



November 13, 2025

Smith County Board of Education  
Director of Schools Barry H. Smith  
Smith County School System  
126 SCMS Lane  
Carthage, TN 37030  
[REDACTED]

Principal LaShae Johnson  
Smith County Middle School  
134 SCMS Lane  
Carthage, TN 37030  
[REDACTED]

Principal David Silcox  
Principal, Carthage Elementary School  
149 Skyline Drive  
Carthage, TN 37030  
[REDACTED]

***Sent via U.S. mail and email***

**Re: Constitutionality of student-led religious clubs in Smith County School System.**

Dear Board Members, Director Smith, Principal Johnson, and Principal Silcox:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans, with an office in Tennessee. We successfully represented Coach Joseph Kennedy at the United States Supreme Court. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022). In that case, the Supreme Court made clear that the Free Exercise Clause protects religious practices by both students and employees in public schools. Our representative experience also includes numerous public school districts, in both advisory and litigation counsel capacities.

We currently represent Josh Gibbs and his sons, G.G.G and G.B.G. G.G.G. is a fifth-grade student at Smith County Middle School. G.B.G. is a second-grade student at Carthage Elementary School.

Both students wish to initiate and lead a faith-based athletic student club at their respective school. However, their efforts were put on hold pending additional guidance from the Smith County Board of Education. As the principal of Smith County Middle School stated, the school wants to “meticulously follow[] all state and federal laws.” Ex. A. We commend Smith County’s commitment to following the law—and protecting the religious liberty rights of its students.

The United States Constitution, federal law, the Tennessee Constitution, and Tennessee state law all protect the rights of students like G.G.G. and G.B.G. to express their faith through religious student clubs. We write to advise the Smith County Board of Education of its obligation to protect students’ and parents’ rights in public schools and assist the Smith County School System’s efforts to follow the law. Accordingly, we request Smith County acknowledge and respect the rights of G.G.G. and G.B.G. to launch and lead faith-based athletic student clubs at their schools. Please direct all communication concerning this matter to our attention rather than our clients.

### **Factual Background**

G.G.G. and G.B.G. are students with bright academic and athletic futures, noticeable leadership skills, and active faith commitments. The Gibbs family members are evangelical Christians and feel called to spread the Gospel to their community. G.G.G. and G.B.G. feel compelled by their religion to share their Christian beliefs with classmates and encourage fellow Christians while at school. And Josh wishes for his children to do so, as he and his wife direct the religious upbringing of their children.

G.G.G. and G.B.G. attend school in the Smith County School System, which operates nine public schools in Carthage, Elmwood, and Gordonsville, Tennessee from pre-kindergarten through twelfth grade. G.B.G. is in second grade at Carthage Elementary School—a pre-kindergarten through fourth grade school. G.G.G. is in fifth grade at Smith County Middle School—a fifth through eighth grade school.

Last year, while G.G.G. was a fourth grade student at Carthage Elementary School, he attended a Fellowship of Christian Athletes (FCA) huddle. Once a month before school, he and his classmates would gather to pray and listen to a community member’s devotional lesson. Attending these meetings fulfilled G.G.G.’s desire to participate in his religious calling while at school. And they satisfied Josh’s faith-driven desire for his son to have Christian community at school.

G.G.G. is now a fifth-grader and attends Smith County Middle School. He hopes to lead a faith-based athletic student club this year. G.G.G. is more than capable of organizing and leading a gathering of his classmates to pray, encourage one another in their faith, and listen to a devotional.

G.B.G. also wishes to lead a faith-based athletic student club at Carthage Elementary School. He is likewise capable of facilitating a gathering of his classmates to pray, encourage one another, and listen to a devotional.

Josh is willing to help guide both sons in initiating these clubs, but he trusts their ability to serve as the primary leadership. He previously attended FCA huddles at Smith County High School, participating as a devotional speaker. And he's not alone—Josh knows of other parents at Smith County Middle School and Carthage Elementary School that would happily volunteer their time to support students leading faith-based athletic student clubs and ensure that adult supervision was available per district policies.

But earlier this year, Josh heard troubling rumors that the Smith County School System was not allowing any religious clubs at schools below the high school level. At a board meeting in August 2025, he shared these concerns.

