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October 13, 2017

Superintendent John J. Moore
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Kathy Dutton, Board Member
Dr. Aaron Moyana, Board Member
Leeds City Schools
P.O. Box 1083
Leeds, AL 35094

RE: Band Halftime show

Dear Superintendent Moore and School Board Members,

I have the honor of serving as the Executive Director of the Congressional Prayer Caucus Foundation. The Foundation serves nearly 100 members of Congress who are part of the Congressional Prayer Caucus (the names of those members of Congress who serve on the Congressional Prayer Advisory Team are listed on the left).

In addition, the Foundation serves Legislative Prayer Caucuses in 33 states, which have over 950 state senators and state representatives as members. These leaders are working together to preserve the integrity of our Founding Principles and protect First Amendment rights for all.

We recently learned from news reports that an out-of-state organization sent a threatening legal demand letter to Leeds City Schools due to their claim that the school band's halftime show was unconstitutionally promoting religion. Based on the news accounts we have read, we believe your position to continue the half-time show and dismiss the demands of this organization is correct. We are writing not only to support you in your stand, but also to offer evidence that your attorneys may find helpful.

As news reports have indicated, the half-time show does not have the primary effect of advancing or endorsing religion. The music program offers a variety of music genres, including classical and pop, along with traditional American hymns. Furthermore, within the context of the band's theatrical presentation, the props (crosses, church pews, or other similar symbols) chosen

to showcase the context of these songs, is entirely appropriate. As stated in *School Dist. of Abington Township v. Schempp*, 374 U.S. 203 (1963), 225: "[T]o allow students only to study and not to perform (religious art, literature, and music, when) such works ... have developed an independent secular and artistic significance, would give students a truncated view of our culture."

In lower federal court decisions, such as in the 5th Circuit and 10th Circuit, the courts have upheld a public high school's adoption of a religious hymn as its theme song, even when it was a requirement for choral programs (*Doe v. Duncanville Independent School District*, 70 F.3d 402 (5th Cir. 1995), and upheld a school choir's performances of religious songs at graduation ceremonies and concerts in churches (*Bauchman v. West High School*, 132 F.3d 542 (10th Cir. 1997), cert. denied, 524 U.S. 953). In other words, the religious nature of the songs does not create an Establishment Clause violation.

Any choral curriculum designed to expose students to the full array of vocal music culture therefore can be expected to reflect a significant number of religious songs. Moreover, a vocal music instructor would be expected to select any particular piece of sacred choral music, like any piece of secular choral music, in part for its unique qualities useful to teach a variety of vocal music skills (i.e., sight reading, intonation, harmonization, expression.). *Bauchman* at 554.

The important key is that there is a balance to the presentation. It could be a violation of the Establishment Clause if the performance were entirely religious in content. And, on the contrary, if the school system yielded to this organization that seeks to erase every reference to our religious heritage from our public schools, that would have the primary effect of showing hostility to religion, something the U.S. Supreme Court forbids. As the U.S. Supreme Court stated well in *Zorach v. Clauson*, 343 U.S. 306, 314 (1952) upholding a Released Time off-campus elective Christian class for public students during the school day: "[W]e find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence." That should especially be the case in public education where we want our young people to understand the beneficial role religion has played in this nation.

Given the voluntary nature of this band program, no public school student is required to participate in an activity that forces him/her to do anything that would violate his/her religious convictions, as provided in *West Virginia Board of Education v. Barnette*, 319 U. S. 624 (1943). Similarly, there is no penalty for a student who may choose not to participate in playing religious songs, *Grove v. Mead School Dist.* No 354, 753 F2d 158, 1533 (9th Cir).

The benevolent accommodation of religion, particularly in ways that acknowledge our nation's Judeo-Christian heritage, was once taken for granted. It was not until the 1950s that the U.S. Supreme Court created new interpretations of the Establishment Clause which has created confusion in our public institutions to this day. However, even with the new direction the Court has taken, there is no ruling that puts your half-time program in legal jeopardy as long as there is a variety of music genres, the religious songs are performed in a non-devotional manner, and the school does not coerce or penalize any students with regard to their half-time performance of the religious songs or their refusal to perform the religious songs.

We are encouraged that you know your rights under the U.S. Constitution and that you will not allow threats of this nature to rob you, your students, or your community of our First Amendment Rights. To protect our freedom, we must exercise that freedom.

May God bless you,



Lea Carawan
Executive Director
Congressional Prayer Caucus Foundation