UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

SCOTT LANE, on his own behalf and on behalf of his minor children, S.L. and M.L.; AND SHARON LANE, on her own behalf and on behalf of her minor child, C.C., Plaintiffs, – Versus – SABINE PARISH SCHOOL BOARD, SARA EBARB, in her official capacity as Superintendent of the Sabine Parish School District; GENE WRIGHT, in his official capacity as Principal of Negreet High School; and RITA ROARK, in her official capacity as a teacher at Negreet High School, Defendants.	NUMBER: JUDGE: MAGISTRATE JUDGE:

MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTION

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INTRODUCTION

All students, regardless of faith, should feel safe and welcome in our public schools. But that is not the case in the Sabine Parish School District in Sabine Parish, Louisiana, where school officials actively inculcate Christianity and discriminate against minority-faith students. At Negreet High School ("NHS" or "Negreet"), for example, Defendant Rita Roark regularly asks her sixth-grade students for professions of Christian faith in science class and teaches the Bible as scientific fact, claiming that the Big Bang never happened and that evolution is a "stupid" theory that "stupid people made up because they don't want to believe in God." Paintings of Jesus Christ, Bible verses, and devotional affirmations adorn the walls of classrooms and hallways. A lighted electronic marquee placed just outside the building scrolls Bible verses every day. And staff members routinely lead students in Christian prayer. The District's administration – all the way up to the Superintendent of Schools – endorses and encourages all of it.

So engrained is official promotion of religion at Negreet that when Plaintiff C.C.,[1] a Buddhist of Thai descent, enrolled in the sixth grade this past August, he quickly became the target of proselytizing and harassment by faculty and administration. C.C.'s teacher, Ms. Roark, even ridiculed him in class for his non-Christian beliefs and has told her students that Buddhism is "stupid."

After learning of Negreet's unlawful practices and Roark's harassment of their son, C.C.'s parents rose to his defense, taking their concerns to Defendant Sara Ebarb, the Sabine Parish Superintendent of Schools. But she took no corrective action. On the contrary, she told the Lanes that "[t]his is the Bible Belt" and that they would simply have to accept that teachers

[1] Per L.R. 5.7.12(b), Minor Plaintiffs are identified only by their initials.

would proselytize students. She also questioned whether C.C. "has to be raised Buddhist" and whether he could "change" his faith. Finally, Ebarb advised Plaintiffs that C.C. should transfer to another District school that had "more Asians."

Defendants' conduct violates the Establishment Clause of the First Amendment to the U.S. Constitution. Left with no choice but to seek judicial relief, Plaintiffs now move for a preliminary injunction prohibiting District officials from continuing to engage in their longstanding custom, policy, and practice of promoting and inculcating Christian beliefs; denigrating the Buddhist faith of Plaintiffs C.C and Sharon Lane; and retaliating against Plaintiffs or their family members for objecting to these unlawful practices. For the reasons set forth below, the Court should grant Plaintiffs' motion.

FACTS

Defendants have a longstanding custom, policy, and practice of promoting and inculcating Christian beliefs by sponsoring and encouraging prayer, proselytizing students, and promoting other religious beliefs and messages via the display of religious iconography and Bible verses, as well as the distribution of religious literature. Verif. Compl. ¶ 26. Plaintiffs Scott and Sharon Lane are married and have children who attend school in the Sabine Parish School District. *Id.* ¶ 9. Scott Lane, as the parent of minor Plaintiffs S.L. and M.L., and Sharon Lane, as the parent of minor Plaintiff C.C., brought this challenge on behalf of themselves and on behalf of their children to put an end to Defendants' unlawful promotion of religion, as well as Defendants' denigration of C.C's and Sharon's Buddhist faith.

I. DEFENDANT ROARK'S PROMOTION OF CHRISTIANITY AND RELIGIOUS HARASSMENT OF PLAINTIFF C.C.

In August of 2013, C.C., a Buddhist of Thai descent, enrolled in the sixth grade at Negreet High School, which serves students in kindergarten through twelfth grade. Verif.

Compl. ¶¶ 10-11. Almost immediately, C.C.'s faith made him the target of religious proselytization and harassment by his then-science and social studies teacher, Defendant Rita Roark. *Id.* ¶ 12.

A. Roark Teaches Creationism in Science Class.

Roark regularly teaches Christian beliefs to her students, substituting Biblical accounts of creation and history for accepted scientific and historical fact. Verif. Compl. ¶ 27. She has, for example, presented C.C. and the rest the science class with her beliefs about "Young Earth" creationism, informing students that the Big Bang never happened and that the Universe was created by God approximately 6,000 years ago. *Id.* ¶ 28. She also teaches her students that evolution does not exist and has stated that, "if evolution were real, it would still be happening. Apes would be turning into humans today." *Id.* ¶ 29. Indeed, when the time came to teach evolution in science class, Roark declined, skipping the chapter in the textbook and dismissing evolution as "impossible" and a "stupid" theory that "stupid people made up because they don't want to believe in God." *Id.*

B. Roark Tests Religious Devotion on Exams and Openly Mocked C.C. When Made Aware of His Buddhist Beliefs.

Roark also routinely requires students to provide written professions of faith on science exams and other tests and assignments. Verif. Compl. ¶ 30. The required religious professions have typically consisted of fill-in-the-blank Bible verses or religious affirmations as test questions. *Id.* On one occasion, the final question on an exam presented students with the following fill-in-the-blank question: "ISN'T IT AMAZING WHAT THE _____ HAS MADE!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!" *Id.* ¶ 31, Ex. A.

