

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

JONATHAN ANDERSON, on his own behalf,)
and as parent and next friend of his)
minor child, **J.A.**, a student in Chesterfield)
County School District,)

Plaintiffs,)

v.)

**CHESTERFIELD COUNTY SCHOOL)
DISTRICT; CHESTERFIELD COUNTY)
SCHOOL BOARD; JOHN WILLIAMS,)
in his official capacity as Superintendent)
of the Chesterfield County School District;)
and **LARRY STINSON**, in his official capacity)
as Principal of New Heights Middle School,)**

Defendants.)

NO. 4: 11-cv-03300-RBH

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

The U.S. Supreme Court “has been particularly vigilant in monitoring compliance with the Establishment Clause” in the public-school context because schoolchildren “are impressionable, and their attendance is involuntary.” *Edwards v. Aguillard*, 482 U.S. 578, 583-84 (1987). Indeed, the Court has issued a “long line of cases carving out of the Establishment Clause what essentially amounts to a *per se* rule prohibiting public-school . . . initiated religious expression or indoctrination.” *Doe v. Duncanville Indep. Sch. Dist.* (“*Duncanville I*”), 994 F.2d 160, 165 (5th Cir. 1993). As detailed in the Complaint and below, the Chesterfield County School District has knowingly and repeatedly flouted this well-established law.

Earlier this school year, for example, officials at New Heights Middle School held an evangelical revival assembly to “save” students by encouraging them to accept Jesus Christ into their hearts. The worship rally featured a minister, who preached to students, and the Christian rapper B-SHOC. Students were asked to sign pledges dedicating themselves to Jesus. In a video chronicling the school-day assembly, B-SHOC boasted that “324 kids at this school have made a decision for Jesus Christ.” *See infra* p.4. He added, “I don’t know if it gets any better than that,” explaining, “We’re in a public school and we did a show for the sixth grade, seventh grade, and the eighth grade.” *Id.* And that evening, the minister who had preached to students told parents that school officials were well aware that the assembly raised serious legal problems: “Your principal went to me today and I said, ‘How are you getting away with this?’ and he said, ‘I’m not . . . I want these kids to know that eternal life is real, and I don’t care what happens to me, they’re going to hear it today.’” *See infra* p.5.

Though the B-SHOC assembly was particularly remarkable as it was captured on video and showed how brazen and unrepentant District officials have become in their efforts to proselytize and indoctrinate students, it was not the first or last time that the District has violated

the Establishment Clause. The District routinely works to inculcate religious beliefs among students by incorporating official prayer into school events, proselytizing students, encouraging students' attendance at religious activities, and repeatedly exposing students to religious symbols and messages.

These violations are perhaps most pronounced at New Heights Middle School, where Plaintiff J.A. is subjected, on a regular basis, to unwelcome prayer, proselytizing, and other official promotion of religion. In addition to the B-SHOC assembly, J.A. must endure official prayer and proselytizing at nearly all school assemblies, chorus concerts, and other events, such as awards ceremonies. J.A.'s teachers have cited Bible scripture in class and have disparaged his atheist beliefs. They have even required him to copy religious essays as punishment for minor infractions like forgetting to wear his belt. In addition, school officials have displayed religious iconography and messages throughout the school, so that J.A. cannot avoid official promotion of religion even when he is not in class or at a particular school event. When J.A.'s father, Plaintiff Jonathan Anderson, complained about these activities, Defendant Larry Stinson, principal of New Heights Middle School, told him he needed to "get right with God." *See infra* p. 13.

The District's contempt for the law has inflicted irreparable harm on Plaintiffs, who do not subscribe to the religious beliefs and practices promoted by Defendants. Plaintiffs will continue to suffer this injury without immediate relief from this Court. Accordingly, for the reasons set forth below, the Court should grant Plaintiffs' motion for a preliminary injunction.

FACTS

Plaintiff J.A is a student at New Heights Middle School in Chesterfield County School District. Compl. ¶ 11; J.A. Decl. ¶ 1;¹ Anderson Decl. ¶2.² As detailed below, J.A. has been subjected repeatedly to officially sponsored prayer, proselytizing, and religious inculcation in class and at various school events. *See generally* Compl. ¶¶ 11-16, 20-59; J.A. Decl. ¶¶ 2-25. He also has been repeatedly exposed to religious messages and iconography at his school. J.A. Decl. ¶¶ 26-31. His father, Plaintiff Jonathan Anderson (who sues here on both his own behalf and J.A.'s behalf), in connection with his role as a parent, also has been subjected to various religious practices by school officials. *See generally* Compl. ¶¶ 11-16, 25, ¶¶53-59; Anderson Decl. ¶¶ 4-8.

A. Official Promotion of Prayer, Proselytizing, and Inculcation of Religion

Defendants have a custom, policy, and practice of promoting and sponsoring prayer, proselytizing, and inculcation of religion at New Heights Middle School and other District schools.

1. *The B-SHOC concert assembly*

Most notably, in September 2011, the school held an evangelical revival assembly. Compl. ¶¶ 34-45; J.A. Decl. ¶¶ 9-15; Weaver Decl. Ex. A.³ During the school-day assembly, an evangelical minister, Christian Chapman, delivered a sermon to students. Compl. ¶ 35; J.A. Decl.

¹ Because Plaintiff is a minor, he is referred to in these proceedings only by his initials to protect his privacy. The Declaration of J.A. in Support of Plaintiffs' Motion for Preliminary Injunction is filed herewith. Plaintiffs' counsel retains a copy of J.A.'s declaration signed with his full name.

² The Declaration of Jonathan Anderson in Support of Plaintiffs' Motion for Preliminary Injunction is filed herewith.

³ The Declaration of Heather L. Weaver in Support of Plaintiffs' Motion for Preliminary Injunction is filed herewith and attaches a video of the B-SHOC event as Exhibit A. (The exhibit will be filed manually.) Citations to specific parts of the video are denoted by the minute and second at which the relevant material begins and the minute and second at which it ends.

¶ 9. Among other things, Chapman told students that “a relationship with Jesus is what you need, more important than anything else.” Weaver Decl. Ex. A. at 3:18-3:23. He also declared that atheism, evolution, and homosexuality are very wrong. Compl. ¶ 35; J.A. Decl. ¶ 9.

In addition to the sermon, B-SHOC, a Christian rapper (whose musical catalog includes titles such as “Crazy Bout God” and “Christ-Like Cruisin”), performed explicitly Christian songs. Compl. ¶ 36; J.A. Decl. ¶ 10; Weaver Decl. Ex. A at 2:46-3:04, 3:39-3:43. And, along with Principal Stinson, he urged students to attend the home church of Bridging the Gap Ministries, a local religious group. Compl. ¶ 36; J.A. Decl. ¶ 10. Members of a local church and other adults, including teachers, also were present to pray with students before they returned to classes and to assist students who accepted Jesus in filling out a pledge card indicating their decision. Compl. ¶ 37; J.A. Decl. ¶ 11; Weaver Decl. Ex. A at 2:28-2:46.

