

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE**

KELLY BUTLER, on his own behalf and as the natural parent and next friend of his minor children, H.B. and P.B.; JASON CARR and SHARONA CARR, on their own behalf and as the natural parents and next friends of their minor children, L.C. and D.C.,

Plaintiffs,

v.

SMITH COUNTY BOARD OF EDUCATION; BARRY H. SMITH, in his official capacity as Director of Schools of the Smith County School System; KELLY BELL, in her official capacity as Principal of Smith County Middle School; and DUSTY WHITAKER, in his official capacity as Principal of Smith County High School,

Defendants.

Civil No.:

Judge:

Magistrate Judge:

COMPLAINT

1. Smith County, Tennessee, is a religiously diverse community. Christian, Muslim, and atheist students, among others, attend Smith County High School and Smith County Middle School in the Smith County School System. But that matters little to school officials: For years, they have routinely promoted and inculcated Christian religious beliefs by sponsoring religious

of the school community while their Christian peers are favored by school officials. Public schools belong to all and all belong in public schools. School officials' blatant promotion of Christianity cannot be reconciled with this principle.

2. Nor can school officials' promotion of religion be reconciled with the Establishment Clause of the First Amendment to the U.S. Constitution, which prohibits public schools from imposing religious beliefs on their charges. When public schools engage in these unconstitutional activities, they harm students by coercing them into religious practices and by subjecting them to unwelcome indoctrination and religious messages; they harm parents by usurping their right to control the religious (or areligious) upbringing of their children; and they harm families and the community as a whole by sending a divisive message of religious favoritism for those who adhere to school officials' preferred faith.

3. Kelly Butler, Sharona Carr, and Jason Carr believe that their children and all students should be able to attend public school without exposure to government-sponsored

4. Accordingly, Plaintiffs seek a declaratory judgment that the Defendants' customs, policies, and practices are unconstitutional because they are religiously coercive, endorse and promote religion, and have the purpose and effect of advancing religion and entangling the government with religion. Plaintiffs further seek preliminary and permanent injunctive relief enjoining Defendants from continuing their unlawful practices and other relief as set forth below.

JURISDICTION AND VENUE

5.

12. The Carrs are atheists. Like Mr. Butler, they object to and are offended by

17. Defendant Barry H. Smith is sued in his official capacity as the Director of Schools of the Smith County School System. As such, he is a resident of Smith County

inculcation on numerous occasions. As alleged above, these practices have caused the minor Plaintiffs to feel coerced, both directly and indirectly, to participate in religious activities and expression that does not comport with their personal beliefs. These practices are unwanted and unwelcome by the minor Plaintiffs, who feel like outsiders within their own school community because they do not share the favored religious beliefs promoted by school staff.

25. In connection with their parental duties and community membership, Mr. Butler and the Carrs also have been exposed to official school promotion of religion. As alleged above, they are offended because these practices promote religious beliefs to which they and their children do not subscribe and usurp their parental role in directing their children's religious education. The parental Plaintiffs feel shunned and unwelcome within the Smith County School System community because they do not share the favored beliefs promoted by school officials.

School-sponsored prayer

26. School staff often incorporate official prayer into various school events, including school-day assemblies, athletic events, and graduation ceremonies, among other activities.

27. On Monday mornings throughout the school year, Smith County Middle School holds mandatory assemblies in the gymnasium known as "family meetings." At these assemblies, Principal Bell solicits prayer requests from students and staff. After demanding that students and staff provide subjects for prayer requests, Bell sometimes adds her own prayer request. She then instructs students over a microphone to "bow your heads and think of these people" or to "keep these people in your prayers." Staff and nearly all students bow their heads to pray silently during this period. Last year, students who laughed or talked during this prayer time were admonished to be quiet and kicked out of the gym and sent to the principal's office if they did not comply with this direction.

28. On mornings when there is no “family meeting,” D.C.’s teacher adopts a similar practice. She first asks students to provide prayer requests; then, after students identify subjects for prayer, she announces that it is time for a moment of silence and bows her head to pray. D.C.’s classmates follow suit.

29. Although the Board of Education’s moment-of-silence policy states that a school “principal will call the students to order and announce that a moment of silence is to be observed at the beginning of each day” and that “[n]o other action shall be taken by a teacher other than to maintain silence,” the policy itself explicitly promotes and encourages prayer in its title: “Prayer and Period of Silence.”

30. Officials at both Smith County High School and Smith County Middle School have used the schools’ observance of Veterans Day as an opportunity to impose prayer on students.

31. Last week, middle-school staff gathered students, including D.C., in the gymnasium for a mandatory Veterans Day assembly. After introductory remarks made by Principal Bell, the podium and microphone were turned over to a student to lead everyone in prayer. The prayer-giver instructed those present to bow their heads and pray for the men and women who died for our country. Nearly all students and staff bowed their heads and prayed as he recited a prayer.

32. Later, about halfway through the same assembly, the podium and microphone were turned over to a second student to give a second prayer. Again, nearly all students and staff bowed their heads to pray while the student recited the prayer.

