

FREEDOM FROM RELIGION *foundation*

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

December 9, 2016

SENT VIA EMAIL & U.S. MAIL

john.craft@killeenisd.org

Dr. John M. Craft
Superintendent
Killeen Independent School District
200 N WS Young Drive
Killeen, TX 76543

Re: Upholding the separation of religion and government

Dear Dr. Craft:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to thank Killeen ISD for ensuring that its staff members are not abusing their government positions to promote their personal religious beliefs to students. As you are aware from our previous correspondence, FFRF is a national nonprofit organization with more than 24,500 members across the country, including over 1,000 members in Texas. Our purpose is to protect the constitutional principle of separation between state and church.

It has been reported that Patterson Middle School principal Kara Trevino recently ensured that the school remained a welcoming learning environment for all Killeen students by having a religious poster removed from the door to the nurse's office. The poster, placed by Dedra Shannon, featured the character Linus from Charlie Brown, along with a proselytizing message:

“For unto you is born this day in the city of David a savior which is Christ the Lord.
That's what Christmas is all about, Charlie Brown” - Linus

Principal Trevino was absolutely correct to ask that the religious message be removed, as its display by a Patterson Middle School staff member is in direct violation of the Establishment Clause of the First Amendment to the U.S. Constitution. Courts have continually held that school districts may not display religious messages or iconography in public schools. *See, e.g., Stone v. Graham*, 449 U.S. 39 (1980) (ruling that the Ten Commandments may not be displayed on classroom walls); *Lee v. York Cnty.*, 484 F.3d 689 (4th Cir. 2007) (ruling that a teacher may be barred from displaying religious messages on classroom bulletin boards); *Washegesic v. Bloomington Pub. Schs.*, 33 F. 3d 679 (6th Cir. 1994) (ruling that a picture of Jesus may not be displayed in a public school).

We understand that Attorney General Paxton has taken an interest in this situation and has declared Principal Trevino's actions an “attack on religious liberty and a violation of the First Amendment.” This could not be further from the truth. It is not a violation of a district employee's free speech or free exercise rights to require her to remove a religious display and refrain from promoting religion in the school. School staff members have access to a captive student audience solely because of their positions as public school employees: “Because the speech at issue owes its existence to [his]

position as a teacher, [the School District] acted well within constitutional limits in ordering [the teacher] not to speak in a manner it did not desire.” *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011) *cert. denied*, 132 S. Ct. 1807 (2012) (upholding decision of school board to require a math teacher to remove two banners with historical quotes referencing “God”). *See also Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (“We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”).

Attorney General Paxton has also cited Texas’s “Merry Christmas Law,” passed in 2013, as prohibiting the removal of a proselytizing message from school property. But as Paxton well knows, state law cannot overwrite the Constitution. The obligation that government actors, including public school employees, not endorse religion while performing in their official capacities is well established and unambiguous in this instance.

Texas’s Merry Christmas Law was ill conceived when drafted and is without teeth today. To the extent that it purports to allow a school district to display a nativity scene or other religious display on school property, the law is in direct conflict with the Establishment Clause. But even the Merry Christmas Law discourages the type of display at issue in this case. Section (c) notes that a display “may not include a message that encourages adherence to a particular religious belief.” Ms. Shannon’s display failed this requirement by telling students that Christmas is “all about” “Christ the Lord.” As the Supreme Court has stated, “[t]he government may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day by suggesting people praise God for the birth of Jesus.” *Cnty. of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 601 (1989).

Again, we thank the district and Principal Trevino for taking action to protect the right of conscience of its students, many of whom practice minority religions or are nonreligious. True religious freedom cannot be had without freedom from governmental religious endorsements. We hope that some day Attorney General Paxton will come to share the views of our country’s Founders on this point. Until that time, we applaud Killeen ISD for protecting its students’ rights.

Sincerely,



Sam Grover
Staff Attorney

cc: Principal Kara Trevino, Patterson Middle School *via* email