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REPLY TO VIRGINIA

November 30, 2018

Via Facsimile and E-Mail

Bary Habrock, Superintendent
Elkhorn Public Schools
20650 Glenn Street,
Elkhorn, NE 68022
Fax: 402-289-2585
bhabrock@epsne.org

RE: Ban on Christmas symbols at Manchester Elementary

Dear Superintendent Habrock:

By way of brief introduction, Liberty Counsel is a non-profit litigation, education, and public policy organization with an emphasis on First Amendment religious liberty issues. We have offices in Florida, Virginia; and Washington D.C., and hundreds of affiliated attorneys across the country, including Nebraska. Liberty Counsel provides *pro bono* advocacy and assistance on a variety of issues within our mission, including the public celebration of traditional holidays such as Christmas.

Liberty Counsel writes to the Elkhorn Public Schools ("District" or "EPS") urging reversal of the comprehensive ban on all Christmas holiday symbols at Manchester Elementary School, as issued to staff in several written directives by the principal. The ban violates the U.S. Constitution by showing hostility toward Christianity. The ban also violates Elkhorn Public Schools board policy; the academic freedom rights of teachers; and it violates the First Amendment right of students to receive information. The original directive from Principal Sinclair is as follows:

Teachers:

Please remember that **we are not to be doing any Christmas or holiday-specific themed activities with students. Santa and Christmas items are not to be on activities or copies.** We have varied religious beliefs in our school, and it is our job to be inclusive. Adhering to your district pacing guides is necessary and important. If you're wondering about a specific activity that you "traditionally do," please come have a conversation with me. (Emphasis added).

In follow-up, Principal Sinclair stated **“I come from a place that Christmas and the like are not allowed in schools, as over the years in my educational career, this has evolved into the expectation for all educators.”** (Emphasis added). Principal Sinclair apologized for the stress she had created, but still doubled down, stating **“I feel uncomfortable that I have to get this specific, but for everyone’s comfort, I will.”** (Emphasis added). She then issued a specific list of “Acceptable practices” and “Not acceptable” practices and items. The comprehensive list speaks for itself and simply cannot be parodied:

Acceptable practices:

Gifts to students
Students making gift for a loved one
Snowmen, snow women, snow people [sic], snowflakes
Gingerbread people [sic]
Holidays Around the World - purposeful presentation of information to teach about different cultures
Sledding
Hot chocolate
Polar Bears
Penguins
Scarves, boots, earmuffs, and hats
Yetis
Olaf - Frozen

Not acceptable:

Santas or Christmas items (clipart) on worksheets
Christmas trees in classrooms
Elf on the Shelf - that’s Christmas-related
Singing Christmas Carols
Playing Christmas music
Sending a Scholastic **book that is a Christmas book** - that’s Christmas-related
Making a Christmas ornament as a gift - This assumes that the family has a Christmas tree which assumes they celebrate Christmas. I challenge the thought of, “Well they can just hang it somewhere else.”
Candy Cane - that’s Christmas-related. Historically, the shape is a “J” for Jesus. The red is for the blood of Christ, and the white is a symbol of his resurrection. This would also include different colored candy canes.
Red/Green items - traditional Christmas colors
Reindeer
Christmas videos/movies and/or characters from Christmas movies
(Emphasis added).

Thus, “Jesus,” the reason for Christmas, along with secular symbols like Christmas trees, Santa, Elves on Shelves, “Christmas ornaments,” and other symbols, must be censored. “Yetis,” which have no relevance to any American holiday, are fine. Not even candy canes – of whatever color and stripe – are allowed, nor are the colors of “Red” and “Green,” because they are “traditional Christmas colors.”

The principal concluded by telling teachers to “reflect on what you’ve already copied, prepped, and posted,” and that “I’m hopeful we can avoid the discomfort of me directly questioning something you’ve copied, posted, and had your kids do. That makes me uncomfortable, and I know it doesn’t feel good. Signed, The (Unintentional) Grinch who stole Christmas.”

The principal appears to have conflated her own values and preferences with the law. The First Amendment simply does not require elimination of all Christmas symbols – religious and secular – in a misguided attempt to be “inclusive” by eliminating all traditional elements of a federally- and state-recognized holiday. The effort to comprehensively eliminate Christmas symbols is Orwellian.

Nothing prohibits public schools from teaching objectively about religion, or about holidays with religious significance, like Thanksgiving and Christmas. Nothing prohibits public school music programs from having a mix of sacred and secular songs relating to the Christmas holiday, as part of a balanced Christmas music program; or classroom assignments from having relevance to Christmas.

Parents who object to their own child’s participation may opt out from portions of a given program or assignment; but they may not deprive other people’s children of the opportunity to practice and perform sacred songs which have attained cultural and musical significance; or for that matter, to make Christmas arts and crafts like Christmas tree ornaments.

It would be literally impossible to develop a public school curriculum that did not in some way affect the religious or nonreligious sensibilities of some of the students or their parents. *Florey v. Sioux Falls Sch. Dist. 49-5*, 619 F.2d 1311, 1319 (8th Cir. 1980), *cert. denied*, 449 U.S. 987 (1980) (quoting *Abington School District v. Schempp*, 374 U.S. 203 (1963) at 225). As the U.S. Supreme Court has said, “to allow students **only to study and not to perform (religious art, literature and music**, when) such works . . . have developed an independent secular and artistic significance, would give students a truncated view of our culture.” *Abington School District v. Schempp*, 374 U.S. 203, 225 (1963).

