

# LIBERTY COUNSEL



DISTRICT OF COLUMBIA  
109 Second Street NE  
Washington, DC 20002  
Tel 202-289-1776  
Fax 407-875-0770  
LC.org

FLORIDA  
PO Box 540774  
Orlando, FL 32854  
Tel 407-875-1776  
Fax 407-875-0770

VIRGINIA  
PO Box 11108  
Lynchburg, VA 24506  
Tel 407-875-1776  
Fax 407-875-0770  
Liberty@LC.org

**REPLY TO FLORIDA**

March 23, 2023

**Via Email Only**

Daniel Smith, Ed.D.,  
Acting Superintendent  
Loudoun County Public Schools  
21000 Education Court  
Ashburn, VA 20148  
daniel.w.smith@lcps.org

RE: Private expression in employee email signature blocks

Dear Acting Superintendent Smith:

Liberty Counsel is a national nonprofit litigation, education, and public policy organization with an emphasis on First Amendment liberties. We have offices in Florida, Virginia, and the District of Columbia, and affiliated attorneys across the nation.

Liberty Counsel represents Mrs. [REDACTED] a teacher at [REDACTED] High School. We understand that Loudoun County Public Schools ("LCPS" or "the District") has no written policy governing email signature blocks, and by practice allows teachers to place in their signature block a variety of examples of private expression selected by and attributable to the teachers as individuals, including personally-selected pronouns, quotations, pictures, or phrases. All of these are non-school-sponsored, private expression or speech. However, LCPS has required Mrs. [REDACTED] to remove her non-school-sponsored, private expression of her personal faith – a Bible verse - from her email signature block, on the basis its inclusion is prohibited by the Establishment Clause.

We are writing to request that the District permit Mrs. [REDACTED] to restore the Bible verse to her email signature block. Please direct us to designated District counsel, and provide a written **response by April 6, 2023, to prevent the need for further action by Liberty Counsel.**

This request is based on the legal sea-change wrought by two landmark United States Supreme Court cases: *Shurtleff v. City of Boston, Massachusetts*, 142 S. Ct. 1583 (2022) (a 9-0 case in which the City of Boston paid an award of attorney's fees to Liberty Counsel in the amount of \$2,125,000.00), and *Kennedy v. Bremerton School District*, 142 S.

Ct. 2407, 2426-27 (2022) decided later that same term, which finally buried the ahistorical “test” derived from *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (a.k.a., the “*Lemon* test”).

The directive from LCPS to Mrs. [REDACTED] to remove an expression of her personal faith from her email signature block, based solely on its perceived religious nature, constitutes religious discrimination (whether in a limited public forum or nonpublic forum) in violation of the First Amendment to the United States Constitution and District policy.

## Facts

Mrs. [REDACTED] is a teacher at [REDACTED] High School with over [REDACTED] years of experience, holding an [REDACTED] and pursuing a doctorate in education so she can better serve her school community. She seeks to inspire her students to excellence and work with them to be the best they can be. The foundation of Mrs. [REDACTED] love for her students and for teaching is her personal faith in Jesus Christ. Because her faith is such a part of who she is, and inspires her life and work, Mrs. [REDACTED] has included a Bible verse as part of her email signature block since she was hired at LCPS (“For God so loved the world, that He gave His only begotten Son, that whosoever believeth in Him should not perish, but have everlasting life. ~ John 3:16”). See Exhibit 1. After Mrs. [REDACTED] received the removal directive for John 3:16, Mrs. [REDACTED] proposed an alternative verse (“Train up a child in the way he should go: and when he is old, he will not depart from it. ~ Proverbs 23:6”). This, too, was rejected by the District, for the same reason: it was a Bible verse.

The District permits teachers to personalize their signature blocks with personally-selected pronouns, quotations, pictures, or phrases, that are intended to express the teachers’ personal views on a variety of subjects, and that are attributable to the teachers, and not necessarily to LCPS. See Exhibit 2 (“Real education should consist of drawing the goodness and the best out of our students. – Cesar Chavez”); Exhibit 3 (“It is easier to build strong children than to repair broken men. Frederick Douglass”). Other teachers include simple motivational quotes such as “Have courage and be kind.” See Exhibit 4. Still others go further and include small pictures under their signatures with an encouraging or inspiring message. Examples of these include:

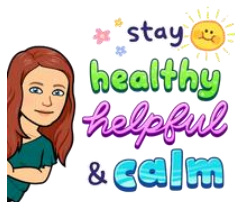


Exhibit 5.



