



June 13, 2017

Dr. Carrie Rowe, Superintendent
Mr. Frank Bovalino, Board President
Dr. Mark Deitrick, Board Vice-President
Ms. Deborah Hogue, Secretary
Mr. Robert Bickerton, Member
Ms. Wende Dikec, Member
Ms. Tracy Longo, Member
Mr. Keith Neeley, Member
Mr. Bruce Woodske, Member
Ms. Denis Yates, Member
1300 Fifth Street
Beaver, PA 15009

***Sent via Email to [REDACTED]
and Certified Mail RRR#: 7011 3500 0003 0382 3031***

RE: Unconstitutional Censorship of Moriah Bridges

Dr. Rowe and School Board:

Moriah Bridges retained First Liberty Institute to represent her in this matter. Please direct all communications regarding this matter to me.

Moriah was asked by the 2017 senior class president to provide the closing exercise at her recent Beaver High School graduation, which occurred on June 2, 2017. *See Exhibit A.* She was given primary control over the production and content of her remarks and submitted her comments to school officials on May 30, 2017. Importantly, Moriah was asked to provide the *closing exercise* for the ceremony and in the final, official program, her participation is noted as "CLOSING EXERCISE." *See Exhibit B.*

On May 31, 2017, Dr. Carrie Rowe, superintendent for Beaver Area School District (BASD), notified Moriah, through Beaver High School principal Steven Wellendorf, that the remarks she had drafted for the closing exercise were unlawful, unconstitutional and, therefore, impermissible. *See Exhibit C.* For unknown reasons, Dr. Rowe mischaracterized the nature of Moriah's closing exercise remarks, recasting them as school-sponsored, student-initiated prayer in violation of the First Amendment. She then tersely instructed Moriah to re-draft her remarks:

The ceremony contains two instances of invocation/prayer/benediction; this is not permissible by federal law, as prayer (even student-initiated prayer) has been held to be unconstitutional by the Supreme Court as a violation of the Establishment Clause.

The selected students may still address their class and indicate the things that they wish/hope for their class, but they may not do it in the style of a prayer and most certainly may not recite a prayer that excludes other religions (by ending "in the name of Our Lord and Savior, Jesus Christ" or "in the matchless name of Jesus").

Of course, factually, Dr. Rowe's characterization of the student speech at the ceremony as "instances of invocation/prayer/benediction" is manifestly incorrect. Outside the ceremonial duties performed by the school principal and superintendent typical of any commencement, the only speech taking place during the commencement ceremony, as reflected in Exhibit B, was the "Student Welcome," two "Commencement Speakers" (the High Honors Student and Senior Class President), and a "Closing Exercise." Despite these facts, it appears clear that Dr. Rowe concluded the personal remarks Moriah had drafted containing religious language were unlawful and unconstitutional.

Moriah was shocked at Dr. Rowe's conclusion and mandate to expunge religion from her remarks. She was forced to remove anything religious from her remarks or relinquish her role in the graduation ceremony entirely. Her edits removed any reference to prayer, deity, and anything resembling an acknowledgement of a higher power—all of which were, and are, central to who she is as a Christian. Her words had been crafted to express her best wishes for her classmates, drawing upon the faith that is central to her identity as a Christian. However, because of Dr. Rowe's instructions, she was muzzled and restrained by school officials on the penultimate day of her high school career.

In short, school officials—in violation of the First Amendment—forced Moriah to censor her personal remarks during the closing exercise of her commencement ceremony merely because of the religious viewpoint of her remarks.

Student Remarks at Graduation

The issue of student remarks at high school graduation that happen to contain religious references is far from novel. Under most circumstances, such as here, a graduation speaker's words are her own, not the government's. A student's remarks are not attributable to the state simply because they are delivered in a public setting or to a public audience. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000); *Board of Ed. v. Mergens*, 496 U.S. 226, 248-50 (1990).

