IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

JANE DOE, et al, Plaintiffs, vs. DONIPHAN R-I SCHOOL DISTRICT, et al Defendants.	)	Case No.: 1:06-cv-102 TCM

PLAINTIFFS' MEMORANDUM IN SUPPORT
OF MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The Supreme Court has consistently held that a government entity may not engage in activities that constitute an establishment of religion. Conducting prayers as part of a school program is one of the unconstitutional activities that has been condemned by the Court. Defendants violated this prohibition, on May 18, 2006, when Doniphan Elementary School officials authorized and led Christian prayers during a mandatory in-school assembly. They repeated their unconstitutional actions again on May 19, 2006, at another assembly. Such religious activities are not only inconsistent with the policies of the Doniphan R-I School District, but also constitute an establishment of religion in violation of the First and Fourteenth Amendments to the Constitution of the United States.

Plaintiffs seek a preliminary injunction enjoining Doniphan R-I School District (hereinafter "District"), the Doniphan R-I School Board (hereinafter "School Board"), superintendent Kevin Sandlin, Doniphan Elementary School principal Mark Thompson, Doniphan Elementary School assistant principal Jason Rose, and Doniphan Elementary School

teachers Lawrence McCann and Janice Griffin from continuing the practice of authorizing and leading prayers during in-school assemblies. Plaintiffs also seek to enjoin the recitation of prayers led by students at in-school assemblies, which Defendant Sandlin proposes as a remedy to the existing problem. Plaintiffs seek this injunction on the grounds that they have a substantial likelihood of success on the merits of their claims. Also, a preliminary injunction is needed to prevent the irreparable harm that will be done to Plaintiffs if the District and its employees continue to coerce elementary school children to participate in religious exercises, and the public has a substantial interest in having this preliminary injunction granted because protecting citizens' First Amendment rights is always in the best interest of the public.

STATEMENT OF FACTS

Jane Doe is a resident of Doniphan, Missouri, and the mother of two children – Jordan Doe and Jamie Doe – who attend Doniphan Elementary School. Compl. at ¶¶ 6, 15. Doe is not raising her children in a Christian-based faith system. *Id*. at ¶ 6.

Doniphan Elementary School is located in Ripley County and is part of the Doniphan R-I School District. *Id.* at ¶ 16. On May 18, 2006, Doniphan Elementary School held a Lower Grades Honors Assembly where students gathered to receive awards for attendance and good grades. *Id.* at ¶¶ 17-18. Because it took place during school hours, all students were required to attend the assembly. *Id.* at ¶ 18. When students were seated in the school's gymnasium, Defendant Thompson welcomed everyone and invited Defendant Griffin, a first and second grade teacher at the school, to come forward and give an opening prayer. *Id*. at ¶ 19. Defendant Griffin began by asking Jesus Christ for blessings for the children and then delivered a sectarian

prayer. Compl. at ¶ 20. Most, if not all, of the students bowed their heads for the prayer. *Id.* at ¶ 25.

On May 19, 2006, the school held a similar mandatory assembly for the upper grade elementary students. *Id.* at ¶¶ 21-22. At that presentation, Defendant Rose welcomed everyone to the assembly and turned the microphone over to Defendant McCann, a fine arts teacher at the school, to deliver the opening prayer. *Id.* at ¶ 23. Defendant McCann directed the students and visitors to bow their heads "as we pray to the lord." *Id.* at ¶ 24. The students followed his instructions, bowing their heads. *Id.* at ¶ 25. He then led a pervasively sectarian prayer that made multiple references to "our father" and concluded by asserting "in Jesus' name we pray, amen." *Id.* at ¶ 24.

This is not the first time Jane Doe has raised concerns about Christianity being forced upon her children at Doniphan Elementary. *Id.* at ¶ 26. The behavior of teachers and administrators at Doniphan Elementary is inconsistent with the policies of the District. *Id.* at ¶ 29. The District's policy on religion, Policy 1100, states that the District supports the constitutional separation of church and state and "urges that the responsibility for the use of [religious] symbols, and observances of religious occasions, be the province of the home and the community." *Id.* In addition, the instructional policies of the District, as set forth in Policy 6242, prohibit the teaching of any specific religious denomination, saying "the espousal of any particular religious denomination or faith is strictly forbidden." *Id.*