Exhibit 6.

Many teachers include personally-selected pronouns or “preferred” pronouns in their signature blocks. See Exhibit 7. The listing of pronouns communicates the teacher’s personal belief that gender or sex is not binary and cannot be presumed, and that pronouns are not objective and do not correspond with biological sex. These beliefs (and whether teachers should promote them to children) are matters of hotly contested public concern.

Yet, despite all these examples of private expression (including political expression that may violate District policies) by teachers in their email signature blocks, the Bible verse

in Mrs. [REDACTED] signature block was challenged and it was required to be removed. LCPS gave the following reason:

*Pursuant to the Establishment Clause of the First Amendment of the U.S. Constitution, the school division requires us to refrain from any communication that could be perceived as the school division's official endorsement of any particular religion. The verse in your signature blocks falls into this requirement.*

See Exhibit 8. This rationale contradicts the Supreme Court's Establishment Clause jurisprudence and overlooks the free speech and religious free exercise rights of teachers.

### **Legal Standard**

The Supreme Court has long held that teachers do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). This is especially true in matters such as this, that concern the interplay between the Free Exercise and Free speech rights of public-school teachers. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2426-27 (2022). The Establishment Clause does not forbid personal religious expression by public-school teachers. When LCPS allows teachers to use their email signature blocks as a means of personal, private expression, the First Amendment to the United States Constitution prohibits the District from excluding private religious expression.

#### **A. A Bible verse in an email signature block does not violate the Establishment Clause.**

Mrs. [REDACTED] private expression of religious sentiment consisting of a Bible verse in her email signature block does not violate the Establishment Clause of the First Amendment. The District does not prohibit all personal expression by teachers in their email signature blocks; but only religious expression, because it says the Establishment Clause precludes the school district “from any communication that could be perceived as the school division's official endorsement of any particular religion.” See Exhibit 8. Yet this endorsement/reasonable observer test was explicitly rejected by the Supreme Court in its *Kennedy* decision this term.

In *Kennedy*, the Court upheld a teacher's right to privately pray and even be joined by dozens of students in praying after school football games. 142 S. Ct. at 2407, 2433. The School District argued that such a display would risk attributing a religious message to the District and violate the Establishment Clause. *Id.* at 2426-33. The Court rejected these arguments, noting: “[a]n Establishment Clause violation does not automatically follow whenever a public school or other government entity “fail[s] to censor” private religious speech. *Board of Ed. of Westside Community Schools (Dist. 66) v. Mergens*, 496 U.S. 226, 250, 110 S.Ct. 2356, 110 L.Ed.2d 191 (1990) (plurality opinion).” Instead, the Court noted that it was a false dichotomy to pit the Establishment and Free Exercise Clauses against each other. *Kennedy*, at 2426-27. The Establishment Clause should instead be interpreted by its “original meaning and history” and not as an attempt to favor secular speech over religious speech in the public square. *Id.* at 2427-2428. Upholding a teacher's private

speech in the workplace is not state endorsement of any religious message the teacher may choose to convey. *Id.* at 2431-32. It is instead a rightful protection of that teacher's fundamental free exercise rights.

However, despite the Supreme Court's clear and recent precedent protecting the private religious expression of teachers, LCPS is still applying a view of the Establishment Clause explicitly rejected by the Court. Yet, "[r]espect for religious expressions is indispensable to life in a free and diverse Republic." *Id.* 2433. Disallowing Mrs. [REDACTED] private expression of religious speech while allowing secular speech by other teachers reflecting their private views raises the specter of viewpoint discrimination against Mrs. [REDACTED] religious expression.

**B. The District cannot suppress Mrs. [REDACTED] religious expression through viewpoint discrimination.**

Further, the First Amendment requires LCPS to not discriminate against Mrs. [REDACTED] private religious expression. Regardless of the nature of the "forum" the District has opened for email signature blocks, Mrs. [REDACTED] is free to include private expression that may be religious in nature, to the same extent other teachers are permitted private expression that is from a secular viewpoint. The District certainly is not required to open up a forum in this way, but when it does allow teachers to include private expression such as pronouns, quotations, pictures, or phrases in their signature blocks, it may not forbid Mrs. [REDACTED] private religious expression.

