

FREEDOM FROM RELIGION *foundation*

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**SENT VIA EMAIL & U.S. MAIL: klcastellanos@capousd.org, mgparham@capousd.org,
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Krista Castellanos
President
Board of Trustees
Capistrano Unified School District
33122 Valle Rd
San Juan Capistrano, CA 92675

Re: Abuse of school board position to promote religion

Dear President Castellanos and Board members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to request that the Capistrano Unified School District Board of Trustees take appropriate action to stop board members from using their government positions to promote their personal religious beliefs and denigrate the religious beliefs of students, parents, and community members. FFRF is a national nonprofit organization with more than 40,000 members across the country, including more than 5,100 members and two chapters in California. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned District community member has reported that board member Lisa Davis has been using her position on the board to foist her personal religious beliefs upon district parents and community members and to denigrate non-Christian students and families in the District. Our complainant noted that they are not a “satanist,” but that they were shocked and dismayed that a school board member would use their position to promote their personal religious beliefs and organize a group of people against a religious club because she personally believes “satanists are the worst.”

Our complainant reports that on January 17, 2024 during a board meeting, Ms. Davis expressed that she wants the District to develop a policy to deny after school access to school facilities for groups that do not align with her (Christian) values. Her statement ironically began by acknowledging the importance of religious freedom:

Yesterday was our national religious freedom day. National religious freedom day marks the anniversary of the Virginia Statute for Religious Freedom drafted in 1777 by Thomas Jefferson. It was a pivotal moment in our nation’s history, as that visionary document laid the foundation for the protection of religious liberties enshrined in our constitution.

She then implied that members of the Satanic Temple are comparable to Nazis, Hitler, the Proud Boys, Antifa, and the KKK:

We don't have the authority to do whatever we want as a board. Our clubs are also not set up carte blanche. We do not allow six year olds to run and lead a club. We would not approve: Proud Boys clubs, bondage clubs, guns and shooting clubs, ANTIFA clubs, nazi clubs, Hitler clubs, KKK clubs, black magic clubs, ouija board clubs...or would we?

She stated she valued "religious pluralism" and "freedom of religion," only to immediately denigrate those who hold a minority religious viewpoint:

I put a lot of value on religious pluralism and believe firmly in the freedom of religion. Since we run a public school with taxpayers' dollars, we have a duty to protect people's availability to worship in various ways as long as it does not infringe upon others rights or lives. We also have policies in place that limit a religion's specific influence on our public schools that allow for people to share their faith consistent with the Constitution and various state laws. We allow various clubs and churches to use our facilities with certain restrictions. Yet tonight I have been informed that we have a request by the After School Satan Club that they would like to open up a club in one of our, one of my, elementary schools in San Clemente because that school also has a Good News or a Christian club.

I am not exactly sure how a satanic club fits into all this... While we can be pluralistic about faith and agree to disagree on doctrinal matters, I would think that the District would not allow the formation of a KKK or a nazi club under a sense of propriety that neither of them reflect our community values. It would not matter, in the least, if they were offering courses in self-worth, art, or public speaking. I would think that the Board would rightly so reject their applications out of hand. Honestly, in my view, nazis and KKKs are terrible, but satanists are the worst and absolutely contrary to everything I believe and stand for. And what the vast majority of what our community believes and stands for. They actively work against the interest of a vast majority of our community.

She called the Satanic Temple a "hate group" and expressed that they should not be able to identify with their chosen religious affiliation, but should change it to something that she personally approves of:

Make no mistake, the satanistic[sic] group is a hate group organized with a specific purpose to mock and demon[sic] Christian beliefs. It could very easily rebrand as an open minded group, scientific group, or even an atheist group. Choosing to brand themselves as a satanic group serves only to express hate. While we respect everyone's right to believe whatever they may and worship whatever they like, the nature of this group forces this body to understand the limits of its policy. Why is this okay and not a nazi group? So while the United States Supreme Court has ruled on related issues, I am not aware of specific precedent that would stop us from denying a satan club, if indeed that is where the board decides to go.

We understand that Ms. Davis used her position as a board member to organize a prayer walk on February 11, 2024 at Truman Benedict Elementary School in order to further promote her personal religious beliefs and take action against the After School Satan Club. Our complainant reports that District parents and community members who questioned this event and its discriminatory intent on her official Instagram page, where she regularly posts important information as a member of the board, were blocked and their comments were deleted. Please see the enclosed screenshots.

While board members are free to promote their personal religious beliefs however they wish in their personal capacities outside of the school board, as government officials they cannot be allowed to abuse their position to promote their personal religious beliefs and to denigrate members of minority religions. We ask that all members of the Board respect the constitutional rights of all Capistrano USD's students, parents, and community members by refraining from promoting their personal religious beliefs in their official role as school board members, or actively denigrating and organizing events against those who follow other religions.

