MAYER | BROWN

Mayer Brown LLP
201 S. Main St.
Suite 1100
Salt Lake City, UT 84111
United States of America

T: +1 801 907 2700
F: +1 801 880 2221

mayerbrown.com

Michael R. Menssen
Partner
T: +1 801 907 2714
F: +1 801 289 0391
MMenssen@mayerbrown.com

April 23, 2025

VIA EMAIL

Wasatch County School District
101 East 200 North
Heber City, Utah 84032

Paul Sweat, Superintendent (paul.sweat@wasatch.edu)
Kim Dickerson, Board President (kimberly.dickerson@wasatch.edu)
Cory Holmes Board Vice President (cory.holmes@wasatch.edu)
Brad Ehlert, Board Member (bradley.ehlert@wasatch.edu)
Breanne Dedrickson, Board Member (breanne.dedrickson@wasatch.edu)
Jake Collett, Board Member (jacob.collett@wasatch.edu)

Ashlee Buchholz
Office of the Attorney General
350 N. State St., Ste. 230
Salt Lake City, UT 84114
noticeofclaim@agutah.gov

Re: Notice of Claim and Request for Ms. Taryn Israelson to Continue Prayer Chain

Dear Superintendent Sweat and Board Members:

My law firm, Mayer Brown LLP, along with First Liberty Institute, represent Ms. Taryn Israelson, a teacher at J.R. Smith Elementary School, in matters related to her First Amendment rights under the United States Constitution and similar rights under Utah law. Please direct all correspondence related to this matter to me at the contact information provided above.

Ms. Israelson has been a teacher at J.R. Smith Elementary since September 2021. Currently, Ms. Israelson teaches first grade. Two years ago, Ms. Israelson began a voluntary prayer chain in which individuals could opt-in to be prayed for and to pray for others. She posted a sign in the school faculty lounge to invite faculty members to participate. She continued the practice this year. In October 2024, she posted two signs in the faculty lounge briefly explaining how interested individuals could become involved. On October 4, 2024, J.R. Smith's Principal, Alex Judd, directed Ms. Israelson to cease this religious expression.

This letter constitutes Ms. Israelson's request and written notice that you rescind that directive. The United States Constitution and Utah law protect Ms. Israelson's right to

religious expression in the faculty lounge. The attempt to prohibit Ms. Israelson's religious expression violates both the First Amendment to the United States Constitution and Chapter 33 of the Utah Code (Free Exercise of Religion, Utah Code § 63G-33-201).

Accordingly, we request that by no later than May 14, 2025, you rescind Principal Judd's directive that Ms. Israelson refrain from posting messages about the prayer chain in the faculty lounge and that you permit her to engage in religious expression to the same extent other employees are permitted to engage in secular expression.

Factual Background

In order to understand why Ms. Israelson's religious expression is constitutionally protected, it is important to understand the context surrounding the prayer chain. Ms. Israelson is motivated by her sincerely-held religious beliefs to facilitate a prayer chain so those in need of prayer may receive support.

Ms. Israelson has facilitated a prayer chain since September 2021. Two years ago, after receiving approval from human resources, she posted a sign in the J.R. Smith faculty lounge with information about the prayer chain so that those who wished to participate could become involved. In continuing with this practice, Ms. Israelson posted a single 8.5 by 11-inch sign on both refrigerators in the faculty lounge on October 1, 2024. The sign reads, "Need prayer? Want to help pray for others? Text Taryn to be added to the prayer chain." Prior to placing the sign, Ms. Israelson consulted with three of her non-religious coworkers to ensure the wording on the sign was not offensive.

On October 4, 2024, Principal Judd summoned Ms. Israelson to his office and informed her that school policy prohibited her from posting the sign because "they're in everybody's faces." He advised her that she could wear the sign on her lanyard or water bottle or post it in her room instead. Ms. Israelson informed Principal Judd that human resources and the former J.R. Smith principal allowed her to post the sign in the past. Principal Judd reiterated that, although he wasn't sure of the policies, Ms. Israelson could not post the sign in the faculty lounge.

Upset by this discussion, Ms. Israelson emailed Principal Judd on October 9, 2024, asking whether her sign on the faculty lounge refrigerators violated a policy or law. Principal Judd responded the same day, stating: "The faculty lounge is a public space accessible to all faculty and staff. As such, we do not advertise religious beliefs on district-owned property, such as the refrigerator, because the message appears to be endorsed by the District."

Despite Principal Judd's position that District property cannot be used for personal religious expression, the faculty lounge is often used for personal secular expression. Faculty members are routinely permitted to post personal signs on the refrigerators—such as wedding or baby shower invitations and announcements for community plays. As such, the school's policy

prohibiting Ms. Israelson from posting her own sign about the prayer chain violates her constitutional rights to free speech and free exercise, as well as her right to freely exercise her religion under Utah law.

