 9, 2017) ("The Court finds that the students . . . who hold religious beliefs contrary to those of the Christian religion, would rightfully feel coerced by the Joplin District's field trips, into either not attending the events, or subjecting themselves to religious beliefs contrary to their family's teaching. No parent can be required to subject their children to Bible studies, worship service, or any other activity that pertains to the Christian faith, in order for their child to take advantage of the opportunities of a public school system.) (quotation marks omitted).[11]

Just as coercive as this field trip's venue is its content. The Supreme Court and lower federal courts have routinely struck down public school activities that amount to devotional education or endorsement of the bible or similar sacred texts. Indeed, the case upon which modern public school-related Establishment Clause jurisprudence is built, *McCollum v. Board. of Education*, ruled on that very issue, holding that bible education classes taught by private instructors in public school unconstitutional. *See McCollum*, 330 U.S. at 212 (Frankfurter, Jackson, Rutledge, and Burton, JJ., concurring) ("Illinois has here authorized the commingling of sectarian with secular instruction in the public schools. The Constitution of the United States forbids this."). The Eight Circuit has held likewise, striking down public school action that amounts to an endorsement of the bible or biblical instruction. *Roark v. S. Iron R-1 Sch. Dist.*, 573 F.3d 556, 561 (8th Cir. 2009) (affirming a permanent injunction barring public school from permitting Gideons to distribute bibles on school grounds during instructional time); *Doe v. Human*, 725 F. Supp. 1503, 1504 (W.D. Ark. 1989), *aff'd*, 923 F.2d 857 (8th Cir. 1990) (finding unconstitutional public school bible classes taught by volunteers not acting on behalf of any church, even when the classes were voluntary and not for school credit).

In *Lee* and *Santa Fe*, the state "merely required students to be exposed to others engaging in religious activity at secular venues." *Elmbrook*, 687 F.3d at 855. The religious activity at issue in *Lee* and *Santa Fe* consisted of a nondenominational prayer lasting not more than handful of minutes at most. Here, any RES student that attends will sit through at least twenty minutes of content ripped straight from the pages of the Hebrew bible. To "subject a student at such an event to a display of religion that is offensive or not agreeable to his or her own religion or lack of religion is to constructively exclude that student . . . The Establishment Clause does not permit

[11] Accordingly, it is irrelevant that parents must give permission for their child to attend. *See generally Lee*, 505 U.S. at 596; *Schempp*, 374 U.S. at 288 (Brennan, J., concurring) ("the availability of excusal or exemption simply has no relevance to the establishment question"); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) ("VMI cannot avoid Establishment Clause problems by simply asserting that a cadet's attendance at supper or his or her participation in the supper prayer are 'voluntary.'").

this." *Gearon v. Loudoun Cty. Sch. Bd*., 844 F. Supp. 1097, 1099-1100 (E.D. Va. 1993).

Second, in addition to violating the Establishment Clause under *Lee*'s coercion test, this trip lacks a secular purpose, independently violating the Establishment Clause. There is no valid, secular purpose to taking students to a religious play at a religious institution that cannot be accomplished through less constitutionally suspect means. *See Joplin Sch. Dist*., 3:15-cv-05052, Doc. 58 at *16 (W.D. Mo., Mar. 9, 2017) ("E]ven if the Court finds the Joplin District can provide a valid secular purpose for the activities at issue, these valid secular objectives can be readily accomplished by other means.") (citing *Stark*, 802 F.2d at 1049). It is "settled [Supreme Court] jurisprudence that 'the Establishment Clause prohibits government from abandoning secular purposes.'" *Tex. Monthly, Inc. v. Bullock*, 489 U.S. 1, 8-9 (1989) (citing cases pre- and post-dating *Lemon*).[12] Where the government promotes an "intrinsically religious practice," it "cannot meet the secular purpose prong." *Jager v. Douglas Cty. Sch. Dist*., 862 F.2d 824, 829-30 (11th Cir. 1989). *See also McCreary*, 545 U.S. 844 at 870 (posting of the Ten Commandments on a county court house wall, alongside other documents with "highlighted God as their sole common element," had "impermissible" religious purpose.); *Santa Fe*, 530 U.S. at 309-10 ("infer[ring] that the specific purpose of the policy" permitting but not requiring student-led prayers was religious, not secular); *Stone v. Graham*, 449 U.S. 39, 41 (1980); *Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff'd* 472 U.S. 38 (1985) ; *Am. Humanist Ass'n v. Douglas Cty. Sch. Dist. Re-1*, 328 F. Supp. 3d 1203, 1206 (D. Co. 2018)[13] (school district violated the First Amendment by promoting and endorsing a "mission trip" to Guatemala, the stated goals of which were to "promote Christianity" and to "introduce [children] to the Bible."); *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 763 (M.D. Pa. 2005) (no secular purpose for teaching "intelligent design" as part of a science curriculum).

