

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CHRISTY COLE, on her own behalf
and on behalf of her minor
daughter, K.C.

PLAINTIFF

CIVIL ACTION NO.:
5:17-CV-01629-SMH-MLH

VERSUS

CHIEF JUDGE: S. MAURICE HICKS, JR.

WEBSTER PARISH SCHOOL BOARD,
JOHNNY ROWLAND, in his official
capacity as Superintendent of the
Webster Parish School District, and
DENNY FINLEY, in his official capacity as
Principal of Lakeside Junior/Senior
High School

DEFENDANTS

DEFENDANTS' ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES

NOW INTO COURT, through undersigned counsel, come Defendants, WEBSTER PARISH SCHOOL BOARD, JOHNNY ROWLAND, and DENNY FINLEY, who, for answer to the Complaint of the Plaintiff, file their original Answer and Affirmative Defenses. In connection therewith, Defendants will show the Court as follows:

I. **AFFIRMATIVE DEFENSES**

A. Defendants specifically deny any liability in this case under any of the theories of recovery articulated by Plaintiff and further deny that Plaintiff is entitled to any of the relief requested in her Complaint.

B. Notwithstanding the foregoing, Defendants assert that Plaintiff has failed to state a claim upon which relief can be granted under the Constitution, or any other statute, constitutional theory, or legal authority.

C. Notwithstanding the foregoing, Plaintiff's claims, or a portion thereof, are barred by the applicable statute of limitations. Alternatively, Plaintiff's allegations of sporadic and isolated incidents involving third parties and those who are now deceased over a 14 year period have impaired Defendants ability to respond, and such claims are barred by the doctrine of laches.

D. Notwithstanding the foregoing, Defendants assert that this Court lacks jurisdiction over this controversy or over individual claims, as Plaintiff lacks standing to assert the rights of third parties.

E. Notwithstanding the foregoing, Defendants assert that they did not deprive Plaintiff of any constitutionally protected rights.

F. Notwithstanding the foregoing and without admitting either liability or that Plaintiff was damaged in any way, Defendants further assert that Plaintiff has failed to mitigate her damages, if any. Accordingly, to the extent the Plaintiff has failed to mitigate, minimize or abate any damages which she has allegedly suffered, her damages, if any, should be adjusted accordingly.

G. Notwithstanding the foregoing, Defendants assert their right to raise additional defenses that become apparent throughout discovery and other factual development of this case.

H. Plaintiff failed to make amicable demand upon Defendant.

II. **ORIGINAL ANSWER**

Subject to and without waiving the foregoing defenses, Defendants deny each and every allegation contained in Plaintiff's Complaint pursuant to Fed. R. Civ. P. 8(b), except

those expressly admitted herein. Defendants respond to the corresponding sections of paragraphs of Plaintiff's Complaint as follows:

INTRODUCTION

1. The allegations of fact contained within Paragraph 1 of Plaintiff's Complaint require no answer by these Defendants. To the extent that an answer is required, Defendants deny the allegations of Paragraph 1 of Plaintiff's Complaint and expressly deny that their actions were unlawful or unconstitutional.

2. Defendants deny the allegations of fact contained within Paragraph 2 of Plaintiff's Complaint and deny that any of their actions were unlawful or unconstitutional. Defendants affirmatively show that Plaintiff has attempted to weave unsupported allegations of isolated actions by third parties over a 14 year period into a custom, policy or practice of constitutional violations. If such alleged actions did occur, which is not admitted, Plaintiff failed to call same to Defendant's attention so that such issues could be addressed promptly. Rather, Plaintiff intentionally delayed for such a period of time as to deprive Defendant of the ability to respond.

3. Defendants deny the allegations of fact contained within Paragraph 3 of Plaintiff's Complaint and deny that their actions were unlawful or unconstitutional.

4. Defendants deny the allegations of fact contained within Paragraph 4 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein and deny that their actions were unlawful or unconstitutional.

5. Defendants deny the allegations of fact contained within Paragraph 5 of Plaintiff's Complaint as same are not allegations of fact but are statements of her beliefs. Defendants further deny that their actions were unlawful or unconstitutional.

6. Defendants deny the allegations of fact contained within Paragraph 6 of Plaintiff's Complaint, deny that Plaintiff is entitled to injunctive relief, and deny that their actions were unlawful or unconstitutional.