Having been raised a Buddhist, C.C. did not know the expected answer and left the question blank. *Id.* ¶ 32. Roark marked it incorrect, wrote "LORD" in the blank in red ink, and

returned the test to C.C. *Id.*, Ex. A. She also scolded C.C., with the entire class listening, for not writing in the correct answer. *Id.* C.C.'s sister, who is also in Roark's class, jumped to her brother's defense, explaining that C.C. is a Buddhist and does not believe in God. *Id.* Roark returned to her desk, at which point a student remarked that "you're stupid if you don't believe in God." Roark looked up and shook her head "yes" in affirmation of the student's remark. *Id.*

C.C. felt sick and humiliated after the incident. *Id.* ¶ 33. He took the test home to his mother, who instructed him that he need not answer such inappropriate questions. *Id.* ¶ 34. However, when C.C. expressed concern that he would lose points on his tests, Lane told her son he could write "Buddha" if Roark posed the question again. *Id.*

Soon enough, C.C. was given another science test with the very same fill-in-the-blank question. In the blank, he wrote "Lord Boda [sic]." *Id.* ¶ 35, Ex. B. Roark marked the answer incorrect by placing a large, red question mark near it. *Id.* As Roark was returning the tests to students, one student declared again, for the whole class to hear, that "people are stupid if they think God is not real." *Id.* Roark agreed, responding, "Yes! That is right! I had a student miss that on his test." *Id.* Most of the students, who were present when Roark had previously ridiculed C.C. for failing to write "Lord" as the correct answer, broke out in laughter. *Id.*

As a result of Roark's conduct, C.C. became anxious and nauseated every morning before school. *Id.* ¶ 36. When the Lanes asked why he was sick, he and his sister told them in more detail what Roark had been doing science class. *Id.*

C. Defendant Ebarb Refuses to Stop Roark's Unlawful Activities and Suggests That C.C. Should "Change" His Faith or Transfer to a School With "More Asians."

Outraged and deeply concerned about Roark's treatment of C.C., the Lanes contacted Superintendent Ebarb and explained what had happened. Verif. Compl. ¶ 37. Although Ebarb

indicated that she would look into the matter, she also told them that "this is the Bible Belt," and recommended that they simply tolerate Roark's proselytization and harassment. *Id.* Unsatisfied, the Lanes met with Ebarb to follow up. They discussed Roark's treatment of C.C., as well as the general advancement of Christianity by faculty and administrators at Negreet. *Id.* ¶ 38. During the meeting, Ebarb proved unreceptive to Plaintiffs' concerns and ultimately repeated her earlier admonition that they "were in the Bible Belt" and that they should simply accept the pervasiveness of official Christianity in Sabine Parish public schools. *Id.*

Ebarb also defended Roark specifically, declaring that "[t]eachers have religious freedom," adding that, "if they were in a different country," Plaintiffs would see "that country's religion everywhere," and thus "shouldn't be offended" to "see God here." *Id.* ¶ 39. Purporting to illustrate her point further, she noted that because she did not find it offensive that "the lady who cuts [her] toenails has a statue of Buddha," the Lanes and their children should not be bothered by Roark's in-class proselytization. *Id.* Ebarb then asked whether C.C. "has to be raised Buddhist" and whether he could "change" his faith. *Id.* Plaintiffs were shocked and expressed their dismay at Ebarb's suggestion. *Id.*

In the end, the only recourse Ebarb offered Plaintiffs was to advise them that C.C. could transfer to Many Junior High School, a school that was twenty-five miles away, where, in her words, "there are more Asians." *Id.* ¶ 40. She did not, however, offer to provide school bus transportation or, alternatively, funds to cover the Lanes' private expense of transporting C.C. to the new school. *Id.*

The day following her meeting with the Lanes, Ebarb wrote a letter to Principal Wright stating that she approved of Wright's practices in general and that she approved of the fact that

the teachers at Negreet acted consistent with their religious beliefs. *Id.* ¶ 41. Wright read the letter to the whole school over the public-address system. *Id.*

D. C.C Is Forced to Move to Another School.

Concerned about the increasingly hostile environment that Defendants were creating for C.C., confronted with an unreceptive and uncaring Superintendent, and hoping to save C.C. from additional psychological harm, the Lanes decided to remove C.C. from Negreet and enroll him at Many Junior High School. *Id.* ¶ 42. At great personal expense in terms of both cost and time, they now drive him daily twenty-five miles each way to and from school. *Id.*

