



February 13, 2023

Mayor Gary Norton  
[REDACTED]

Major Bradwick Lee Sherrod  
Assistant Police Chief  
[REDACTED]

City of Port Wentworth  
7224 GA Highway 21  
Port Wentworth, Georgia 31407

*Sent via email and U.S. Mail*

**RE: UNCONSTITUTIONAL DISCRIMINATION AGAINST POLICE OFFICER JACOB KERSEY**

Mayor Norton and Major Sherrod:

First Liberty Institute is a nationwide, non-profit legal organization dedicated exclusively to defending religious liberty for all Americans. We represent Jacob Kersey, a devout Christian, and former police officer with the Port Wentworth Police Department (the “Department”). This letter concerns the Department unconstitutionally forcing Mr. Kersey out of his job because of his deeply held religious beliefs. Please direct all communication regarding this matter to First Liberty Institute.

**Factual Background**

In May 2022, Jacob Kersey began his employment as a police officer with the Department. Mr. Kersey is a Christian whose beliefs define the core of who he is. At an early age, Mr. Kersey was inspired by the exceptional police officers who encouraged him throughout his parents’ custody battle. They brought order and peace to a difficult situation. He grew passionate about giving back to his community and felt he was called by God to serve in law enforcement. He wanted to follow in the footsteps of the officers who had invested in his life at a young age. He was excited to begin his career in law enforcement. During his time at the Department, Mr. Kersey had an exemplary record. He was professional and had great relationships with his co-workers. The Department’s leadership stated that “they brag on [Mr. Kersey] all the time.”

On January 2, 2023, Mr. Kersey shared his Christian beliefs on his private Facebook page. The post read: “God designed marriage. Marriage refers to Christ and the church. That’s why there is no such thing as homosexual marriage.” The following day, January 3, his supervisor called and told Mr. Kersey to take down the post. Mr. Kersey believed that his supervisor was forcing him to abandon his Christian beliefs and decided not to remove the post. His supervisor warned Mr. Kersey that the Department may terminate

his employment if he did not delete the Facebook post. After that conversation, Lt. Justin Hardy also ordered Mr. Kersey to remove the post. Still feeling that the Department was forcing him to choose between his Christian faith and his job, Mr. Kersey did not remove the post. Later that day, Maj. Lee Sherrod called Mr. Kersey and ordered him to come to the office the next morning and turn in all the items that belonged to the city.

On January 4, Mr. Kersey arrived at the police station and met with Maj. Sherrod, Lt. Hardy, Capt. Nathan Jentzen, and Police Chief Matt Libby. Chief Libby told Mr. Kersey that his post about his Christian beliefs was the “same thing as saying the N-word and F— all those homosexuals.” Capt. Jentzen told him that his free speech was “limited due to his position as . . . a police officer.” They told Mr. Kersey “he could not post things like that” and that he would be placed on administrative leave while the city investigated him.

One week later, Mr. Kersey met with the Department’s leadership again. They told Mr. Kersey if he continued to share his interpretation or opinion on biblical scripture and it was deemed offensive, he could no longer work as a police officer for the Department. The leadership cited “separation of church and state” as the reason why Mr. Kersey could not post his religious beliefs on his private social media accounts. The Department’s leadership also stated they were developing a new policy to guide police officers on what they were and were not allowed to post on their social media accounts.

On January 13, Mr. Kersey received a “Letter of Notification” from Maj. Sherrod explaining that there was not sufficient evidence to terminate him, but that the notice was not to be construed as an exhaustive finding. The letter warned Mr. Kersey that he could be terminated for any post on any of his private social media accounts or any other statement or action that could be perceived as offensive, while noting that his posts and podcasts are “likely offensive” to certain communities. Maj. Sherrod ended the letter saying that he hoped that Mr. Kersey would “take this situation as a learning lesson.”

After the meetings with leadership and the January 13 letter, Mr. Kersey realized that he faced a choice between compromising his deeply held religious beliefs or continuing as a police officer with the Department. Forced to choose between his private religious speech and the job he loved, Mr. Kersey had no choice but to resign on January 17.

## **Legal Analysis**

The Department violated Mr. Kersey’s First Amendment rights to free exercise of religion and freedom of speech by punishing him for his private Facebook posts and forcing him to resign his position.