The Constitution Protects Ms. Israelson's Religious Expression

While the Wasatch County School District Board of Education policy may be silent on the First Amendment rights of district employees, the United States Supreme Court has reiterated time and again that "[t]he First Amendment's protections extend to 'teachers and students,' neither of whom 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.'" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 527 (2022) (quoting *Tinker v. Des Moines Ind. Sch. Dist.*, 393 U.S. 503, 506 (1969)). These First Amendment rights encompass both Ms. Israelson's right to freedom of speech as well as her right to freely exercise her religion.

The Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious adherents. *See Everson v. Bd. of Educ.*, 330 U.S. 1, 18, (1947). Accordingly, the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by individuals acting on their own behalf. The Court has explained that "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." *Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality).

The First Amendment to the United States Constitution prohibits the government from "abridging the freedom of speech" of private individuals or "prohibiting the free exercise" of religion. U.S. Const., amend. I. This prohibition applies to state and local governments through the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). As such, the government may not suppress or exclude the speech of private individuals simply because their speech is religious. *See, e.g.*, *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

The Constitution especially disfavors speech restrictions that discriminate on the basis of viewpoint. *See Lamb's Chapel*, 508 U.S. 384. Principal Judd's policy constitutes viewpoint discrimination because it permits faculty to share announcements of secular personal events and activities but prohibits similar religious messages. *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995) ("Discrimination against speech because of its message is presumed to be unconstitutional."); *Church of Rock v. City of Albuquerque*, 84 F.3d 1273, 1279 (10th Cir. 1996) (holding that the government committed viewpoint discrimination when it banned a film on the life of Jesus).The Supreme Court has "adopted a broad construction" of viewpoint discrimination, "providing greater protection to private religious speech on public property." *Summum v. Callaghan*, 130 F.3d 906, 917 (10th Cir.

1997). This broad First Amendment protection prohibits Principal Judd's policy, which constitutes viewpoint discrimination in a limited public forum. The government's ability to restrict protected speech by private persons on government property depends, in part, on the nature of the forum. A limited public forum "arises where the government allows selective access to some speakers or some types of speech in a nonpublic forum, but does not open the property sufficiently to become a designated public forum." *Shero v. City of Grove*, 510 F.3d 1196, 1202 (10th Cir. 2007) (quoting *Summum v. City of Ogden*, 297 F.3d 995, 1002 n.4 (10th Cir. 2002)). Restrictions on speech in a limited public forum must be viewpoint neutral and reasonable in light of the purpose served by the forum. *Shero*, 510 F.3d at 1202; *see also Swanson v. Griffin*, No. 21-2034 2022 WL 570079, at *3 (10th Cir. Feb. 25, 2022).

J.R. Smith has opened up the faculty lounge as a space on school property where faculty members may gather when they are not engaged in their official duties, such as to enjoy coffee before the school day begins, take their lunch break, or socialize after class. School policy permits faculty members to post personal signs on the refrigerators in the lounge advertising community plays, announcing weddings and baby showers, sharing motivational phrases, and engaging in other forms of personal speech and expression. Until this year, Ms. Israelson was similarly allowed to post messages about the prayer chain in the lounge.

Because the faculty lounge is open to some speakers, including members of the school faculty, to engage in some types of speech, including displays of personal signs and announcements, it is a limited public forum. Therefore, any restrictions on the expressions of permitted speakers, such as Ms. Israelson, must be viewpoint neutral and reasonable in light of the purpose served by the forum. As explained above, however, Principal Judd's restriction on Ms. Israelson's speech is not viewpoint neutral. Because the policy discriminates based on viewpoint in a limited public forum, it is subject to strict scrutiny.

Although the government may engage in viewpoint discrimination when it is the speaker, the personal announcements and messages shared on the faculty lounge refrigerator do not constitute government speech. *See Shurtleff v. City of Boston*, 596 U.S. 243, 251 (2022). When determining whether a private citizen or the government is speaking, the critical question in the government employment context is "whether the speech at issue is itself ordinarily within the scope of an employee's duties." *Kennedy*, 597 U.S. at 527 (quoting *Lane v. Franks*, 573 U.S. 228, 240 (2014)).

Ms. Israelson's sign in the faculty lounge is clearly personal speech, not government speech, because she is not "speak[ing] pursuant to government policy" or "seeking to convey a government-created message." *Kennedy*, 597 U.S. at 529. She is not providing class instruction to her students or speaking on school business as an employee. Indeed, none of the faculty members who post personal notes or messages in the lounge seek to convey a government message, and the school is not concerned that any weddings or baby showers announced on the refrigerator may be perceived as school-sponsored. Instead, the school

recognizes the rights of those individuals to participate in speech unrelated to their employment through signs posted in the faculty lounge.

Principal Judd's policy also infringes upon Ms. Israelson's right to freely exercise her religion. The Free Exercise Clause protects not only Ms. Israelson's right to inwardly and secretly hold religious beliefs, but to express those beliefs to the world. Indeed, government employees have the right to exercise their religion at work, and, as such, a government entity cannot burden an employee's "sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.'" *Kennedy*, 597 U.S. at 525.