On or about May 24, 2006, counsel for the Does wrote to Defendant Sandlin to inform him of the religious activities that took place during the honors assemblies and request corrective action. *Id.* at ¶ 30. Defendant Sandlin responded by e-mail, acknowledging that these events had occurred and that they violated the District's policies. Compl. at ¶ 31. He indicated that he spoke

to the responsible parties and informed them that teachers could not be called upon to lead school prayers in the future. *Id.* Defendant Sandlin wrote that if a prayer was to be part of a meeting or assembly in the future, it would have to be led by a student. *Id.*

On July 5, 2006, counsel for the Does wrote to Charlie Bass, president of the School Board, to notify him of the religious activities and Defendant Sandlin's response. *Id.* at ¶ 32. Counsel demanded the District give written assurance it would not allow its employees to participate in these sorts of sectarian activities during the school day and would take affirmative action to ensure such activity will not occur in the future. *Id*. The Does also requested an apology and nominal damages. *Id.* Counsel requested a response by July 12, 2006, but no response to the letter was ever received. *Id.* at ¶¶ 32-33.

After Defendant Sandlin's unsatisfactory response and the District's failure to respond, Plaintiffs have no choice but to initiate this suit.

SUMMARY OF ARGUMENT

Defendants are liable to Plaintiffs for violations of the Establishment Clause of the Constitution of the United States for prayers led by teachers during in-school assemblies, and, therefore, preliminary injunctive relief is necessary to ensure that these violations do not continue.

First, there is a substantial likelihood that Plaintiffs will succeed on the merits. There was no secular purpose for the prayers, and the principal effect of the prayers was to advance the Christian faith. In addition, the recitation of these prayers amounted to an excessive government entanglement with religion in violation of the First Amendment.

When presented with Doe's complaint, Defendant Sandlin wrote that all future in-school prayers would be led by students. This is equally unconstitutional. An objective observer would perceive that a student-led prayer during an in-school assembly is a government endorsement of religion. While student-led prayer is acceptable in instances of private speech or when student attendance is optional, neither of these factors come into play during an in-school assembly.

The School Board and Defendant Sandlin are vicariously liable for these § 1983 violations because they have failed to provide adequate supervision and training. The prayers offered at the honors assemblies violate the policies of the District but are not isolated incidents. Because Doniphan Elementary has a history of religious activities and the District has not taken sufficient corrective action, district officials are liable for their failure to supervise.

Second, Plaintiffs will suffer irreparable harm if this Court fails to enjoin the practice of in-school prayer. It is a matter of well-established constitutional law that a parent has the right to direct the religious upbringing of her children. If Defendants are allowed to continue their practice of school-sponsored prayer, Doe will be deprived of this right. In addition, Doe's children are facing government coercion to participate in religion each time they are forced to attend a school ceremony when a prayer is recited as part of the event by a teacher or a student.

Finally, no party will be harmed by a preliminary injunction, and it is clear that issuance of such an injunction is in the public interest. The purpose of this injunction is not to limit the constitutional religious freedoms of District staff. Although prayer may be acceptable in instances of private speech or when students' attendance is optional, Defendants will suffer no restriction on their First Amendment rights if the Court issues an injunction to prevent prayer at mandatory, in-school events. On the other hand, it is always in the public interest to prevent a First Amendment violation.

ARGUMENT

The Eighth Circuit has long and consistently held that there are four factors in determining whether to issue a preliminary injunction:

> (1) the probability of success on the merits; (2) the threat of irreparable harm to the movant; (3) the balance between this harm and the injury that granting the injunction will inflict on other interested parties; and (4) whether the issuance of an injunction is in the interest of the public.

Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109, 114 (8th Cir. 1981). A court must balance all of these factors in deciding whether to grant an injunction. No single element is completely determinative of whether an injunction may be granted; there must be a balance of the equities proving that justice requires the court to intervene. *Id.* at 113.

Here, the facts prove that Plaintiffs' likelihood of success is substantial; that Plaintiffs will be irreparably harmed by Defendants; and that the balance of hardships as well as the public interest strongly favors the issuance of an injunction

I. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS BECAUSE DEFENDANTS' ACTIONS VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT.