Moriah's words constituted *her* private speech, not government speech; private speech is not subject to the Establishment Clause. Accordingly, BASD officials had no cause for concern that her remarks would cause the school to violate the constitution. The "proposition that schools do not endorse everything they fail to censor is not complicated." *Mergens*, 496 U.S. at 250. And, if BASD officials were truly concerned that some in the audience might perceive government endorsement of Moriah's

message, the United States Court of Appeals for the Ninth Circuit has stated:

The school's proper response is to educate the audience rather than squelch the speaker. Schools may explain that they do not endorse speech by permitting it. If pupils do not comprehend so simple a lesson, then one wonders whether the [] schools can teach anything at all. Free speech, free exercise, and the ban on establishment are quite compatible *when the government remains neutral* and educates the public about the reasons.

Hills v. Scottsdale Unified Sch. Dist., 329 F.3d 1044, 1055 (9th Cir. 2003) (emphasis added).

Clearly, there are no Establishment Clause concerns raised by Moriah's speech. But even if there were, the desire to avoid a perceived Establishment Clause violation is not a valid reason to violate the Free Exercise Clause by engaging in censorship. *See Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993). In fact, a student's private, religious speech is entitled to full First Amendment protection.

Unauthorized Editing of Student Remarks

Ordinarily, it is only in the narrowest circumstances that school officials may exercise editorial control over student speech. The Supreme Court of the United States requires school officials to tolerate student speech. Yet, the Court makes allowance for those times in which school officials must exercise control over school-sponsored speech in order to advance the educational mission of the school. Thus, the Court approves of school officials "exercising editorial control over the style and content of student speech in school-sponsored expressive activities *so long as their actions are reasonably related to legitimate pedagogical concerns.*" *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) (emphasis added). Remarks as part of the closing exercise of a high school graduation ceremony are not part of a curriculum, school classroom activity "designed to impart particular knowledge or skills to student participants and audiences," or any other "pedagogical concerns." *Id.* at 271, 273. Rather, Dr. Rowe approved of speech that, in her view, would be aspirational and inspiring in nature ("things that they wish/hope for their class"), but free of *any* religious viewpoint ("most certainly may not recite a prayer that excludes other religions").

Without the justification of ensuring the "pedagogical concerns" of the school are met, Dr. Rowe unilaterally disagreed with the particular viewpoint expressed by Moriah in her submitted remarks and used her authority as superintendent to force Moriah to conform to a particular point of view. That is unlawful under the First Amendment.

Unlawful Viewpoint Discrimination

It is a fundamental principle that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines*

Indep. Comm. Sch. Dist., 393 U.S. 503, 506 (1969). This also applies to student religious speech or expression. “Nothing in the Constitution . . . prohibits any public school student from voluntarily praying at any time before, during, or after the school day.” *Santa Fe*, 530 U.S. at 313. Yet prohibiting, or attempting to prohibit, Moriah from voluntarily engaging in religious speech during the closing exercise of her graduation ceremony is precisely what BASD officials attempted to do. This kind of censorship is called viewpoint discrimination, and it is unconstitutional. *Rosenberger*, 515 U.S. at 845-46; *Mergens*, 496 U.S. at 248 (plurality opinion); *id.* at 260-61 (Kennedy, J., concurring in part and in judgment).

Long ago, the Supreme Court warned that prior restraint is “the essence of censorship,” and that it will not be countenanced absent very “exceptional” circumstances not present here. *Near v. Minn.*, 283 U.S. 697, 713, 716 (1931). Much more recently, the Supreme Court bolstered this proposition when it issued a strong warning against “involv[ing] government in religious matters” by inquiring about the contents of a prospective prayer. *Town of Greece v. Galloway*, No. 12-696 (May 5, 2014). Although *Town of Greece* involved public prayers before governmental bodies, the *Town of Greece* majority made clear that neither the court nor the government has the authority to examine the content of private, religious speech. Applying Justice Kennedy’s rationale in *Town of Greece* here, BASD officials clearly ran afoul of this prohibition when they reviewed and rejected the content of Moriah’s remarks.