E. Roark Continues to Promote Christian Beliefs.

Despite Plaintiffs' objections, Roark continues to promote her religious beliefs to her students, including C.C.'s sister, during science class and at other times. *Id.* ¶ 43. In recent months, she has repeatedly instructed students that evolution is not valid as a scientific theory and that God made the world 6,000 years ago. *Id.* ¶ 44. She demands that students write either a Bible verse or "Isn't it amazing what the Lord has made" at the bottom of exams if they want extra credit. *Id.* ¶ 45. Roark writes "Yes!" next to the verse or religious affirmation and awards students five additional points when they comply with this mandate. *Id.*

In addition, in social studies class, Roark presents Biblical accounts of persons, places, and events as fact. *Id.* ¶ 46. For example, on a handout asking, "What mountain did Moses supposedly get the Ten Commandments from," Roark crossed out the word "supposedly." *Id.* She also has told students that the Bible is "100% true" and that "scientists are slowly finding out that everything in the Bible is accurate." *Id.*

Further, Roark continues to ridicule non-Christians for their beliefs. Last month, during a social studies lesson about Hinduism and Buddhism, Roark told the class that Buddhism "is

stupid" and, speaking about the founder of Buddhism, Siddhartha, she proclaimed that "no one can stay alive that long without food and water." *Id.* ¶ 47.

II. DEFENDANTS' SPONSORSHIP OF PRAYER DURING SCHOOL EVENTS.

Roark's conduct is part of a pervasive custom, policy, and practice of official promotion and inculcation of religion (in particular, Christianity) by District officials who, until this school year, posted a belief statement on the District's website declaring as the District's top principle, "We believe that God exists." Verif. Compl. ¶¶ 48-49, Ex. C. As part of this custom, policy, and practice, school officials routinely incorporate Christian prayer into classes and school functions. *Id.* ¶ 56.

For example, C.C.'s fifth grade math teacher, Stacy Bray, asked her students to bow their heads and pray aloud before lunch every day. *Id.* ¶ 57. Bray selected a different student each time to lead the class in prayer and participated in the prayers herself. *Id.* Another teacher, Angela Knight, leads her class in daily prayer before lunch. *Id.*

Nearly all student assemblies begin with prayer. *Id.* ¶ 58. For example, this past spring, Negreet held a mandatory Drug Abuse Resistance Education (D.A.R.E.) assembly at which Principal Wright led the entire faculty and student body in prayer. *Id.* In fact, Wright frequently leads the faculty and student body in prayer at many assemblies, including the school's annual Class Ring Ceremony, which is held in the springtime. *Id.*, Ex. G. And every Veterans Day, including the most recent, school officials invite a local Christian preacher to hold a group prayer at a mandatory faculty/student assembly honoring the Nation's veterans. *Id.* ¶ 60, Ex. H. The assembly also features a video presentation accompanied by contemporary Christian-themed music. *Id.* Like the D.A.R.E. event, student attendance at the Class Ring Ceremony and Veterans Day assemblies is compulsory. *Id.* ¶¶ 58-60.

In addition, mandatory school-day pep rallies held before LEAP standardized testing also feature an official prayer led by a student over the public-address system. *Id.* ¶ 59. And once a year, Negreet administrators and faculty organize a "See You at the Pole" event, at which students and faculty gather at the school's flagpole before class to pray. *Id.* ¶ 61. All students are required to attend. *Id.*

Meanwhile, almost every athletic event at Negreet opens with an official prayer. The prayers are often led by faculty, administration, or local religious leaders. *Id.* ¶ 62. And last month, on the day Negreet dismissed students for winter break, Principal Wright prayed over the public-address system. *Id.* ¶ 63.

III. DEFENDANTS' DISPLAY OF RELIGIOUS ICONOGRAPHY AND MESSAGES AND DISTRIBUTION OF RELGIOUS LITERATURE.

Defendants promote their religious beliefs in other ways as well. A large portrait of Jesus Christ adorns the main hallway, and other depictions of Christ have been displayed in many hallways and classrooms at Negreet. *Id.* ¶ 50, Ex. D. Posters bearing Bible verses hang throughout Negreet's halls, and a large, outdoor, variable-message electronic marquee on Negreet premises also regularly displays Bible verses. *Id.* ¶ 51, Ex. E.

In the main foyer of the school, one display informs students that "ACTIONS SPEAK LOUDER THAN WORDS." It includes several posters urging students to "Pray," "Worship," and Believe," while a poster displayed near the waiting area of the main office announces that "[i]t's okay to pray." *Id.* ¶¶ 53-54.

