



March 19, 2019

Sent via email and U.S. Mail
Superintendent@greenvilleisd.com

Dr. Demetrius Liggins
Superintendent
Greenville ISD
4004 Moulton Street
Greenville, TX 75401

Re: Greenville ISD Should Ignore Meritless Complaint

Superintendent Liggins:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans.

It is my understanding that you have received correspondence, attached as Exhibit A, from an organization purporting to convince you to investigate and terminate the private speech of individuals in your employ, Messrs. Chip Gregory and Dale Mason.

For reasons discussed below, we write to assure you that the complaint is meritless and should simply be disregarded. Numerous courts and the Texas Association of School Boards agree that, "[i]n their free time, away from school and school events, school employees are free to involve themselves in religious activities." *TASB LEGAL SERVICES, EMPLOYEE RELIGIOUS EXPRESSION*, at 8 (2019).¹

Specifically, the complaint calls into question the appearance of Gregory and Mason for less than two minutes in a much longer video produced by a private organization and published by a private citizen on a website over which Greenville ISD has no control. Given the prominence of the private organization's logo before and after the video, along with the description of its work throughout, the posting of it by a private individual to Facebook and YouTube, and the use of personal pronouns by Gregory and Mason, no reasonable person would review the video and possibly conclude that this privately produced video is the speech of Greenville ISD. Indeed, it is private speech subject to the full protection of the First Amendment to the U.S. Constitution.

The Constitution forbids hostility toward religion.

The Supreme Court has clearly stated that the Constitution does not "require complete separation of church and state; it affirmatively mandates accommodation, not

¹ Available at https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Community/Religion-in-the-Public-Schools/documents/employee_religious_expression.aspx (Last visited Mar. 13, 2019).

merely tolerance, of all religions and forbids hostility toward any.” *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984). The complainant would have the school district ignore this mandate and censor otherwise protected speech. In addition to being unnecessary, that is the type of religious hostility the First Amendment abhors.

As the Supreme Court of the United States has repeatedly affirmed, school officials do not give up their First Amendment rights by virtue of their employment. *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 506 (“It can hardly be argued that either students or teachers shed their constitutional rights at the schoolhouse gate.”).

School officials’ private speech is protected under the First Amendment.

Where, as here, a government employee is speaking in his private capacity and not on behalf of the government, his speech is protected by the Constitution, not limited by it. *See Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (“[T]here 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.”); *see also Capital Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (“[P]rivate religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.”).

Thus, it is well established that school officials and students may engage in religious expression in their private capacity. *See Wigg v. Sioux Falls*, 382 F.3d 807, 815 (8th Cir. 2004) (stating that a school district may not “unnecessarily limit[] the ability of its employees to engage in private religious speech on their own time”); *Kountze Indep. Sch. Dist. v. Matthews*, No. 09-13-00251-CV, 2017 Tex. App. LEXIS 9165, at *27 (Tex. App. – Beaumont Sept. 28, 2017) (quoting *Chandler v. Siegelman*, 230 F.3d 1313, 1317 (11th Cir. 2000)) (“Private speech endorsing religion is constitutionally protected --- even in school.”).

Moreover, even if statements by Gregory and Mason were included in the video because of their positions in Greenville ISD, their speech is still private speech. *See Doe v. Sch. Dist. of the City of Norfolk*, 340 F.3d 605, 613 (8th Cir. 2003) (noting a school board member’s speech was private even though he “undeniably took advantage of his School Board membership to gain access to a forum where he could espouse his personal views.”). Where the government does not put its imprimatur on the speech at issue, the speech is private, not public.

Greenville ISD should ignore the complaint to avoid engaging in viewpoint discrimination.

There is no indication whatsoever that the speech complained of is government speech rather than private speech. That means Greenville ISD is on solid legal footing to do nothing in response to the complaint it received. Doing nothing in response to this meritless complaint strengthens the perception that Greenville ISD respects the private speech of those in its community.

In fact, the school district should do nothing. If Greenville ISD were to take any action to discipline either gentleman or to remove the video from private distribution, it would likely constitute unconstitutional viewpoint discrimination and subject the school board to suit. *See Good News Club v. Milford Central School*, 533 U.S. 98, 119 (2001) (“[W]e cannot say the danger that children would misperceive the endorsement of religion is any greater than the danger that they would perceive a hostility toward the religious viewpoint . . .”); *School District of Abington Township v. Schempp*, 374 U.S. 203, 225 (1963) (“[T]he State may not establish a ‘religion of secularism’ in the sense of affirmatively opposing or showing hostility to religion, thus ‘preferring those who believe in no religion over those who do believe.’” (quoting *Zorach v. Clauson*, 343 U.S. 306, 314 (1952))).