33. This is at least the second year in a row that the middle school has incorporated official prayer into its Veterans Day assembly. Last year, Mr. Butler, a U.S. Army veteran who served tours in Iraq and Afghanistan, attended the event. L.C. and P.B. were also in attendance.

Before the mandatory assembly concluded, Principal Bell announced that there would be a prayer and introduced the designated student prayer-giver. Bell then passed the student a microphone, and the student delivered a Christian prayer in Jesus's name. Principal Bell, teachers, and nearly all students bowed their heads for the prayer. When Mr. Butler informed

37. Moreover, athletic coaches frequently give prayers or participate in prayer with student-athletes before games and practices. For example, P.B. is a member of the Smith County High School girls' soccer team. Just before the beginning of every game, the coach announces to the team members that "it's time to pray." He then gathers them into a prayer circle to hold hands and bow their heads. Once in the prayer circle, the coach asks the senior players on the team to begin reciting the prayer; the coaches and other team members join in with the recitation after the first few words. The prayer is explicitly Christian.

38. The coaches of the Smith County High School boys' soccer team likewise lead or participate in official prayers with students. As a student manager for the boys' soccer team, P.B. will be exposed to these official prayers when the boys' soccer season begins in January.

39. Last school year, every (or nearly every) Smith County High School pep rally (all held during regular school hours) included official prayer. Like all students, H.B. was required to attend these events, where she also performed as a member of the marching band.

40. Smith County Middle School has likewise incorporated prayer into pep rallies, which take place during the school day and are mandatory. For example, at a pep rally in support of the boys' basketball team in February 2019, Principal Bell selected a student prayer-giver who delivered a prayer in Jesus's name.

41. Graduation ceremonies also include official prayer. At the beginning of Smith County High School's 2019 graduation ceremony, a school official asked the audience to "please remain standing," introduced the designated prayer-giver—a student who was waiting next to school officials—and informed the audience that the student would lead everyone in prayer. The school official then ceded the microphone to the student, who delivered a prayer in Jesus's name. The school official then returned to the microphone and continued to welcome the audience "on

behalf of the faculty, staff, and administration of Smith County High School, Smith County Board of Education, Central Office staff, and Director of Schools, Mr. Barry H. Smith.”

42. The same graduation ceremony featured a benediction prayer as well. After presenting students as the graduating class of 2019, a school official announced that the benediction would be given by a student, who prayed:

God we just want to come to you today and first off give you thanks and give you thanks for getting us to this point in our lives. And God we put glory and acknowledgement in you . . . that it is only through you and your son Jesus and his sacrifice that we’re graduating . . . And God we pray that whatever direction we take today, help us go in the direction that you point us towards God. God help keep us safe in your will and all we do and guide our every footstep, decision, and action. And we give you all the praise, all the glory. In Jesus’s name, Amen.

43. As a member of the concert band, H.B. will be required to attend and perform at the 2020 graduation ceremony for Smith County High School. P.B. and L.C. will also attend the ceremony to witness their friends graduate, and P.B. will also take photos at the ceremony for the yearbook.

44. Like the high school’s 2019 graduation, the Smith County Middle School May 2019 graduation ceremony for eighth-graders also included official prayer. All Plaintiffs attended the ceremony to support P.B. and L.C., who were eighth graders at the time.

Other pe e , J - 3

instructed to raise their hands if they wanted a Bible. D.C. was the only person in his class who did not raise his hand to receive a Bible.

47. On information and belief, The Gideons were permitted to distribute Bibles to all fifth-graders at the middle school in October 2019.

48. On information and belief, Defendants authorize the distribution of Bibles to fifth-graders each year. For example, P.B.'s fifth-grade teacher distributed Bibles to her and her classmates.

49. The Bible distributions are not the only time that Defendants have made known their preference for the Bible.

50. Last school year, several Bibles were perpetually displayed on side tables adjacent to chairs in the breezeway, located just inside of the middle school's front door.

53. In addition to specially displaying Bibles, Defendants frequently display religious iconography and other religious messages in school facilities. They have no permissible educational or pedagogical reason for doing so.

54. For example, a mural in Smith County High School's weight-training room depicts a giant Latin cross, alongside the words "In God We Trust." Athletic teams, such as the boys' football team and girls' soccer team, use the room for weight-training purposes.

55. The weight-training room also has an indoor field with artificial grass, which is used during inclement weather by various sports teams, including the boys' football, boys' soccer, and girls' soccer teams. As noted above, P.B. is a member of the girls' soccer team and will also serve as a manager for the boys' soccer team starting this January.

56. The weight-training room also abuts a parking lot in which the marching band practices. Band members, such as H.B., must pass through the facility (and by the cross display) to use the restroom during rehearsal.

57. In addition to indoor team practice and weight training, the facility is used for other functions, such as the county-wide field day, which is attended by younger children from across the school system and neighboring school systems.

