



October 9, 2013
VIA EMAIL, FAX, & U.S. MAIL

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Wausau School District Board of Education
P.O. Box 359
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Wausau, WI 54402-0359

Re: The Inclusion of Religious Music in Public School Programs

Dear Members of the Wausau School District Board of Education:

It has come to our attention that teachers in the Wausau School District (the "District") recently canceled a number of holiday choir performances after administrators severely restricted their ability to include traditional Christmas carols in school programs. The relevant facts reported in the news media are as follows. In a recent meeting, district officials and the district's attorney met with music educators and provided them with three unworkable options for their December concerts: (1) sing five non-religious songs for each religious song performed, (2) perform no Christmas carols or other religious songs whatsoever, or (3) postpone the December concerts, which would also eliminate the singing of any Christmas carols. Music educators at the elementary level consequently postponed their December concerts until the spring. In addition, Wausau West High School temporarily disbanded its elite group of Master Singers because its members could not carry out their regularly scheduled program of over a dozen holiday concerts at nursing homes, grade schools, and businesses without singing the traditional Christmas carols they had previously learnt and which every audience expects.

School officials recently issued a statement explaining that the cancelation of the Masters Singers' holiday performances occurred after they instituted "an alternative process" to "ensure that the District was not unconstitutionally

endorsing the religious celebration of Christmas.”¹ This concern appears to have resulted from the number of Christmas carols included in the Masters Singers’ public concerts. According to administrative officials’ public statement, the District’s legal counsel gave two options for these performances: (1) allow the holiday concerts to continue but exclude all songs related to the religious origins of Christmas, or (2) hold concerts with alternative themes unrelated to Christmas and perhaps “include one religiously-themed Christmas selection along with four” songs “from other religious, secular, or cultural traditions.”² The public statement further claims that the mass cancellation of elementary school holiday performances resulted from entirely different concerns related to “time lost from instruction” and state and federal testing schedules, neither of which appear to trouble other school districts in Wisconsin or throughout the nation.³

We write to explain that every federal court to examine the issue has determined that including Christmas carols and other religious music in school choir programs fully complies with the First Amendment and to urge you to immediately rescind the new practice instituted by administrative officials. By way of introduction, Alliance Defending Freedom is an alliance-building legal organization that advocates for the right of people to freely live out their faith. Alliance Defending Freedom frequently assists students, teachers, and public school districts in understanding their rights and responsibilities when it comes to seasonal religious expression.

We understand that district officials’ recent actions “stem[] from legal concerns over the amount of religious music performed in [Wausau] schools.”⁴ But that concern is unfounded. Federal courts have recognized that the vast majority of high-quality choral music is religious in nature.⁵ As a result, they have refused to second-guess music educators’ curricular choices and place numerical quotas on the religious pieces that school choirs may perform.⁶

¹ Statement by the Wausau School District Administration (Oct. 7, 2013), *available at* <http://ftpcontent.worldnow.com/waow/Wausau Statement.pdf> (last visited Oct. 8, 2013).

² *Id.*

³ *Id.*

⁴ Shereen Siewert, *Wausau schools limit religious music: Elite West singing group put on hold; holiday concerts canceled*, APPLETON POST-CRESCENT (Oct. 4, 2013), *available at* <http://www.postcrescent.com/article/20131004/APC0101/310040430/Wausau-schools-limit-religious-music-Elite-West-singing-group-put-hold-holiday-concerts-canceled> (last visited Oct. 7, 2013).

⁵ *See, e.g., Bauchman v. West High Sch.*, 132 F.3d 542, 554 (10th Cir. 1997) (considering it well “recognized that a significant percentage of serious choral music is based on religious themes or text”); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 407 (5th Cir. 1995) (crediting testimony that approximately “60-75 percent of serious choral music is based on sacred themes or text”).

⁶ *See, e.g., Bauchman*, 132 F.3d at 556 (determining that “the selection of religious songs from a body of choral music predominated by songs with religious themes and text ..., without more, amount[s] to religiously neutral educational choices”); *Duncanville*, 70 F.3d at 408 (“[W]e will not find an

The law thus clearly recognizes that “[a] position of neutrality towards religion must allow choir directors to recognize the fact that *most choral music is religious*” in nature.⁷ Because singing a wide variety of religious songs—particularly during the holiday season—is simply a result of “the dominance of religious music in this field,” courts have never considered this fact to either unconstitutionally advance or endorse religion.⁸ To the contrary, they have stated that, “[a]s a matter of statistical probability,” good choir music is more likely to be religious than not.⁹ Requiring that December choir concerts contain four to five secular songs for every one that is religious is thus fundamentally misguided.¹⁰

Federal law demands no such thing, as courts have recognized for many years that Christmas “carols have achieved a cultural significance that justifies their being sung ... in public schools.”¹¹ What the First Amendment does require is that the Wausau School District remains neutral towards religion and refrains from demonstrating an unconstitutional hostility toward songs with religious origins.¹² The district’s policy of putting aside music educators’ curricular expertise and intentionally excluding religious choral arrangements, regardless of their demonstrated cultural value and educational merit, likely crosses that constitutional line.