The Supreme Court and various federal courts have confirmed that organizations and individuals holding a religious viewpoint may not be subjected to discrimination on the basis of that viewpoint; nor may government consider religious viewpoint in order to censor private speech:

This Court has since made plain, too, that the Establishment Clause does not include anything like a "modified heckler's veto, in which ... religious activity can be proscribed" based on " 'perceptions' " or " 'discomfort.' " ***Good News Club v. Milford Central School***, 533 U.S. 98, 119, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001) (emphasis deleted). An Establishment Clause violation does not automatically follow whenever a public school or other government entity "fail[s] to censor" private religious speech. *Board of Ed. of Westside Community Schools (Dist. 66) v. Mergens*, 496 U.S. 226, 250, 110 S.Ct. 2356, 110 L.Ed.2d 191 (1990) (plurality opinion). Nor does the Clause "compel the government to purge from the public sphere" anything an objective observer could reasonably infer endorses or "partakes of the religious." *Van Orden v. Perry*, 545 U.S. 677, 699, 125 S.Ct. 2854, 162 L.Ed.2d 607 (2005) (BREYER, J., concurring in judgment). In fact, just this Term **the Court unanimously rejected a city's attempt to censor religious speech based on *Lemon* and the endorsement test.** See *Shurtleff*, 142 S.Ct., at 1587–1588; *id.*, at 1595 (ALITO, J., concurring in judgment); *id.*, at 1587, 1588–1589 (opinion of GORSUCH, J.).

*Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2427–28 (2022) (Emphasis added)(quoting *Shurtleff v. City of Boston*, 142 S. Ct. 1583 (2022)). See also e.g.,

*Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995); *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 804-806 (1985); *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384, 392-93 (1993); *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 46 (1983); *R.A.V. v. St. Paul*, 505 U.S. 377, 386-88, 391-93 (1992).

### **C. The District's own policies prohibit religious discrimination based on religious viewpoint.**

In addition to the Constitution, District policies prohibit religious discrimination. To protect the rights of its employees, LCPS Regulation 7560 on Professional Conduct notes that:

The Loudoun County School Board is committed to an **equitable and inclusive work and educational environment** for employees and students. **Discrimination** or harassment on the basis of ... **religion**..., or any other basis prohibited by law will not be tolerated. (emphasis added).

Yet, singling out Mrs. [REDACTED] for religious speech in her signature block, while allowing secular speech in other teacher's signature blocks clearly discriminates against Mrs. [REDACTED] on the basis of religion and is the opposite of the equity and inclusion promised in the District's policies and espoused by its administrators.


We urge the Loudoun County Public Schools to update its policies and practices to conform to current Supreme Court precedent; and not discriminate against teachers based on religious viewpoint. LCPS may certainly prohibit all private expression in email signature blocks (an unnecessary and unfortunate decision) or it may promulgate a constitutional email signature block policy that treats private religious and secular expression equally. Such a policy could require a disclaimer that "LCPS permits private expression within email signature blocks that is solely the expression of the author and is not necessarily attributable to LCPS." Please be advised that personal "pronouns" in email signature blocks remain private secular expression, which will support a cause of action if teacher personal religious expression is proscribed and teacher personal "pronouns" are permitted.

For these reasons, we are asking that you **please provide a written response by April 6, 2023, to prevent further action by Liberty Counsel**. Please confirm that 1) a Bible verse in Mrs. [REDACTED] email signature block does not violate District policy; 2) that Mrs. [REDACTED] may immediately restore the verse to her email signature block; and 3) that Mrs. [REDACTED] will in no way be subjected to discrimination because of her religious beliefs or expression.

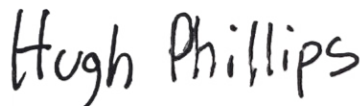
If we do not receive this response, we will unfortunately conclude that the Loudoun County Public Schools is indifferent to the concerns expressed herein, and Liberty Counsel will take further action to prevent irreparable harm to our client's cherished liberties.

Thank you for your attention to this request.

Sincerely,



Richard L. Mast†



Hugh C. Phillips††

CC

**Via Email**

**LCPS School Board**

Ian Serotkin, Chair, Blue Ridge District  
Harris Mahedavi, Vice-Chair, Ashburn District  
Denise Corbo, At-Large  
Atoosa Reaser, Algonkian District  
Tiffany Polifko, Broad Run District  
John Beatty, Catoctin District  
Jeff Morse, Dulles District  
Erika Ogedegbe, Leesburg District  
Brenda Sheridan, Sterling District

[communicationsoffice@lcps.org](mailto:communicationsoffice@lcps.org)

Robert Falconi, Esq., Division Counsel

---

†Licensed in Virginia

††Licensed in Florida