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December 5, 2018

Via Email and U.S. Mail

touchardp@gcsd.us

Ms. Pam Touchard
Superintendent of Education
George County School District
5152 Main Street
Lucedale, MS 39452

Dear Superintendent Touchard:

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 Advisory Team are listed on the left).

In addition, the Foundation serves Legislative Prayer Caucuses in over 32 states, including Mississippi, which have over 1,000 state senators and state representatives as members. These leaders are working together to preserve the integrity of our Founding Principles and to protect First Amendment rights for all.

We understand that you recently received a letter from the Freedom from Religion Foundation ("FFRF"). This letter alleged that the George County High School has permitted the Fellowship of Christian Athletes to hold a 40-minute meeting once a month on campus during the school day, and that some teachers require all students under their supervision to attend this monthly meeting (we believe that this allegation lacks credibility, since we cannot conceive of a teacher forcing students against their will to attend any meeting that is otherwise voluntary). FFRF claims that it is a violation of the First Amendment for the District to allow its employees to promote religion, and "to allow a private group access to school facilities to hold religious meetings during the school day."

The FFRF lawyer cites and quotes many Supreme Court and lower federal court cases for certain propositions, and although we can cite and quote a similar number of cases that state the opposite (or nearly the opposite), let me

provide you with a legal source that has “teeth.” As you are probably aware, Congress passed the Elementary and Secondary Education Act of 1965 and then amended this Act with the No Child Left Behind Act of 2001. Part of the No Child Left Behind Act required the Secretary of Education to issue guidance on religious activities that are constitutionally permissible and impermissible in public elementary and high schools. The Secretary issued this guidance in 2003, and this remains effective and current today. Failure to follow this guidance, including certifying each year that the public school is following this guidance, could result in the loss of federal funds.

See https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html (originally published in 68 Fed. Reg. 9646 (Feb. 28, 2003))

The Guidance provided by the Secretary of Education is found on DOE’s same website and is certainly applicable to the matters raised by FFRF. As a general rule, if the school permits non-religious activities or clubs to meet on campus, it must provide the same opportunity for religious clubs. Similarly, if the school permits non-religious clubs to advertise with flyers or by other means, the school must provide the same opportunity to religious clubs. Specifically, the Guidance states:

Students may organize prayer groups, religious clubs, and "see you at the pole" gatherings before school to the same extent that students are permitted to organize other non-curricular student activities groups. Such groups must be given the same access to school facilities for assembling as is given to other non-curricular groups, without discrimination because of the religious content of their expression. School authorities possess substantial discretion concerning whether to permit the use of school media for student advertising or announcements regarding non-curricular activities. However, where student groups that meet for nonreligious activities are permitted to advertise or announce their meetings—for example, by advertising in a student newspaper, making announcements on a student activities bulletin board or public address system, or handing out leaflets—school authorities may not discriminate against groups who meet to pray. School authorities may disclaim sponsorship of non-curricular groups and events, provided they administer such disclaimers in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

With respect to teachers or staff, the Guidance distinguishes between whether the teacher or staff member is acting within his/her official capacity, or whether the teacher or staff members is a volunteer. The Guidance states:

When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the Establishment Clause from encouraging or discouraging prayer, and from actively participating in such activity with students. Teachers may, however, take part in religious activities

where the overall context makes clear that they are not participating in their official capacities. Before school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activities. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies.

From the George County High School website we learned that the school has several student clubs, including a Spanish Club, a Math Club, a Beta Club, and a Bible Club. Since this website is public information, we assume that FFRF has similar access to this information. We further note that FFRF did not complain about the Bible Club meeting on campus. Since the Bible Club is given equal treatment to other school clubs, we assume that you and your staff know about the DOE Guidance are in compliance with it, and therefore that the complaint that forms the basis of FFRF's letter is simply mistaken.

FFRF's letter cites the 1948 *McCullum* case. So did the U.S. Supreme Court in *Lynch v. Donnelly*, 465 U.S. 668, 673-75 (1984), where the Court stated,

the Constitution [does not] require complete separation of church and state; it affirmatively *mandates accommodation*, not merely tolerance, of all religions, and *forbids hostility toward any*. See, e.g., *Zorach v. Clauson*; *McCullum v. Board of Education*. Anything less would require the "callous indifference" we have said was never intended by the Establishment Clause. *Zorach*. Indeed, we have observed, such hostility would bring us into "war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion." *McCullum*.

FFRF, you and I share many things in common, including living in a country that protects our rights to free speech and the free *exercise* of religion (or, for that matter, the free exercise of non-religion). FFRF has every right to speak on behalf of its members' non-belief, just like we have a right to speak on behalf of our belief. Thank you for instituting policies (like permitting the Bible Club) that treat religious students similarly to non-religious students.

If we can be of any service to you on this issue, feel free to contact us. We have First Amendment lawyers on staff who will work with you, without charge, if you need their services. To protect our freedom, we must exercise that freedom. May God bless you and the citizens of Lucesdale.

Sincerely,



Lea Carawan
Executive Director