

# FREEDOM FROM RELIGION *foundation*

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July 3, 2024

**SENT VIA EMAIL & U.S. MAIL: lwhitehead@gosnellschool.net**

Superintendent Len Whitehead  
Gosnell School District  
600 State Highway 181  
Gosnell, AR 72315

Re: Unconstitutional religious assignment

Dear Superintendent Whitehead:

I am writing on behalf of the Freedom From Religion Foundation to object to a constitutional violation which occurred at Gosnell Elementary School. FFRF is a national nonprofit organization representing 40,000 members across the country, including members and a chapter in Arkansas. FFRF's purpose is to protect the constitutional principle of separation between state and church.

A concerned community parent informs us that Gosnell Elementary School art teacher [REDACTED] [REDACTED] instructs young students to paint the crucifixion scene. That is evident from GES's art show on May 23, 2024, which features some of the crucifixion paintings. Please see the enclosed images. We understand that this is not the first year that Ms. [REDACTED] has given this assignment.

Public school students have a constitutional right to be free from religious indoctrination in their public schools. It is well settled that public schools may not show favoritism towards or coerce belief or participation in religion. *See generally Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 393 U.S. 97 (1967); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *McCullum v. Bd. of Educ.*, 333 U.S. 203 (1948).

Moreover, public schools may not provide religious instruction. In the seminal Supreme Court case on this issue, *McCullum v. Board of Education*, the Court held that bible classes in public schools are unconstitutional. 333 U.S. 203. The district in *McCullum* allowed religious teachers, employed by private religious groups, to teach students a regular bible class. The Court held, "here not only are the state's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory public school machinery. This is not separation of Church and State." *Id.* at 212. There is simply no legitimate educational reason for Ms. [REDACTED] to assign students to depict the Christian cross in their artwork.

Using a religious holiday, Easter, as a pretext to teach religious lessons in a public school is unconstitutional. Certainly, “a school can direct a teacher to ‘refrain from expressions of religious viewpoints in the classroom and like settings.’” *Helland v. S. Bend Comm. Sch. Corp.*, 93 F.3d 327 (7th Cir. 1993) (quoting *Bishop v. Arnov*, 926 F.2d 1066, 1077 (11th Cir. 1991)). The Supreme Court has recognized that “[f]amilies entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.” *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987). If the District turns a blind eye to overt proselytization in its classroom, it becomes complicit in an egregious constitutional violation and breach of trust.

Please note that it is not a violation of any teacher’s First Amendment rights when a district regulates their curriculum while acting in their official capacities. Teachers have access to a captive audience of students due to their position as public educators. Therefore, the District has a duty to regulate religious proselytizing during school-sponsored activities. “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.”). Courts have upheld the termination of teachers who violate the principle of separation between church and state. See, e.g., *Grossman v. S. Shore Pub. Sch. Dist.*, 507 F.3d 1097 (7th Cir. 2007) (upholding termination of guidance counselor who prayed with students).

If assigned for a grade, the coercive effect intensifies. Non-religious students are dealt a dilemma: Either refuse—at risk of their grades and community standing—or acquiesce, betraying their conscience. That ultimatum is precisely what the Establishment Clause guards against. The District’s assignment, therefore, violates the Establishment Clause.

The Supreme Court’s decision in *Kennedy v. Bremerton School District* did not change the law or overrule any of the above cases. 597 U.S. 507 (2022). The *Kennedy* court repeatedly stressed the private nature of Kennedy’s prayer and that it occurred when he was not on duty. *Id.* at 513–14. Not so here; this event falls within the scope of a teacher’s official public duties and thus *Kennedy* is inapplicable.

On whole, [REDACTED]’s assignment “sends a 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*, 530 U.S. at 310 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (O’Connor, J., concurring)). The District has a constitutional duty to remain neutral toward religion. By including religious assignments, the

District abdicates that duty—needlessly alienating the forty-nine percent of Generation Z who are religiously unaffiliated.<sup>1</sup>

To respect the constitutional rights of students and their families, the District must counsel its employees against religious assignments. We ask the District to investigate and ensure that its employees and staff are aware of their Establishment Clause obligations. Please respond in writing with the steps the District is taking to remedy these constitutional violations. Thank you for your time and attention to these matters.

Sincerely,

A handwritten signature in cursive script that reads "Hirsh M. Joshi".

