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December 30, 2015

Joseph F. Betley, Esq.
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Dear Mr. Betley:

The American Civil Liberties Union has been informed that Haddon Heights School District's Glenview Elementary School has been engaging in the practice of including the phrase "God bless America" as part of the school's daily opening assembly. It is my understanding that students in kindergarten through sixth grade stand at attention on school grounds, lined up by grade, and recite the phrase immediately following recitation of the Pledge of Allegiance. As you confirmed for me last week, Glenview School is the only school in the district that has students recite this phrase.

I write to inform you that engaging in a school-sponsored practice of having elementary school students invoke God's blessing at the beginning of every school day, during an official school assembly, is unconstitutional. I am hopeful that this matter can be quickly and amicably resolved.

The Establishment Clause of the First Amendment to the United States Constitution prohibits the government not only from favoring one religion over another, but also from promoting religion over non-religion. *McCreary County v. ACLU*, 545 U.S. 844, 883 (2005); *Everson v. Board of Education*, 330 U.S. 1, 15-16 (1947). The greatest care must be taken to avoid the appearance of governmental endorsement in schools, especially elementary schools, given the impressionable age of the children under the school's care and authority. *Lee v. Weisman*, 505 U.S. 577, 592 (1992) ("there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools"); *Abington School District v. Schempp*, 374 U.S. 203, 290-91, n. 69 (1963) (Brennan, J., concurring) ("The susceptibility of school children to prestige suggestion and social influence within the school environment varies inversely with age, grade level, and consequent degree of sophistication of the child").

The United States Supreme Court has already rejected a practice of invoking God's blessing as a daily ritual. In *Engel v. Vitale*, 370 U.S. 421 (1962), the Court halted a school district's practice of students acknowledging God and asking God's "blessings on us, our parents, our teachers, and our Country" immediately following recitation of the Pledge of Allegiance. The Court found that the daily recitation

violated the Establishment Clause by promoting religion over non-religion. Because the daily recitation was part of the official school practice, it created “indirect coercive pressure upon religious minorities to conform,” and neither the fact that the particular recitation was “denominationally neutral nor the fact that its observance on the part of the students [was] voluntary [could] serve to free it from the limitations of the Establishment Clause....” *Id.* at 430-31.

The phrase “God bless America” calls upon God to bless our Country in a more shorthand form than the phrase used in *Engel v. Vitale*, but the basic result here is the same: a daily state-sponsored practice of reciting - in a way that prompts student participation - a phrase that invokes God’s blessing. The fact that the phrase has some patriotic overtones does not sufficiently negate its fundamentally religious nature.¹

It should be noted that what might be acceptable in other government contexts might nevertheless be precluded in public schools.² Indeed, the context in which the phrase is recited here is far more coercive and gives far more of an appearance of endorsement than, for example, merely hearing the phrase uttered by a legislator. The recitation at Glenview occurs as part of the daily school-wide assembly, prompting student participation from children as young as kindergarten. It relays a sense to these elementary school students that believing in God and asking for God’s blessing is the norm, part of being an American, and proper to do. It “leave[s] the reasonable nonadherent with the impression that his or her religious choices were disfavored.” *ACLU-NJ v. Black Horse Pike Regional Bd. Of Ed.*, 84 F. 3d 1471, 1487 (3rd Cir. 1996). And because it occurs during an assembly where the Pledge of Allegiance is recited and where the “Principal’s Star Student” has the honor of carrying the flag, it also links participation in this practice with other benefits to which the student is entitled.

The practice thereby makes it harder for non-religious parents to raise their children as they see fit, and makes it harder for non-religious or questioning students to be full and complete participants in their school. It places them in the impermissible position of either conforming to the official school practice or missing out on benefits and being made to feel like a disfavored outsider because of the student’s (or his or

¹ Further, the particular phrase “God bless America” does not have a lengthy and continuous history and tradition of recitation in the public school context (and Glenview School in fact stands out as the lone school in the district to engage in this practice). In addition, it is unclear why this particular school’s officials believe the Pledge of Allegiance itself was not sufficient to instill a sense of patriotism (if that was their intent), nor why it was necessary to use this particular phrase rather than others that do not invoke religion.

² See, e.g., *Lee v. Weisman*, 505 U.S. at 597 (“Our decisions in *Engel v. Vitale*, *supra*, and *School Dist. of Abington v. Schempp*, *supra*, require us to distinguish the public school context”); *id.* (comparing the approval of the prayer opening a legislative session in *Marsh v. Chambers*, 463 U.S. 783, 795 (1983), with the rejection of prayers conducted at the opening of the school day in *Abington School District v. Schempp*, 374 U.S. 203 (1963) and *Engel v. Vitale*, *supra*.).

her parents') religious beliefs or lack thereof. That is not only an "improper choice to force upon them," but an unconstitutional one. *ACLU-NJ v. Black Horse Pike*, 84 F.3d at 1480; see also *Lee v. Weisman*, *supra*.

Finally, because the phrase "God bless America" is recited immediately following the Pledge of Allegiance, and is essentially made an extension thereof, it violates N.J.S.A. § 18A:36-3, which prescribes particular language for the Pledge.³

I am hopeful that this matter will be quickly remedied and amicably resolved. Indeed, we simply seek to have Glenview School comport with the manner in which the Pledge of Allegiance and opening to the school day occur at all other elementary and secondary schools in the district. Please respond by January 7, 2016. I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ed Barocas".

Ed Barocas
Legal Director

³ The United States Court of Appeals for the Third Circuit, in *Lipp v. Morris*, 579 F.2d 834 (1978), struck down the portion of that statute that required students to stand for the Pledge of Allegiance, but left the rest of the statute intact.