Third, the field trip unconstitutionally endorses and advances religion, failing the second prong of the traditional tripartite Establishment Clause analysis. *See Elmbrook*, 687 F.3d at 853 ("Regardless of the purpose of school administrators in choosing the location, the sheer religiosity of the space created a likelihood that high school students and their younger siblings would perceive a link between church and state."); *Greenville*, 6:13-cv-02471, Doc. 121 at *10 (D. S. C., Dec. 12, 2017) ("There . . . can be no doubt that the setting in which the ceremony occurred conveyed a message of religious endorsement and created a likelihood that the school-aged children would perceive a link between church and state. Thus, the Court finds that the school district's use of Turner Chapel for the . . . Elementary School [graduation] fails the second prong of the *Lemon* test.") (internal citations omitted) *Joplin Sch. Dist.*, 3:15-cv-05052, Doc. 58 at *20 (W.D. Mo., Mar. 9, 2017) ("Joplin District's use of [the ministry's] facilities, including the waiver and release forms required by [the ministry] in order for students to participate in school functions at [the ministry's sports complex], indicates Joplin District's approval of Victory's religious messages."); *Enfield*, 716 F. Supp. 2d at 191 ("Upon attending graduation ceremonies, a reasonable observer would conclude that the [school district's] . . . decision to use First Cathedral sends the message that the Board embraces the religious values, symbols, and ideas present within

[12] *E.g., Stone v. Graham*, 449 U.S. 39 (1980) (*per curiam*); *Edwards v. Aguillard*, 482 U.S. 578 (1987); *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Torcaso v. Watkins*, 367 U.S. 488 (1961).

[13] Full text of opinion: http://americanhumanist.org/wp-content/uploads/2018/07/105.-Order-Summary-Judgment-07.17.2018.pdf

First Cathedral."); *Spacco*, 722 F. Supp. at 842-43 ("the manner in which the facility is used communicates to a reasonable observer, particularly a reasonable elementary school child, that: the public school and the Roman Catholic Church are closely linked; the Roman Catholic Church has a special status in our society; Roman Catholic people are preferred; Roman Catholic children who attend cathechism classes at the St. Thomas Aquinas Parish Center are attending public school in a place that is especially theirs; members of other faiths are outsiders or guests; and the government favors and encourages religious belief rather than disbelief.").

The same risk that students "will perceive the state as endorsing a set of religious beliefs is present both when exposure to a pervasively religious environment occurs in the classroom and when government summons students to an offsite location." *Elmbrook*, 687 F.3d at 856. If "constitutional doctrine teaches that a school cannot create a pervasively religious environment in the classroom, or at events it hosts, it appears overly formalistic to allow a school to engage in identical practices when it acts through a short-term lessee." *Id.* (internal citations omitted).

In AHA's case against the Joplin Schools Public School District, in Missouri, the court, relying on Supreme Court and Eighth Circuit precedent, held that taking middle school students on a field trip to church-affiliated athletic complex unconstitutionally endorsed religion despite the complex itself being primarily secular in nature and "Defendants claim[ing] no direct sharing of religious messages [] during the field trips." *Joplin Sch. Dist.*, 3:15-cv-05052, Doc. 58 at *17 (W.D. Mo., Mar. 9, 2017). The court reasoned:

> the plain and unequivocal language of the [permission slip] permits [the complex] to invite students to Bible studies and local churches, and for students to actually participate in worship service, Bible studies, and any other activity pertaining to the Christian faith. In addition, during visits to [the complex] there were various signs displaying religious messages prominently displayed throughout the facility and religious literature made easily available to the students. Further, the waiver and consent form allows [the complex] to photograph and/or video students, and to include those videos or photographs, without restriction, using the student's actual name in advertising for their Christian ministry. Finally, the Joplin District paid significant sums from public tax dollars to [the complex]. Together, these things clearly advance [a religious] mission and purpose[.]