Numerous courts have held that a governmental body may not rely on Establishment Clause concerns to protect them from liability when they attempt to stifle private speech. *See Pounds v. Katy Indep. Sch. Dist.*, 730 F. Supp. 2d 636, 660 (S.D. Tex. 2010) (concluding that “remov[ing] the only explicitly religious message option that a third-party offered . . . [was] unconstitutional viewpoint discrimination not justified by the interest in avoiding an Establishment Clause violation.”); *Wigg*, 382 F.3d at 815 (holding that “Wigg’s private speech does not put SFSD at risk of violating the Establishment Clause[.]”); *Draper v. Logan County Pub. Library*, 403 F. Supp. 2d 608, 621 (W.D. Ky. 2003) (“Even under the deferential review of the *Pickering* analysis, Defendants’ Establishment Clause defense is unpersuasive.”).

Conclusion: Greenville ISD can safely ignore this complaint.

In summary, the complaint attacks speech that cannot reasonably be attributed to Greenville ISD and thus does not violate the Establishment Clause. The complaint you received is meritless. Rather, the video in question is private speech and therefore protected by the First Amendment of the United States Constitution. As a word of caution: should Greenville ISD act to silence that speech, it would likely commit unconstitutional viewpoint discrimination and make itself subject to legal liability.

Of course, that need not be the case. The better course of action is to simply ignore this unfounded complaint and recommit Greenville ISD to the protection of the private speech of the citizens it serves. Should you have any questions, we are happy to speak with you further on these issues.

Sincerely,



Jeremy Dys
Deputy General Counsel
First Liberty Institute

Exhibit A

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

February 28, 2019

SENT VIA EMAIL AND U.S. MAIL
superintendent@greenvilleisd.com

Dr. Demetrus Liggins
Superintendent
Greenville Independent School District
4004 Moulton Street
Greenville, TX 75401

Re: Unconstitutional district promotion of religious activities

Dear Superintendent Liggins:

I am writing on behalf of the Freedom From Religion Foundation to alert you to unconstitutional religious promotion by employees of Greenville Independent School District. FFRF is a national nonprofit organization with more than 31,000 members across the country, including over 1,300 members in Texas. Our purposes are to protect the constitutional principle of separation between state and church and to educate the public on matters relating to nontheism.

FFRF has been alerted that two Greenville ISD employees are featured in a recently released video advertisement for the evangelical religious group that runs “Men of Honor” and “Ladies of Honor,” which appears to be actively running meetings for both groups within the district. The website for the group, HonorMinistries.org, uses the tagline “World Changers for Christ” and identifies the organization’s mission: “to develop passionate followers of Jesus Christ.”

The video¹ first depicts the head of the organization, Mr. Tony Rorie, boasting that the group has “seen 400 students give their hearts to Christ on the public school campus.” Next, Chief School Leadership Officer Chip Gregory, who is identified in the video as “Head of Schools, Greenville ISD” appears and endorses the religious group: “I really feel strongly that [Men and Ladies of Honor] is going to be a game changer. And I know for a fact that Men’s [sic] and Ladies of Honor is going to change the dynamics of Greenville Independent School District.” Greenville Middle School Principal Dale Mason then appears and similarly endorses the group. He says in part, “I want [the students] to know ... that there is honor in being righteous....” The video shows Principal Mason interacting with students at Men of Honor and Ladies of Honor meetings.

While a school or district may permissibly adopt a policy that allows for private groups to meet on school property outside of instructional time, the district runs afoul of the Constitution if it allows its employees to organize or run religious events while acting in their official capacities, or allows

¹ Video available at <https://www.facebook.com/tony.rorie/videos/10218387645348586/>. Mr. Gregory first appears at the 0:48 mark.

employees to advertise religious groups to students. We write to ensure that the district ends all such unconstitutional practices and brings the Men and Ladies of Honor groups into compliance.

It is a well-settled constitutional principle that public schools may not endorse religion. *See generally Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 393 U.S. 97 (1967); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). The district may not allow its employees to use their official positions to advertise religious groups to students, or to participate in religious meetings at school while acting in their official capacities. Courts recognize that “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lee*, 505 U.S. at 589). When district staff organize, lead, or promote a religious group’s meetings, they violate the constitutional rights of students and their parents.