As the United States Court of Appeals for the Fifth Circuit has explained, “[l]imiting the ... religious piece[s] of music [that] can be sung is tantamount to censorship and does not send students a message of neutrality.”¹³ “[D]isqualif[ing] the majority of appropriate choral music simply because it is religious” necessarily “require[s] hostility, not neutrality, toward religion.”¹⁴

endorsement of religion exists merely because a religious song with widely recognized musical value is sung more of often than other songs.”).

⁷ *Duncanville*, 70 F.3d at 408 (emphasis added).

⁸ *Id.*; see also *Bauchman*, 132 F.3d at 556 (“[A] reasonable observer would conclude the selection of religious songs from a body of choral music predominated by songs with religious themes and text ..., without more, amount to religiously neutral educational choices”).

⁹ *Duncanville*, 70 F.3d at 408.

¹⁰ *Bauchman*, 132 F.3d at 556 n.10 (declining “to more closely evaluate the number and quality of religious songs selected for the Choir” because “[t]he Constitution does not contemplate nor require judicial micro-management of the religious content of public education”).

¹¹ *Florey v. Sioux Falls Sch. Dist.*, 619 F.2d 1311, 1316 n.5 (8th Cir. 1980).

¹² See *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 846 (1995) (“[F]ostering a pervasive bias or hostility to religion ... undermine[s] the very neutrality the Establishment Clause requires.”).

¹³ *Duncanville*, 70 F.3d at 408.

¹⁴ *Id.*

Moreover, the cultural and educational merits of Christmas carols and other religious songs are well established. The United States Court of Appeals for the Eighth Circuit, for example, recognized over thirty years ago that there is no constitutional objection to students in public schools learning and performing religious songs “presented objectively as part of a secular program of education.”¹⁵ Such experience advances “students’ knowledge of society’s cultural and religious heritage, as well as [their ability] to perform a full range of music ... that is likely to be of interest to the students and their audience.”¹⁶ It also “expose[s] students to the full array of vocal music culture.”¹⁷ These secular objectives more than justify the traditional holiday concerts schools typically stage across the nation, which District officials unfortunately scuttled this year.

Significantly, no evidence exists that music educators abused their authority by teaching religious music in a devotional manner. Testimonials by former students of Mr. Buch (the director of the Master Singers), for instance, make clear that he “is an intelligent and dedicated teacher” who selects only songs that are “challenging and worth learning.”¹⁸ These individuals, who have spent countless hours with Mr. Buch in the classroom, explain that he “knows where to draw the line between choosing music for its faith or for its quality,” “gives all ... students a chance to learn about the rich history of music,” and presents each piece “to students in an objective, unbiased way.”¹⁹ Students in the Wausau School District were receiving an educational program that was both high-quality and secular in nature. The Board of Education should immediately act to restore it.

Music educators, not administrative officials, should choose which choral pieces—secular or sacred—are best-suited to the occasion and to “teach [students] a variety of vocal music skills (*i.e.*, sight reading, intonation, harmonization, expression).”²⁰ We request a response to our letter by **October 11, 2013**, confirming that the Board of Education will right this wrong by immediately rescinding the new practice put in place by administrative officials and restoring Wausau School District’s lost holiday programs.

¹⁵ *Florey*, 619 F.2d at 1315 (quoting *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 225 (1963)).

¹⁶ *Id.* at 1314; *see also id.* at 1316 (“It is unquestioned that public school students may be taught about the customs and cultural heritage of the United States and other countries.”).

¹⁷ *Bauchman*, 132 F.3d at 554.

¹⁸ *Former students: Choir programs taught us to love music*, WAUSAU DAILY HERALD (Oct. 6, 2013), available at <http://www.wausaudailyherald.com/article/20131007/WDH06/310070110/> (last visited Oct. 7, 2013).

¹⁹ *Id.*

²⁰ *Id.* at 554.

Sincerely,

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