In a video of the assembly, B-SHOC claimed that “324 kids at this school have made a decision for Jesus Christ.” Weaver Decl. Ex. A at 4:59-5:07. He also stated: “I don’t know if it gets any better than that,” explaining, “We’re in a public school and we did a show for the sixth grade, seventh grade, and the eighth grade.” *Id.* Ex. A at 5:12-5:21. Chapman also reported on the event in a series of messages posted to his Twitter account, in which he exclaimed that, “Total count is close to 400 public school teens surrendered their hearts to Jesus today!!!” *Id.* Ex. B. He also wrote that there were “4 students who said they wouldn’t go to the event because they were atheist but they just walked in . . . A Jesus party is much better.” *Id.*

School officials were intimately involved in and supportive of the assembly’s religious content. Teachers prayed with students during the event and assisted in passing out religious literature. Compl. ¶ 39; J.A. Decl. ¶ 11. After the event, one teacher exhorted students, “Remember kids, let Thursday be the beginning, not the climax,” and urged them to attend the

next meeting of a student religious club, Hawks for Hope. Weaver Decl. Ex. C (attaching math teacher's Facebook page, which was set up for current and former students). And the school's website featured links to help students "Connect with Christian Chapman and B-SHOC" and a student's account of the event, which stated:

A worship rally took place at New Heights Middle School on Thursday, September 1, 2011. When walking into the gym, you would normally see bleachers and basketball goals, but on this day, the lights were dimmed and smoke filled the air. A pastor and a rapper took center stage. B-SHOC, a Christian rapper performed first in the gym. He was able to get the kids to really interact with him. Jumping, clapping, singing . . . the students were all stirred up and captivated by B-SHOC's mesmerizing light show. While performing, lyrics on the screen got the kids singing and rapping about Jesus. After B-SHOC's interactive performance, Christian Chapman, a youth evangelist took over. He delivered a serious address, but at the same time brought a little humor into it. Through telling his own testimony and other personal experiences, he brought a powerful message to which the middle school students could easily relate. Before the day ended, 324 kids had either been saved, or had re-committed their lives to the Lord. These two men, with help from volunteers did an amazing job in speaking to the hearts of these kids. They touched the lives of some very important people – our youth. The overall experience was astounding.⁴

Id. Ex. D

In addition, in the video, Chapman noted during a follow-up evening session with parents and students that Principal Stinson was well aware of the constitutional problem with the assembly, explaining, "Your principal went to me today and I said, 'How are you getting away with this?' and he said, 'I'm not . . . I want these kids to know that eternal life is real, and I don't care what happens to me, they're going to hear it today.'" *Id.* Ex. A at 3:56-4:12; Ex. D (describing Chapman's presentation to parents).

Before the B-SHOC assembly, J.A.'s teacher told his class that students who did not want to attend would have report to the in-school suspension ("ISS") room for the duration of the event. Compl. ¶ 44; J.A. Decl. ¶ 13. J.A. felt pressured to attend the assembly, however, because

⁴ The District deleted this online material after the violations came to light in the media.

nearly everyone else was going and he believed that sending students to the ISS room was intended to punish those who refused to go to the religious event. Compl. ¶ 44; J.A. Decl. ¶¶ 13-14. In ISS, students would be forced to sit in silence and could be ordered to do extra work that those attending the assembly would not have to do. Compl. ¶ 44; J.A. Decl. ¶ 13.

During the B-SHOC assembly, J.A. felt very uncomfortable and upset. Compl. ¶ 45; J.A. Decl. ¶ 15. Aware that he is not a Christian, his classmates singled him out and told him he should listen to what was being said. Compl. ¶ 45; J.A. Decl. ¶ 15. On his way out, volunteers and teachers distributed religious literature to students. Compl. ¶ 45; J.A. Decl. ¶ 11. This literature including fake money (in the form of a \$1 million bill), stating:

THE MILLION DOLLAR QUESTION: WILL YOU GO TO HEAVEN WHEN YOU DIE? HERE'S A QUICK TEST. HAVE YOU EVER TOLD A LIE, STOLEN ANYTHING, OR USED GOD'S NAME IN VAIN? JESUS SAID, "WHOEVER LOOKS AT A WOMAN TO LUST FOR HER HAS ALREADY COMMITTED ADULTERY WITH HER IN HIS HEART." HAVE YOU LOOKED WITH LUST? WILL YOU BE GUILTY ON JUDGMENT DAY? IF YOU HAVE DONE THOSE THINGS, GOD SEES YOU AS A LYING, THIEVING, BLASPHEMOUS, ADULTERER AT HEART. THE BIBLE WARNS THAT IF YOU ARE GUILTY YOU WILL END UP IN HELL. THAT'S NOT GOD'S WILL. HE SENT HIS SON TO SUFFER AND DIE ON THE CROSS FOR YOU. YOU BROKE GOD'S LAW BUT JESUS PAID YOUR FINE. THAT MEANS HE CAN LEGALLY DISMISS YOUR CASE. HE CAN COMMUTE YOUR DEATH SENTENCE. "FOR GOD SO LOVED THE WORLD THAT HE GAVE HIS ONLY BEGOTTEN SON. THAT WHOEVER BELIEVES IN HIM SHOULD NOT PERISH BUT HAVE EVERLASTING LIFE." THEN HE ROSE FROM THE DEAD AND DEFEATED DEATH. PLEASE REPENT (TURN FROM SIN) TODAY AND TRUST ALONE IN JESUS, AND GOD WILL GRANT YOU ETERNAL LIFE. THEN READ YOUR BIBLE DAILY AND OBEY IT.

J.A. Decl. Ex. A; Compl. ¶ 45.

2. *Prayer and proselytizing at other assemblies*

The B-SHOC assembly was not the first or last time District officials incorporated prayer and proselytizing into assemblies this school year. For example, J.A. is a member of the school

chorus, which puts on concerts seasonally for the student body during school-day assemblies and for parents and families during the evening. Compl. ¶ 22; J.A. Decl. ¶ 2. Each chorus concert attended by J.A. has included school-sponsored prayer. Compl. ¶¶ 22-24; J.A. Decl. ¶ 3. The prayers are typically Christian and delivered by Defendant Larry Stinson, principal of New Heights Middle School. Compl. ¶ 23; J.A. Decl. ¶ 3; Anderson Decl. ¶ 4. During these prayers, nearly all audience members, school staff, and students bow their heads. Compl. ¶ 24; J.A. Decl. ¶ 3. In addition to prayer, the Winter choral performance is slated to include several overtly religious songs. Compl. ¶ 26; J.A. Decl. ¶ 6.