Mr. Gregory and Principal Mason have made clear to students that Men and Ladies of Honor is “stamped with [their] school’s seal of approval.” *Santa Fe* at 307. Based on both the video and district employees’ participation in these religious meetings, students and parents will inevitably conclude that the district impermissibly endorses religion over nonreligion, and specifically Christianity over all other faiths. “School sponsorship of a religious message is impermissible because it sends the ancillary message to . . . nonadherents ‘that they are outsiders, not full members of the political community and an accompanying message to adherents that they are insiders, favored members of the political community.’” *Id.* at 309–10.

Schoolchildren already feel significant pressure to conform from their peers. They must not be subjected to similar pressure from district employees, especially on religious questions. The district must ensure that the video in question is taken down and that Mr. Gregory and Principal Mason refrain from endorsing or participating in religious activities while acting on behalf of the district in the future.

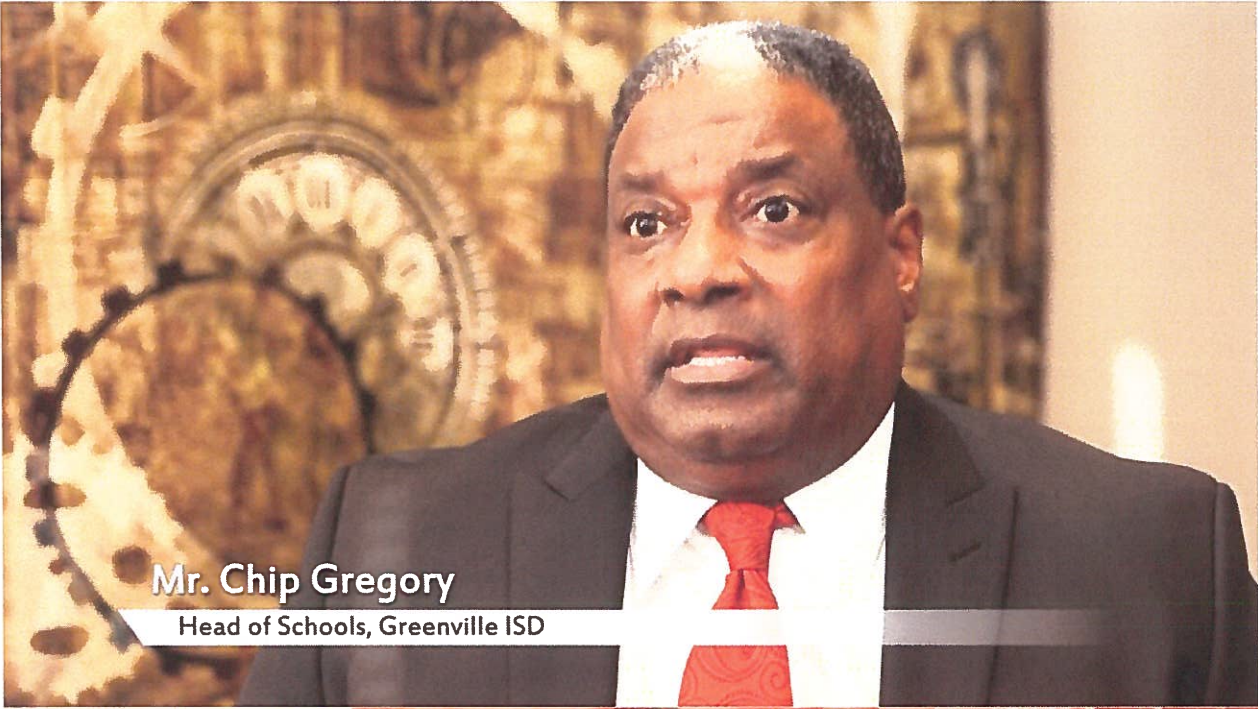
Additionally, district staff must be reminded that school-sponsored religious activity violates the Constitution as well as the rights of conscience of students and their parents, who have the right to direct the religious or non-religious upbringing of their children. The district should investigate the extent to which the Men and Ladies of Honor meetings on district property are being organized, led, or supported by district employees. All district involvement in these meetings must cease immediately. Please inform us in writing of the steps the district takes to address these constitutional violations so that we may notify our complainant.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Grover', written in a cursive style.

Sam Grover
Associate Counsel

Enclosures (two images from video advertisement)



Mr. Chip Gregory
Head of Schools, Greenville ISD