Defendants violated the Establishment Clause of the First Amendment when school personnel led elementary school students in prayer. The governing law in this case is the First Amendment of the Constitution of the United States, which reads, in relevant part, "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof." U.S.C.A. Const. Amend. 1. The Supreme Court has consistently held that the Fourteenth Amendment makes the Establishment Clause operative against the states. *See Engel v. Vitale*, 370 U.S. 421, 430 (1962).

The three-part test used to determine an Establishment Clause violation was set forth by the Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). To avoid conflict with the First Amendment, the statute or government decision in question must 1) have a secular legislative purpose, 2) its principal or primary effect must be one that neither advances nor inhibits religion, and 3) it must not foster excessive government entanglement with religion. *Id*. at 612-13. The actions of the Doniphan Elementary staff fail to meet the standards of this three-part test and as such, there is a substantial likelihood that Plaintiffs will succeed on the merits of this case.

1. The District Is Liable for Violations of the First Amendment as well as the Establishment Clause of the Missouri Constitution.

Doniphan Elementary staff violated the First Amendment by leading an in-school prayer. The Supreme Court has held that when school prayer is conducted or condoned by a public official, it amounts to a constitutional violation. "A school official, the principal, decided that an invocation and a benediction should be given; this is a choice attributable to the State, and from a constitutional perspective it is as if a state statute decreed that the prayers must occur." *Lee v. Weisman*, 505 U.S. 577, 587 (1992). In *Jaffree v. Board of School Commissioners of Mobile County*, Justice Powell made it clear that prayers like those recited by Defendant Griffin and Defendant McCann are unconstitutional. "[C]onducting prayers as part of a school program is unconstitutional under this Court's decisions." 459 U.S. 1314, 1315 (1983) (Powell, J., Circuit Justice).

a. There Was No Secular Purpose for the Prayers Recited at the In-school Honors Assemblies.

If any of the three standards set forth in the *Lemon* test is not met, the government action should be found unconstitutional. Here, the Court should need to proceed no further than the purpose prong of the test, which should be dispositive. When determining whether the

government action has met the secular purpose standard, the Court need not weigh the content of the prayer:

> Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment. *Engel*, 370 U.S. at 430.

There is no foreseeable secular purpose for the recitation of a prayer during an in-school awards ceremony.

In *Wallace v. Jaffree*, the Supreme Court weighed the constitutionality of an Alabama prayer and meditation statute as well as the daily practice of teachers in plaintiffs' school leading students in prayer. 472 U.S. 38, 42 (1985). In that case, the Court determined the existence of a secular purpose by asking "whether the government's actual purpose is to endorse or disapprove of religion." *Id.* at 56. The legislative record showed that the legislature had no other purpose, so the Court found the Alabama law unconstitutional on the basis of the secular purpose test. *Id*. at 58.

While there is no "legislative history" of the staff's actual purpose in the instant case, it is unlikely that the Court can find that the prayers were motivated by a secular purpose. As with the daily prayers in *Wallace*, the prayers in the instant case should be found unconstitutional. The school officials chose to begin an in-school ceremony with a Christian prayer and directed the elementary students to bow their heads in reverence for the prayer. Given these facts, there is no conceivable secular purpose for the school's action. For this reason, the Court should find that the school's actions were unconstitutional on the basis of the secular purpose prong of the *Lemon* test.

b. The Principal Effect of the Prayers Was to Advance the Religious Beliefs of Christians.

Even if, *arguendo*, there is some way to attach a secular purpose to the in-school prayers, this Court is likely to find a constitutional violation because the prayers advanced Christian beliefs in a manner that the Doe children were coerced to participate. "It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Lee*, 505 U.S. at 587. The Supreme Court has held that indirect coercive pressure takes place "[w]hen the power, prestige and financial support of government is placed behind a particular religious belief." *Engel*, 370 U.S. at 431. The coercive nature of the prayers is magnified by the fact that they took place in an elementary school. The Court has held that there are heightened concerns with preventing coercive pressure in public schools where attendance is compulsory and students are expected to obey teacher instructions. *See Lee*, 505 U.S. at 591; *School Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 252-53 (1963). Here, for instance, students were expected—and did—follow Defendant McCann's directions to bow their heads and pray in the name of Jesus.