Similarly, near the beginning of the school year, prior to the B-SHOC concert, the school held a mandatory assembly featuring a family of musicians who performed religious songs. Compl. ¶ 33; J.A. Decl. ¶ 8. The assembly was opened by a prayer delivered by Principal Stinson. Compl. ¶ 33; J.A. Decl. ¶ 8.

An October 2011 drug awareness assembly also featured school officials promoting religion. Specifically, Principal Stinson spoke at length during the assembly about the role that religion and God played in helping his family members through drug-related issues. Compl. ¶ 31; J.A. Decl. ¶ 17.

Recently, the school designated a student to lead the opening prayer during an assembly held on November 10, 2011, in honor of Veterans Day. The mandatory assembly took place during the school day and was attended by all students. Compl. ¶¶ 28-30; J.A. Decl. ¶¶ 18-20.

At the beginning of the assembly, Principal Stinson introduced the designated prayer giver, a student who was seated in the front of the gym next to school officials, and informed the audience that the student would lead everyone in a prayer. Compl. ¶ 29; J.A. Decl. ¶ 18. Stinson then passed the student a microphone, and the student delivered a prayer. Compl. ¶ 29; J.A.

Decl. ¶ 18. Principal Stinson, teachers, and nearly all students bowed their heads for the prayer. Compl. ¶ 29; J.A. Decl. ¶ 18.

The assembly also featured a speech by a Vietnam War veteran. Introducing the guest, Principal Stinson noted the important role that God had played in the veteran's survival at war. Compl. ¶ 30; J.A. Decl. ¶ 19. The guest then detailed his war experiences and spoke about his belief that God had saved his life. Compl. ¶ 30; J.A. Decl. ¶ 19. After the veteran's speech concluded, Principal Stinson thanked him for attending the assembly and also thanked God for saving the veteran. Compl. ¶ 30; J.A. Decl. ¶ 19.

On November 17, 2011, the school held another assembly during school hours. The assembly featured snake handler Ron Cromer, who often shares about his Christian faith during his presentations. Compl. ¶ 32; J.A. Decl. ¶ 21. In giving his presentation that day, Cromer removed the snakes from a carrying case with a "Jesus fish" painted on it. Compl. ¶ 32; J.A. Decl. ¶ 21. During the assembly, he mentioned several times that the snakes were "God's creatures." Compl. ¶ 32; J.A. Decl. ¶ 21. Cromer also used the assembly as an opportunity to urge students to come to the PTO meeting that night. Compl. ¶ 32; J.A. Decl. ¶ 21. At the PTO meeting, Cromer gave an explicitly religious lecture. Compl. ¶ 32.

School-sponsored prayers and proselytizing during assemblies have not been limited to this school year. Last year, for instance, during the assembly for the student awards ceremony, Principal Stinson delivered a Christian prayer that praised God for helping students learn and achieve. *Id.* ¶ 27; J.A. Decl. ¶ 7.

Nor are official prayers during assemblies limited to New Heights Middle School. For example, at McBee High School, officials invited a local minister to give a closing prayer during a school-wide event in honor of the tenth anniversary of the 9/11 attacks. Compl. ¶ 61; Weaver

Decl. Ex. E. Further, some athletic events, such as Central High School's football games, are opened with official prayer. Compl. ¶ 60.

3. *Proselytizing in class and assignments*

Defendants' custom, policy, and practice of promoting prayer, religious messages, and religious activities extends to other contexts as well. In math class, for example, J.A.'s teacher refers to Bible scripture during her lessons. Compl. ¶ 47; J.A. Decl. ¶ 22.

In gym class, when J.A. forgot his gym clothes one day, he was assigned, as a punishment, to copy an essay stating that he was thankful for God and that God would help him remember his gym clothing. Compl. ¶ 48; J.A. Decl. ¶ 23. Similarly, when he forgot his belt (part of the school uniform) one day, J.A. was ordered to copy an essay stating that he thanks God every day and would not forget his belt again. Compl. ¶ 48; J.A. Decl. ¶ 23.

4. *Other promotion of prayer and religious activities*

School officials also improperly organize and participate in religious activities and prayer during meetings of student religious clubs and encourage students to attend these meetings as well. Teachers have urged students to attend Hawks for Hope, a religious club that meets in the mornings in a school classroom. Weaver Decl. Ex. C (encouraging students to attend meetings and thanking them for their attendance); Compl. ¶ 49. And the Hawks for Hope meetings are specially promoted by Principal Stinson during morning announcements. Compl. ¶ 49; J.A. Decl. ¶ 24. Moreover, Principal Stinson and other school officials also take part annually in Prayer Around the Pole, an event that is advertised around the school grounds and that takes place in the morning as students arrive for school. Compl. ¶ 50; J.A. Decl. ¶ 25. Principal Stinson has led prayer during the events, and the District has officially promoted and encouraged his participation. Weaver Decl. Ex. F. School officials also have given local ministers special

access to students, allowing them to take active roles in the meetings of student religious clubs and distribute religious literature to students. Weaver Decl. Ex. D (noting local religious leader's role in Hawks for Hope and Fellowship of Christian Athletes). And school officials have allowed fliers and other posters promoting religious events, including two B-SHOC concerts held at other District schools, to be plastered around the New Heights Middle School campus. Compl. ¶ 62; J.A. Decl. ¶ 16, Ex. B.

B. The Display of Religious Iconography and Messages Throughout New Heights Middle School

The District's custom, policy, and practice of promoting religion at New Heights Middle School also includes the display of numerous religious symbols and message. In the lobby area outside of the main office, a poster proclaims, "Through God all things are possible." Compl. ¶ 54; J.A. Decl. ¶ 27; Anderson Decl. ¶5. In the lobby area foyer display case, a "Faith" sign hangs just below a plaque depicting Jesus and a prayer. Compl. ¶ 55; J.A. Decl. ¶ 27; Anderson Decl. ¶5. In the main office, a framed depiction of a purple cross is displayed on a table visible to all passersby. Compl. ¶ 56; J.A. Decl. ¶ 27; Anderson Decl. ¶ 5.

In another hallway, a large, framed poster of the Ten Commandments is affixed to the wall. It is displayed alone. Compl. ¶ 57; J.A. Decl. ¶ 27; Anderson Decl. ¶ 5. And the painting of the school mascot on the gymnasium floor clearly depicts a cross in the hawk's eye. Compl. ¶ 59; J.A. Decl. ¶ 27.

Further, the school's career development teacher has posted a cross and dozens, if not hundreds, of religious messages, including biblical references, on the outside window of her office, visible to all passersby, as well as those who enter the office for guidance. Compl. ¶ 58; J.A. Decl. ¶ 28.