His suspicions were soon confirmed. G.G.G. asked his teacher if he could organize an FCA huddle and was told no. Josh then followed up with the principal of Smith County Middle School, Mrs. LaShae Johnson. She replied that she appreciates G.G.G.'s initiative and that she and Mr. Barry Smith, Director of Schools, "would love to get a Fellowship of Christian Athletes (FCA) going at our school." Ex. A. But because of the alleged "gray area" presented, and the fear of being "put in a position to be sued again," she was waiting on further guidance from the school board. Ex. A. Shortly after, Josh received a call from Mr. Barry Smith, echoing Mrs. Johnson's sentiment.

Mrs. Johnson's concerns reference a lawsuit filed against the district in 2019. Two families sued the district, alleging violations of the Establishment Clause. *See Compl., Butler v. Smith Cnty. Bd. of Educ.*, No. 2:19-cv-91 (M.D. Tenn. Nov. 18, 2019). The lawsuit concluded in less than a year with a consent decree. *See Final Consent Decree and Order, Butler v. Smith Cnty. Bd. of Educ.*, No. 2:19-cv-91 (M.D. Tenn. Sept. 14, 2020). The consent decree specifically carves out religious student clubs from the agreed prohibition on religious events on Smith County Schools' campuses. *Id.* at ¶ 4(e)(i); ¶ 7(a); 8(b). And it provides that "no provision in this Order is intended to supplant or alter the rights afforded student clubs by the Equal Access Act." *Id.* at ¶ 5.

### **Legal Analysis**

Smith County School System risks running afoul of the First Amendment—and other state and federal laws—if it limits the rights of elementary or middle grade students to initiate and organize religious clubs. Fear of violating the Establishment Clause is no excuse; "in no world may a government entity's concerns about phantom constitutional violations justify actual violations of [a student's] First Amendment rights." *Kennedy*, 597 U.S. at 543.

“Both the Free Exercise and Free Speech Clauses of the First Amendment” protect religious expression at public schools. *Kennedy*, 597 U.S. at 514. “Nor does a proper understanding of the Amendment’s Establishment Clause require the government to single out private religious [expression] for special disfavor. The Constitution and the best of our traditions counsel mutual respect and tolerance, not censorship and suppression, for religious and nonreligious views alike.” *Id.*

It is a fundamental principle of the First Amendment that students do not shed their constitutional rights at the schoolhouse gate. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). That principle does not discriminate based on age or grade. The First Amendment’s protection of free exercise and free speech extends to elementary and middle grade students—like G.G.G. and G.B.G.—expressing their sincere religious beliefs through voluntary clubs. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 107 (2001) (applying the First Amendment to an elementary school club).

**I. The Free Exercise Clause protects the rights of elementary and middle grade students to organize religious clubs where other nonreligious clubs are allowed.**

The Free Exercise Clause provides robust protection for students seeking to express their faith through religious clubs. So a school district violates the First Amendment when it “single[s] out’ religious groups ‘for special disfavor’ compared to similar secular groups.” *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist.*, 82 F.4th 664, 672 (9th Cir. 2023) (quoting *Kennedy*, 597 U.S. at 514).

The Free Exercise Clause has “three bedrock requirements” “that the government may not transgress,” unless it can meet strict scrutiny, the most difficult test in constitutional law. *Id.* at 686. First, under *Tandon v. Newsom*, “the government may not ‘treat . . . comparable secular activity more favorably than religious exercise.’” *Id.* at 686 (citation modified). Second, under *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, “the government may not act in a manner ‘hostile to . . . religious beliefs’ or inconsistent with the Free Exercise Clause’s bar on even ‘subtle departures from neutrality.’” *Id.* Third, under *Fulton v. City of Philadelphia*, a “‘generally applicable’ policy may not have a ‘mechanism for individualized exemptions.’” *Id.*

Should Smith County School System restrict religious clubs to only high school grade students, it risks violating all three bedrock requirements.

**A. Prohibiting religious clubs for elementary and middle grades treats secular activity more favorably than religious exercise.**

“[G]overnment regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). In *Tandon*, the Supreme Court held that prohibiting private worship gatherings while granting exceptions for comparable secular activities triggered strict scrutiny under the Free Exercise Clause. *Id.* at 63–64; *see also Fellowship of Christian Athletes*, 82 F.4th at 689 (applying *Tandon*’s logic to student clubs).

