



October 19, 2016

Dr. Kevin Rogers, Superintendent
Lewisville Independent School District
1565 W. Main Street
Lewisville, TX 75067

Via superintendent@lisd.net and CMRRR: 7015 1520 0001 0679 3346

Ms. Sonya Lail, Principal
Flower Mound High School
3411 Peters Colony Road
Flower Mound, TX 75022

Via lailsk@lisd.net and CMRRR: 7015 1520 0001 0679 3339

RE: Unconstitutional Censorship of Religious Viewpoints

Dear Dr. Rogers and Ms. Lail:

First Liberty Institute represents Wess Jones and 1st Choice Marine regarding Flower Mound High School's unlawful and unnecessary censorship of his religious viewpoint. Please direct all future correspondence on this matter to First Liberty Institute at the contact information provided below. We request that you respond to this letter no later than 5:00 p.m. on October 31, 2016.

Mr. Jones' Business Logo and Team Sponsorship

Mr. Jones is a practicing Christian who runs his small business in accordance with his religious beliefs. Through 1st Choice Marine, Mr. Jones provides a range of business services repairing and maintaining boats and other watercraft in the broader Dallas-Ft. Worth area. His corporate logo clearly reflects that his professional service is rooted in his personal faith, as can be seen here:



Mr. Jones is also an avid supporter of Flower Mound High School and enthusiastic about the school's Bass Fishing Club. His daughter is a member of the club, and he spends most weekends during the lengthy club fishing season captaining her boat while she fishes in a variety of bass fishing tournaments.

Early in the 2016 school year, Mr. Jones was presented with the opportunity to increase his support of the Bass Fishing Club by becoming an official sponsor. He was told that, in exchange for an investment of \$200 in the Bass Fishing Club, his business logo would be listed on the team's jersey and be posted on the club's website for the next four (4) years. *See Exhibit 1.* Sponsors were notified that the businesses being solicited must be "school appropriate" and that logos containing "drugs, alcohol, tobacco" or that "could be construed as offensive" by the school would not be accepted. *See Exhibit 2.* Mr. Jones was eager to support his daughter and her club's efforts. He quickly agreed to the sponsorship. According to FMHSBassTeam.com, several other businesses, including CornerStone Staffing, Culver's, Eagle Gun Range, Clear and Clean, Lew's, and Bayou Bug Jigs, were also welcomed as sponsors.

LISD Unlawfully Censors "Jesus" from Logo

On September 6, 2016, Mr. Jones provided the artwork for his business logo to the club's sponsor/coach Mr. Davis, having previously submitted his \$200 sponsorship. The next day, Mr. Davis indicated school administrators rejected the 1st Choice Marine logo because of its religious content:

Mr. Jones,

I love the 1st Choice Marine Logo and the slogan. The Christian affiliation will drive me straight to them when I need work on my boat. However, the administration says that I cannot use the slogan with the logo as we are a public school and it would put us in real hot water. So, are they okay if I put the logo on the jersey but omit the slogan, or do we return the check? Please ask for me and let me know, or if you prefer, I can ask if you give me contact information.

Thanks,

Steve C. Davis,
FMHS Wrestling/Bass Team

Mr. Jones was stunned that his logo was unacceptable to the Flower Mound High School's administration. Hoping to keep the process moving, while preserving his objections, Mr. Jones responded:

Coach Davis,

You can just use the other part of the logo. I know you are needing this quick so go with that as I will not have time to address school administration on this issue before printing. 1st Choice marine is my company and is not affiliated with the school just like the other sponsors are not. I believe the administration is confused on how public schools are protected by religious freedom laws. Can you please provide me with the person's name in administration that says the complete logo cannot be used? I will research this issue and would like to provide administration with the correct documentation if I am correct on this issue. If this is resolved before printing next year, I would like to have the complete logo put on the jerseys in the future years.

Thank you for your personal support of my logo and business.

Please let me know if you have any question.

