



November 19, 2013  
VIA EMAIL, FAX, & U.S. MAIL

Mr. Abram Cram, Chairman  
Ms. Lori Hoffman, Secretary  
Mr. Jim Faux, Finance Committee Chair  
Mr. Jamey Gaston, Audit Committee Chair  
Mr. Chris Revels, Academic Committee Chair  
Ms. Laurie Brigman-Veale, Member At-Large/Special Projects  
York Preparatory Academy School Board  
1047 Golden Gate Ct.  
Rock Hill, SC 29732

**Re: The Inclusion of Religious Music in Public School Programs**

Dear Members of the York Preparatory Academy School Board:

We have been contacted by a concerned family with two students attending York Preparatory Academy regarding a school policy that appears to ban religious music at students' holiday performances. It is our understanding that the Academy's band director gave older students a choice of musical selections to perform at the school's Winter Concert, which is scheduled for December 19, 2013. The students chose two songs that included the melodies from Joy to the World and Oh Come All Ye Faithful. But the Academy's band director excluded the songs based on a communication from the American Civil Liberties Union ("ACLU") or a similar group that warned South Carolina schools against performing traditional Christmas carols, threatening the close monitoring of concerts and possible litigation. When questioned about this decision, the Academy's principal confirmed the receipt of the ACLU's or similar group's communication and suggested that in order for students to play traditional Christmas carols they would need to play songs from other religions as well.

We write to explain that every federal court to examine the issue has determined that including religious Christmas carols in school music programs fully complies with the First Amendment and to urge you to immediately rescind the 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.

Federal courts have recognized for decades that the vast majority of high-quality Christmas music is religious in nature.<sup>1</sup> As a result, they have refused to second-guess music educators' curricular choices and place numerical quotas on the religious pieces that student groups may perform.<sup>2</sup> Because performing 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.<sup>3</sup> To the contrary, they have stated that, “[a]s a matter of statistical probability,” good Christmas music is more likely to be religious than not.<sup>4</sup> Requiring that band concerts contain a set ratio of religious music is thus fundamentally misguided.<sup>5</sup>

Moreover, federal law demands no such thing. Courts have recognized for many years that Christmas “carols have achieved a cultural significance that justifies their being [performed] ... in public schools.”<sup>6</sup> What the First Amendment does demand is that York Preparatory Academy remains neutral towards religion and refrains from demonstrating an unconstitutional hostility towards music with religious origins.<sup>7</sup> The Academy's policy of intentionally excluding band arrangements with melodies from religious Christmas carols, regardless of the music's demonstrated cultural value and educational merit, shows impermissible hostility toward religion.

As the United States Court of Appeals for the Fifth Circuit has explained, “[l]imiting the ... religious piece[s] of music [that] can be [performed] is tantamount

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<sup>1</sup> 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”).

<sup>2</sup> 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 endorsement of religion exists merely because a religious song with widely recognized musical value is sung more of often than other songs.”).

<sup>3</sup> *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”).

<sup>4</sup> *Duncanville*, 70 F.3d at 408.

<sup>5</sup> *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”).

<sup>6</sup> *Florey v. Sioux Falls Sch. Dist.*, 619 F.2d 1311, 1316 n.5 (8th Cir. 1980).

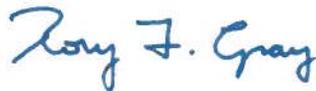
<sup>7</sup> See *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 846 (1995) (“[F]ostering a pervasive bias or hostility to religion ... undermine[s] the very neutrality the Establishment Clause requires.”).

to censorship and does not send students a message of neutrality.”<sup>8</sup> “[D]isqualif[ing] the majority of appropriate ... music simply because it is religious” necessarily “require[s] hostility, not neutrality, toward religion.”<sup>9</sup>

The cultural and educational merits of Christmas carols and other religious songs are well established. For example, the United States Court of Appeals for the Eighth Circuit 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.”<sup>10</sup> 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.”<sup>11</sup> It also “expose[s] students to the full array of ... music culture.”<sup>12</sup> These secular objectives more than justify the traditional holiday concerts that schools typically stage across the nation.

In short, the Academy should not be intimidated by threats from groups like the ACLU. No court has outlawed students’ performance of Christmas carols in a non-devotional manner. We request that you respond to our letter by **November 26, 2013**, confirming that the Academy will permit religious music to be included among the many secular songs performed at its winter concerts. And please know that, should the ACLU pursue legal action against the Academy for allowing Christmas carols to be performed on an equal basis with secular tunes, Alliance Defending Freedom would be happy to defend the Academy free of charge.

Sincerely,



Rory T. Gray, Litigation Staff Counsel  
Jeremy D. Tedesco, Senior Legal Counsel  
J. Matthew Sharp, Legal Counsel

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<sup>8</sup> *Duncanville*, 70 F.3d at 408.

<sup>9</sup> *Id.*

<sup>10</sup> *Florey*, 619 F.2d at 1315 (quoting *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 225 (1963)).

<sup>11</sup> *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.”).

<sup>12</sup> *Bauchman*, 132 F.3d at 554.