Under the facts of this case, the promotion of religious beliefs is so prominent and clear that consideration of the *Lemon* test is not required to reach an independent conclusion that Defendants endorsed a particular religion. In *Lee*, a public school student and her father brought suit after a clergyman selected by the school delivered a nonsectarian prayer at the student's middle school graduation ceremony. *Lee*, 505 U.S. at 581. The Court held that the government involvement in religious activity in that case was so pervasive that it was not even necessary to use the framework established by the Court in *Lemon*, which has sometimes divided the Court. *Id.* at 586. The state-sponsored and state-directed religious exercise in a public school was so clear that the Court found the prayers in violation of the settled rules regarding prayer in schools.

Id. The Court also rejected the defendants' argument that attendance at graduation was not mandatory. "[T]o say a teenage student has a real choice not to attend her high school graduation is formalistic in the extreme . . . Everyone knows that in our society and in our culture high school graduation is one of life's most significant occasions." *Lee*, 505 U.S. at 595.

As in *Lee*, it is clear that the prayers led by Defendant Griffin and Defendant McCann coerced students to participate in a religious exercise. The overtly Christian prayers – which made specific reference to "our father" and "Jesus Christ" – took place during an in-school assembly and attendance was mandatory. The presence of a state-directed religious exercise is so pervasive that this Court is likely to find the practice unconstitutional either under the second prong of the *Lemon* test or even if this Court elects not to use the *Lemon* test. All the students bowed their heads and remained silent during the prayer. This Court is likely to find that these factors amount to government coercion of a student to participate in religion and that the prayers are therefore unconstitutional.

c. The Recitation of Prayers in School Amounts to an Excessive Government Entanglement with Religion.

The Court is also likely to find that there is an excessive government entanglement with religion. In *Engel*, the Supreme Court quoted James Madison, who said, "'[I]t is proper to take alarm at the first experiment on our liberties. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects?'" 370 U.S. at 436. For this reason, it is important for the government to steer clear of behaviors that create an excessive government entanglement with religion. *See Walz v. Tax Comm'n. of City of New York*, 397 U.S. 664, 674 (1970).

There is only one situation—inapposite to this case—where teacher-led prayer would not constitute excessive entanglement. The Eighth Circuit has held that teacher participation in prayer does not constitute government entanglement so long as it is private speech. *See Wigg v. Sioux Falls Sch. Dist.*, 382 F.3d 807 (8th Cir. 2004). In *Wigg*, the Eighth Circuit upheld a teacher's participation in an after-school religious club because it amounted to private speech. *Id.* at 815. "Wigg's speech did not occur during a school-sponsored event; she did not affiliate her views with [the school district]; students participated in the meetings with parental consent; and nonparticipating students … exited the building before meetings began." *Id.* The court held that private speech is protected even when it occurs at a school-related function. *Id.*

This case is the opposite of *Wigg* on all key facts. This case is more like *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), where the speech of students was attributable to the school as speaker. *See Downs v. Los Angeles Unified Sch. Dist.*, 228 F.3d 1003, 1009 (9th Cir. 2000) (applying *Hazelwood* to teacher speech).

Unlike in *Wigg*, it is clear that the prayers in the instant case were not recited as part of private speech. The four standards cited by the Eighth Circuit in *Wigg* are not present here because the cases are factually distinguishable. First, the prayers recited by Defendant Griffin and Defendant McCann took place during a school-sponsored event. Second, it is apparent that their views were clearly affiliated with the District. The top administrative officials at Doniphan Elementary welcomed visitors to the assemblies on behalf of the District and invited the teachers to come forward to deliver the opening prayer. The District clearly gave its imprimatur to the prayers, and any reasonable person would view the prayers as being given on behalf of the District. Third, attendance at the assembly was not optional for students. The event took place during the school day, and students were led into the gymnasium with their classes. Finally,

unlike *Wigg*, the students who did not wish to participate in the prayer did not have the option of not attending. The students were not only compelled to attend the assembly, but also forced to participate in the prayer ceremony. For these reasons, the Court is likely to find that the prayers were not private speech and therefore constitute an excessive government entanglement with religion.

2. The District Would Not Be Relieved of Liability in the Future if Prayers at In-school Assemblies Were Led by Students.