JURISDICTION AND VENUE

7. The allegations of fact contained within Paragraph 7 of Plaintiff's Complaint require no answer by these Defendants. To the extent that an answer is required, Defendants deny that Plaintiff has sufficient factual basis upon which to assert a claim against Defendants under the First or Fourteenth Amendments of the U.S. Constitution and deny that their actions were unlawful or unconstitutional.

8. The allegations of fact contained within Paragraph 8 of Plaintiff's Complaint require no answer by these Defendants. To the extent that an answer is required, Defendants deny the allegations of fact contained within Paragraph 8 of Plaintiff's Complaint and deny that their actions were unlawful or unconstitutional.

9. The allegations of fact contained within Paragraph 9 of Plaintiff's Complaint require no answer by these Defendants. To the extent that an answer is required, Defendants deny the allegations of fact contained within Paragraph 9 of Plaintiff's Complaint and deny that their actions were unlawful or unconstitutional.

PARTIES

10. Defendants deny the allegations of fact contained within Paragraph 10 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein.

11. Defendants deny the allegations of fact contained within Paragraph 11 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein and deny that any of their practices were unlawful or unconstitutional.

12. Defendants deny the allegations of fact contained within Paragraph 12 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein and deny that any of their practices were unlawful or unconstitutional.

13. It is admitted that K.C. is a junior currently enrolled at Lakeside High School. Further answering, Defendants deny that any of their practices were unlawful or unconstitutional.

14. It is admitted that K.C. has been a student at schools of Webster Parish from August 2006, but deny that its customs, policies, or practices were unlawful or unconstitutional.

15. Defendants deny the allegations of fact contained within Paragraph 15 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein.

16. Defendants deny the allegations of fact contained within Paragraph 16 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein.

17. Defendants deny the allegations of fact contained within Paragraph 17 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein and Defendants deny that any of their actions or practices were unlawful or unconstitutional.

18. Defendants deny that K.C. has been "mocked by teachers." All other allegations of fact contained within Paragraph 18 of Plaintiff's Complaint are denied for lack of sufficient information to justify a belief therein and Defendants deny that any of their actions or practices were unlawful or unconstitutional.

19. The allegations of fact contained within Paragraph 19 of Plaintiff's Complaint are admitted.

20. Defendant, WEBSTER PARISH SCHOOL BOARD, admits the allegations of fact contained within Paragraph 20 of Plaintiff's Complaint, but denies that any of its actions were unlawful or unconstitutional.

21. Defendant, JOHNNY ROWLAND, admits his status as superintendent as of July 1, 2017 and domicile. Further answering, Defendant, JOHNNY ROWLAND, denies that any of his actions were unlawful or unconstitutional.

22. Defendant, DENNY FINLEY, admits his status as of July 1, 2017 and domicile. Further answering, Defendant, DENNY FINLEY, denies that any of his actions were unlawful or unconstitutional.

23. The allegations of fact contained within Paragraph 23 of Plaintiff's Complaint call for a legal conclusion and require no answer by Defendants. To the extent that an answer is required, the allegations contained within Paragraph 23 of Plaintiff's Complaint are denied and Defendants expressly deny that any of their actions were unlawful or unconstitutional.

FACTUAL ALLEGATIONS

24. Defendants deny the allegations of fact contained within Paragraph 24 of Plaintiff's Complaint, expressly deny that any of their actions were unlawful or unconstitutional and incorporate by reference all of the affirmative defenses and answers in the preceding paragraphs.

25. Defendants deny the allegations of fact contained within Paragraph 25 of Plaintiff's Complaint.

26. Defendants deny the allegations of fact contained within Paragraph 26 of Plaintiff's Complaint.

27. Defendants deny the allegations of fact contained within Paragraph 27 of Plaintiff's Complaint as written.

28. Defendants deny the allegations of fact contained within Paragraph 28 of Plaintiff's Complaint as written.

29. Defendants deny the allegations of fact contained within Paragraph 29 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein.

30. Defendants deny the allegations of fact contained within Paragraph 30 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein and deny that any of their actions were unlawful or unconstitutional. Such allegations are nothing more than a partial quote of *Wikipedia's* description of the subject cartoon.

31. Defendants deny the allegations of fact contained within Paragraph 31 of Plaintiff's Complaint as alleged and for lack of sufficient information to justify a belief therein.

32. Defendants deny the allegations of fact contained within Paragraph 32 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein.

33. It is admitted that Ana Lopez-Cole and K.C. were students at Central Elementary School. All other allegations of fact contained within Paragraph 33 of Plaintiff's Complaint are denied for lack of sufficient information to justify a belief therein and Defendants deny that any of their actions were unlawful or unconstitutional.