Even more recently than *Town of Greece* the Supreme Court denied *certiorari* in the case of *Elmbrook Sch. Dist. v. Doe*, 687 F.3d 840 (7th Cir. 2012). *Elmbrook* is noteworthy because Justice Scalia, joined by Justice Thomas, dissented from the denial of *certiorari*. See *Elmbrook Sch. Dist. v. Doe*, 134 S. Ct. 2283 (2014), *cert denied*. In his dissent, Justice Scalia stated that “*Town of Greece* abandoned the antiquated ‘endorsement test.’” *Id.* at 2284 (Scalia, J., dissenting). Therefore, any argument that Moriah’s words, if left uncensored, would constitute a type of tacit government endorsement of his beliefs, does not survive after *Town of Greece*.

U.S. Department of Education Guidance

Finally, the United States Department of Education has long-standing guidance for student speech, including student speakers at graduation ceremonies. According to the Department of Education:

Where students or other private graduation speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, however, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student or other private speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.

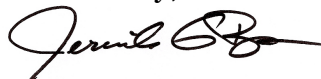
U.S. Dep't of Ed., Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools, dated February 7, 2003.
(http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html, last accessed on June 12, 2017).

Conclusion

The policy of BASD officials editing, controlling, and censoring student speech because of its religious viewpoint is unconstitutional and its application to Moriah caused irreparable injury. *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.”).

To that end, we propose a meeting with the BASD superintendent prior to July 18, 2017 to resolve these concerns and discuss how BASD might provide for student religious expression in the future. And, we seek a written statement from BASD acknowledging its improper actions toward Moriah, along with BASD’s pledge that such censorship will not occur in the future.

Sincerely,



Jeremy Dys
Deputy General Counsel
First Liberty Institute

EXHIBIT A



iMessage
Today 12:43 PM

██████████
Would one of you do the opening and one of you do the closing for graduation and I don't care who does what but I think you two would be perfect for it

AA

██████████
Of course!

K

██████████
Just let me know who wants to do what by monday 😘

AA



iMessage



EXHIBIT B

The One Hundred Thirty-Third Annual
Commencement
. . . . of
Beaver Area High School



Beaver Area High School
Gypsy Glen, Beaver

Friday, the second of June
two thousand seventeen
half after six

EXHIBIT C

De: Steve Wellendorf [REDACTED]
Fecha: 31 de mayo de 2017, 11:18:53 AM EDT

Para: Moriah Bridges [REDACTED], [REDACTED]
[REDACTED]

Cc: CARRIE ROWE [REDACTED]

Asunto: Graduation Welcome/Closing Messages

Good morning Mo and Katia

Thanks so much for sharing your welcome message (Katia) and your closing (Mo). Please see the following from Dr. Rowe:

The ceremony contains two instances of invocation/prayer/benediction; this is not permissible by federal law, as prayer (even student-initiated prayer) has been held to be unconstitutional by the Supreme Court as a violation of the Establishment Clause.

The selected students may still address their class and indicate the things that they wish/hope for their class, but they may not do it in the style of a prayer and most certainly may not recite a prayer that excludes other religions (by ending "in the name of Our Lord and Savior, Jesus Christ" or "in the matchless name of Jesus").

Dr. Rowe has shared the following caselaw to support her decision:

*In **Santa Fe Independent School District v. Doe, 530 US 290 (2000)**, the court said that school officials may not permit "a teacher, faculty member, member of the clergy, or student to delivery any sort of prayer, invocation, or benediction at public school-sponsored events, including graduations."*

*In **Lee v. Weisman, 505 US 592**, Supreme Court Justice Kennedy said, "[The State's] involvement is as troubling as it is undenied. A school official ... 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. The principal chose the religious participant ... and that choice is also attributable to the State ... The degree of school involvement here made it clear that the graduation prayers bore the imprint of the State and thus put school age children who objected in an untenable position.*

I will reopen the GoogleDoc for you to edit. If you would like to call me, stop in, or email, please get in touch so that I know you received this message.

Again, thanks so much for your efforts, but we have to edit for the ceremony.

*Mr. Steve Wellendorf, Principal
Beaver Area High School*

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