When presented with Plaintiffs' complaint, Defendant Sandlin responded by saying that these sorts of prayers would not take place in the future and if prayers were used as part of school assemblies, they would be recited by students. As a preliminary matter, the superintendent's promise to cease illegal activity does not deprive this Court of the power to enjoin it. The Eighth Circuit has held that "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case." *Steele v. Van Buren Pub. Sch. Dist.*, 845 F.2d 1492, 1494 (8th Cir. 1988). Here, as in *Steele*, the District has not shown that it will forbid prayer at school functions and, therefore, it is in the public interest to have the matter settled by the Court. *Id.* at 1494-95. If the Court declines to issue an injunction on the basis of Defendant Sandlin's assertion, Defendants will be "free to return to [their] old ways." *Id.*

In any event, Defendant Sandlin's alternative to teacher-led prayer is also unconstitutional. Sandlin proposes selecting a student to lead prayers at future elementary school assemblies. The Supreme Court addressed the issue of student-led prayer in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000). In that case, plaintiffs challenged a high school's practice of allowing a student-led prayer prior to each home football game. The Court ruled this type of prayer rule unconstitutional after weighing "whether an objective observer, acquainted with the text, legislative history, and implementation of the statute, would

perceive it as a state endorsement of prayer in public schools." *Santa Fe*, 530 U.S. at 308. The Court determined that members of the listening audience would believe that the pregame prayer was endorsed by the government because it was delivered with the approval of administrators. *Santa Fe*, 530 U.S. at 308. The school attempted to argue that the prayers were private speech, but the Court rejected this, pointing out that they took place "on government property at government-sponsored school-related events." *Id.* at 302. The school also argued that the prayers should be allowed because student attendance at football games is voluntary. However, the Court also rejected this argument by observing how important football is from a social standpoint in high school: "[T]he government may no more use social pressure to enforce orthodoxy than it may use more direct means." *Id.* at 312.

The prohibition against student-led prayer is even clearer in the instant case. As in *Santa Fe*, an objective observer attending a Doniphan Elementary assembly would believe that the school has endorsed religion by having a student lead a prayer. The arguments made by the school district in *Santa Fe* are even less persuasive here. Prayer at an in-school assembly cannot be considered private speech when attendance at such an assembly is not voluntary, is on school property, and is during the school day. The history also reveals that the purpose is endorsement of sectarian prayer: student-led prayer would be the replacement for teacher-led prayer only because someone pointed out the illegality of teacher-led prayer. Accordingly, the Court is likely to find the proposed practice of student-led prayer in place of teacher-led prayer unconstitutional.

3. <u>The Superintendent, School Board, and the District are Responsible for Their Failure to Supervise and Failure to Train.</u>

Federal courts have held that supervising officials can be liable for § 1983 violations when there is evidence of past violations without correction. A supervisor can be liable for

constitutional violations of his or her subordinates where the supervisor participates in the violations or knows of the violations and has failed to act to prevent them. *See Taylor v. List,* 880 F.2d 1040 (9th Cir. 1989). The Court is likely to find that the prayers at Doniphan Elementary were not isolated incidents. First, prayers were led by teachers on consecutive days. Second, Doe had complained of past exercises of religion by teachers at Doniphan Elementary. It is reasonable to believe that this type of behavior is not uncommon in the District.

In his response to Plaintiffs' complaints, Defendant Sandlin acknowledged that in-school prayer goes against the District's policy supporting the separation of church and state. He also stated that he had spoken to the administrators responsible and gave assurances that this type of prayer would not happen in the future. However, the Court is likely to find that his alternative, student-led prayer, is also unconstitutional and that it too violates district policy and the First Amendment. For this reason, this Court is likely to find that the prayers offered at the honors assemblies are part of a pattern of in-school religious activity in the District and hold the superintendent and the School Board as well as the District vicariously liable under § 1983 for their failure to supervise and failure to train.

II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF PRELIMINARY INJUNCTION IS NOT GRANTED.

The government-sponsored religious activities in the instant case deprive Plaintiffs of a fundamental First Amendment freedom, namely the right to be free from government establishment of religion. The Supreme Court has consistently held that violations of the First Amendment constitute irreparable harms. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). Any violation of an individual's constitutional rights alone establishes irreparable harm.