In *Elmbrook*, the Seventh Circuit ruled that holding graduations in a nondenominational church unconstitutionally endorsed Christianity. 687 F.3d at 844 n.1, 853-54. The venue in *Elmbrook* was not a "traditional church sanctuary;" rather, the room was "the 'auditorium'" and used only for weekend services. *Id.* at 844 n.1 Nonetheless, the court found against the school district because the "presence of religious iconography" would not only create "a likelihood" that students would "perceive a link between church and state" but would also indicate "to everyone that the religious message is favored and to nonadherents that they are outsiders." *Id.*

In *Spacco*, the court enjoined a school district from renting facilities owned by a church, based largely on the need for students to "pass beneath a large cross." 722 F. Supp. at 842-43. The court found the Establishment Clause was violated, even though by "[s]imply sitting in a classroom, a reasonable observer . . . would not receive any constitutionally impermissible message from his

or her surroundings." *Id*.

Here, not only will RES students be taken to an avowedly Christian institution, but they will do so for the express purpose of seeing a Christian-themed play. The risk that these children will perceive a school endorsement of a religious message should be readily apparent.

In view of these authorities, it is clear that the District is in violation of the Establishment Clause. Parents have the constitutionally protected interest in guiding the "religious future and education of their children." *Wis. v. Yoder*, 406 U.S. 205, 232 (1972). Parents have the sole and exclusive right to direct their child's religious or nonreligious upbringing, and accordingly have the affirmative right to send their children to "public schools that do not impose or permit religious practices." *Steele*, 845 F.2d at 1495 (internal citation omitted). Should the District go through with this field trip, it will have failed to honor that right.

This letter serves as an official notice of the unconstitutional activity and demands that Roosevelt Elementary School and the District cancel this field trip and any similar illegal activity immediately. We hope that you will replace this school field trip with something more appropriate, where children and parents of all religions, and no religion at all, will be properly respected. We also remind you that any actions that might be considered punitive or retaliatory toward those raising concerns about the matters described herein would be unlawful as well. To avoid legal action, we kindly ask that you respond with written assurances that appropriate steps will be taken by October 16, 2019. Thank you for your attention to this important matter.

Sincerely,
/s/ Monica L. Miller

Monica L. Miller
Legal Director and Senior Counsel
Appignani Humanist Legal Center
American Humanist Association

(Enclosed Photos)

Children's Show School Performance: Jonah and the Giant Fish

Add to calendar

When: Thursday, Oct 17, 2019
Time: 12:00 PM
Where: Allen Black Box Theatre
Contact: Becky Donahue, Theatre Secretary/Building Manager
707-7341, becky.donahue@nwciowa.edu
More: Theatre productions

adapted from the Bible by Tom Boogaart; directed by Jeff Barker

When God floats the idea that Jonah travel to Ninevah, Jonah dives into deep trouble.

This play, which is suitable for all ages, will also be presented to area schoolchildren every Tuesday and Thursday from Sept. 26 to Nov. 12.

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Remember this field trip date:
October 17, 2019

Dear Parents,

Each year Northwestern College in Orange City presents a play for children. This year's production is *Jonah and the Whale*. We would like to give your first grade child the wonderful opportunity to enjoy this production.

On Thursday, October 17, 2019, the first grades will be leaving at 9:30 am and returning at 2 pm. **Your child will need to bring a sack lunch and a drink on the day of the performance. Please let us know if you would prefer the school to provide a lunch for your child on the day of the performance.**

Thanks,
First Grade Teachers

Please send back bottom portion of note and keep the top for your reference.

Please return by Wednesday October 9, 2019

I received the note about attending the play in Orange City on Thursday, October 17, 2019. **Please mark one of the following and return.**

_____ My child will bring a sack lunch and a drink from home on the field trip day.

_____ My child will need the school to provide a sack lunch and a drink on the field trip day (payment deducted from student's lunch account).

Child's Name _____ Parent's Signature _____