34. Defendants deny the allegations of fact contained within Paragraph 34 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein.

35. Defendants deny the allegations of fact contained within Paragraph 35 of Plaintiff's Complaint as written.

36. It is admitted that voluntary student-led prayers were held at Central Elementary and that some teachers allowed the students to pray before lunch. However, Principal Marvin Jones discontinued this practice after receiving a complaint from Christy Cole.

37. Defendants deny the allegations of fact contained within Paragraph 37 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein. Further answering, Defendants assert that prayer was discontinued after receiving a complaint from Christy Cole.

38. Defendants deny the allegations of fact contained within Paragraph 38 of Plaintiff's Complaint as written.

39. Defendants deny the allegations of fact contained within Paragraph 39 of Plaintiff's Complaint as written. Further answering, Defendants assert that at this time, prayer was discontinued at Central Elementary after receiving a complaint from Christy Cole.

40. Defendants deny the allegations of fact contained within Paragraph 40 of Plaintiff's Complaint as written.

41. Defendants admit that Principal Jones discontinued prayer at Central Elementary after receiving a complaint by Christy Cole. Further answering, Defendants deny the allegations deny the allegations of fact contained within Paragraph 41 as written.

42. Defendants deny the allegations of fact contained within Paragraph 42 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein.

43. Defendants admit that Lisa Toland allowed students to volunteer to deliver a prayer. All other allegations of fact contained within Paragraph 43 of Plaintiff's Complaint are denied as written and Defendants deny that any of their actions were unlawful or unconstitutional.

44. Defendants deny the allegations of fact contained within Paragraph 44 of Plaintiff's Complaint as written.

45. Defendants deny the allegations of fact contained within Paragraph 45 of Plaintiff's Complaint as written.

46. It is admitted that Team Impact performed for students and presented a message of clean living and morality. All other allegations of fact contained within Paragraph 46 of Plaintiff's Complaint are denied as written.

47. It is admitted that Team Impact performed for students and presented a message of clean living and morality. All other allegations of fact contained within Paragraph 47 of Plaintiff's Complaint are denied as written.

48. Defendants deny the allegations of fact contained within Paragraph 48 of Plaintiff's Complaint and deny that any of their actions were unlawful or unconstitutional.

49. A voluntary, student-led, student-initiated prayer was delivered in the mornings at Lakeside, but this practice has been discontinued. Defendants assert that no prayers occurred at student assemblies, at pep rallies or at all of the athletic games. The remainder of the allegations of fact contained within Paragraph 49 of Plaintiff's Complaint are denied as written. Further answering, Defendants deny that their actions were unlawful or unconstitutional.

50. It is admitted that Lakeside High School has a chapter of the Fellowship of Christian Athletes. It is further admitted that this student group meets once a week during the students' lunch break. All other allegations of fact contained within Paragraph 50 of Plaintiff's Complaint are denied and Defendants deny that their actions were unlawful or unconstitutional.

51. Defendants deny that any student at Lakeside was taken to the gym to be "introduced" to the FCA. All other allegations of fact contained within Paragraph 51 of Plaintiff's Complaint are denied for lack of sufficient information to justify a belief therein and Defendants deny that their actions were unlawful or unconstitutional.

52. Defendants deny the allegations of fact contained within Paragraph 52 of Plaintiff's Complaint as written and deny that any of their actions were unlawful or unconstitutional.

53. The allegations of fact contained within Paragraph 53 of Plaintiff's Complaint are denied as written and Defendants deny that their actions were unlawful or unconstitutional.

54. It is admitted that Lakeside students who were late to class because of FCA attendance are excused for their absences just like any late arriving student attending any other student club at Lakeside High School. All other allegations of fact contained within Paragraph 54 of Plaintiff's Complaint are denied as written and Defendants deny that any of their actions were unlawful or unconstitutional.

55. It is admitted that movies were shown in Ms. Williamson's class solely as a supplement to the parenthood and adult responsibility curriculum. All other allegations of

fact contained within Paragraph 55 of Plaintiff's Complaint are denied as written and Defendants deny that any of their actions were unlawful or unconstitutional.

56. Defendants deny the allegations of fact contained within Paragraph 56 of Plaintiff's Complaint as written.

57. The allegations contained in Paragraph 57 of Plaintiff's Complaint are denied as written and Defendants deny that any of their actions were unlawful or unconstitutional.