It's All About Jesus,
Wess

Even after Mr. Jones clarified that he and his business are distinct, private entities unassociated with the school or state, Mr. Davis declined to reconsider. Further, he identified Ms. Lail as the responsible individual for reviewing all the logos wishing to sponsor the school's bass fishing club and rejecting Mr. Jones' logo. As Mr. Davis explained:

Mr. Jones,

Thanks for your understanding, we will send them to print. Our FMHS Principal, Sonya Lail, made the call. She has to sign off on all logos. Perhaps I put words in her mouth in my earlier e-mail. I am assuming that she was worried about the possible conflict if we displayed the logo as is. She did not actually offer an explanation, she merely told me I could not use the slogan.

Sincerely,
Steve C. Davis
FMHS Wrestling/Bass Team

We believe neither Ms. Lail nor Mr. Davis objected to the logos of other companies, including that of CornerStone Staffing, which includes the phrase, "Helping build a better workforce," or Family Allergy & Asthma Care's logo bearing the words, "Helping you breathe in a brand-new way of life," or any of the other logos' words or insignia. Ms. Lail and Mr. Davis—both on behalf of Flower Mound High School and Lewisville Independent School District—singled out the logo of 1st Choice Marine as

inappropriate for the Flower Mound High School Bass Fishing Team's jerseys and website.

Additionally, without the input or permission of Mr. Jones, Flower Mound High School and Lewisville Independent School District invented an entirely new logo for 1st Choice Marine. In the school's version, the 1st Choice Marine logo, as displayed below, not only fails to reflect the owner's religious beliefs, it alters the business' name, removes all previous branding, and eliminates the company's essential contact information:



Flower Mound High School and Lewisville Independent School District received all of the benefit of the \$200 investment by 1st Choice Marine while Mr. Jones has received only unlawful censorship of his business and religious viewpoints.

Actions by LISD Violate the Law

Mr. Davis, Ms. Lail, Flower Mound High School, and Lewisville Independent School District violated the United States Constitution and the laws of Texas by engaging in unlawful viewpoint discrimination. The 1st Choice Marine's logo is Mr. Jones' private speech and is entitled to the full protection of the First Amendment to the Constitution of the United States. "There is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 765 (1995) (quoting *Bd. of Educ. v. Mergens*, 496 U.S. 226 226, 250 (1990)) (emphasis in original).

The censorship of 1st Choice Marine's private speech constitutes illegal viewpoint discrimination under the First Amendment. The Supreme Court of the United States has made clear that such viewpoint discrimination is prohibited. *See Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 811 (1985) (holding that viewpoint discrimination is prohibited in a nonpublic forum); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983) (same). A government actor may not suppress or exclude 1st Choice Marine's private speech merely because it expresses a religious viewpoint. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Pinette*, 515 U.S. 753; *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981).

The Supreme Court of the United States has repeatedly protected private, religious speech at public facilities. *See, e.g., Pinette*, 515 U.S. at 760 ("Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression."). The First

Amendment “does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities.” *Mergens*, 496 U.S. at 248 (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978)). This extends to private speech appearing on jerseys and especially the club’s website.

Mr. Davis, Ms. Lail, Flower Mound High School, and Lewisville Independent School District should have remained neutral with regard to Mr. Jones’ and 1st Choice Marine’s private religious speech. *See Rosenberger*, 515 U.S. at 839 (“We have held that the guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.”). While a school may permissibly censor private speech that espouses offensively lewd, indecent, or vulgar content that would challenge the school’s educational mission, it cannot be argued that the slogan, “It’s not about us, it’s all about Jesus” is lewd, indecent, or vulgar. *See Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 685 (1986).

The Supreme Court of the United States characterizes unlawful viewpoint discrimination as “an egregious form of content discrimination.” *Rosenberger*, 515 U.S. at 829; *see also id.* at 828 (finding “[i]t is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys”); *id.* at 829 (“The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”); *Cornelius*, 473 U.S. at 806 (“[T]he government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.”); *Perry Educ. Ass’n*, 460 U.S. at 46 (government may not “suppress expression merely because public officials oppose the speaker’s view”).