C. Community Reaction

Like school officials, many in the community have defended the District's actions in expressly religious terms and have made clear that they view the school's actions as an endorsement of religion – one that they approve of, notwithstanding the law in this area and the fact that not all students and families are Christian. Compl. ¶¶ 68-70. After making their objections known to school officials and others, Plaintiffs have received harassing phone calls. Compl. ¶ 71; Anderson Decl. ¶ 12. Some have suggested to Mr. Anderson that the family should move away from the District or withdraw J.A. from school if they do not agree with the District's religious practices. Compl. ¶ 71; Anderson Decl. ¶ 12.

D. Plaintiffs' Objection to the District's Promotion of Religion

Plaintiffs are offended by the District's practices because these official practices promote religious beliefs with which they do not agree. Compl. ¶¶ 12-14; J.A. Decl. ¶¶ 4, 5, 15, 17, 20, 26, 29; Anderson Decl. ¶ 8. Neither J.A. nor Mr. Anderson subscribes to Christian beliefs or any other specific religious doctrine. Compl. ¶ 12; J.A. Decl. ¶ 4; Anderson Decl. ¶ 8. They are non-believers who live their lives in accordance with principles of free thought and specifically reject the validity of all religious systems. Compl. ¶ 12; J.A. Decl. ¶ 4; Anderson Decl. ¶ 8. They believe that these practices send the message that those students and families who practice officials' preferred faith are favored by the District, while those who do not, such as Plaintiffs, are outsiders who are not entitled to the same rights as others. Compl. ¶ 12; Anderson Decl. ¶ 11. As a result, Plaintiffs feel like second-class citizens in the District and their community. Compl. ¶ 12; J.A. Decl. ¶ 29; Anderson Decl. ¶ 11.

J.A. feels extremely uncomfortable and upset at school because he is routinely subjected to unwelcome religious messages and coerced both directly and indirectly to participate in

religious activities that conflict with his personal beliefs and conscience. Compl. ¶ 13; J.A. Decl. ¶¶ 4, 5, 15, 17, 20, 26, 29. With his principal, teachers, and classmates all engaged in prayer at school events, J.A. feels extremely pressured to participate as well. Compl. ¶ 13; J.A. Decl. ¶¶ 4, 5, 15, 17, 20, 26, 29. The coercive influence of these religious activities is exacerbated when his classmates, emboldened by officially sponsored prayer and religion, try to bully him into participating in the religious activities. Compl. ¶¶ 24, 45; J.A. Decl. ¶¶ 5, 15. At one chorus concert, for example, a classmate told J.A. that he should bow his head during Mr. Stinson's prayer; and at the B-SHOC concert, his classmates said he should listen more closely to the religious message imparted by the speakers. Compl. ¶¶ 24, 45; J.A. Decl. ¶¶ 5, 15.

J.A. is nervous that his refusal to pray at these events or submit to school-sponsored religious inculcation will lead his teachers, classmates, and others in attendance to dislike him or treat him negatively. Compl. ¶ 44; J.A. Decl. ¶ 14. These fears are heightened when school-sponsored events, such as the B-SHOC assembly, feature speakers who explicitly condemn non-believers. Compl. ¶ 35; J.A. Decl. ¶ 9.

Unfortunately, J.A.'s concerns have been substantiated: When he has explained that he is a non-believer, he has faced ridicule and harassment from school officials and his classmates. For example, on the way to the B-SHOC concert, J.A.'s teacher exclaimed, "Isn't this going to be fun?!" When J.A. responded that it would not be fun because he was an atheist, the teacher told him, "I wouldn't brag about that." Compl. ¶ 44; J.A. Decl. ¶ 14. In addition, classmates have falsely called him a satanist and made other disparaging remarks about his beliefs. Compl. ¶ 71; J.A. Decl. ¶ 30. As a result of the District's religious activities, J.A. feels very unwelcome in his school, the District, and the community. Compl. ¶ 13; J.A. Decl. ¶ 29.

Like J.A., Mr. Anderson is uncomfortable and upset by the prayers and proselytizing at schools events, as well as the religious iconography posted throughout New Heights Middle School. Compl. ¶ 14; Anderson Decl. ¶¶ 8-9. At one event, a chorus concert, Mr. Anderson was so offended that he left the room when Mr. Stinson began a prayer. Compl. ¶ 25; Anderson Decl. ¶ 4. He believes that he should not have to be subjected to unwelcome religious messages and exercise simply to remain an engaged and responsible parent. Compl. ¶ 14; Anderson Decl. ¶ 9. He also believes that the religious education a child receives, if any, is the province of parents and families, not public school officials. Compl. ¶ 14; Anderson Decl. ¶ 10;

Though Mr. Anderson has objected to school officials regarding these practices, his concerns have been dismissed. On one occasion, Principal Stinson justified the school's actions by claiming that school was the only place some kids could be introduced to Christ because many parents do not teach the Bible at home. Compl. ¶ 52; Anderson Decl. ¶ 6. On another occasion, Stinson told Mr. Anderson that he needed to "get right with God." Compl. ¶ 66; Anderson Decl. ¶ 7

On September 22, 2011, Plaintiffs' counsel sent Defendants a letter, objecting to the B-SHOC concert and seeking public records relating to the B-SHOC event and other promotion of religion by the District. The letter also asked District officials to contact Plaintiffs' counsel if they were "amenable to taking immediate and concrete steps to remedy this problem." Weaver Decl. Ex. G. The District produced only a handful of responsive documents. Subsequently, on November 10, 2011, Plaintiffs' counsel sent a second letter explaining that the FOIA response was inadequate and requesting that the District provide additional public records. The letter also asked District officials to contact Plaintiffs' counsel to resolve the matter without litigation. *Id.* Ex. H. The District did not heed this request.

LEGAL STANDARD

To obtain a preliminary injunction, a plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.”

Dewhurst v. Century Aluminum Co., 649 F.3d 287, 290 (4th Cir. 2011) (internal quotation marks omitted); *see also Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 278-79 (5th Cir. 1996) (upholding preliminary injunction barring enforcement of school prayer statute); *Duncanville I*, 994 F.2d at 163 (upholding preliminary injunction prohibiting public school officials from leading or participating in prayer). As explained below, Plaintiffs here meet all four requirements of the preliminary injunction standard.

ARGUMENT

Where Establishment Clause plaintiffs demonstrate that they are likely to succeed on the merits of their claim, the other requirements for a preliminary injunction are easily met. In *Ingebretsen*, for instance, after ruling that the plaintiffs were likely to succeed on their Establishment Clause claim to strike down the Mississippi School Prayer Statute, the U.S. Court of Appeals for the Fifth Circuit quickly dispensed of the other preliminary injunction factors. *See Ingebretsen*, 88 F.3d at 280. The Court held that (1) the “[l]oss of First Amendment freedoms, even for minimal periods of time, constitute[d] irreparable injury”; (2) “the threatened injury outweigh[ed] any damage the injunction might cause to Mississippi and its citizens”⁵; and

⁵ The court rejected the State’s claim that enjoining the statute would have a chilling effect on students who would like to pray at school, explaining that “students continue to have exactly the same constitutional right to pray as they had before the statute was enjoined. They can pray silently or in a non-disruptive manner whenever and wherever they want . . .” *Ingebretsen*, 88 F.3d at 280.

