

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

November 24, 2017

SENT VIA EMAIL & U.S. MAIL
PRobinson@tharringtonsmith.com

Ms. Patricia Robinson
Tharrington Smith, LLP
P.O. Box 1151
Raleigh, North Carolina 27602

Re: Unconstitutional Wake County Schools Participation in Nativity Events

Dear Ms. Robinson:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding Wake County Public School System's participation in annual religious events that are affiliated with local churches and focus on the biblical nativity. We understand that you represent the Wake County Public School System, and we want to alert the school system to concerns raised by a local complainant.

As your firm is aware, FFRF and a parent raised concerns in 2015 and 2016 with WCPSS schools participating in the annual Apex Nativity event. We understand that the school system took action to address those concerns last year by stopping school involvement.

It was recently reported to FFRF that a number of WCPSS schools are scheduled to participate in similar religious events hosted by the Church of Jesus Christ of Latter-day Saints this year. For example, we understand that music groups from district schools are scheduled to participate in a church nativity event on Nov. 30 and Dec. 1. The following school groups are listed in the program:

Martin Middle School Orchestra
Douglas Elementary Creative Arts and Science Magnet School Chorus
Wakefield Middle School Advanced Orchestra
Leesville Capital Pride Singers
Sanderson High School
Broughton High School A'Capella Ensemble
Heritage Middle School Patriot Pride Honors Chorus
Enloe High School Chorus
Heritage High School Concert Choir¹

¹ <http://raleighnativity.org/performance-schedule/>

The Raleigh Community Christmas Celebration describes the history of the event this way:

We started our Nativity display at The Church of Jesus Christ of Latter-day Saints in 1998 as a way to usher in the Christmas Season and **share our belief and love for the Savior**. Back then it was very small. We now have over 300 nativities on display every year and welcome some amazingly talented choirs and groups who provide music throughout each evening of the event.²

The theme of the overall program appears to be biblical and proselyting:

Then spake Jesus again unto them, saying, I am THE LIGHT OF THE WORLD: he that followeth me shall not walk in darkness, but shall have the light of life. John 8:12³

In order to avoid the perception of school endorsement of a religious message, schools must not participate in overtly religious events. School 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 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)).

When school choirs ask students to attend a church event, a reasonable student will perceive that the school is endorsing religion. The schools’ message of endorsement is heightened by the fact that the event is focused on the birth of Jesus and that religious iconography is the major attraction. “Regardless of the purpose of school administrators in choosing the location, the sheer religiosity of the space [can create] a likelihood that high school students and their younger siblings [will] perceive a link between church and state. That is, the activity [will convey] a message of endorsement.” *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 853 (7th Cir. 2012).

The environment in churches is often “pervasively Christian, obviously aimed at nurturing Christian beliefs and gaining new adherents among those who set foot inside the church.” *Id.* at 853. A school runs the risk of appearing to endorse religious iconography such as crosses because “there is no doubt that a sectarian message is conveyed by a cross prominently displayed in a house of worship.” *Id.* at 852. The same is true for nativities and other religious symbols.

Even worse than the space in *Elmbrook*, the whole purpose of the event is to display and honor nativity scenes, which highlight an exclusively Christian aspect of the holiday season, rather than a secular Christmas celebration. Students are intentionally brought to the church to be exposed to hundreds of depictions of the Christian legend of Jesus’ birth. A reasonable public school student

² (emphasis added) <http://raleighnativity.org/about/>

³ <http://raleighnativity.org/>

would be justified in thinking that their school was endorsing the religious message, as the *Elmbrook* decision recognized.

Courts are “particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. Families entrust public schools with the education of their students, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.” *Edwards v. Aguillard*, 482 U.S. 578, 583-84 (1987).

WCPSS cannot remedy this constitutional violation by claiming that these events are voluntary. Courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See generally, Lee*, 505 U.S. at 596 (“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.”); *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.’”); *FFRF v. Concord Comm. Schools*, No. 3-15-CV-00463, Dkt. 40 at pg. 11 n.4 (Granting preliminary injunction against live nativity performance and noting, “Even assuming Jack Doe is fully able to opt out, though, that fact would not impact the analysis.”).

We are certain that there are many other venues in the community—assisted living homes, community parks, and other district schools—that would welcome a performance by WCPSS choirs.

These nativity performances at LDS churches are unconstitutional and cannot continue. We would appreciate if you address this matter with the administration and confirm that schools will not participate in any nativity events this year and going forward. As it stands, the school system has been given notice of these constitutional issues and has not taken proper corrective action. Please let us know whether the WCPSS will address this matter prior to the scheduled performances.

Sincerely,



Patrick Elliott
Senior Counsel