Our Constitution's Establishment Clause—which protects Americans' religious freedom by ensuring the continued separation of religion and government—dictates that the government cannot in any way show favoritism toward religion. As the Supreme Court has put it, “the First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cty. v. ACLU*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15–16 (1947).

Moreover, “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lee*, 505 U.S. at 589). Allowing board members to use their positions to promote their personal religious beliefs to students and community members during school board meetings, while also denigrating other beliefs, violates these constitutional limits on government religious coercion and sends a religious message on behalf of the Board that is “impermissible because it sends the ancillary message to . . . nonadherents ‘that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.’” *Santa Fe Indep. Sch. Dist.*, 530 at 309–10 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)). Furthermore, the Ninth Circuit Court of Appeals has upheld restrictions on employee speech in the course of their government job when such restrictions exist to avoid Establishment Clause violations. *Berry v. Dept. of Soc. Serv.*, 447 F.3d 642 (9th Cir. 2006). “There is no doubt that compliance with the Establishment Clause is a state interest sufficiently compelling to justify content-based restrictions on speech,” including in public fora. *Freedom From Religion Found., Inc. v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132, 1151 (9th Cir. 2018) (internal citation omitted).

The statements of school board members are attributable to the district. It is inappropriate and unconstitutional for the district or its agents to promote a religious message because it conveys government preference for religion over nonreligion. “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”)

It is also worth pointing out that there is clear and “specific precedent” that would stop the Board from denying a religious club based on a board member's issues with its religious viewpoint. In *Good News Club v. Milford Central School*, the school district opened its facilities for public use after school hours as the District has done here. 533 U.S. 98, 102 (2001). The local Good News Club applied to use school facilities for its weekly after school meetings. *Id.* at 103. The district denied the GNC's request based on the organization's religious purpose. *Id.* The GNC sued the district and sought a preliminary injunction, alleging that the district had violated its First Amendment rights. *Id.* at 104. The United States Supreme

Court stated that the district, after creating its facility use policy, could not “discriminate against speech on the basis of viewpoint.” *Id.* at 106. The Court held that the school discriminating against the GNC’s speech based on its “religious viewpoint” was “impermissible viewpoint discrimination” that violated the First Amendment. *Id.* at 112.

Furthermore, “[t]he government, consistent with the Constitution’s guarantee of free exercise...cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices. The Free Exercise Clause bars even ‘subtle departures from neutrality’ on matters of religion.” *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm’n*, 584 U.S. 617, 638 (citing *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 534). In *Masterpiece Cakeshop*, the Supreme Court found that “official expressions of hostility to religion” in comments made by government officials, especially when those comments are “not disavowed...at any point,” are “inconsistent with what the Free Exercise Clause requires.” *Id.* at 639.

As school board members, you serve a diverse population that consists not only of Christians, but also minority religious and nonreligious students, parents, and community members. Religious communications made in your official capacity send a message that excludes those who are among the 37 percent of Americans who are non-Christians, including the nearly one in three adult Americans (29 percent) who are religiously unaffiliated.¹ Religious statements coming from your position on the school board needlessly alienate the non-Christian and nonreligious residents of the Capistrano Unified School District, turning them into outsiders in their own community. While many residents may support these religious sentiments, a significant proportion are excluded by them.

While board members are certainly free to express their religious beliefs in their private capacity outside of their role as board members, it is unconstitutional for school board members to push their personal religious beliefs during school board meetings and advocate for disparate treatment of those who hold other religious viewpoints. We request that members of the Board refrain from discussing their religious beliefs during meetings in order to uphold the rights of conscience embodied in our First Amendment, and that the Board remember that as long as it allows other non-profits to host clubs in school facilities after school hours, it must allow all non-profits to do so, including ASSC.

Sincerely,



Christopher Line
Staff Attorney
Freedom From Religion Foundation

Enclosures

¹ Gregory A. Smith, *About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated*, Pew Research Center (Dec. 14, 2021), www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/.

prayer walk

SUNDAY, 2/11 @7 AM

MEET AT TRUMAN BENEDICT ELEMENTARY
@1251 CALLE SARMENTOSO
SAN CLEMENTE, CA 92673

JOIN CUSD TRUSTEE, LISA DAVIS, ALONG
WITH FELLOW NEIGHBORS OF FAITH, AS
WE START THIS WEEK'S SABBATH OFF
WITH A "PRAYER WALK". PRAY AND WALK
WITH FRIENDS FOR OUR SCHOOLS,
COMMUNITY, AND COUNTRY.

JOSHUA 1:9 "BE STRONG AND COURAGEOUS. DO NOT BE
AFRAID; DO NOT BE DISCOURAGED, FOR THE LORD YOUR
GOD WILL BE WITH YOU WHEREVER YOU GO."

HOPE TO SEE YOU THERE ❤️❤️❤️

MUCH LOVE