The Supreme Court has also rejected the argument that singing Christian carols would entangle the school with religion: “[m]usic without sacred music, architecture minus the Cathedral, or painting without the Scriptural themes would be eccentric and incomplete, even from a secular point of view.” *Illinois ex rel. McCollum v. Board. of Educ.*, 333 U.S. 203, 236 (1948) (Jackson, J., concurring). (Emphasis added).

Moreover, in *Lynch v. Donnelly*, 465 U.S. 668 (1984), in which the United States Supreme Court held that a nativity scene was permissible to display on public property, the court noted with approval the practice of public schools “taking note of the season with Christmas hymns and carols,” in its discussion of how everything about Christmas is influenced by faith:

Of course the crèche is identified with one religious faith but no more so than the examples we have set out from prior cases in which we found no conflict with the Establishment Clause. See, e.g., *McGowan, supra*; *Marsh, supra*. It would be ironic, however, if the inclusion of a single symbol of a particular historic religious event, as part of a celebration acknowledged in the Western

World for 20 centuries, and in this country by the people, by the Executive Branch, by the Congress, and the courts for two centuries, would so “taint” the City’s exhibit as to render it violative of the Establishment Clause. To forbid the use of this one passive symbol—the crèche—at the very time **people are taking note of the season with Christmas hymns and carols in public schools and other public places**, and while the Congress and Legislatures open sessions with prayers by paid chaplains would be a stilted over-reaction contrary to our history and to our holdings. If the presence of the crèche in this display violates the Establishment Clause, a host of other forms of taking official note of Christmas, and of our religious heritage, are equally offensive to the Constitution.

The Court has acknowledged that the “fears and political problems” that gave rise to the Religion Clauses in the 18th century are of far less concern today. *Everson, supra*, 330 U.S., at 8, 67 S.Ct., at 508. We are unable to perceive the Archbishop of Canterbury, the Vicar of Rome, or other powerful religious leaders behind every public acknowledgment of the religious heritage long officially recognized by the three constitutional branches of government. **Any notion that these symbols pose a real danger of establishment of a state church is far-fetched indeed.** *Lynch v. Donnelly*, 465 U.S. 668, 685-86, (1984). (Emphasis added.)

Finally, the Christmas ban finds no support in Board Policy 604.05,¹ nor in its implementing Administrative Regulation 604.05,² which states:

1. **Teachers may teach about religious holidays as part of an objective and secular educational program.** Celebrating religious holidays in the form of religious worship or other similar practices is prohibited. The study of holidays should reflect the diverse heritage of the United States.
2. Religious symbols, such as **crosses, creches or menorahs may be used as teaching aids in the classroom provided that the symbols are displayed as an example of the cultural and/or religious heritage of the holiday and are temporary in nature.** If put on a bulletin board, religious symbols may be viewed as promoting a certain religious perspective. **(Christmas trees, Santa Claus and Easter eggs and bunnies are considered to be secular, seasonal symbols** and may be displayed as teaching aids provided they do not disrupt the instructional program for students.)
3. **Music, art, literature and drama with religious themes may be included in teaching about holidays, provided that they are presented in a religiously neutral, prudent and objective manner and related to sound, secular educational goals.** (Emphasis added).

¹ <https://www.elkhornweb.org/blog/policy/series-600-instruction/604-instructional-curriculum/policy-604-05-public-performances-and-exhibits/>

² <https://www.elkhornweb.org/blog/policy/series-600-instruction/604-instructional-curriculum/policy-604-05-public-performances-and-exhibits/>

For these reasons, Liberty Counsel urges you to immediately overrule and specifically disavow the sweeping directive banning Christmas holiday items, and require Principal Sinclair to undertake review of District policy and the law.

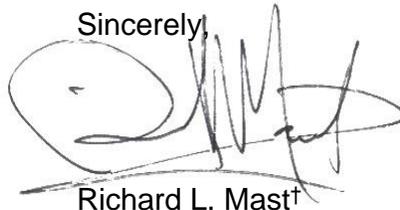
Please inform Liberty Counsel in writing by close of business on Monday, December 3, 2018, of how the District intends to proceed. If the District fails to respond disavowing the directive, or ratifies it, Liberty Counsel will take additional action to prevent irreparable harm to cherished liberties.

In the spirit of Christmas, Liberty Counsel does not desire the removal of Principal Sinclair; only her compliance with the law; respect for the rights of others; and respect for cherished holiday traditions. As she herself indicates, "she comes from a place" where misinformation and hostility toward Christmas runs rampant, and that has shaped her professional development.

We trust that this will be a good learning experience for her and that she will conduct herself and make decisions involving other church-state matters with appropriate respect for expressions of faith, and not with hostility.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Mast", written over a horizontal line.

Richard L. Mast[†]

CC

Via Email:

Principal Jennifer Sinclair

jsinclair1@epsne.org

Elkhorn School Board Members
John Marasco
Aaron Clark
Chuck Burney
Amy Parks
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