Here, the facts show that Plaintiffs will suffer further irreparable harm if Defendants continue to endorse Christianity through prayers at mandatory in-school assemblies. Doe is raising her children in a faith system that is not based on Christianity, and the Supreme Court and the Eighth Circuit have consistently held that a parent has the right to direct the religious upbringing of her children as she sees fit. *Pierce v. Soc'y. of Sisters*, 268 U.S. 510, 534-35 (1925); *see also Steele*, 845 F.2d at 1495. Jane Doe will be irreparably harmed if the practice of leading prayers during school events is allowed to continue because it introduces Christian beliefs to her children without her consent. Jamie Doe and Jordan Doe will also suffer irreparable harm because they will be coerced to participate in religious activities. Given the elementary school environment, where attendance is compulsory and students are expected to obey teacher instructions, the coercive pressure of teacher-led prayer is magnified greatly. *See Lee*, 505 U.S. at 591; *Schempp*, 374 U.S. at 252-53. In short, Plaintiffs are harmed where Defendants endorse religion.

III. AN INJUNCTION WILL DO NO HARM TO OTHER INTERESTED PARTIES.

While Plaintiffs face irreparable harm if a preliminary injunction is not granted, Defendants will suffer no foreseeable injury as a result of a preliminary injunction. Defendants will still have the opportunity to exercise their religious rights under the First Amendment, but they will need to do so in an appropriate forum that does not have the effect or appearance of government endorsement of religion. Even if, *arguendo*, Defendants do suffer some harm, it is *de minimis* to the injury Plaintiffs will suffer if Defendants are allowed to continue their practice of school-sponsored prayer. Defendants' conduct constitutes an establishment of religion and both threatens Doe's right to determine the religious upbringing of her children and coerces her children. A balancing of these interests weighs heavily in Plaintiffs' favor.

IV. AN INJUNCTION WILL SERVE THE PUBLIC INTEREST.

The issuance of an injunction is in the public interest because "it is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n.*, 23 F.3d 1071, 1079 (6th Cir. 1994). Here, Defendants have engaged in unconstitutional behavior, and there is no risk of an adverse impact on the public if an injunction is issued. Plaintiffs are not the only individuals whose First Amendment rights are at stake in this case. If the Court fails to issue a preliminary injunction, all students in the District will be subject to unconstitutional religious coercion and their parents will be stripped of their rights to direct the religious upbringing of their children. No counterbalancing interest governs this aspect of the case, and the Court should therefore enter preliminary injunctive relief.

CONCLUSION

Plaintiffs have more than adequately established that they meet the standards for injunctive relief. Plaintiffs will succeed on their § 1983 claims because Defendants' in-school prayers violate the First and Fourteenth Amendment by impermissibly establishing a Christian belief system in a public school. Also, Doe and her children will suffer irreparable injury if Defendants are allowed to continue carrying out religious activities in school. Because Defendants will not be harmed by this injunction and because it will serve the public interest, this Court should grant the preliminary relief sought by Plaintiffs. The request is narrowly tailored and is the least intrusive means necessary to correct ongoing harms. Therefore, Plaintiffs are entitled to a preliminary injunction ordering the cessation of in-school prayer during mandatory public school events.

Respectfully submitted,

American Civil Liberties Union of Eastern Missouri

/s/ Anthony E. Rothert
ANTHONY E. ROTHERT, ED Mo #518779
Legal Director
American Civil Liberties Union of Eastern Missouri
4557 Laclede Avenue
St. Louis, Missouri 63108
(314) 361-3635
FAX: (314) 361-3135
E-Mail: tony@aclu-em.org

JENNIFER A. SHAW (*pro hac vice* pending)
201 Hillsboro Avenue
Edwardsville, IL 62025
(618) 665-0555
FAX: (618) 659-1700

COOPERATING ATTORNEY FOR AMERICAN
CIVIL LIBERITIES UNION OF EASTERN MISSOURI

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing memorandum in support of motion was delivered to the following by placing a copy of the same in the United States Mail in a properly addressed envelope with first-class postage prepaid on the 25th day of July, 2006.

DONIPHAN R-I SCHOOL DISTRICT
DONIPHAN R-I SCHOOL BOARD
KEVIN SANDLIN
309 Pine Street
Doniphan, MO 63935

MARK THOMPSON
JASON ROSE
600 East Summit Street
Doniphan, MO 63935

JANICE GRIFFIN
HC 6 Box 621
Doniphan, MO 63935

LAWRENCE McCANN
2137 Inman Road
Poplar Bluff, MO 63901

/s/ Anthony E. Rothert