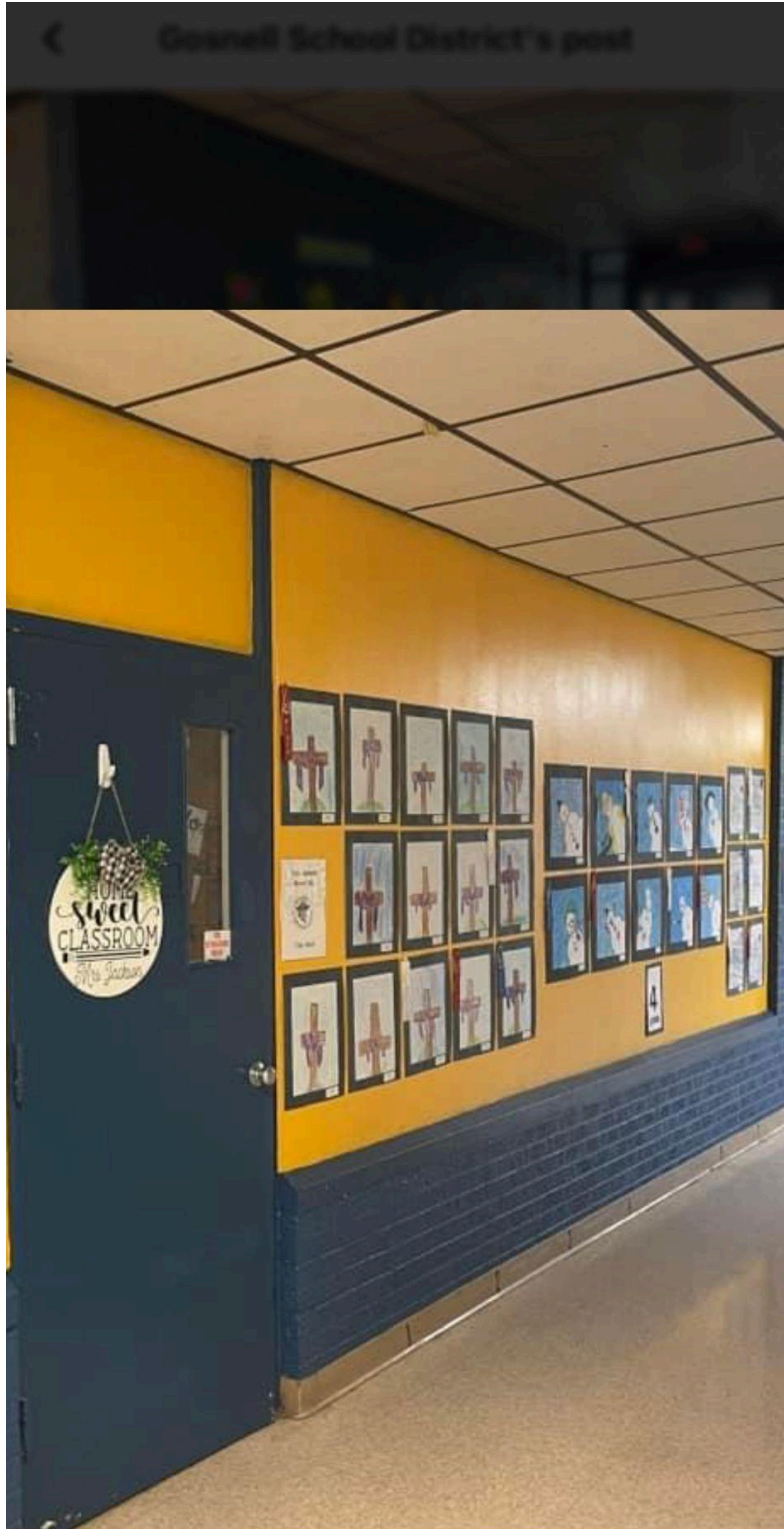
Hirsh M. Joshi  
*Patrick O'Reiley Legal Fellow*  
*Freedom From Religion Foundation*

Enclosures

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<sup>1</sup> Ryan P. Burge, *2022 Cooperative Election Study of 60,000 respondents*, Apr. 3, 2023, <https://religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/>.







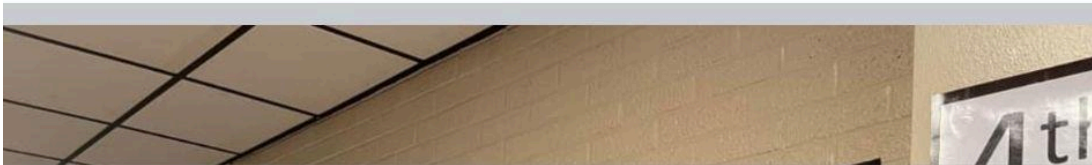


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 Message Gosnell School District