The Free Exercise Clause of the First Amendment protects Mr. Kersey’s right to express his Christian beliefs in his personal life and discuss his faith while off duty. *See Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022) (finding the Clause protects “the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life”). “The Free Exercise Clause does not permit the State to confine religious speech to whispers or banish it to broom closets. If it did, the exercise of one’s religion would not be free at all.” *Chandler v. Siegelman*, 230 F.3d 1313, 1316 (11th Cir. 2000). Government officials violate the Free Exercise Clause when they express or harbor animus toward religion and that

animus accompanies an official action or policy that burdens religious exercise. *Kennedy*, 142 S. Ct. at 2422. The government “cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices.” *Masterpiece Cakeshop, Ltd. V. Civil Rights Comm’n*, 138 S. Ct. 1719, 1731–32 (2018).

Here, the Department’s policy and practice prohibited Mr. Kersey from sharing his religious beliefs on his personal social media account if the Department deemed them offensive. The Department’s leadership described Mr. Kersey’s posts and podcasts about his Christian beliefs as “likely offensive,” and analogized Mr. Kersey’s Christian beliefs to someone “saying the N-word and F—all those homosexuals.” Likewise, the Department’s actions placing him under investigation, warning him about future posts, and stating that it hoped Mr. Kersey would “take this situation as a learning lesson” demonstrate that the Department viewed Mr. Kersey’s Christian beliefs with hostility and disapproval. The Department’s actions send a message to Christians who hold traditional biblical beliefs about marriage that they are unwelcome as police officers or city employees.

Furthermore, the Free Speech Clause of the First Amendment also protects Mr. Kersey’s private, off-duty religious speech on his private social media accounts. *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.”). The Department’s purported justification for censoring Mr. Kersey’s Christian beliefs, the separation of church and state, is “premised on a misconstruction of the Establishment Clause.” *See Kennedy*, 142 S. Ct. at 2432. The Clause does not “‘compel the government to purge from the public sphere’ anything an objective observer could reasonably infer endorses or ‘partakes of the religious.’” *Id.* at 2427 (quoting *Van Orden v. Perry*, 545 U.S. 677, 699 (2005)). What matters is whether Mr. Kersey’s religious speech was offered while acting within the scope of his duties. *See Kennedy*, 142 S. Ct. at 2425. His private, off-duty religious speech on a private social media post is clearly not within the scope of his duties as a police officer. Mr. Kersey’s private religious speech “did not come close to crossing any line one might imagine separating protected private expression from impermissible government coercion.” *Id.* at 2429. “[I]n no world may a government entity’s concerns about phantom constitutional violations justify actual violations of an individual’s First Amendment rights.” *Id.* at 2432.

Moreover, the Department cannot forbid Mr. Kersey’s private religious speech because the Department believes his religious beliefs are “likely offensive.” *See Iancu v. Brunetti*, 139 S. Ct. 2294, 2301 (2019) (quoting *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) (“a law disfavoring ‘ideas that offend’ discriminates based on viewpoint, in violation of the First Amendment.”)). “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). This kind of “[d]iscrimination against speech because of its message is presumed to be unconstitutional.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

The Department violated the First Amendment’s Free Exercise and Free Speech Clauses when it prohibited Mr. Kersey from expressing his sincere religious beliefs on his private social media accounts. Putting Mr. Kersey to the choice of censoring his private religious speech or remaining employed as a

police officer is an unconstitutional choice. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022 (2017).

## **Conclusion**

Requiring Mr. Kersey to censor his private, off-duty religious speech to remain employed as a police officer is an unconstitutional violation of Mr. Kersey's rights under the Free Exercise and Free Speech Clauses of the First Amendment. The City of Port Wentworth and the Port Wentworth Police Department should issue a public statement committing to respect the First Amendment rights of its police officers and announce an official change of policy.

The Department has stated that it is in the process of creating an official policy regarding employee private speech. Any such policy should be fully consistent with First Amendment protections for employee speech, including employee religious speech. First Liberty is available to consult with the district, on behalf of Jacob Kersey and similarly situated employees of faith, to inform the Department of its obligations under the Constitution.

Sincerely,

Stephanie N. Taub  
Courtney Jones  
FIRST LIBERTY INSTITUTE

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The Honorable Doug Collins  
GA Bar No. ██████████