AMERICANS UNITED
FOR SEPARATION OF CHURCH AND STATE

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September 23, 2022

By U.S. Mail & Email
Dr. Sito Narcisse, Superintendent
Gwynn Shamlin, General Counsel
East Baton Rouge Parish School System
1050 S. Foster Drive
Baton Rouge, LA 70806
c/o LGriffin7@ebrschools.org

Re: *District involvement in religious event*

Dear Dr. Narcisse and Mr. Shamlin:

We have received several complaints regarding the East Baton Rouge Parish School System's involvement with a religious event. On September 20, 2022, students were taken to the "Day of Hope" event at Living Faith Christian Center. Numerous reports indicate that the event included prayer and that students were proselytized by event speakers. *See* Charles Lussier, *Parents, students complain East Baton Rogue schools field trip was more like church service*, The Advocate, Sept. 21, 2022, at https://bit.ly/3dGENew. We understand that Dr. Narcisse both promoted and spoke at the event. *Id*. Moreover, the district has released a statement clearly indicating that it partnered with the Days of Hope organizer to put on the event. *See* Scottie Hunter, *The Investigators: EBR Schools doubles down in defense of Day of Hope event*, WAFB9, Sept. 22, 2022, at https://bit.ly/3SvDgGD.

Public schools exist to serve all schoolchildren and their families regardless of faith or belief and must be welcoming to all. The inclusion of prayer and proselytizing religious messages at an official school event conveys disrespect for students' and families' beliefs and sends the message that students who do not practice the officially favored faith or participate in these religious activities are unwelcome outsiders who do not belong. Moreover, the inclusion of religious content violates the Establishment Clause of the First Amendment to the U.S. Constitution. Please ensure that the school does not include religious content in school activities in the future.

The Supreme Court recently emphasized that "the Establishment Clause must be interpreted 'by reference to historical practices and understandings,'" and that the "'line' . . . 'between the permissible and the impermissible' has to 'accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers.'"

Kennedy v. Bremerton Sch. Dist., 142 S. Ct. 2407, 2428 (2022) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014) (alterations in original)). The district's partnership with a church group to host an event with prayer and proselytizing messages flies in the face of history and the law.

The Supreme Court explained in *Engel v. Vitale*, 370 U.S. 421, 432 (1962), that the Establishment Clause was in part based "upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand." Our founding generation knew "from bitter personal experience, that one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services." *Id.* Accordingly, the Establishment Clause's "first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion." *Id.* at 431. "The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy to permit its 'unhallowed perversion' by a civil magistrate." *Id.* at 431-32 (quoting *Memorial and Remonstrance against Religious Assessments*, II Writings of Madison, at 187).

The Establishment Clause therefore requires a "wholesome 'neutrality'" with respect to religion, which "stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions," which "the Establishment Clause prohibits." *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 222 (1963). Specifically,

> [g]overnment in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no[n]religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.

Epperson v. Arkansas, 393 U.S. 97, 103-04 (1968); *accord McCreary County v. ACLU of Kentucky*, 545 U.S. 844, 875-76 (2005) (reaffirming, based on history of religious conflict in England and the American colonies, that "the government may not favor one religion over another, or religion over irreligion").

The school district's inclusion of prayer and proselytizing content in an official district activity contravenes both history and the law. When a public school sponsors an event such as a field trip, the school is legally responsible for the message presented; hence the courts have repeatedly held that school activities and events must not be used as opportunities for school employees, students, or outsiders to proselytize or to distribute religious messages to students. *See Santa*

Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 302-03 (2000) (striking down student-led prayers at athletic events where prayers were authorized by school policy); *Lee v. Weisman*, 505 U.S. 577, 587-90 (1992) (holding unconstitutional school's selection and invitation of rabbi to deliver prayer at graduation); *McCollum v. Bd. of Educ.*, 333 U.S. 203, 209-12 (1948) (striking down religious classes taught in public school by private-school teachers); *Roark v. South Iron R-1 Sch. Dist.*, 573 F.3d 556, 560-61 (8th Cir. 2009) (prohibiting Bible distributions in public schools); *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 983-85 (9th Cir. 2003) (holding that school could not constitutionally allow student to give proselytizing religious speech at graduation); *Nartowicz v. Clayton Cnty. Sch. Dist.*, 736 F.2d 646, 649-50 (11th Cir. 1984) (prohibiting school from allowing churches to announce church-sponsored activities over school public-address system). The inclusion of prayer and proselytizing messages at a school event is unconstitutional, even if that content is delivered by outsiders and not school officials.

Moreover, even if the event was wholly private—which it was not—the district's promotion and support for the event was still unconstitutional. The federal courts have, thus, routinely struck down school involvement in the administration or promotion of private religious events. *See, e.g.*, *Warnock v. Archer*, 443 F.3d 954, 955 (8th Cir. 2006) (school conveyed impermissible sponsorship of religious baccalaureate service where school employees "designed the service's program, typed it up, . . . copied it using school resources," and "handed out the programs at the . . . service" and through school employees "[meeting] with . . . seniors during school hours, where they supervised and advised on the planning of the baccalaureate service"); *Carlino v. Gloucester City High Sch.*, 57 F. Supp. 2d 1, 23 (D.N.J. 1999) (by dictating time and format of religious baccalaureate service, planning service with pastor, and controlling students' ability to attend, school officials "appeared to exercise control and had actual control over the Baccalaureate Service"); *Chandler v. James*, 998 F. Supp. 1255, 1273 (M.D. Ala. 1997) (school prohibited from "printing baccalaureate announcements or commemorations or other materials regarding baccalaureate services" and from "encouraging, directly or indirectly, a student's attendance at baccalaureate services"). As the U.S. Supreme Court has made clear, the government must not "utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals." *McCollum*, 333 U.S. at 211.

It makes no difference in the legal analysis that this field trip may have been "optional" for students. School sponsorship of an event with religious content is unconstitutional even if student participation is nominally voluntary and students may opt out. *See Schempp*, 374 U.S. at 224-25 (school-sponsored religious activities are not "mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause"); *see also Santa Fe*, 530 U.S. at 311, 312 (public schools must not sponsor prayer at football games, even though attendance is voluntary, because Establishment Clause prohibits them from "exact[ing] religious

conformity from a student as the price of joining her classmates at a varsity football game") (quotation marks omitted); *Lee*, 505 U.S. at 593, 594 ("adolescents are often susceptible to pressure from their peers towards conformity," and "the government may no more use social pressure to enforce orthodoxy than it may use more direct means").

The bottom line is that the East Baton Rouge School System's Day of Hope event violated the First Amendment rights of its students and the parents that came to chaperone the event. The school district must ensure that future school district events do not include religious content. We would appreciate a response to this letter within thirty days that advises us how you plan to proceed. If you have questions, you may contact Ian Smith at (202) 466-3234 or *ismith@au.org*.

Sincerely,

Ian Smith, Staff Attorney