

# FREEDOM FROM RELIGION *foundation*

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

April 6, 2023

**SENT VIA EMAIL & U.S. MAIL: [daniel.smith@lcps.org](mailto:daniel.smith@lcps.org)**

Daniel Smith  
Acting Superintendent  
Loudoun County Public Schools  
21000 Education Court  
Ashburn, VA 20148

Re: Religious Quotes in Employees' Email Signature Blocks

Dear Superintendent Smith:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding Liberty Counsel's recent misguided letter demanding that you allow your teachers to promote their personal religious beliefs using their official school email accounts in communications with students and coworkers. FFRF is a national nonprofit organization with more than 40,000 members across the country, including more than 900 members in Virginia. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

It is our understanding that on March 23, 2023, you received a letter from Liberty Counsel regarding the district's decision to require a teacher to refrain from using her official district email account to proselytize to your students and her coworkers by including a bible verse in her official email signature. In its letter, Liberty Counsel mischaracterized the Supreme Court's recent decisions in *Shurtleff v. City of Bos., Mass.* and *Kennedy v. Bremerton*, arguing that it is now religious discrimination to direct a teacher not to include religious expressions in official district communications. This is blatantly inaccurate and we understand the district has correctly ignored these specious claims.

It is well-settled law that public schools may not promote or show favoritism toward religion. *See generally Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). The statements of a district employee 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.

When district employees use official channels of communication to promote their religious beliefs, it sends a message of exclusion that needlessly alienates the students and families who belong to the thirty-seven percent of Americans who are non-Christians, including the nearly one

in three Americans who now identify as religiously unaffiliated.<sup>1</sup> This “[s]chool sponsorship of a religious message 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. v. Doe*, 530 U.S. 290, 309–10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)).

It is not a violation of the free speech rights of employees when a school district regulates what employees say while acting in their official capacity. *See, e.g., Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1807 (2012) (“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.”); *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.”).

Contrary to Liberty Counsel’s assertions, allowing teachers to display appropriate secular messages, such as listing their preferred pronouns or including district approved quotes, does not create a “forum.” These messages sent through official district emails by district staff members are government speech attributable to the district, and it is well within its rights to restrict the content of such messages, especially when the messages are used to violate students’ rights to be free from proselytizing by teachers.

In *Shurtleff v. City of Bos., Mass.*, the Supreme Court concluded that because Boston had established a public forum, it could not deny a group from flying the Christian flag in that forum. 142 S. Ct. 1583 (2022). However, the Court also reaffirmed that “[t]he First Amendment’s Free Speech Clause does not prevent the government from declining to express a view.” *Id.* at 1589. “When the government wishes to state an opinion, to speak for the community, to formulate policies, or to implement programs, it naturally chooses what to say and what not to say.” *Id.* In this situation, there is no forum, and so, the district may freely choose what it allows its employees to say or what not to say.

Furthermore, contrary to Liberty Counsel’s assertion, the decision in *Kennedy v. Bremerton School District* does not apply to the facts at hand. The *Bremerton* decision simply affirms that public school faculty and staff may pray silently and privately during times when they are not acting in their official capacity as District representatives. *Kennedy v. Bremerton Sch. Dist.*, 142 S.Ct. 2407, 2432–33 (2022). The Court stressed that “[s]tudents were not required or expected to participate.” *Id.* Here, it is clear that employee emails sent to students through the district’s official communications system pursuant to their duties as a district employee are not private speech.

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<sup>1</sup> 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/](http://www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/).

You are correct that allowing a public employee to retain a religious quote in their official email signature block is a violation of the First Amendment rights of students and coworkers, and should feel confident standing by your position. We commend you for not capitulating to Liberty Counsel's demands based on its deceitful misinterpretations of the current state of the law in public schools.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Line", with a stylized, flowing script.

Christopher Line  
Staff Attorney  
Freedom From Religion Foundation