58. Defendants deny the allegations of fact contained within Paragraph 58 of Plaintiff's Complaint as written.

59. It is admitted that an invocation was delivered during the eighth grade graduation ceremony at Lakeside in May 2015. All other allegations of fact contained within Paragraph 59 of Plaintiff's Complaint are denied as written and Defendants deny that any of their actions were unlawful or unconstitutional.

60. The allegations of fact contained within Paragraph 60 of Plaintiff's Complaint are denied and Defendants deny that any of their actions were unlawful or unconstitutional.

61. The allegations of fact contained within Paragraph 61 of Plaintiff's Complaint are denied for lack of sufficient information to justify a belief therein.

62. The allegations of fact contained within Paragraph 62 of Plaintiff's Complaint are denied as written and Defendants deny that any of their actions were unlawful or unconstitutional.

63. The allegations of fact contained within Paragraph 63 of Plaintiff's Complaint are denied.

64. A voluntary, student-led prayer was delivered in the morning at Lakeside. A copy of the Lord's Prayer was present on the school secretary's desk in case a student,

who voluntarily decided to give the Lord's Prayer, forgot the words. This practice has been discontinued. All other allegations of fact contained within Paragraph 64 of Plaintiff's Complaint are denied and Defendants deny that any of their actions were unlawful or unconstitutional.

65. Defendants deny the allegations of fact contained within Paragraph 65 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein.

66. It is admitted that the students at Lakeside were allowed to give a voluntary prayer, but this practice has been discontinued. All other allegations of fact contained within Paragraph 66 of Plaintiff's Complaint are denied for lack of sufficient information to justify a belief therein and Defendants deny that any of their actions were unlawful or unconstitutional.

67. Defendants deny the allegations of fact contained within Paragraph 67 of Plaintiff's Complaint and deny that any of their actions were unlawful or unconstitutional.

68. It is admitted that Lakeside held its graduation at First Baptist Church in Minden in May 2016. Further answering, Defendants assert that graduation was held at this location due to inclement weather and capacity issues. All other allegations of fact contained within Paragraph 68 of Plaintiff's Complaint are denied and Defendants deny that any of their actions were unlawful or unconstitutional.

69. It is admitted that Lakeside's graduation ceremony was held at City on a Hill in Minden in May 2017. Further answering, Defendants assert that the graduation ceremony was held at this facility because it provided for a greater capacity and due to renovations that were being undertaken at First Baptist Church in Minden. All other

allegations of fact contained within Paragraph 69 of Plaintiff's Complaint are denied and Defendants deny that any of their actions were unlawful or unconstitutional.

70. It is admitted that the graduation ceremony contained an invocation and benediction. All other allegations of fact contained within Paragraph 70 of Plaintiff's Complaint are denied as written and Defendants deny that any of their actions were unlawful or unconstitutional.

71. Defendants deny the allegations of fact contained within Paragraph 71 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein and deny that any of their actions were unlawful or unconstitutional.

72. It is admitted that Lakeside and other Webster Parish schools participate in "See You at the Pole", an event that is held before the designated school day begins. All other allegations of fact contained within Paragraph 72 of Plaintiff's Complaint are denied for lack of sufficient information to justify a belief therein and Defendants deny that any of their actions were unlawful or unconstitutional.

73. It is admitted that "Fields of Faith" was held at Lakeside after school hours and that this event was student-organized and student-led. All other allegations of fact contained within Paragraph 73 of Plaintiff's Complaint are denied for lack of sufficient information to justify a belief therein and Defendants deny that any of their actions were unlawful or unconstitutional.

74. It is admitted that "Fields of Faith" was student-led and that the event was promoted in the same manner that all other events were promoted. All other allegations of fact contained within Paragraph 74 of Plaintiff's Complaint are denied and Defendants deny that any of their actions were unlawful or unconstitutional.

75. It is admitted that Mynista has performed for students at Lakeside. Further answering, Defendants contend that this performance was scheduled in an effort to counsel students about the dangers of drugs and other vices, and any message he delivered with Christian overtures was done of his own volition without any direction or editorial control of the Webster Parish School Board. All other allegations of fact contained within Paragraph 75 of Plaintiff's Complaint are denied for lack of sufficient information to justify a belief therein and Defendants deny that any of their actions were unlawful or unconstitutional.

76. It is admitted that Lakeside held an assembly entitled You Are Worth It to impart a message to the students about the dangers of drinking and driving. All other allegations of fact contained within Paragraph 76 of Plaintiff's Complaint are denied for lack of sufficient information to justify a belief therein and Defendants deny that any of their actions were unlawful or unconstitutional.

