



SWEENEY WINGATE & BARROW P.A.
November 27, 2013

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SENT VIA US MAIL, EMAIL & FACSIMILE

East Point Academy Board of Directors
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Re: Threats Related to Operation Christmas Child

Dear Members of the Board:

It is well-known that the American Humanist Association (“AHA”) has threatened East Point Academy with a lawsuit because it includes Operation Christmas Child (“OCC”) as one of many humanitarian, community service opportunities its students may voluntarily participate in throughout the school year. We write to inform you that there is nothing illegal about a public school providing students an opportunity to put together a box of gifts for impoverished children throughout the world just because the toy drive is sponsored by a religious organization. We also write to encourage you to take a stand against AHA, and to offer our legal services free of charge if AHA files suit. Our representation would be a co-counsel relationship where Alliance Defending Freedom and John Tyler of Sweeney, Wingate & Barrow, P.A. work together to represent East Point Academy.

We believe strongly that the Academy’s offering of OCC as an optional community service project does not violate the Establishment Clause of the United States Constitution. To comply with that Clause, a government action must serve a secular purpose, must not have the primary effect of advancing religion, and must not excessively entangle the government with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). The Academy’s actions easily satisfy each and every aspect of this test.

Looking first to the secular purpose prong, the United States Supreme Court has said it is “reluctan[t] to attribute unconstitutional motives to” government officials “when a plausible secular purpose for” their actions is proffered. *Mueller v. Allen*, 463 U.S. 388, 394-95 (1983). Here, the Academy easily satisfies this prong. It includes OCC as one of many optional community service projects offered throughout the year. Further, it promotes OCC as an opportunity to provide Christmas gifts to impoverished children throughout the world, gifts which they would not otherwise receive. The Academy’s community service program therefore clearly serves a secular purpose.

The Academy’s inclusion of OCC in its community service offerings also does not have the primary effect of advancing religion, nor does it unlawfully entangle the Academy with religion. The AHA’s letter to the Academy complains that Samaritan’s Purse, the religious organization that sponsors OCC, promotes the Christian faith through OCC. But the alleged actions of a third party are irrelevant to the question of whether *the Academy* is unlawfully advancing religion. As the Supreme Court has explained, “For a law to have forbidden ‘effects’ under *Lemon*, it must be fair to say that the *government itself* has advanced religion through its own activities and influence.” *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 337 (1987). Here, the Academy has taken no actions that promote any religious aspect of OCC. It simply offers OCC as an optional opportunity for students to engage in humanitarian aid to needy children. The Academy is not advancing religion *at all*. For the same reasons, it also is not excessively entangled with religion. Like advancement concerns, entanglement concerns also are completely absent.

The AHA’s interpretation of the Establishment Clause is inaccurate and highly antagonistic to religion. They ask public schools to exclude religious organizations or persons from programs simply because they are religious. But such blatant religious discrimination is prohibited by the Establishment and Free Exercise Clauses. As the United States Supreme Court has said, “religious people (or groups of religious people) cannot be denied the opportunity to exercise the rights of citizens simply because of their religious affiliations or commitments, for such a disability would violate the right to religious free exercise.” *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 698 (1994) (plurality opinion). Government entities are thus generally prohibited from “impos[ing] special disabilities on the basis of religious views or religious status,” *Employment Div., Dept. of Human Res. of Ore. v. Smith*, 494 U.S. 872, 877 (1990), and from exhibiting “hostility toward any [religion],” *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984). As venerable Supreme Court Justice William Brennan once rightly said,

The Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities.

McDaniel v. Paty, 435 U.S. 618, 641 (1978) (Brennan, J., concurring). Yet it is exactly this type of religious hostility that groups like AHA demand of public schools.

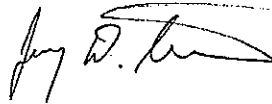
religion. As the Supreme Court has said, “[T]he Constitution [does not] require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.” *Lynch*, 465 U.S. at 673. *See also American Civil Liberties Union of Kentucky v. Mercer County*, 432 F.3d 624, 638 (6th Cir. 2005) (the phrase “separation of church and state” is an “extra-constitutional construct” that has “grown tiresome. The First Amendment does not demand a wall of separation between church and state”).

Here, the Establishment Clause is vindicated, not violated, by the Academy continuing to offer OCC as a part of its community service program. Indeed, the Supreme Court has repeatedly “held that the guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.” *Rosenberger*, 515 U.S. at 839.

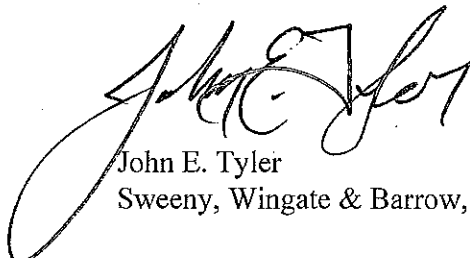
This is a teaching moment for the Academy. And make no mistake, the Academy’s students, and indeed the whole nation, are watching. The Academy should demonstrate to its students and to its wider audience that the correct response to being wrongfully accused of violating the law is to take a stand, rather than acquiesce to the accuser’s unreasonable demands. Should the Academy take such a stand, we will be happy to represent it free of charge against any legal action filed by the AHA. We understand that the OCC collection period has passed for this year, but the AHA’s threat should not deter you from once again including OCC as an optional community service project next year.

Please contact us with any questions you may have. We stand ready to defend the Academy against the AHA’s unwarranted and misguided attacks.

Sincerely,



Jeremy D. Tedesco, Senior Legal Counsel
Alliance Defending Freedom



John E. Tyler
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cc: Renee Mathews, Principal (rmathews@eastpointsc.org)