(3) “the School Prayer Statute [was] unconstitutional so the public interest was not disserved by an injunction preventing its implementation.” *Id.* at 280.⁶

As this reasoning applies equally here, the primary question that this Court must address is whether Plaintiffs are substantially likely to succeed on the merits of their Establishment Clause claim. Based on the clear law regarding public school officials’ promotion of prayer and inculcation of religious beliefs and doctrine, Plaintiffs must prevail.

Whether reviewing public school sponsored prayer, proselytizing, or other official attempts to inculcate or promote religious beliefs, the Supreme Court has emphatically deemed the challenged activities to be violations of the Establishment Clause.⁷ The federal courts of appeals have followed suit, holding that public school promotion of religion is fundamentally at odds with the religious liberty protections afforded students by the First Amendment.⁸

⁶ See also, e.g., *Duncanville I*, 994 F.2d at 166 (“Our decision on the remaining injunction factors . . . follows from the initial determination that the Does likely will succeed at trial. Assuming that the Does’ Establishment Clause rights have been infringed, the threat of irreparable injury to the Does and to the public interest that the clause purports to serve are adequately demonstrated.”).

⁷ See, e.g., *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 317 (2000) (prohibiting student-led prayers over the public address system before football games); *Lee v. Weisman*, 505 U.S. 577, 599 (1992) (holding that prayers delivered by clergy at graduation ceremonies violated the Establishment Clause), *Edwards*, 482 U.S. at 596-97 (striking down state statute that aimed to facilitate teaching of religious doctrine – creationism – in public schools); *Stone v. Graham*, 449 U.S. 39, 42-43 (1980) (overturning state statute requiring display of Ten Commandments in public schools); *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 226-27 (1963) (invalidating state rules providing for morning Bible reading and prayer in public schools); *Engel v. Vitale*, 370 U.S. 421, 436 (1962) (barring public schools from holding daily morning prayer recitations); *McCullum v. Bd. of Educ.*, 333 U.S. 203, 211-12 (1948) (holding that public school district could not permit clergy to teach religious classes to students on campus during the school day).

⁸ See, e.g., *Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 289 (3d Cir. 2011), *petition for cert. filed*, 80 USLW 3309 (Nov. 2, 2011) (No. 11-569) (barring official prayer at school board meetings); *Borden v. Sch. Dist.*, 523 F.3d 153, 178-79 (3d Cir. 2008) (prohibiting public school football coach from participating in team prayer); *Doe v. Porter*, 370 F.3d 558, 562-64 (6th Cir. 2004) (enjoining public school district from allowing volunteer instructors from local Christian college to conduct Bible classes, which taught the Bible as truth, at elementary schools during school day); *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1289-90 (11th Cir. 2004)

Defendants’ custom, policy, and practice of promoting prayer, proselytizing, and other religious messages plainly violates the Establishment Clause principles recognized in these cases. Indeed, a closer analysis of Defendants’ religious practices, applying each of the three Establishment Clause tests set forth by the Supreme Court – the coercion, *Lemon*, and endorsement tests – shows just how far astray Defendants have ventured under the law. Though Plaintiffs need show only that Defendants have failed one of these tests to prove a substantial likelihood of success on their Establishment Clause claim,⁹ Defendants’ religious practices fail all three.

(ruling that teacher’s practice of holding daily moment of silent prayer was unconstitutional); *Doe v. Sch. Bd. of Ouachita Parish*, 274 F.3d 289, 294-95 (5th Cir. 2001) (ruling that state statute promoting verbal morning prayer in public schools was unconstitutional); *Coles ex rel. Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369, 385-86 (6th Cir. 1999) (holding official prayer at public school board meetings unconstitutional); *Ingebretsen*, 88 F.3d at 281 (enjoining statute that would have authorized prayer during public school assemblies and other events); *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F. 3d 337, 348 (5th Cir. 1999) (overturning school board policy requiring teachers to read classroom disclaimer questioning validity of evolution and promoting religious creationist beliefs); *Duncanville I*, 994 F.2d at 168 (upholding preliminary injunction to stop official prayer at public school pep rallies, award ceremonies, and other school events); *Doe v. Duncanville Indep. Sch. Dist.* (“*Duncanville II*”), 70 F.3d 402, 406-07 (5th Cir. 1995) (affirming permanent injunction prohibiting coaches from leading or taking part in team prayer at basketball games and practices, and enjoining official prayers at awards ceremonies, football games, and other public school events); *Washagesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679, 684 (6th Cir. 1994) (holding that display of portrait of Jesus in hallway of public high school violated Establishment Clause); *Jager v. Douglas Cnty. Sch. Dist.*, 862 F.2d 824, 834-35 (11th Cir. 1989) (prohibiting official prayer before public school football games); *Steele v. Van Buren Pub. Sch. Dist.*, 845 F.2d 1492, 1493 (8th Cir. 1988) (holding that teacher-led prayer at band practices and concerts violated the Establishment Clause); *Collins v. Chandler Unified Sch. Dist.*, 644 F.2d 759, 762-63 (9th Cir. 1981) (holding that student-led prayer during public school assemblies was unconstitutional); *Hall v. Bd. of Sch. Com’rs*, 656 F.2d 999, 1001-03 (5th Cir. 1981) (ruling that Bible literature course taught from “a fundamentalist, evangelical, protestant perspective” could not pass constitutional muster); *Mangold v. Albert Gallatin Area Sch. Dist.*, 438 F.2d 1194, 1196 (3d Cir. 1981) (recognizing that official Bible readings and prayers in public school violates the Establishment Clause); *Daniel v. Waters*, 515 F.2d 485, 487, 489 (6th Cir. 1975) (striking down statute requiring public school lessons regarding evolution to devote equal time to teaching creationism).

⁹ See *Freiler*, 185 F.3d at 343 (“Nothing in our Circuit’s case law requires that contested government action be examined under each Supreme Court-delineated test.”).

