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Prayer at Athletic Events

On June 19, 2000, the United States Supreme Court issued its ruling in *Santa Fe Independent School District v. Doe* in which it held that the district's policy creating a venue as part of a government-initiated program for students to pray at football games was a violation of the Establishment Clause. The gist of the *Santa Fe* decision is that it violates the Establishment Clause for a school district to take affirmative steps to create a vehicle for a prayer to be delivered at a school assembly. The decision is limited in its scope as it is based on a unique set of facts that existed in the Santa Fe school district. *Santa Fe*, slip op. at 9, 23. The undersigned legal organizations and attorneys, all specializing in First Amendment issues, are concerned as we have heard much confusion and many false conclusions about the *Santa Fe* decision.

The Supreme Court ruled as unconstitutional a school football game policy (1) of "government speech" (government initiated prayer), (2) that included the use of the word "invocation" so as to put prayer to a student majority vote, (3) in a forum specifically not open as to student expression, (4) in a district with an unquestionable history of promoting student prayer. *Santa Fe*, slip op. at 11-25. The Court placed great weight on the peculiarities of the challenged policy (same, single student delivers the message the entire season; policy confines content and topic of student's message; policy text encourages or suggests an "invocation"), the degree of school involvement in determining the election process, the context of the pregame message, past practice in the Santa Fe district, and the evolution of the school policy itself. *Id.* Very few schools in the country would ever fit such an unusual situation. The conclusion is that the vast majority of schools can continue what they have always done - allow and encourage student involvement, participation and speech in school programs and activities.

Nothing in *Santa Fe* calls into question the right of students to engage in religious expression through Bible Clubs, one-on-one discussions, literature distribution, student-initiated activities (e.g., "See You at the Pole"), and a myriad of other channels of communication. Nor does *Santa Fe* affect the right of students to engage in religious expression where students are otherwise already free (within broad parameters of relevance) to select the content and viewpoint of their expression (e.g., talent shows, class assignments, show-and-tell, oratorical competitions, message-bearing clothing or jewelry).

The Court *explicitly endorsed* voluntary student prayer "at any time before, during, or after the schoolday," *Santa Fe*, slip op. at 21. The Court stated, "[b]y no means do these commands [Establishment and Free Exercise Clauses of the First Amendment] impose a prohibition on all religious activity in our public schools." *Id.*

Free speech rights of students outside the context of school organized event are unaffected by the *Santa Fe* decision. The conclusion is that the vast majority of schools can continue what they have always done - allow and encourage student involvement, participation and speech in school programs and activities. For this reason, we have prepared this letter to state clearly what rights students continue to possess and enjoy on public school campuses.

The children in your schools still possess the constitutionally protected right to:

- read their Bibles or other scripture texts, individually or as a group;
- say a prayer before meals or pray before a test, individually or as a group, and even pray, individually or as a group, before a school sporting event;
- attempt to persuade, proselytize, their peers concerning religious topics, just as they do with regard to political topics;
- use religious themes, express their beliefs about religion, in their homework, artwork, or other written or oral assignments, with said work being judged by ordinary academic standards;
- distribute religious literature to their schoolmates during non-instructional times, before or after school, in between classes, or during any other non-instructional setting;
- be excused from lessons that are objectionable on religious or other conscientious grounds;
- wear clothing displaying religious themes or messages which may not be singled out for suppression;
- form and participate in religious groups at public secondary schools that have the same right of access to school facilities as is enjoyed by other comparable student groups, and to exclude from these groups those who do not share the group's religious beliefs;
- meet together and conduct a prayer service or other worship exercise as well as jointly participate in Bible reading during said meeting; and
- use the public address system, the school newspaper, and the school bulletin board to announce their meetings, on the same terms as other student groups.

Westside Community Schools v. Mergens, 496 U.S. 226 (1990); *Tinker v. Des Moines I.S.D.*, 393 U.S. 503; *Religious Expression in Public Schools*, U.S. Dept. of Education Guidelines, Secretary Richard W. Riley, August 1995, Revised and Reissued, May 1998.

In short, public schools can and must allow religious, student speech to the extent that comparable secular speech is allowed. What *Santa Fe* says is that public schools may not devise plans designed to perpetuate or initiate religious invocations. That is what had happened in the *Santa Fe* school district and it was on that fact that the Supreme Court based its ruling.

Santa Fe does not question the protected status of genuinely private student religious speech. *Santa Fe*, slip op. at 10, 18, 21. Thus, whenever a student speaker is otherwise free to control the content or viewpoint of a message, that freedom includes the use of religious speech. For example, a valedictory speaker who is free to thank parents can also thank God. A class president who speaks on moral character development can also address the topic from a religious perspective. A club representative at a club fair can recruit for a Bible Club to the same extent as for a Young Democrats Club. (If the school were to selectively restrict otherwise permissible student speech because of its religious dimension, this would violate the First Amendment under cases like *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 [1993] and *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 [1995].) Importantly, no special policy is needed to allow students these rights!

As stated, the *Santa Fe* case does not have the broad application that some may attempt to confuse you into believing. In fact, a misapplication of this decision beyond its holding may very well violate numerous constitutional rights of students and have a negative impact on religious expression in public schools.

In conclusion, prayer is permitted before or after school sporting events if it is entirely student directed and initiated. Students can be given the opportunity to volunteer to provide an opening or closing “message” at the sporting event. Students who volunteer then are entirely responsible for the content of the message, and the district cannot direct, edit or monitor the content of the message. After the *Santa Fe* case, school districts should avoid having an opening prayer that is led by or sponsored by anyone associated with the district, including a guest invited by the district. The messages must be the private messages of the students, wholly uncoerced or otherwise directed by teachers, principals or school staff. It would be best to use the term “message” rather than “prayer,” because even using the word “prayer” would be seen as the school endorsing religion. If the student volunteer’s message happens to be a prayer, then it is less likely to be attributed to the school.

Please contact us if you have any questions.