77. It is admitted that the YAWI's presentation was to caution teens and young adults against drinking and driving and any Christian message by the speaker was done of his own volition without any direction or editorial control of the Webster Parish School Board. All other allegations of fact contained within Paragraph 77 of Plaintiff's Complaint are denied for lack of sufficient information to justify a belief therein and Defendants deny that any of their actions were unlawful or unconstitutional.

78. The allegations of fact contained within Paragraph 78 of Plaintiff's Complaint are denied for lack of sufficient information to justify a belief therein and Defendants deny that any of their actions were unlawful or unconstitutional.

79. The allegations of fact contained within Paragraph 79 of Plaintiff's Complaint are denied as written. It is admitted that Mr. Baldrige did speak to those in attendance about the dangers of drinking and driving. Defendants deny that any of their actions were unlawful or unconstitutional.

80. Defendants deny the allegations of fact contained within Paragraph 80 of Plaintiff's Complaint for lack of sufficient information to justify a belief therein. It is admitted that Chief Nelson with the Ouachita Parish Fire Department was present at Mr. Baldrige's presentation; however, like Mr. Baldrige, Chief Nelson was there for the express purpose of counseling students about the dangers of drinking and driving and any comments of Chief Nelson were made of his own volition without any direction or editorial control of the Webster Parish School Board. Defendants expressly deny that any of their actions were unlawful or unconstitutional.

81. The allegations of fact contained within Paragraph 81 of Plaintiff's Complaint are denied as written. It is admitted that a Veterans Day program was held at Lakeside and a local state senator was invited to speak. Any comments the senator made at the event were made of his own volition without any direction or editorial control of the Webster Parish School Board. Defendants expressly deny that any of their actions were unlawful or unconstitutional.

82. The allegations of fact contained within Paragraph 82 of Plaintiff's Complaint are denied as written and Defendants deny that any of their actions were unlawful or unconstitutional.

83. The allegations of fact contained within Paragraph 83 of Plaintiff's Complaint are denied as written and Defendants deny that any of their actions were unlawful or unconstitutional.

84. The allegations of fact contained within Paragraph 84 of Plaintiff's Complaint are denied for lack of sufficient information to justify a belief therein and Defendants deny that any of their actions were unlawful or unconstitutional.

85. It is admitted that students serving in-school suspension are sent to Ms. Hall's classroom. All other allegations of fact contained within Paragraph 85 of Plaintiff's Complaint are denied.

86. It is admitted that Ms. Hall had these writings on her classroom wall; however, these have been removed. All other allegations of fact contained within Paragraph 86 of Plaintiff's Complaint are denied and Defendants deny that any of their actions were unlawful or unconstitutional.

87. Defendants deny the allegations of fact contained within Paragraph 87 of Plaintiff's Complaint and deny that any of their actions were unlawful or unconstitutional.

88. Defendants deny the allegations of fact contained within Paragraph 88 of Plaintiff's Complaint and deny that any of their actions were unlawful or unconstitutional.

89. Defendants deny the allegations of fact contained within Paragraph 87 of Plaintiff's Complaint and deny that any of their actions were unlawful or unconstitutional.

CLAIM FOR RELIEF: ESTABLISHMENT CLAUSE VIOLATION

90. Defendants deny the allegations of fact contained within Paragraph 90 of Plaintiff's Complaint and incorporate by reference its affirmative defenses and answers to

the preceding paragraphs in this Complaint. Defendants deny that any of their actions were unlawful or unconstitutional.

91. Defendants deny the allegations of fact contained within Paragraph 91 of Plaintiff's Complaint.

92. Defendants deny the allegations of fact contained within Paragraph 92 of Plaintiff's Complaint.

93. Defendants deny the allegations of fact contained within Paragraph 93 of Plaintiff's Complaint.

94. Defendants deny the allegations of fact contained within Paragraph 94 of Plaintiff's Complaint.

95. Defendants deny the allegations of fact contained within Paragraph 95 of Plaintiff's Complaint.

96. Defendants deny the allegations of fact contained within Paragraph 96 of Plaintiff's Complaint.

97. Defendants deny the allegations of fact contained within Paragraph 97 of Plaintiff's Complaint.

WHEREFORE, DEFENDANTS, WEBSTER PARISH SCHOOL, JOHNNY ROWLAND, and DENNY FINLEY, PRAY that this Answer be deemed good and sufficient and that, after legal delays and due proceedings are had, there be judgment herein in favor of Defendants dismissing Plaintiff's claims with prejudice and at Plaintiff's cost.

