

FREEDOM FROM RELIGION *foundation*

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David R. Shiflett
Board Chair
Augusta County School Board
18 Government Center Lane
Verona, VA 24482

Re: Concerns regarding student free speech

Dear Chair Shiflett and School Board members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding the school board's inappropriate reaction to a student's artwork and its threat to curtail student speech that it disagrees with in the future. 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 a Fort Defiance High School student used art to express the idea that "growing up queer meant you couldn't be saved by God."¹ We understand that the background of the piece features pages from the Bible while the foreground shows praying hands clasping a rosary. There are blood stains in rainbow colors. The text reads, "God loves you... but not enough to save you." Please see a photo of the piece enclosed.

We understand that multiple board members expressed that they were personally offended by the student's artwork and that the board held a special meeting to consider taking adverse action towards the student's speech. Fortunately, we understand that the board included its legal counsel in the meeting and avoided discriminating against the student based on their religious viewpoint or curtailing the student's speech. However, we understand that the board has announced it "will look at possible policy adjustments or other possible solutions to help remedy a problem like this in the future."

This is a piece of art, a deeply personal expression by a student of their personal beliefs. The best art evokes strong emotional reactions and stirs discussion. The only "problem" that the board needs to address "in the future" is the conduct of its members when confronted with viewpoints that conflict with their own personal religious beliefs.

We write to remind the board that it cannot discriminate against students based on their religious beliefs and religious expression. Nor can it permissibly draw a distinction between student religious expression

¹ <https://www.artsonia.com/museum/art.asp?id=123418418&artist=11778020&gallery=y>

based on which religion or what messages they choose to express. This kind of viewpoint discrimination would be a violation of not only the Establishment Clause, but also the Free Exercise Clause and the Free Speech Clause of the First Amendment.

As public school board members, you have a responsibility to uphold the First Amendment rights of all August County Public Schools students, regardless of your personal beliefs. Your decision to hold a special meeting regarding a student's artwork and your implication that this kind of message will not be allowed in the future isolates a specific viewpoint for censorship. Viewpoint discrimination is an especially potent concern animating free speech jurisprudence. *See, e.g., Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) ("Viewpoint discrimination is thus an egregious form of content discrimination...The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."). While you may view utilizing pages from the bible in a piece of artwork as offensive, you may not use your position as school board members to censor student artistic expression simply because that view is contrary to your own.

The school board cannot adopt a policy stifling religious or nonreligious expression simply because it challenges majoritarian religious views and beliefs. Adopting a school policy that targets particular religious expression is unlawful. This practice would amount to viewpoint discrimination under the First Amendment because the policy treats student expression differently based on the viewpoint expressed. Viewpoint discrimination is a blatant violation of the Free Speech Clause. The Supreme Court has ruled school districts cannot ban information based on a "dislike of the ideas." *See Bd. of Educ. v. Pico*, 457 U.S. 853 (1982) (holding the removal of "anti-Christian" books from the school library was a violation of the students' First Amendment rights).

As school board members, you are charged with great responsibility and have been given significant trust by the Augusta County community, including those students, parents, and staff, who do not share your religious viewpoint.

Any attempt to block student speech for the religious viewpoint it expresses violates the Free Speech, Establishment and Free Exercises clauses of the United States Constitution. You must not allow your personal beliefs to interfere with your constitutional responsibilities to your students and the broader community. We ask that you refrain from further attempts to interfere with student speech and that you issue an apology to the student whose artwork you have unjustly targeted. Thank you for your time and attention to this matter.

Sincerely,



Christopher Line
Staff Attorney
Freedom From Religion Foundation