Faculty members also distribute religious literature to students: Recently, one teacher gave M.L. and his classmates copies of a book from the "Truth For Youth" program. Published by Revival Fires International ministry of West Monroe, Louisiana, "Truth for Youth" Bibles consist of the entire New Testament and with cartoon tracts that denounce evolution, spread

scientifically inaccurate information about birth control and sex, and warn students about the evils of rock music, drunkenness, pornography, premarital sex, homosexuality, sorcery, witchcraft, and other subjects. *Id.*

IV. OFFICIAL PROMOTION OF RELIGION AT MANY JUNIOR HIGH SCHOOL.

At Many Junior High School, which C.C. currently attends, school officials also incorporate official prayer into school events. For example, most football games begin with an official student-led prayer over the public-address system. *Id.* ¶ 65, Ex. I. Prior to each prayer, an announcer asks the entire audience to stand and bow their heads. *Id.* School-day assemblies, including the Veterans Day celebration, also include official prayer. *Id.* ¶ 66.

Moreover, this past Christmas, Many High School held, on school premises, a "living nativity" scene depicting the birth of Jesus Christ. *Id.* ¶ 67. And before the holiday, C.C.'s teacher read his class a story about the birth of Christ. The story stated that candy canes are shaped like a "J" to symbolize Jesus. *Id.* ¶ 68.

V. PLAINTIFFS' OBJECTIONS TO DEFENDANTS' UNLAWFUL CONDUCT.

Both C.C. and Sharon Lane deeply value their Buddhist religious beliefs. Verif. Compl. ¶ 11. They object to and are offended by Defendants' conduct because it denigrates their faith and promotes religious beliefs to which they do not subscribe. *Id.* This conduct caused C.C. to become physically ill. *Id.* ¶¶ 33, 36. He feels pressured to take part in religious practices and feels like an outcast in the District. *Id*. ¶¶ 11-12.

C.C.'s brothers, Plaintiffs S.L. and M.L, remain enrolled at Negreet High School, where they are subject to Defendants' repeated efforts to inculcate and promote Christianity. *Id.* ¶ 16. Although M.L. attends church, he believes that his faith is a personal matter. *Id.* He believes that he should be able to decide, with the guidance of his parents and religious leaders, which

beliefs he will follow and when, as well as how to express those beliefs, without pressure from his teachers and school officials. *Id.* S.L. is a non-believer who does not subscribe to the religious beliefs promoted by school officials. *Id.*

Both S.L. and M.L. feel very uncomfortable and coerced, both directly and indirectly, by school officials' repeated efforts to impose their religious beliefs on students in the form of official prayer, displays of religious iconography, and other religious activities. *Id.* ¶ 17. They are also upset and offended by school officials' disparagement of their brother, C.C., and his faith. S.L. and M.L. feel like outsiders in their school because of Defendants' conduct. *Id.*

Plaintiffs Scott and Sharon Lane sue on behalf of their minor children and on their own behalf. *Id.* ¶¶ 10, 18. They object to and are offended by Defendants' conduct not only because it promotes religious beliefs to which neither parent subscribes, but also because Defendants' conduct impedes their right to control their children's religious education and upbringing free from governmental intrusion or interference. *Id.* ¶¶ 11, 18. And, as parents, the Lanes have had to take on additional financial and administrative burdens in order to transport C.C. each day more than 25 miles to a different school than his siblings. *Id.* ¶ 15.

Plaintiffs feel marginalized and like outsiders at Negreet and within the School District because of Defendants' conduct, and they fear that they will continue to suffer these harms through this school year and beyond. Thus, Plaintiffs filed suit on January 22, 2014, seeking (1) a declaratory judgment that the Defendants' custom, policy, and practice of promoting and inculcating Christianity is unconstitutional; (2) a preliminary and permanent injunction prohibiting Defendants from continuing their unlawful practices and from retaliating against Plaintiffs for voicing their objections and filing this action; (3) nominal and compensatory damages; and (4) any other relief deemed by this Court to be necessary and appropriate.

ARGUMENT

To obtain a preliminary injunction, Plaintiffs must show that (1) there is a substantial likelihood that they will succeed on the merits; (2) there is a substantial threat that they will suffer irreparable injury if the injunction is not issued; (3) the threatened injury would outweigh the potential harm to the Defendants; and (4) the preliminary injunction will not disserve the public interest. *See Speaks v. Kruse*, 445 F.3d 396, 399-400 (5th Cir. 2006); *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 278 (5th Cir. 1996) (upholding preliminary injunction barring enforcement of Mississippi School Prayer Statute); *Doe v. Duncanville Indep. Sch. Dist*. ("*Duncanville* I"), 994 F.2d 160, 163 (5th Cir. 1993) (upholding preliminary injunction prohibiting public school "from permitting employees . . . to lead, encourage, promote, or participate in prayer with or among students during curricular or extracurricular activities, including before, during or after school related sporting events"). As discussed below, Plaintiffs here meet all for requirements of this standard.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR ESTABLISHMENT CLAUSE CLAIM.