Defendants further pray for all such other general and equitable relief as may be proper and this court competent to grant.

Respectfully submitted,

HAMMONDS, SILLS, ADKINS & GUICE, L.L.P.
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BY: s/ Jon K. Guice
JON K. GUICE, #20841

BY: s/Neal L. Johnson, Jr.
NEAL L. JOHNSON, JR., #23149

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JUSTIN N. MYERS, #34005

ATTORNEYS FOR DEFENDANTS,
WEBSTER PARISH SCHOOL BOARD,
JOHNNY ROWLAND, AND DENNY FINLEY

C E R T I F I C A T E

I hereby certify that a copy of the above and foregoing Defendants' Original Answer and Affirmative Defenses has this date been forwarded to all counsel for Plaintiff, by depositing same in the United States mail with sufficient postage affixed thereto and properly addressed to them as follows:

Mr. Bruce Hamilton
ACLU Foundation of Louisiana
P.O. Box 56157
New Orleans, LA 70156

Mr. Daniel Mach
Ms. Heather L. Weaver
American Civil Liberties
Union Foundation
915 15th Street, NW
Washington, DC 20005

Monroe, Louisiana, this 10th day of January, 2018.

BY: s/ Jon K. Guice
JON K. GUICE

BY: s/Neal L. Johnson, Jr.
NEAL L. JOHNSON, JR.

BY: s/Courtney T. Joiner
COURTNEY T. JOINER

BY: s/Justin N. Myers
JUSTIN N. MYERS

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DEFENDANTS

**MEMORANDUM IN OPPOSITION TO
MOTION FOR PRELIMINARY INJUNCTION**

NOW INTO COURT, through undersigned counsel, come Defendants, WEBSTER PARISH SCHOOL BOARD, JOHNNY ROWLAND and DENNY FINLEY (collectively, the “Defendants”), who and which respectfully submit this Memorandum In Opposition to the Motion for Preliminary Injunction filed by Plaintiffs, Christy Cole and her minor daughter, K.C. (collectively, the “Plaintiffs”).¹ For the reasons set forth below, Plaintiffs’ claims and arguments in support of their Motion are either unfounded or have become entirely moot. In either event, Plaintiffs have failed to meet their burden of proving each of the elements required for a preliminary injunction, and this Court should deny their Motion.

¹Defendants submit the present Memorandum in Opposition to Motion for Preliminary Injunction out of an abundance of caution and in order to comply with the time constraints of Local Rule 7.5. Defendants reserve their rights to supplement, amend or otherwise modify their Opposition in accordance with any Notice of Motion Setting or other Scheduling Order that may be issued by this Court.

I. BACKGROUND

On December 18, 2017, Plaintiffs filed a Complaint against the Webster Parish School Board, its Superintendent, Johnny Rowland, and a school administrator, Denny Finley, alleging violations of the First Amendment's Establishment Clause. In support of their action, Plaintiffs cite to various alleged activities and incidents occurring during the tenure of Christy Cole's children, Ana Lopez-Cole and K.C. These events cover a near fourteen-year span and involve numerous teachers and school administrators, many of whom are now retired or deceased. Likewise, these alleged events involve several schools throughout the District.

Along with their Complaint, Plaintiffs filed a Motion for Preliminary Injunction. Plaintiff's Motion presents identical allegations to those asserted in their Complaint. In particular, Plaintiffs attempt to support their Motion with reference to the following alleged incidents or activities: (1) student-led prayer before school; (2) student-led prayer before pep rallies, athletic events and assemblies; (3) a teacher's religious iconography; (4) outside speakers or organizations prothelytizing during assemblies; (5) viewing of religious videos; and (6) participation in student-led religious groups. In their Motion, Plaintiffs request injunctive relief prohibiting some or all of these alleged activities. Nevertheless, as set forth below, Plaintiffs' allegations are insufficient to merit such extraordinary relief.

Plaintiffs served Defendants with their Complaint and Motion on December 20, 2017, just one day before the Webster Parish School Board commenced its break for the holiday season. The school system and its teachers, administrators, central office staff and other employees were on break and otherwise unavailable from December 21, 2017, until school resumed on January 8, 2018. Defendants and its counsel were therefore left with

little time to answer or otherwise respond to Plaintiffs' action. Defendants have also been left with little time to prepare their opposition to Plaintiffs' Motion. As set forth above, Defendants submit the present opposition out of an abundance of caution, and with full reservation of their rights to supplement and amend.