I. DEFENDANTS' SPONSORSHIP OF RELIGIOUS EXERCISE IS UNCONSTITUTIONALLY COERCIVE.

It is beyond dispute that, “at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.” *Mellen v. Bunting*, 327 F.3d 355, 367 (4th Cir. 2003) (quoting *Lee*, 505 U.S. at 587). As the Supreme Court has recognized, there are, in particular, “heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.” *Lee*, 505 U.S. at 592. By injecting biblical scripture into mathematics lessons, assigning religious essays to be copied as punishment for minor infractions of school rules, and routinely incorporating prayer and proselytizing into school events, the District has violated, and continues to violate, this fundamental Establishment Clause principle.¹⁰

The District cannot evade the constitutional prohibition against religious coercion by inviting outside guests to pray with, sermonize, or proselytize students during school events, as with the B-SHOC assembly.¹¹ Nor can the District skirt the Establishment Clause by designating

¹⁰ See, e.g., *Santa Fe*, 530 U.S. at 310-12 (holding that policy permitting student-led invocations at public school football games was impermissibly coercive); *Lee*, 505 U.S. at 593-96 (deeming official prayers at public school graduation ceremony unconstitutionally coercive); *Torasco v. Watkins*, 367 U.S. 488, 494-95 (1961) (affirming that, under the Establishment Clause, “neither a State nor the Federal Government can constitutionally force a person ‘to profess a belief or disbelief in any religion’”); *Ingebretsen*, 88 F.3d at 279-80 (holding that statute allowing “prayers to be given by any person, including teachers, school administrators and clergy at school functions where attendance is compulsory” violates the coercion test because “students will be a captive audience that cannot leave without being punished by the state or School Board for truancy or excessive absences”); *Herdahl v. Pontotoc Cnty. Sch. Dist.*, 933 F. Supp. 582, 598 (N.D. Miss. 1996) (ruling that class incorporating “fundamentalist Christian doctrine” and Bible study failed the coercion test because students were “faced once a week with the difficult choice of conforming to the overwhelming majority’s participation in the class or absenting themselves in protest”).

¹¹ See, e.g., *Lee*, 505 U.S. at 599 (holding that prayers delivered by invited clergy at graduation ceremonies violated the Establishment Clause); *Porter*, 370 F.3d at 562-64 (barring school district from permitting volunteer instructors from local Christian college to conduct religious Bible classes during school day).

a student to lead prayers during a school event, as with the Veterans Day assembly.¹² The Supreme Court has made clear that such officially sanctioned prayers are no less coercive than if delivered by a school official:

The undeniable fact is that the school district’s supervision and control of . . . [meetings] places public pressure, as well as peer pressure, on attending students to stand as a group or, at least, maintain respectful silence during the invocation and benediction. This pressure, though subtle and indirect, can be as real as any overt compulsion.

Id. at 593.¹³

Moreover, Defendants’ public claim that attendance at the B-SHOC assembly was voluntary does not shield the event or similar school-sponsored events from Establishment Clause scrutiny. Allowing students to opt out of official prayer or school-sponsored events featuring prayer and proselytizing does not cure the unconstitutional coercion. *See Holloman*, 370 F.3d at 1287 (“That students were not actually forced to pray during the moment of silence, and may have been free to leave the room, does not alleviate the constitutional infirmities of [the teacher’s] moment of silence.”); *Mellen*, 327 F.3d at 372 (“The technical “voluntariness” of the supper prayer does not save it from its constitutional infirmities.”); *see also Engel*, 370 U.S. at 430 (rejecting claim that allowing “those who wish to do so to remain silent or be excused from the room” during school-sponsored prayer exercise rendered practice constitutional). On the

¹² *See, e.g., Santa Fe*, 530 U.S. at 310 (noting that student body vote on whether to open football games with prayer and election of students to lead the prayer could “not insulate the school from the coercive element of the final message”); *Herdahl*, 887 F. Supp. at 586-89 (issuing preliminary injunction prohibiting school district from allowing student group to broadcast morning prayers over intercom); *cf. Holloman*, 370 F.3d at 1287 (holding that “[s]chool personnel may not facilitate prayer simply because a student requests or leads it”); *Ingebretsen*, 88 F.3d at 279-80 (holding that school prayer statute, which would have allowed schools employees to include prayer in school events “so long as a student ‘initiates’ the prayer (ostensibly by suggesting that a prayer be given)” nevertheless violated the coercion test by “forcing students to attend school and then forcing them to listen to prayers offered there”).

¹³ The U.S. Court of Appeals for the Fourth Circuit echoed this reasoning in *Mellen*, 327 F.3d at 371-72, holding that, in the context of Virginia Military Institute’s “coercive atmosphere,” even mature adults could be unconstitutionally coerced as a result of state-sponsored prayer.

contrary, the purported choice offered to students here exacerbated the coercive infringement of J.A.'s constitutional rights by imposing a punishment – spending the afternoon in the in-school suspension room – should he “decide” not to attend the assembly.

Indeed, even if attendance at a school event featuring prayer or proselytizing were deemed “purely voluntary,” the Supreme Court has concluded that the official prayer nevertheless “has the improper effect of coercing those present to participate in an act of religious worship.” *Santa Fe*, 530 U.S. at 312; *see also, e.g., Mellen*, 327 F.3d at 372 n.9 (“Even if dining in the mess hall was truly voluntary, the First Amendment prohibits General Bunting from requiring religious objectors to alienate themselves from the VMI community in order to avoid a religious practice.”). The Court has explained:

“[T]he government may no more use social pressure to enforce orthodoxy than it may use more direct means.” As in *Lee*, “[w]hat to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy.”

Santa Fe, 530 U.S. at 312 (quoting *Lee*, 505 U.S. at 592, 594).

J.A. has faced this very type of pressure when confronted with prayers, proselytizing, and other religious inculcation in class and at school events, such as assemblies, choral concerts, and awards ceremonies. The prayers and proselytizing are often initiated and led by Principal Stinson, the highest authority at New Heights Middle School. Teachers and other school staff, as well as students, all bow their heads to recognize and take part in the prayers. In the case of other proselytizing or sermonizing, students and staff listen intently. Emboldened by school officials' clear support for these religious activities, J.A.'s classmates have even urged him to bow his head during prayers and to pay close attention to proselytizing messages.

Defendants' custom, policy, and practice of incorporating prayer and proselytizing into school events, as well as some classes, "exact[s] an unconstitutional toll on the consciences of religious objectors," including J.A. *See Mellen*, 327 F.3d at 372. This Court should enjoin these religiously coercive activities and restore J.A.'s ability to attend his school and participate in school events without being placed "in the dilemma of participating, with all that implies, or protesting" them as infringements of his right to conscience and religious liberty as guaranteed by the First Amendment. *See Lee*, 505 U.S. at 593.

II. DEFENDANTS' PRAYER, PROSELYTIZING, AND PROMOTION OF RELIGIOUS MESSAGES FAIL THE LEMON AND ENDORSEMENT TESTS.

In addition to "the serious constitutional injury that occurs when a student is forced to participate in an act of religious worship because she chooses to attend a school event," the federal courts have remained acutely aware of "the myriad, subtle ways in which Establishment Clause values can be eroded" and "guard[ed] against other different, yet equally important, constitutional injuries," including those inflicted by practices and policies that have "the purpose and perception of government establishment of religion." *Santa Fe*, 530 U.S. at 313-14. Thus, the Supreme Court has recognized that, under the Establishment Clause, "[s]chool sponsorship of a religious message is impermissible," and for good reason: Public school promotion of religious messages and activities announces to those who do not follow the school's favored faith that they are second-class citizens, "outsiders, [who are] not full members of the political community." *Id.* at 309-10 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)).

