

**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

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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 rel

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

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. n / y 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. n / y 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. *he B OC concert sse y*

Most notably, in September 2011, the school held an evangelical revival assembly. Compl. ¶¶ 34-45; J.A. Decl. ¶¶ 9-15; Weaver Decl. Ex. A³ 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.” d Ex. A at 5:12tat1ol a

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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 into 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

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 Ch78(s)-1.7465(.)-0n 30u0.952a6or

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 rel

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.

Like J.A., Mr. Anderson is uncomfortable and upset by the prayers and proselytizing at schools events, as well as the religious iconograph

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.”

P *C n y A n Co.*, 649 F.3d 287, 290 (4th Cir. 2011) (internal quotation marks omitted); *J o n n c on c* *P*, 88 F.3d 274, 278-79 (5th Cir. 1996) (upholding preliminary injunction barring enforcement of school prayer statute); *P n c n*, 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 *n n*, 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.

n n, 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’ ability to pray at school, explaini

(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 *Id.*, *Inc. n*, 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

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

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 silenc

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.” *Minnick*, 327 F.3d at 370.¹⁴ Though “[f]ailure of any prong of the test results in a finding of unconstitutionality,” *Chapman*, 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-spon

272. The Supreme Court has, for example, held that public schools may not teach religious doctrine, such as creationism or biblical scripture, as truth. *Edwards*, 482 U.S. at 596-67; *McCormick*, 333 U.S. at 210-212; *Johnson*, 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

will unquestionably perceive the inevitable pregame prayer as stamped with her school's seal of approval." *d* 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

Other federal courts have agreed that the display of religious messages and symbols in public schools is simply not permitted under the Establishment Clause. *Moore v. United States*, 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”); *Moore v. United States*, 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”); *Moore v. United States*, 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. 8(3)-0.956417(d)-0.956417()-0.478208(9)-0.956417(5)-0.956417(5)-0.956417(5)-0.87f

C. The District's Religious Activities Excessivel

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.”