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August 16, 2024

**Via Email**

Hirsh M. Joshi  
Patrick O'Reiley Legal Fellow  
Freedom From Religion Foundation  
P.O. Box 750  
Madison, WI 53701  
hjoshi@ffrf.org

Re: Easter Drawings

Dear Mr. Joshi:

This firm represents the Gosnell School District ("District"). Please allow this letter to serve as a response to your July 3, 2024, letter sent to the District. The District is committed to ensuring that its students are not discriminated against at school or during school-sponsored activities, whether educational, athletic, or extracurricular. District policy specifically includes prohibitions on discrimination based on voluntary religious expression.

Contrary to the assertion in your correspondence, the District did not display favoritism towards Christianity nor coerce elementary students to participate in religion by allowing them to draw a crucifix in art class around the Easter holiday. An activity is permissible if "its principal or primary effect (is) one that neither advances nor inhibits religion." *Lemon v. Kurtzman*, 403 U.S. 602, 612, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).

In *Florey v. Sioux Falls School Dist.*, 619 F.2d 1311 (8th Cir. 1980), the Eighth Circuit addressed a school district policy and rules on permissible activity for holiday exercises. In concluding that the policy and rules at issue did not violate the First Amendment, the majority found the rules guaranteed that all materials used had secular or cultural significance:

Only holidays with both religious and secular bases may be observed; music, art, literature and drama may be included in the curriculum only if presented in a prudent and objective manner and only as a part of the cultural and religious heritage of the holiday; and religious symbols may be used only as a teaching aid or resource and only if they are displayed as a part of the cultural and religious heritage of the holiday and are temporary in nature. Since all programs and materials authorized by the rules must deal with the

secular or cultural basis or heritage of the holidays and since the materials must be presented in a prudent and objective manner and symbols used as a teaching aid, the advancement of a “secular program of education,” and not of religion, is the primary effect of the rules.

*Id.* at 1317.

Thus, when the primary purpose served by a school activity is secular, that activity is not made unconstitutional by the inclusion of some religious content. As a result, the District does not believe that permitting students to draw a crucifix in art class around the Easter holiday displayed favoritism towards Christianity. The drawings were done as part of an objective assignment to make an item appear three dimensional. Students were not required to draw the crucifix but could draw other items to complete the same assignment. As a result, no student was forced to participate in any religious speech. The display of those student drawings was further only temporary.

Nonetheless, without admitting any constitutional violation occurred, to avoid any ongoing issues, the District art teacher will not assign a project that includes drawing a crucifix in the future.

If you have any questions or concerns regarding this matter, please contact me directly.

Sincerely,

A handwritten signature in blue ink, appearing to read 'P. M. Brick, Jr.', with a stylized, cursive script.

Phillip M. Brick, Jr.

cc: Len Whitehead, Superintendent (*via email*)