To address these concerns, the courts have evaluated public school promotion of religion through the lens of the Establishment Clause test set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under that test, the challenged governmental policy or action (1) must have a secular

purpose; (2) may not have the principal or primary effect of advancing religion; and (3) cannot excessively entangle the government with religion. *Id.* at 612-13. The second prong of *Lemon* has since been refined by the endorsement test, which provides that “the government may not engage in a practice that suggests to the reasonable, informed observer that it is endorsing religion.” *Mellen*, 327 F.3d at 370.¹⁴ Though “[f]ailure of any prong of the test results in a finding of unconstitutionality,” *Ouachita*, 274 F.3d at 29, Defendants’ custom, policy, and practice of promoting religion violate all three prongs.

A. Defendants’ Religious Practices Have An Impermissible Purpose.

Defendants cannot reasonably claim that school-sponsored prayers at school events such as assemblies, chorus concerts, award ceremonies, and athletic competitions, have a secular purpose. As the Fourth Circuit has explained, “an act so intrinsically religious as prayer cannot meet, or at least would have difficulty meeting, the secular purpose prong of the *Lemon* test.” *N.C. Civil Liberties Union Found. v. Constangy*, 947 F.2d 1145, 1150 (1991) (quoted in *Mellen*, 327 F.3d at 373).¹⁵

Similarly, Defendants cannot proffer a legitimate secular purpose for proselytizing students in class or at school events, such as the B-SHOC worship rally and Veterans Day assembly. “When a state-sponsored activity has an overtly religious character, courts have consistently rejected efforts to assert a secular purpose for that activity.” *Mellen*, 327 F.3d at

¹⁴ Because the Fourth Circuit and other circuit courts have undertaken the endorsement and effects analysis together, they are jointly treated here. See *Mellen*, 327 F.3d at 370; *Freiler*, 185 F.3d at 346 (“*Lemon*’s second prong . . . is similar to analysis pursuant to the endorsement test”).

¹⁵ *Holloman*, 370 F.3d at 1285 (holding that “a teacher or administrator’s intent to facilitate or encourage prayer in a public school is *per se* an unconstitutional intent to further a religious goal”); *Karen B. v. Treen*, 653 F.2d 897, 901 (5th Cir. 1981) (“Prayer is perhaps the quintessential religious practice” and “its observance in public school classrooms has, if anything, a more obviously religious purpose . . .”); see also *Ouachita*, 274 F.3d at 294-95 (holding that amendment to state statute intended to promote verbal student prayer in public schools violated purpose prong).

272. The Supreme Court has, for example, held that public schools may not teach religious doctrine, such as creationism or biblical scripture, as truth. *See Edwards*, 482 U.S. at 596-67; *McCollum*, 333 U.S. at 210-212; *see also Porter*, 370 F.3d 562-63 (teaching the Bible as “religious truth” can have no secular purpose).

Defendants also cannot justify their display of religious iconography and messages, such as the Ten Commandments, crosses and scripture, throughout New Heights Middle School. In *Stone v. Graham*, the Supreme Court explained that the “[p]osting of religious texts on the wall serves no . . . educational function.” 449 U.S. at 42. Consequently, the Court rejected the claim that hanging copies of the Ten Commandments in public school classrooms served a secular purpose. *Id.* at 42-43. *See also Washegesic*, 33 F.3d at 683 (holding that public school had no secular purpose for display of Jesus portrait).

Indeed, even if Defendants could articulate a legitimate secular purpose in sponsoring prayers, proselytizing, religious displays, and other religious inculcation (e.g., helping students remember their gym clothes), “[t]he unmistakable message of the Supreme Court’s teachings is that the state cannot employ a religious means to serve otherwise legitimate secular interests.” *Holloman*, 370 F.3d at 1286 (quoting *Treen*, 653 F.2d at 901). In *Holloman*, for example, the court noted that, although “promoting compassion may be a valid secular purpose, teaching students that praying is necessary or helpful to promoting compassion is not.” *Id.* at 1285-86. Moreover, it is not enough to claim just any secular purpose; rather, Establishment Clause Defendants must show that the asserted secular purpose is the *predominant* reason behind the District’s activities. *See McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 865 (2005) (“As we said, the Court often does accept governmental statements of purpose, in keeping with the respect owed in the first instance to such official claims. But in those unusual cases where the

claim was an apparent sham, or the secular purpose secondary, the unsurprising results have been findings of no adequate secular object, as against a predominantly religious one.”). Defendants simply cannot meet this burden. Their custom, policy, and practice of promoting religious activities and messages thus fails *Lemon*’s first prong.

B. Defendants’ Prayers, Proselytizing, and Other Promotion of Religious Activities and Messages Have the Impermissible Effect of Endorsing and Advancing Religion.

The Fourth Circuit has “recognized the obvious, that recitation of a prayer ‘is undeniably religious and has, by its nature, both a religious purpose and effect.’” *Mellen*, 327 F.3d at 373 (quoting *Hall v. Bradshaw*, 630 F.2d 1018, 1020 (4th Cir.1980)). See also *Holloman*, 370 F.3d at 1288 (“Encouraging or facilitating any prayer clearly fosters and endorses religion over nonreligion, and so runs afoul of the First Amendment.”). Accordingly, in *Mellen*, the Fourth Circuit held that the challenged supper prayer “sends the unequivocal message that VMI, as an institution, endorses the religious expressions embodied in the prayer.” *Mellen*, 327 F.3d at 374. In *Santa Fe*, the Supreme Court similarly recognized that student-led prayer incorporated into official pregame football activities conveyed a message of religious endorsement. Student prayer givers were selected pursuant to an official school policy. *Santa Fe*, 530 U.S. at 306. The policy, “by its terms, invite[d] and encourage[d] religious messages.” *Id.* The religious messages were then delivered via the school’s public address system “to a large audience assembled as part of a regularly scheduled, school-sponsored function conducted on school property.” *Id.* at 307. Under these circumstances, the Court determined that, “[r]egardless of the listener’s support for, or objection to, the message, an objective Santa Fe High School student

will unquestionably perceive the inevitable pregame prayer as stamped with her school's seal of approval.” *Id.* at 308.¹⁶

In light of this precedent, there can be no question that the District’s practice of incorporating prayers into school events – from assemblies to awards ceremonies to choral concerts to athletic activities – has the effect of endorsing and advancing religion in violation of the Establishment Clause. Whether led by school officials themselves, invited guests, or designated students, the prayers would be perceived by any objective student as marked by the imprimatur of the District.