There are "heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." *Lee v. Weisman*, 505 U.S. 577, 592 (1992). Accordingly, the U.S. Supreme Court "has been particularly vigilant in monitoring compliance with the Establishment Clause" in the public-school context, *Edwards v Aguillard*, 482 U.S. 578, 583 (1987), where "[s]chool sponsorship of a religious message is impermissible." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000). By incorporating official prayer and proselytizing into public-school classes and events, displaying religious iconography and Bible verses throughout school facilities, distributing religious literature to students, and otherwise promoting religion, Defendants have plainly violated this constitutional

prohibition. *See Duncanville I*, 994 F.2d at 165 (pointing to 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"). Under any Establishment Clause test, Defendants' egregious conduct clearly warrants a preliminary injunction.

A. Defendants' Sponsorship of Prayer, Proselytizing, and Other Religious Messages is Unconstitutionally Coercive.

"[A]t a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Lee*, 505 U.S. at 587. Thus, "school-sponsored activity contravenes the First Amendment when (1) the government directs (2) a formal religious exercise (3) in such a way as to oblige the participation of objectors." *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 343 (5th Cir. 1999) (internal quotation marks omitted).

Defendants have repeatedly sponsored, and continue to sponsor, formal religious exercises in the form of official prayer. At Negreet, teachers incorporate prayer into classes; the principal delivers prayer to students via the school-wide public-address system; compulsory school-day assemblies feature one or more official prayers; and other school events, such as athletic games, also include prayer. *Supra* p. 6-8. School officials even require students to attend "See You at the Pole," an event organized with the sole purpose of promoting prayer and worship. *Id.* p. 8. Many Junior High School likewise imposes official prayer on students during school activities. *Id.* p. 9.

School-sponsored prayers delivered in these contexts oblige the minor plaintiffs and other students to participate. *See*, *e.g.*, *Santa Fe*, 530 U.S. at 310-12 (holding that student-led invocations during pre-game ceremonies at public school football games would be impermissibly coercive); *Lee*, 505 U.S. at 593-96 (deeming official prayers at public-school graduation ceremony unconstitutionally coercive); *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" violated 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"); *Duncanville I*, 994 F.2d at 165 (holding that public-school coach's involvement in prayers at practices, games, and other events was coercive because it '"will be perceived by the students as inducing a participation they might otherwise reject'") (quoting *Lee*, 505 U.S. at 590); *see also, e.g.*, *Collins v. Chandler Unified Sch. Dist.*, 644 F.2d 759, 762 (9th Cir. 1981) (enjoining student-led prayer during school-day assemblies in the "institutionally coercive setting of primary and secondary [public] schools").

Defendants cannot avoid this determination by claiming that students may either opt out of participating in the prayers or avoid school events featuring official devotionals. *See Engel*, 370 U.S. at 430 ("Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause."); *see also Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S 203, 224-225 (1963) ("Nor are these required exercises 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."); *Holloman ex rel Holloman v. Harland*, 370 F.3d 1252, 1287 (11th Cir. 2004) ("That students were not actually forced to pray during the moment of [silent prayer], and may have been free to leave the room, does not alleviate the constitutional infirmities of [their teacher's] moment of silence."). In fact, in many cases, attendance at Sabine Parish events featuring official prayer, including school-day assemblies, is compulsory and students cannot opt out. But even where attendance is not mandatory in the technical sense, students nevertheless face substantial pressure to take part in school events. *See,*

e.g., *Santa Fe*, 530 U.S. at 312 (noting that the "the choice between attending [football] games and avoiding personally offensive religious rituals is in no practical sense an easy one"). [2]

As the Supreme Court has explained, adolescents are impressionable and are "often susceptible to pressure from their peers towards conformity." *See Lee*, 505 U.S. at 593; *see also Collins*, 644 F.2d at 762 (reasoning that, because "students must either listen to a prayer chosen by a select group of students or forego the opportunity to attend a major school function," it was "difficult to conceive how this choice would not coerce a student wishing to be part of the social mainstream . . ."). Defendants "may no more use [this] social pressure to enforce [their religious] orthodoxy than [they] may use [more] direct means." *Lee*, 505 U.S. at 594.

Indeed, even if attendance at all District events featuring official prayer were "purely voluntary," Defendants cannot require students "to forfeit [their] rights and benefits" – here, the ability to attend and participate in school activities – "as the price of resisting conformance to state-sponsored religious practice." *See Santa Fe*, 530 U.S. at 312 (internal quotation marks omitted). Once at these events, Plaintiffs and other Sabine Parish students are faced with "the dilemma of participating, with all that implies, or protesting." *Lee*, 505 U.S. at 593. The

[2] Defendants also may not circumvent the constitutional prohibition on religious coercion by designating students to lead official prayers in class or during school events. *See Santa Fe*, 530 U.S. at 310 (holding that students' roles in voting for a particular student to lead pregame prayers could "not insulate the school from the coercive element of the final message"); *Holloman*, 370 F.3d at 1287 ("School personnel may not facilitate prayer simply because a student requests or leads it."); *see also Ingebretson*, 88 F.3d at 279 (noting that statute would have unconstitutionally authorized incorporation of prayer led by students "so long as a student 'initiates' the prayer (ostensibly by suggesting that a prayer be given)"); *Karen B. v. Treen*, 653 F.2d 897, 901 (5th Cir. 1981), *aff'd* 455 U.S. 1913 (1981) (overturning Louisiana statute authorizing public-school teachers to ask class whether any student wishes to offer a morning prayer and to offer a prayer themselves if no student volunteers); *Herdahl v. Pontotoc Cnty. Sch. Dist.,* 933 F. Supp. 582, 591 (N.D. Miss. 1996) (enjoining school from permitting student-led prayers over the public-address system and prohibiting teachers from organizing pre-lunch, student-led blessings).