Smith County School System “allow[s] students to form clubs or groups that meet before, during, and/or after the school day.” Smith Cnty. Bd. of Educ. Policy 4.802, “Student Equal Access (Limited Public Forum).” This policy contains no age or grade restrictions—it applies equally to Carthage Elementary School, Smith County Middle School, or Smith County High School. But staff at a Smith County School System in-service day were advised that religious clubs were only allowed in “secondary grades (7–12).” Ex. B. By categorically excluding religious clubs for elementary, fifth, and sixth grade students, but allowing nonreligious clubs—such as 4-H, FFA, and Hoot Club—to meet, with the possibility of additional nonreligious clubs being established under the policy, Smith County School System is treating nonreligious clubs more favorably than religious clubs. *See Bd. of Educ. of Westside Cmty Schs. v. Mergens*, 496 U.S. 226, 236 (1990) (“Thus, even if a public secondary school allows only one ‘noncurriculum related student group’ to meet . . . the school may not deny other clubs, on the basis of the content of their speech, equal access to meet on school premises during noninstructional time.”).<sup>1</sup>

Smith County Board of Education’s policy on religious clubs, while it is unduly restrictive in some ways, at least recognizes this legal reality. Smith Cnty. Bd. of Educ. Policy 4.802. Religious clubs are therefore permitted under district policy for elementary and middle grades. More than that, they are required by the First Amendment—if the district allows any nonreligious clubs, it must allow religious clubs too.

**B. Singling out religious clubs for prohibition or burdensome restrictions at elementary and middle grades demonstrates hostility to religious exercise.**

When “official expressions of hostility” accompany policies burdening religious exercise, that is an automatic Free Exercise violation. *Kennedy*, 509 U.S. at 525 n.1 (citing *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 584 U.S. 617, 639 (2018));

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<sup>1</sup> The analysis in *Mergens* primarily concerns the Equal Access Act, discussed *infra*, which focuses on secondary schools. But the logic applies with the same force here. And Free Exercise rights “appl[y] to all grades, especially elementary.” Ex. B. *See also Good News Club*, 533 U.S. at 107.

see also *Fulton*, 593 U.S. at 533 (“Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature.”). The Free Exercise Clause also prohibits “subtle departures from neutrality,” and “covert suppression of particular religious beliefs.” *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534 (1993); see also *Fellowship of Christian Athletes*, 82 F.4th at 690 (holding that a school sent a message of hostility by revoking the approval of a religious club).

By singling out religious clubs for prohibition, Smith County School System risks demonstrating unconstitutional hostility toward G.G.G. and G.B.G.’s free exercise of religion. Religious clubs are also being singled out through a ban on “adult leadership.” Ex. B. While the ability of school staff to participate in religious clubs is restricted and non-school persons may not direct, control, or regularly attend such meetings under the Equal Access Act, discussed *infra*, nothing in the First Amendment prevents qualified adults—such as Josh—from volunteering their time to participate in student clubs.<sup>2</sup> Smith County School System allows adults to participate in student clubs and organizations—recently the 4-H Extension Office visited Smith County Middle School “to teach students about Yoga and mental health.” Ex. C. Singling out religious clubs for a ban on “adult leadership,” treats them less favorably than nonreligious clubs, and is a covert suppression of religious exercise that violates the Free Exercise Clause.

The same logic applies to any prohibition on “use of school resources or social media for religious purposes.” Ex. B. If Smith County Middle School or Carthage Elementary School allows nonreligious clubs to access resources or social media accounts, religious clubs cannot be singularly prohibited from this privilege. See *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 845–46 (1995).

**C. Schools may not exercise discretion in denying student clubs to prevent religious exercise.**

“[T]he mere existence of government discretion is enough to render a policy not generally applicable.” *Fellowship of Christian Athletes*, 82 F.4th at 685. In *Fulton*, the Supreme Court unanimously held that under the Free Exercise Clause, strict scrutiny is triggered when government decisionmakers have discretion whether to grant or deny exemptions from their policies, even if those policies appear neutral. See *Fulton*, 593 U.S. at 537 (“creation of a formal mechanism for granting exceptions renders a policy not generally applicable, regardless of whether any exceptions have been given”).

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<sup>2</sup> Schools may make rules regarding community visitors to protect student safety and maintain order and discipline. But those rules may not be applied in hostile manner that targets religious exercise.

Smith County Board of Education Policy 6.702 gives principals, “in cooperation with the faculty and student body representatives,” the right to approve all clubs and organizations within the school. Smith Cnty. Bd. of Educ. Policy 6.702, “Student Clubs and Organizations.” But Policy 4.802 outlines a discrete set of criteria for religious clubs to meet, so a school official may not use his or her discretion to deny a club because of its religious status.