The proselytizing that has taken place at these same events also violates *Lemon*’s second prong, as well as the endorsement test. School officials may not themselves preach to students or teach religious tenets as truth and may not invite outside guests to do so. *See Porter*, 370 F.3d at 563 (permitting Bible ministry members to come onto school property to teach courses during the school day that treated the Bible as “literal truth” conveyed “a clear message of state endorsement of religion – Christianity in particular – to an objective observer”); *Roberts v. Madigan*, 921 F.2d 1047, 1055 (10th 1990) (noting that there is a “difference between teaching *about* religion, which is acceptable, and teaching religion, which is not”) (internal quotation marks omitted); *cf. Helland v. South Bend Cmty. Sch. Corp.*, 93 F.3d 327, 329, 331 n.2 (7th Cir. 1996) (holding that public school district had properly dismissed substitute teacher for, among other infractions, “the unconstitutional interjection of religion” into classes “by reading the Bible aloud to middle and high school students, distributing Biblical pamphlets, and professing his belief in the Biblical version of creation in a fifth grade science class”);

¹⁶ *Jager*, 862 F.2d at 831 (“When a religious invocation is given via a sound system controlled by school principals and the religious invocation occurs at a school-sponsored event at a school-owned facility, the conclusion is inescapable that the religious invocation conveys a message that the school endorses the religious invocation.”).

School officials also may not use school events as vehicles to encourage students to attend afterschool or pre-school religious activities. *See, e.g., Chandler v. James*, 998 F. Supp. 1255, 1273 (M.D. Ala. 1997) (enjoining school officials “from encouraging or discouraging, directly, or indirectly, a student’s attendance at privately sponsored baccalaureate services”). Thus, District officials violated the Establishment Clause, for example, by encouraging students to attend a local church, urging students to attend Hawks for Hope meetings, and allowing Ron Cromer to use his snake presentation to invite students to an evening session where religion featured even more prominently.¹⁷

Finally, school officials may not use students’ compulsory attendance of school as an opportunity to subject them to religious messages and iconography. Holding a school’s display of a portrait of Jesus unconstitutional, for instance, the Sixth Circuit explained:

Though the portrait, like school prayers and other sectarian religious rituals and symbols, may seem “de minimis” to the great majority, particularly those raised in the Christian faith and those who do not care about religion, a few see it as a governmental statement favoring one religious group and downplaying others. It is the rights of these few that the Establishment Clause protects in this case.

Washegesic, 33 F.3d at 684.

¹⁷ Nor may the District provide religious groups with special access to students to distribute Bibles or other religious literature. Even one of the most permissive decisions allowing the distribution of religious literature authorized only passive distribution in accordance with a “neutral policy of allowing religious and nonreligious groups alike to set up” tables at high schools. *See Peck v. Upshur*, 155 F.3d 274, 275-76 (4th Cir. 1998) (upholding school district’s distribution policy where religious materials were placed on tables outside of the classroom; the tables displaying the Bibles were set up for only one day; the tables had a disclaimer, renouncing any sponsorship or endorsement by the school; no one was allowed to enter classrooms to announce the availability of the religious or political material, or to stand at the tables to encourage or pressure students to take the material; and no school announcement or assembly was allowed to mark the availability of the materials). The District has gone much further here by allowing the active distribution of religious materials in class, during school events, and elsewhere on campus.

Other federal courts have agreed that the display of religious messages and symbols in public schools is simply not permitted under the Establishment Clause. *See, e.g., Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 957, 965 (9th Cir. 2011) (upholding removal of banners hung in public school classroom to emphasize various religious messages including, “In God We Trust,” “One Nation Under God,” “God Bless America,” and “God Shed His Grace on Thee”); *Roberts*, 921 F.2d at 1049, 1051, 1057 (holding that teacher’s display of poster stating, “You have only to open your eyes to see the hand of God,” along with other religious activities, “had the primary effect of communicating a message of endorsement of a religion to the impressionable ten-, eleven-, and twelve-year-old children in his class”); *Doe v. Harlan Cnty. Sch. Dist.*, 96 F. Supp. 2d 667, 679 (E.D. Ky. 2000) (enjoining display of Ten Commandments in public school). These cases make clear that Defendants’ display of the Ten Commandments, a cross, a prayer plaque, and other religious iconography sends an unconstitutional message of religious endorsement to students and families.

No reasonable observer could miss the District’s clear preference for religion generally and Christianity specifically. The District’s activities have made Plaintiffs feel like outsiders and second-class citizens who are disfavored by school officials merely because they do not hold the District’s favored religious beliefs. This perception was bolstered further by school officials’ improper and derogatory comments to Plaintiffs, including Principal Stinson’s directive to Mr. Anderson that he should “get right with God,” Stinson’s admission that the school’s religious activities were important because some students would not be exposed to the Bible and Jesus at home, and a teacher’s remark to J.A. that he should not “brag” about being an atheist. *Supra* pp. 12-13.

C. **The District's Religious Activities Excessively Entangle School Officials With Religion.**

Although the Court need not reach *Lemon's* third prong, given the District's clear failure of the purpose and effect/endorsement tests, Defendants' religious practices also violate *Lemon's* prohibition against excessive government entanglement. The Fifth Circuit held in *Duncanville II* that school officials' leadership of or participation in student prayers "improperly entangles [the school] in religion and signals an unconstitutional endorsement of religion." 70 F.3d at 406. And in *Treen*, explaining that the challenged "statute itself makes inappropriate governmental involvement in religious affairs inevitable," the court pointed out that, among other sources of entanglement, "[t]he morning exercises take place on school property during regular school hours"; teachers are required "to select among any student volunteers" or may pray themselves in the absence of volunteers; and teachers must monitor the prayer and enforce time limitations. 653 F.2d at 902; *see also, e.g., Porter*, 370 F.3d at 563-64 (religious class "takes place on school premises, during the school day, with the explicit sanction of the Board of Education"); *Washegesic*, 33 F.3d at 683 (display of Jesus portrait improperly entangles government religion). As noted above, in orchestrating religious assemblies, prayers, proselytizing, and other religious inculcation, as well as promoting religious messages and activities, Defendants here have engaged in similar types of entanglement and improper association with religion.

Conclusion

"Teachers and other public school employees have no right to make the promotion of religion a part of their job description and by doing so precipitate a possible violation of the First Amendment's [E]stablishment [C]ause." *Grossman v. South Shore Pub. Sch. Dist.*, 507 F.3d 1097, 1099 (7th Cir. 2007) (upholding dismissal of public school guidance counselor who

prayed with students). The District's practices here transgress the clear constitutional boundaries forbidding public school promotion of religion.

"Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family." *Edwards*, 482 U.S. at 584. By promoting prayer, proselytizing, and other religious activities and messages, Defendants have broken that trust. Accordingly, Plaintiffs respectfully request that the Court grant their motion for a preliminary injunction.

Respectfully submitted,

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