58. Last school year, Bible verses and other religious messages were also prominently posted in the halls of Smith County High School. A sign displayed on one classroom door stated, "Whatever you do, work at it with all your heart, as working for the Lord.' – COLOSSIANS 3:23." A sign on another classroom door counseled, "TRUST in the LORD with all your Heart and lean not on your own understanding' – PROV 3:5." And a large banner that hung outside the school's cafeteria proclaimed, "Your Talent is GOD'S gift to you[,] what you do with it is your gift back to GOD."

59. These signs were put up over the course of the school year. Although they were removed in the summer, presumably as part of a school-wide cleaning for the current school year, religious signs have begun to appear again: The classroom doors of science teacher Jason Harville and economics teacher Janet Bailey feature their names and a

75. For example, official social-media accounts for the high school’s football team and health-occupations club (HOSA), as well as the middle school’s official Facebook page, have posted photos or videos of the weight-training room’s mural featuring a giant Latin cross. Murf Murray, the high school’s head football coach, likewise shared a photo of the Christian mural on his Facebook page in April 2019.

76. One month later, in May 2019, Coach Murray posted a series of photos of students in the weight-training room, stating, “Suddenly the weight room is full! Keep the kids coming. Come by and see me if you want your kid to be part of building something special! Praise God!”

77. School staff training and 0 T1s

80. The middle school's official Facebook page featured photos of the FCA assemblies run on campus by outside guests during instructional time, and school officials commented on the post, praising the arrangement.

81. Official social-media accounts also have been used to broadcast other religious messages. Prayer requests and directives to pray are frequently posted on the high-school football team's official social-media accounts. Last week, for example, the official Facebook page for team posted a prayer request. When a commenter on one of the posts stated, "I am so proud of you for your guidance showing these teenagers the power of prayer," the official account replied, "[T]hank you. They are awesome young men and a lot will be great spiritual leaders in this county."

82. Similarly, the Facebook page for the girls' soccer team posts prayer requests. And as another example, in July 2019, the coach for the Smith County High School girls' basketball team used the team's official Facebook account to celebrate the conclusion of the team's summer camp, proclaiming, "It is when you learn to have a servant's heart, that you truly become a child of the Lord."

CLAIM FOR RELIEF: ESTABLISHMENT CLAUSE VIOLATIONS

(42 U.S.C § 1983)

83. Plaintiffs re-allege and incorporate by reference all of the preceding paragraphs in this Complaint as if fully set out herein.

84. By Defendants' customs, practices, and policies alleged above, Defendants have violated, and are continuing to violate, Plaintiffs' rights under the Establishment Clause of the First Amendment and Fourteenth Amendment to the U.S. Constitution. The customs, practices, and policies established by Defendants are the cause in fact of the constitutional violations.

85. Defendants' customs, practices, and policies coercively expose Plaintiffs to unwanted religious exercise and messages sponsored by school officials.

86. Defendants' customs, practices, and policies officially favor religion over non--religion, and officially favor Christianity above all other faiths.

87. Defendants' customs, practices, and policies improperly endorse religion. A reasonable, objective student, parent, or other observer aware of the conduct alleged above would conclude that the Defendants have endorsed and continue to endorse religion at their public schools.

88. Defendants' customs, practices, and policies, in addition, have the primary purpose and effect of promoting and advancing religion and excessively entangle Defendants with religion.

89. Defendants' customs, practices, and policies also usurp the role of parents in controlling the religious (or areligious) upbringing of their children.

90. Unless restrained by this Court, Defendants will continue to subject Plaintiffs to these unconstitutional customs, policies, and practices, causing Plaintiffs irreparable harm by denying their fundamental constitutional right to be free from governmental promotion of religious beliefs and messages and governmental coercion of religious practices.

91. Plaintiffs have no adequate remedy at law for the denial of their fundamental constitutional rights.

RELIEF REQUESTED

Plaintiffs respectfully request the following relief in the form of a judgment against the Defendants Smith County Board of Education, Barry H. Smith, Kelly Bell, and Dusty Whitaker, jointly and severally:

- A. An order declaring Defendants' customs, policies, and practices alleged above to be in violation of the Establishment Clause of the First Amendment to the U.S. Constitution;

B. An order preliminarily and, thereafter, permanently enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants, employees, successors, and all other persons or entities in active concert or privity or participation with them, from continuing their unlawful conduct at Smith County Middle School, Smith County High School, and all schools within the Smith County School System, and specifically prohibiting Defendants from:

1. Participating in, organizing, promoting, advancing, aiding, endorsing, or causing prayer, religious devotionals, or proselytizing during class and school-sponsored events;
2. Encouraging students to participate in religious events and activities, or otherwise promoting religious events and activities;
3. Displaying religious messages and holy texts in a manner that (a) does not have a non-religious, educational, pedagogical, and curriculum

- D. Entry of judgment for Plaintiffs against Defendants for nominal damages;
- E. An award, from Defendants to Plaintiffs, of reasonable attorneys' fees and costs incurred in connection with this action, pursuant to 42 U.S.C. § 1988;
- F. An order retaining this Court's jurisdiction of this matter to enforce the terms of the Court's orders; and
- G. Such further and different relief as is just and proper.

Respectfully submitted,

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**Motion for Pro Hac Vice Admission Pending*