III. LAW AND ARGUMENT

A. PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION IS MOOT.

A case may become moot if: "(1) there is no reasonable expectation that the alleged violation will recur; and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *Bell v. Tensas Parish Sch. Bd.*, 185 Fed.Appx. 326, 2006 WL 1684662 at *1 (5th Cir. 2006) (*citing*, *County of Los Angeles v. Davis*, 440 U.S. 625, 631, 99 S.Ct. 1379, 1383, 59 L.Ed.2d 642 (1979)). Likewise, claims for injunctive relief are moot where the allegedly harmful conduct has been discontinued.

In the instance case, a key factual premise for the harm alleged by *Plaintiffs—student led prayer over the school intercom or public announcement system—*no longer exists. Since the filing of the present action, the School Board has directed its schools and their administrators to cease the practice of providing prayer at any point during the school day. This directive bans any alleged practice of allowing students to volunteer to provide a prayer at the commencement of the school day. Stated otherwise, the student prayer at issue in Plaintiffs' Complaint and Motion is no longer occurring and there is no threat that such a practice will resume in the future. While the School Board denies the occurrence of such prayer, its interim actions eliminate any possible argument or need for injunctive relief.

Plaintiffs' allegations of prayer occurring when Ana Lopez-Cole and K.C. attended elementary school over ten years ago are likewise moot. Similarly, alleged one-time events, such as viewing isolated movies or animated programs, attending an assembly involving a bodybuilding group in 2014, observing student prayer at a football in 2014 and observing prayer at a graduation ceremony in 2014 are also insufficient to merit injunctive relief. Finally, there is currently no religious iconography or other religious statements in the classroom of Mechelle Hall, thereby mooting any need for injunctive relief to protect students such as K.C. from exposure to such materials.

As recognized by the Supreme Court in *City of Los Angeles v. Lyons*, 461 U.S. 95, 111, 103 S.Ct. 1660, 1669, 75 L.Ed.2d 675 (1983), a plaintiff seeking injunctive relief based on an alleged past wrong must show that there is a real or immediate threat that he will be wronged again. Plaintiffs' allegations concerning school prayer and Defendants' impermissible involvement in religion cannot meet this threshold. These disparate allegations of past conduct are insufficient to show that a future violation of Plaintiffs' rights is likely. Considering the Webster Parish School Board's directives against school prayer, Plaintiffs are not threatened with any future harm, and their Motion for Preliminary Injunction is not entirely moot.

B. PLAINTIFFS ARE NOT ENTITLED TO A PRELIMINARY INJUNCTION.

Even if this Court reaches the merits of Plaintiffs' Motion, it should be denied. The United States Fifth Circuit Court of Appeals has "cautioned repeatedly that a preliminary injunction is an extraordinary remedy which should not be granted unless the party seeking it has clearly carried the burden of persuasion." *Lake Charles Diesel, Inc v. General Motors Corp.*, 328 F.3d 192, 196 (5th Cir. 2003) (Internal Citations Omitted). Within this

framework, Plaintiffs bear the burden of proving each of the following elements:

(1) a substantial likelihood that [they] will prevail on the merits, (2) a substantial threat that [they] will suffer irreparable injury if the injunction is not granted, (3) [their] threatened injury outweighs the threatened harm to the party whom [they] seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest.

Id. at 195-96. Plaintiffs cannot establish each of these elements, and therefore fall well short of their heightened burden in seeking a disfavored injunction.

1. Plaintiffs Cannot Establish a Substantial Threat of Irreparable Injury.

The decision by the Webster Parish School Board to prohibit prayer, whether student-led or otherwise, over the intercom or public address systems of its schools removes any threat of irreparable harm. As discussed above, Plaintiffs' action is primarily based on the allegations that Christy Cole's children, Ana Lopez-Cole and K.C., were forced to listen to daily, student-led prayer while attending elementary, middle and high school in the District. As a result of the School Board's institution of its district-wide prohibition, K.C. no longer faces the prospect of enduring daily prayer. The benefits and protections of the School Board's revised policy therefore remove any need for injunctive relief. Plaintiffs will remain free from the complained of conduct, even if an injunction is not granted. Put simply, Plaintiff cannot show a substantial threat of irreparable harm should they not obtain their requested injunction.