Supreme Court has made clear that public schools simply "may not, consistent with the Establishment Clause, place primary and secondary school children in this position," *id.*, because it "has the improper effect of coercing those present to participate in an act of religious worship." *Santa Fe*, 530 U.S. at 312.

While Defendants' official prayers may represent their most overtly coercive conduct, their promotion of Christianity in other ways also has a religiously coercive effect on students. The Supreme Court has recognized that "anytime the government endorses a religious belief there will almost always be some pressure to conform." *See Lee*, 505 U.S. at 605 n.6; *Engel*, 370 U.S. at 431 ("When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.").[3] Defendants openly and routinely make clear to students and their families that they favor Christianity.

Defendants unconstitutionally require students to provide religious affirmations for test credit, *supra* p. 3-4, and they have urged that C.C. disavow or disassociate from his Buddhist faith, *id. p. 5*. This conduct runs afoul of the Supreme Court's now-famous admonition that "neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.'" *Torasco v. Watkins*, 367 U.S. 488, 495 (1961). In class, Defendants religiously coerce students by requiring them to sit by as their teachers unlawfully present Biblical events and doctrine, including creationism, *supra* p. 6, as truth. *See Edwards*, 482 U.S. at 585 (noting, in striking down Louisiana law mandating that public schools give equal time to teaching creationism and evolution, that "[t]he State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of

[3] *But see Freiler*, 185 F.3d at 344 (electing not to apply the coercion test because "the [public school] practice at issue [did] not direct student participation in a formal religious exercise").

teachers as role models and the children's susceptibility to peer pressure"); *see also Herdahl*, 933 F. Supp. at 598 (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"). And Defendants barrage the minor Plaintiffs and other students daily with religious iconography and messages, including portraits of Jesus and Bible verses, which are posted throughout classrooms and hallways. *Supra* p. 8. This rampant promotion of Christianity by school officials places pressure, though more subtle, on students to conform to Defendants' favored faith either to curry school officials' favor or to avoid the disfavor and disdain school officials have directed toward non-Christians.

B. Defendants' Religious Activities Violate the *Lemon* and Endorsement Tests.

Coercion is, of course, sufficient to bring about an Establishment Clause violation, but it is not necessary. *See, e.g*, *Engel*, 370 U.S. at 430 ("The Establishment Clause . . . does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not."). Per Justice Blackmun's concurring opinion in *Lee*, "it is not enough that the government restrain from compelling religious practices: It must not engage in them either." 505 U.S. at 604 (Blackmun, J., concurring). Accordingly, 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 have "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 (internal quotation marks omitted).

To address these concerns, the courts have evaluated public-school promotion of religion through two additional lenses. First, under the three-part test set forth *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971), 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. "Failure of any prong of the test results in a finding of unconstitutionality." *Doe v. Sch. Bd. of Ouachita Parish*, 274 F.3d 289, 293 (5th Cir. 2001); *accord Edwards*, 482 U.S. at 583 ("State action violates the Establishment Clause if it fails to satisfy any of these prongs."). Defendants' conduct falls short under all three prongs.

Second, under the endorsement test, the Court must inquire whether an "objective observer," acquainted with the full history of the challenged governmental action and the context in which it occurs, "would perceive it as a state endorsement of [religion] in public schools." *See Santa Fe*, 530 U.S. at 308 (internal quotation marks omitted). Because the endorsement test and the effects prong of *Lemon* are very similar,[4] Plaintiffs treat them jointly below.

1. *Defendants' religious practices have an impermissible purpose.*

Under *Lemon*, this Court must first "inquire as to the purpose of the government action to determine whether it is predominantly secular in nature." *Trunk v. City of San Diego*, 629 F.3d 1099, 1107 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 2535 (2012); *cf. McCreary County v. ACLU of Ky.*, 545 U.S. 844, 860 (2005) ("When the government acts with the ostensible and predominant purpose of advancing religion, it violates that central Establishment Clause value of official religious neutrality, there being no neutrality when the government's ostensible object is

[4] *See Freiler*, 185 F.3d at 346 ("*Lemon*'s second prong . . . is similar to analysis pursuant to the endorsement test").