One of the most egregious constitutional violations is that Mr. Davis, Ms. Lail, Flower Mound High School, and Lewisville Independent School District specifically targeted Mr. Jones for 1st Choice Marine’s expressed religious viewpoint, while tolerating the secular viewpoint of several other business sponsors. “When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” *Rosenberger*, 515 U.S. at 829. As the Supreme Court explained in *West Virginia State Board of Education v. Barnette*, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion” 319 U.S. 624, 642 (1943). “Our schools are tasked with ‘inculcat[ing] the habits and manners of civility.’ The habits and manners of a free people include tolerance and consideration of a range of political and religious views.” *Morgan v. Swanson*, 659 F.3d 359, 402 (5th Cir. 2011) (*en banc*) (quoting *Bethel Sch. Dist.*, 478 U.S. at 681).

The decision of Mr. Davis, Ms. Lail, Flower Mound High School, and Lewisville Independent School District to censor Mr. Jones’ speech, impermissibly altering the

logo of 1st Choice Marine to remove all religious viewpoints expressed while accepting secular speech, lacks the neutrality required of state actors and violates the First Amendment. In short, Mr. Jones deserved the state's neutrality towards his religious viewpoint; instead, he received hostility towards his religious beliefs.

Conclusion and Requested Action

Therefore, we ask that Flower Mound High School and Lewisville Independent School District take immediate corrective action. Specifically, we respectfully request the following actions to remedy the situation against our clients, Wess Jones and 1st Choice Marine:

- (1) We request that Flower Mound High School and Lewisville Independent School District immediately remove the illegitimate logo currently displayed at FMHSBassTeam.com and replace it with the correct logo for 1st Choice Marine.
- (2) We respectfully require written assurances that the correct 1st Choice Marine logo will appear on the Bass Fishing Club's jerseys for the remaining three (3) years of Mr. Jones' sponsorship, beginning with the 2017-2018 club fishing season.

We request a response by no later than 5:00 p.m. October 31, 2016. Should you deny these requests or fail to respond to this letter, we are prepared to pursue all available legal remedies. Thank you for your prompt attention to this matter.

Sincerely,



Hiram Sasser,
Deputy Chief Counsel

EXHIBIT 1

Flower Mound HS BASS TEAM



Dear Potential Sponsor,

The FMHS Bass Team was formed in 2012 as a means for seriously competitive HS anglers to represent our school in interscholastic competition. We compete in the Texas HS Bass Association West Region made up of over 120 HS teams. Even though we have been quite successful, we are still considered a club sport at FMHS, so we are not afforded any school money. Everything comes right out of our pocket. We need sponsors like you to help us out to defray the costs of this very expensive sport. There are three levels of sponsorship:

White: For a donation of \$100, we will display your company logo on both our website (www.fmhsbassteam.com) and on all team jerseys produced this year.

Silver: For a donation of \$200, we will display your company logo on both our website and on all team jerseys produced for the next four years.

Navy: For a donation of \$500, we will display your company logo on our website, on our team banner, and on the front bottom of all team jerseys produced for the next four years, plus you will receive a personalized FMHS Bass Team jersey for yourself!

Make Checks payable to: FMHS Bass Boosters. Send your vectored company logo (ai, eps) to: davissc@lisd.net

EXHIBIT 2

Sponsorship Rewards

Hey guys,

We are a club sport at FMHS, which means we get no budget. Zero...natta...zilch! Competitive angling is a very expensive sport. We will participate in a couple of fundraisers this year to help keep your costs down. The first of these fundraisers is to seek sponsorships from local businesses.

Please remember to solicit businesses that are “school appropriate”. No drugs, alcohol, tobacco, or other logos that could be construed as offensive by LISD administration will be accepted.

If you earn \$100 in sponsorship for the team, your jersey is free.

If you earn \$200 in sponsorships for the team, your jersey, shorts, and hat are free.

If you earn \$500 in sponsorships, you get it all, baby! Jersey, shorts, hat, tee, letter jacket (when you have earned it) 2016-17 THSBA/TBF fees, 2016-17 family booster club membership, yard sign and car decal.

You have 1 (one) week to solicit sponsorships. All money must be turned in by Thursday, September 1st. It is your responsibility to make sure your sponsor gets their company logo to Coach Davis at: davissc@lisd.net by next Thursday. The logo must be “art ready”, that is to say it must be in a vectored file that won’t pixilate when zooming in. The preferred files are a.i. or e.p.s. There is also a PDF file now that is vectored.