Furthermore, Plaintiffs cannot establish a showing of irreparable harm based on the isolated incidents of past conduct alleged in their Motion. For instance, alleged isolated incidents of speakers providing a religious message during a presentation over four years ago or the isolated viewing of media with potentially religious messages is insufficient to show a substantial likelihood of irreparable harm in the future. *See, Lyons*, 461 U.S. at 111

(requiring past acts to establish “real and immediate threat”).^{2 3}

Similarly, Plaintiffs’ alleged observance of prayer at a highschool football game in 2014 and at graduation ceremonies in 2016 and 2017 are insufficient to establish a real and immediate threat of harm. See, *Lyons*, 461 U.S. at 111. For instance, the commencement of the high school football season is over seven months away. Likewise, at least four months remain until any commencement activities will be held. Even if Plaintiffs could establish a threat of being exposed to prayer either at a football game or at graduation (which is at all times denied), such a threat certainly lacks the immediacy necessary to justify injunctive relief. Further, Plaintiffs have not (and cannot) allege any specific instances of prayer during basketball, baseball or softball games that will continue to take place before high school graduation and the commencement of the football season.⁴ Without any showing of immediacy, Plaintiff’s Motion should be denied.

2. Plaintiffs Cannot Establish a Likelihood of Success on the Merits.

Apart from being moot or otherwise insufficient to establish an immediate risk of harm, several of Plaintiffs’ allegations fall well short of pleading an Establishment Clause

²Any groups invited to speak to the District’s students were requested to do so for secular purposes. For instance, the Christian bodybuilders referred to by Plaintiffs were invited to speak to students about the benefits of exercise, a healthy diet and abstaining from drugs and alcohol. Similarly, a speaker from the group, “You Are Worth It,” was selected to speak to high school students about the dangers of drinking and driving. In neither instance did the Webster Parish School Board exercise any control over the content of the speaker’s message. Likewise, neither group has been asked to return to speak to the District’s students.

³ Any alleged use of the “VeggieTales” program or the film “God’s Not Dead” was for the secular purpose of selecting age-appropriate, family-friendly entertainment as a supplement to the educational curriculum that did not contain any curse words, crude language, violence, nudity or other content inappropriate for children, adolescent and teenage audiences.

⁴Defendants adamantly deny Plaintiffs’ unsupported claim that every athletic event held at schools in Webster Parish includes prayers delivered by students and broadcast over the school’s loudspeakers.

violation. For instance, Plaintiffs are without a substantial likelihood of success on the merits of their claims involving the student group, Fellowship of Christian Athletes (“FCA”). Members of the FCA clearly have the right to use the school premises at Lakeside Junior/Senior High School, before or after instructional hours. See, e.g., *Widmar v. Vincent*, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981) (University that created a forum generally open for use by student groups could not prohibit religious groups from similar use of its buildings.); *Lamb’s Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384, 113 S. Ct. 2141, 124 L. Ed. 2d 352 (1993) (School district could not prohibit evangelical group from after hours use of building to show film series on family values when after hours use of facilities was allowed for social, civic or recreational purposes); *Good News Club v. Milford Central School*, 533 U.S. 98, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001), (School’s exclusion of children’s club from meeting at school after hours based upon religious nature of club was unconstitutional in light of permitted use of school facilities for activities that served a variety of purposes).

Similarly, the School Board’s alleged announcement of the after-school Fields of Faith event does not give rise to a violation of the Establishment Clause. The student-led group responsible for organizing this event was entitled to access and use the same means of communicating with the general student population as any other student group. At Lakeside, it remains common for the school’s principal to announce upcoming events sponsored by student clubs or groups. As a result, the student group behind Fields of Faith was entitled to have its program announced to the general student body. In so announcing the student-led program, Defendants were not providing the students responsible for Fields of Faith with any services not otherwise provided to any other student group. Defendants’

provision of equal access for student groups simply does not provide any justification or support for injunctive relief.

IV. CONCLUSION

This Court does not need to reach the merits of Plaintiffs' Motion for Preliminary Injunction. Much of the factual basis for Plaintiff's Motion no longer exists, rendering their Motion moot. However, even if the Court reaches the merits of the Motion, it should be denied, because Plaintiffs have failed to meet their heightened burden in seeking a disfavored preliminary injunction.

Respectfully submitted,

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CERTIFICATE

I hereby certify that a copy of the above and foregoing Defendants' Original Answer and Affirmative Defenses has this date been forwarded to all counsel for Plaintiff, by depositing same in the United States mail with sufficient postage affixed thereto and properly addressed to them as follows:

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Monroe, Louisiana, this 10th day of January, 2018.

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