## **II. The Free Speech Clause protects the rights of elementary and middle grade students to organize religious clubs.**

For decades, Supreme Court precedent has consistently held that public schools that allow any nonreligious club cannot exclude clubs because of their religious viewpoint. In *Good News Club*, a Christian family sued their school district when the elementary school refused to allow a religious club for elementary-age students to meet after school. 533 U.S. at 111–12. The Supreme Court held that the school district violated the Free Speech Clause when it excluded a Christian club from meeting at school because of its religious viewpoint. *Id.* at 112; *see also Rosenberger*, 515 U.S. at 845–46 (holding university’s refusal to fund student publication from religious perspective violated Free Speech Clause); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393–94 (1993) (excluding religious perspective when other perspectives were allowed “discriminates on the basis of viewpoint”).

Smith County School System allows students to form clubs or groups to meet before, during, and after school. Smith Cnty. Bd. of Educ. Policy 4.802, “Student Equal Access (Limited Public Forum).” This policy creates a limited public forum (as its title acknowledges). Because Smith County School System allows other nonreligious clubs, it cannot exclude religious clubs at the elementary and middle grade level from meeting on an equal basis.

## **III. The Free Exercise Clause protects the right of parents of elementary and middle grade students to direct the religious upbringing of their children.**

The Free Exercise Clause requires schools to accommodate parents’ efforts to direct the religious upbringing of their children. *See Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (“[I]t is the natural duty of the parent to give his children education suitable to their station in life.”); *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 535 (1925) (“The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”). As outlined above, multiple Supreme Court precedents protect the rights of students to participate in religious clubs in public schools. The Supreme Court most recently protected parents’ rights to direct the religious

upbringing of their children in *Mahmoud v. Taylor*, where it held that public schools cannot refuse to provide advance notice and opt-outs when they present material that “substantially interferes” with parents’ religious beliefs or the religious development of their children. 145 S. Ct. 2332, 2353.

In reaching this conclusion, the Court reaffirmed that “[t]he practice of educating one’s children in one’s religious beliefs . . . receives a generous measure of protection from our Constitution.” *Id.* at 2351. It also clarified this right is not confined to the home but rather “extends to the choices that parents wish to make for their children outside the home,” noting “the right of parents to direct the religious upbringing of their children would be an empty promise” if it did not follow those children into public schools. *Id.* (internal quotations omitted). Thus, any policy or practice that “substantially interfer[es] with the religious development” of a child is automatically subject to strict scrutiny regardless of whether the law is neutral and generally applicable. *Id.* at 2361.

Any school that denies the right of a parent to direct their child to participate in a religious club substantially interferes with the same parental rights reaffirmed by *Mahmoud*. To survive strict scrutiny, a school must demonstrate that its action “advances interests of the highest order and is narrowly tailored to achieve those interests.” *Id.* at 2361 (internal quotations omitted). And Smith County School System is not advancing an interest of the highest order by unconstitutionally restricting the rights of students and parents to have religious clubs in elementary and middle grades, especially when it allows other nonreligious clubs.

#### **IV. Religious clubs at Smith County Middle School are protected by the Equal Access Act.**

It is unlawful for any “public secondary school” receiving federal financial assistance to deny equal access to students who wish to start religious clubs, when a limited open forum is established. 20 U.S.C. § 4071. Policy 4.802 establishes that forum.

Under the Equal Access Act, “secondary school” is defined by state law. *Id.* at § 4072. In Tennessee, a secondary school is one “that provides a secondary education”—grades seven through twelve. Tenn. Code § 49-6-410. Smith County Middle School is designed to “serve grades five through eight,” § 49-6-301, so it is a school that indeed provides secondary education. Therefore, Smith County Middle School must abide by the terms of the Equal Access Act.

Moreover, the Equal Access Act’s *protection* of rights for secondary school students to have religious clubs does not mean that elementary school students are *prohibited* from likewise organizing religious clubs. Students at elementary schools are independently protected by the First Amendment, as the Supreme Court held in *Good*

*News Club*, while students at secondary schools are doubly protected by the First Amendment and the Equal Access Act.

**V. The Tennessee Constitution and state law protect the rights of elementary and middle grade students to organize religious clubs.**

Tennessee law offers robust protection for religious exercise—particularly for public school students. First, the Tennessee Constitution provides that “all men have a natural and inalienable right to worship Almighty God according to the dictates of their own conscience . . .” Tenn. Const. art 1, § 3. And Section 4-1-107 of the Tennessee Code prohibits government entities from “substantially burden[ing] a person's free exercise of religion even if the burden results from a rule of general applicability” unless that burden is the least restrictive means of furthering a compelling government interest.