"A law is neutral so long as its object is something other than the infringement or restriction of religious practices." *Grace United Methodist v. City of Cheyenne*, 451 F.3d 643, 649-50 (10th Cir. 2006). Principal Judd's policy is not neutral because it is "specifically directed at . . . religious practice." *Kennedy*, 597 U.S. at 526. Although faculty members are permitted to post secular signs in the faculty lounge, Principal Judd directed Ms. Israelson to remove her sign because they concern "religious beliefs." Neither is the policy generally applicable because it "prohibits religious conduct while permitting secular conduct." *Chiles v. Salazar*, 116 F.4th 1178, 1224 (10th Cir. 2024) (quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021)). Because the policy is not neutral or generally applicable, it is subject to strict scrutiny. And as described below, the policy violates the Constitution under the strict scrutiny standard.

The Policy Fails to Meet the Applicable Standard of Strict Scrutiny

As explained, Principal Judd's policy is subject to strict scrutiny under the free exercise and speech clauses. The policy fails under this standard because it requires the policy to be both necessary to serve a compelling governmental interest and narrowly tailored to achieve that result. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). This policy, however, is neither narrowly tailored nor made in furtherance of a compelling government interest.

The District may claim it has an interest in avoiding an Establishment Clause violation. Principal Judd stated his concern that Ms. Israelson's sign would "appear[] to be endorsed by the District." But this position embraces an outdated understanding of Establishment Clause doctrine. The Supreme Court "long ago abandoned" the endorsement test for evaluating Establishment Clause claims, *Kennedy*, 597 U.S. at 510, and has since interpreted the clause "by reference to historical practices and understandings." *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014) (citation omitted). Regardless, the policy cannot logically rely upon purported fear of religious coercion because the prayer chain cannot reasonably be understood to "make a religious observance compulsory," *Zorach v. Clauson*, 343 U.S. 306, 314 (1952), or mandate "formal religious exercise." *Lee v. Weisman*, 505 U.S. 577, 589 (1992). Thus, "the school has no valid Establishment Clause interest." *Good News Club*, 533 U.S. at 112; *see*

also Huck v. United States, No. 222CV00588RJSDBP, 2023 WL 6163615, at *7 (D. Utah Sept. 21, 2023).

Further, an outright ban on Ms. Israelson's religious expression is not narrowly tailored to avoid purported Establishment Clause concerns. Instead, the school could clarify that personal messages posted in the faculty lounge do not belong to the school and instead represent private speech by individuals in their personal capacity.

Finally, although Establishment Clause concerns may create a compelling interest, such a restriction is not necessary where, as here, "the state does not sponsor the religious expression." *Church of Rock*, 84 F. Supp. at 1280.

Upon reviewing Principal Judd's policy, the District will find there is no First Amendment conflict. "There is only the 'mere shadow' of a conflict, a false choice premised on the misconstruction of the Establishment Clause. But a government entity's concerns about *phantom* constitutional violations cannot justify *actual* violations of an individual's First Amendment rights." *Kennedy*, 597 U.S. at 543 (citations omitted).

The Policy Violates Utah's Free Exercise of Religion Statute

Separate from the violation of the United States Constitution, Principal Judd's policy also violates Utah's recently enacted Free Exercise of Religion statute, which expands First Amendment case law protecting the "free exercise of religion." *See* Utah Code § 63G-33-201. While Supreme Court precedent instructs that laws must be neutral toward religion and generally applicable, *see Emp. Div., Dep't Human Resources v. Smith*, 494 U.S. 872, 872 (1990), Utah law provides more protection. Section 63G-33-201 of the Utah Code prohibits even facially neutral laws of general applicability that "substantially burden[] the free exercise of religion." § 63G-33-201(1)-(2)(a). Only laws which satisfy strict scrutiny may overcome this statutory prohibition. § 63G-33-201(1)-(3). And, as discussed above, Principal Judd's policy cannot satisfy strict scrutiny. In addition, under Utah law, a person who prevails in an action to enforce Utah's Free Exercise of Religion statute against a government entity is entitled to recover attorney's fees and costs. § 63G-33-201(6).

Conclusion

In sum, the prohibition against Ms. Israelson's message shared on the faculty lounge refrigerators violates the Constitution and Utah law. The sign represents Ms. Israelson's personal religious speech, and no one could reasonably conclude that the District sponsors, endorses, or encourages anyone to participate in the prayer chain. To the extent that faculty members may read the sign and subsequently participate in the prayer chain, the District must not discriminate against, prohibit, or interfere with employees' personal religious decisions and practices. If the school remains concerned that Ms. Israelson's sign—posted alongside

other secular personal messages—may be construed as government speech, the school can provide a simple disclaimer stating that all posted messages are private speech.

As stated above, we request that by no later than May 14, 2025, you rescind Principal Judd's directive that Ms. Israelson refrain from posting messages about the prayer chain in the faculty lounge and that you permit her to engage in religious expression to the same extent other employees are permitted to engage in secular expression. Otherwise, Ms. Israelson has authorized us to seek all remedies in law and equity, including attorney fees, pursuant to the US Constitution and federal and state statute.

Sincerely,

Michael R. Menssen
Partner

Cc:
Keisha T. Russell
Senior Counsel
First Liberty Institute
2001 W Plano Parkway
Suite 1600
Plano, TX 75075