to take sides."). School-sponsored prayers during class, assemblies, athletic competitions, and other school events unquestionably have a religious purpose. *See Treen*, 653 F.2d at 901 ("Prayer is perhaps the quintessential religious practice," and "its observance in public school classrooms has, if anything, a more obviously religious purpose . . . ."); *Holloman*, 370 F.3d at 1285 ("Because prayer is a primary religious activity in itself, 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.") (internal citation and quotation marks omitted); *see also Ouachita Parish*, 274 F.3d at 294-95 (holding that amendment to state statute intended to promote verbal student prayer in public schools violated purpose prong); *Ingebretsen*, 88 F.3d at 279 ("Returning prayer to public schools is not a secular purpose."); *N.C. Civil Liberties Union Found. v. Constangy*, 947 F.2d 1145, 1150 (4th Cir. 1991) (holding that "an act so intrinsically religious as prayer cannot meet . . . the secular purpose prong of the *Lemo*n test"); *Jager v. Douglas County School Dist*., 862 F.2d 824, 830 (11th Cir. 1989) (finding that "the pre-eminent purpose behind having invocations [before football games] was to endorse Protestant Christianity").

Likewise, proselytizing students by, among other things, teaching them creationism and other Biblical doctrine as fact and dismissing evolution as "stupid" serves no secular purpose. In *Edwards,* for example, the Supreme Court rejected the State's argument that a law requiring public schools to devote equal instruction time to evolution and creation-science was animated by the desire to protect academic freedom. 482 U.S. at 586-88. Instead, the Court found that the law aimed to "discredit evolution by counterbalancing its teaching at every turn with the teaching of creationism" and that, therefore, "[t]he preeminent purpose of the Louisiana Legislature was clearly to advance the religious viewpoint that a supernatural being created humankind." *See id.* at 582, 591 (internal quotation marks omitted); *see also Doe v. Porter*, 370

F.3d 558, 562-63 (6th Cir. 2004) (teaching the Bible as "religious truth" can have no secular purpose).

Defendants similarly cannot point to a predominantly secular purpose that justifies their display of religious iconography and messages, such as the portrait of Jesus or the scrolling LED Bible verse display, or their distribution of proselytizing materials like the "Truth for Youth" Bible and religious tract provided to Plaintiff M.L. by his teacher. *Supra* p. 9. As in *Stone v. Graham*, 449 U.S. 39, 42 (1980), "[t]his is not a case in which the [challenged materials] are integrated into the school curriculum, where [they] may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like." Rather, like the Ten Commandments plaques at issue in *Stone,* Defendants' use of religious iconography and messages in this manner does not serve any "educational function." *See id*. at 41-42 (holding that "[t]he pre–eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature"); *see also Washegesic v. Bloomingdale Pub. Sch*., 33 F.3d 679, 683 (6th Cir. 1994) (finding that public school had no secular purpose for display of Jesus portrait). Because Defendants' cannot evince a primarily secular purpose for their repeated efforts to promote and inculcate Christianity, they fail the first prong of the *Lemon* test.

2. *Defendants' religious activities endorse and advance Christianity.*

Even if Defendants could identify a predominantly secular purpose behind their longstanding custom, policy, and practice of promoting and inculcating Christian beliefs, the State "cannot employ a religious means to serve otherwise legitimate secular interests." *See Treen*, 653 F.2d at 901; *see also Holloman*, 370 F.3d at 1283 (rejecting teacher's claim that in-class prayer was permissible way of teaching compassion in connection with character education instruction because prayer "is not within the range of tools among which teachers are empowered

to select in furtherance of their pedagogical duties"). Regardless of the asserted purpose, "[g]overnment unconstitutionally endorses religion whenever it appears to take a position on questions of religious belief or makes adherence to a religion relevant in any way to a person's standing in the political community." *Ingebretsen*, 88 F.3d at 280 (internal quotation marks omitted). Because 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," it fails the endorsement test. *Santa Fe*, 530 U.S. at 309,

The Supreme Court's decision in *Santa Fe* provides a model for this Court's analysis under the endorsement test. There, the Court took into account the history of the challenged policy and, importantly, the context in which the approved prayers would take place. 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.

In light of *Santa Fe*'s clear holding, there can be no doubt that Sabine Parish's practice of incorporating prayers into class and school events 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, Defendants' prayers would be perceived by any objective

student as stamped with the imprimatur of the School District. *See id*.; *see also 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.").

Defendants' proselytizing, moreover, also clearly violates *Lemon*'s second prong and the endorsement test. Contrary to Superintendent Ebarb's claim, *supra* p. 5, school officials, such as Defendant Roark, do not have the right to preach to students or teach religious tenets as truth. There is a '"difference between teaching *about* religion, which is acceptable, and teaching religion, which is not.'" *Roberts v. Madigan*, 921 F.2d 1047, 1055 (10th Cir. 1990) (quoting district court opinion with approval). While teachers and school officials enjoy the full range of religious-liberty rights in their personal capacities, they are not entitled to use their government positions to promote and impose their personal religious beliefs on students. *See, e.g.*, *Grossman v. S. Shore Pub. Sch. Dist*., 507 F.3d 1097, 1099 (7th Cir. 2007) ("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]lause."); *Helland v. S. 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"); *Williams v. Vidmar*, 367 F. Supp. 2d 1265, 1275 (N.D. Cal. 2005) ("In the view of the Court, there is a well-defined difference

between *being* an elementary school teacher who is an avowed Christian, which Williams is free to be, and *expressing* the Christian faith in the classroom.").