More specifically, Tennessee students enrolled at public schools enjoy the express right to organize religious groups—absent any age or grade restriction. Tenn. Code § 49-6-1805. “Students may organize religious student groups, religious clubs, ‘see you at the pole’ gatherings, or other religious gatherings before, during, and after school to the same extent that students are permitted to organize other noncurricular student activities and groups.” *Id.* And the Tennessee Student Religious Liberty Act protects the rights of any student to express religious viewpoints, share his or her religious views, and possess religious literature on campus. Tenn. Code § 49-6-2904.

**Conclusion**

It follows the best of our nation’s traditions when a state cooperates with religious organizations and parents seeking to provide religious instruction. *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). In this spirit, religious expression is “doubly protected.” *Kennedy*, 597 U.S. at 523. And “phantom” concerns about Establishment Clause violations do not “justify actual violations of an individual’s First Amendment rights.” *Id.* at 543.

We are hopeful the Smith County School System will respect this tradition and allow students to initiate and lead religious clubs in all schools—including Smith County Middle School and Carthage Elementary School. Within thirty days of receipt of this letter please provide, in writing, Smith County School System’s plans to ensure that G.G.G. and G.B.G. can lead a faith-based athletic student club at Smith County Middle School and Carthage Elementary School. And within sixty days of receipt of this letter, please provide certificates of completion for the RESPECT Project for all members of the Smith County Board of Education. The RESPECT Project is available at [www.respectproject.net](http://www.respectproject.net).

Of course, you are welcome to discuss this matter with me any time at  
[REDACTED] or [REDACTED]

Sincerely,



Nathan W. Kellum  
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David McDonald  
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November 13, 2025

Page 11 of 11

Scotty Lewis

[REDACTED]

Robin Moore

[REDACTED]

Office of Tennessee Attorney General

Jonathan Skrmetti

[REDACTED]

## EXHIBIT A

**From:** [Johnson, LaShae](#)  
**To:** [Josh Gibbs](#)  
**Subject:** Re: FCA Huddle  
**Date:** Friday, October 10, 2025 9:53:31 AM

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Dear Mr. Gibbs,

Thank you for your email. We sincerely appreciate **G.G.G.**'s initiative and his interest in serving as a student leader. That is exactly the kind of character we hope to foster in our students.

Regarding your question, I want to be transparent about the situation. Both Mr. Smith and I would love to get a Fellowship of Christian Athletes (FCA) group going at our school. However, there is a lot of gray area in the law concerning student-led religious clubs, especially at the elementary and middle school levels.

We have been waiting on the Board Members and our school attorney to give us specific guidance on the law so that we can ensure we stay in full compliance. Our foremost goal is to establish an FCA huddle while meticulously following all state and federal laws, so we are not put in a position to be sued again.

We appreciate your patience as we navigate this complex legal process. We are hopeful for a resolution that allows students to participate while protecting the school district.

Sincerely,

Mrs. Johnson

On Fri, Oct 10, 2025 at 2:16 AM Josh Gibbs **[REDACTED]** wrote:

Hello, Mrs. Johnson,

My son, **G.G.G.**, is a 5th student at SCMS. He is interested in starting an FCA huddle for his classmates and is willing to serve as a student-leader. So far, he's been told no. We've heard that Smith County School System is not allowing K-6th grade students to hold or attend FCA meetings. Is this correct?

Thank you,  
Josh Gibbs

--

Sunni LaShae Johnson, Principal  
**Smith County Middle School**

134 [REDACTED]

[REDACTED] Fax: 615-735-8255

"When educating the minds of our youth, we must not forget to educate their hearts." -Dalai Lama

## EXHIBIT B

## EQUAL ACCESS & RELIGIOUS CLUBS

- Only allowed in secondary grades (7–12)
- Clubs must be student-initiated and student-led
- Meet during non-instructional time
- No school promotion or adult leadership

## FIRST AMENDMENT & SCHOOL NEUTRALITY

- Schools may not promote or discourage religion
- No use of school resources or social media for religious purposes
- Applies to all grades, especially elementary

## EXHIBIT C

6:12



Smith County Middle School



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Smith County Middle School



Sep 24 · 🌐

Last week in Hoot Club, the 4-H Extension Office came to teach students about Yoga and mental health. Students also participated in kickball, created Lego structures, painted name canvas, made butter during our new agriculture program, made balloon art, and made S'mores.



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