When school staff cross the constitutional line, as they have here, by proselytizing students and subjecting them to religious indoctrination, or inviting others into school to do the same, the courts have stepped in to stop the unlawful activities. *See, e.g.*, *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"); *Hall v. Bd. of Sch. Comm'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); *S.D. v. St. Johns Cnty. Sch. Dist*., 632 F. Supp. 2d 1085, 1095 (M.D. Fla. 2009) (holding that school's selection of a "a patently religious and proselytizing" song to be performed by third-graders during an end-of-year assembly failed the endorsement test); *Herdahl*, 933 F. Supp. at 593-99 (ruling that a public-school course teaching the Bible as truth and teacher's screening of religious videotapes explaining the "real" reasons for Christmas and Easter holidays "constitute[d] impermissible religious instruction and endorsement of religion by a public official").

Lastly, when public schools display pictures of Jesus, Bible verses, and other posters and items encouraging students to engage in religious exercise or adopt particular religious beliefs, it sends an unconstitutional message of religious endorsement to students and families. *See, e.g.*, *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"); *Ahlquist v. City of Cranston ex rel. Strom*, 840 F.Supp.2d 507, 521-23 (D.R.I. 2012) (holding that display of prayer banner in public-school cafeteria violated *Lemon*'s effects prong and the endorsement test); *cf. Doe v. Harlan Cnty. Sch. Dist.*, 96 F. Supp. 2d 667, 679 (E.D. Ky. 2000) (enjoining display of Ten Commandments in public school). 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.

In sum, no reasonable observer could miss Defendants' clear preference for religion generally and Christianity specifically. Their activities have made Plaintiffs feel like outsiders and second-class citizens who are disfavored by school officials. That perception is only bolstered by Roark's insulting and humiliating treatment of C.C. in front of his classmates, Ebarb's and Wright's public defense of Roark's tactics, and Ebarb's suggestion that C.C.'s parents change his faith or learn to tolerate their son's mistreatment because they are "in the Bible Belt."[5]

[5] By officially condemning C.C.'s Buddhist faith and urging him to change his religious beliefs, Defendants have independently violated the Establishment Clause: When the State singles out one faith for disfavorable treatment, its conduct must be narrowly tailored to achieve a compelling governmental interest. *See Awad v. Ziriax*, 670 F.3d 1111, 1129-31 (10th Cir. 2012) (holding that Oklahoma's condemnation of Sharia law violated the Establishment Clause). Defendants can offer no legitimate reason, let alone a compelling one, for degrading the faith of a sixth-grade student in this manner.

3. *Defendants' 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 coercion, purpose, and effect/endorsement tests,[6] 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." *Doe v. Duncanville Indep. Sch. Dist*., 70 F.3d 402, 406 (5th Cir. 1995). 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.

As noted above, in teaching creationism in class, requiring professions of faith on exams, sponsoring prayers at school events, proselytizing students, displaying religious iconography, and engaging in other acts of religious inculcation, Defendants here have hopelessly entangled themselves with religion. *See, e.g.*, *Porter*, 370 F.3d at 563-64 (finding entanglement, in part, because religious class took "place on school premises, during the school day, with the explicit sanction of the Board of Education"); *Washegesic*, 33 F.3d at 683 (holding that display of Jesus portrait improperly entangles government religion).

[6] *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.").

II. PLAINTIFFS EASILY SATISFY THE REMAINING REQUIREMENTS FOR A PRELIMINARY INJUNCTION.

Where Establishment Clause plaintiffs have demonstrated that they are likely to succeed on the merits of their claim, the Fifth Circuit has found that they easily meet the other requirements for a preliminary injunction. In *Ingebretsen*, after ruling that the plaintiffs were likely to succeed in showing that the Mississippi School Prayer Statute violated the Establishment Clause, the Fifth Circuit quickly dispensed with the remaining factors, holding 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"[7]; and (3) "the School Prayer Statute [was] unconstitutional so the public interest was not disserved by an injunction preventing its implementation." 88 F.3d at 280. This Court should not hesitate to reach the same conclusion. *See, e.g.*, *Duncanville I*, 994 F.2d at 166 ("Our decision on the remaining injunction factors . . . follows from the initial determination that [Plaintiffs] likely will succeed at trial. Assuming [Plaintiffs'] Establishment Clause rights have been infringed, the threat of irreparable injury to [Plaintiffs] and to the public interest that the clause purports to serve are adequately demonstrated.").

CONCLUSION

For the reasons set out above, this Court should issue the preliminary injunction as outlined in Plaintiffs' Motion for Preliminary Injunction and Proposed Preliminary Injunction.

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[7] The Fifth Circuit 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.

Respectfully Submitted,

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