IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STACI BARBER, Plaintiff, vs. KATY INDEPENDENT SCHOOL DISTRICT; BRYAN SCOTT ROUNDS, Principal of Cardiff Junior High, sued in his individual and official capacities, Defendants.	)	Civil Action No.: 4:24−cv−01004

PLAINTIFF'S REPLY IN SUPPORT OF A PRELIMINARY INJUNCTION

Plaintiff Staci Barber ("Barber") files this reply in support of a preliminary injunction to enjoin the Defendants from prohibiting or penalizing her personal prayer "on campus visible to students in [her] role as an employee," Pl.'s Ex. C, and of specific import here, at the flagpole or in her classroom. Surprisingly, Defendants contend, "At this point it is unclear what Barber is seeking as a remedy for her lawsuit." Defs.' Resp. at 13, ECF No. 17. Not so. There is no lack of clarity here. Barber seeks an injunction protecting her right to pray personally, separate from any official student group, regardless of whether students are present. As Rounds concedes, he ordered Barber to stop praying at the flagpole even though the student group was not present. Defs.' Ex. A ¶ 8. That private prayer is protected by the First Amendment.[1]

Rounds misrepresents what he told Barber. He did not tell her to move "since the flagpole area had been approved for the students to hold SYATP," Defs.' Ex. A ¶ 9, nor did he tell her he "was not denying their right to pray, but that they needed to use another location, such as their

[1] Attached to this reply are two additional exhibits, made necessary by the arguments raised by Defendants' Response. Defs.' Resp., ECF No. 17.

classroom." *Id.* Instead, Rounds told Barber categorically that "you can't even pray in front of students, right? That's part of board policy," Pl.'s Ex. E at 1, and "[y]ou can get together and pray together in, in private away from students, but you cannot do that in front of students." *Id.* That remains the *current* policy. Defendants' policy still prohibits teachers from praying, just because that prayer may occur where a student might happen to be present. Pl.'s Ex. A at 26 ("[N]othing prevents a teacher or other employee from praying or reading religious materials during a time *when students are not present*.") (emphasis added).

Defendants contend that Barber wishes to "participate in a student-initiated, noncurricular event." Defs.' Resp. at 8. This is inaccurate. Barber does not seek, nor has she sought, any right to pray as part of an official student noncurricular event. Her desired relief is to engage in personal, private prayer at the flagpole, entirely separate from official conduct such as the meeting of a student group. Defendants' discussion of whether a teacher should be kept separate from a "noncurricular student activity" is irrelevant and beyond the scope of Barber's desired relief. Barber believed the official student meeting would occur after her prayer had concluded. Compl. ¶ 19. Further, when Barber told Rounds of her intention to only pray with "staff before students arrive just like we have done the past three years," Pl.'s Ex. C, Rounds did not respond by indicating an official student group would already be meeting. Instead, he simply said, "[b]y 8:00 AM students are generally waiting *at the front entry of the building*." *Id.* (emphasis added). Moreover, Coach Thomas, the faculty member monitoring the student prayer group, informed Barber that the official student prayer would not be occurring until after her prayer concluded. Pl.'s Ex. D ¶ 3.

The undisputed facts indicate Barber's prayer was not with any student group. Rounds states in his declaration that when Barber was at the pole there were not students present: "[t]here

were students near the front entrance of the school, but students had not yet started gathering at the pole." Defs.' Ex. A, ¶ 8. Barber's prayer and religious speech occurred separate from and did not "overlap," Defs.' Resp. at 8, with the any student group's activity. Her future personal prayer will likewise not overlap.

Defendants' policy prohibits Barber from personal prayer, just because a student might see. Likewise, in *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Defendant argued "that any visible religious conduct by a teacher or coach should be deemed—without more and as a matter of law—impermissibly coercive on students." *Id.* at 2431. The Supreme Court thoroughly rejected this argument, emphasizing that a teacher's personal "demonstrative religious activity" is protected by the First Amendment from infringement. *Id.* It is precisely that holding which Barber seeks to apply here, a right to engage in personal private prayer, and not be barred from doing so just because a student might see her. She is *not* seeking to engage in prayer "at the same time and in the same place as a group of students doing the same thing." Defs.' Resp. at 10. She is not challenging the Equal Access Act or seeking to be present at any event in her official capacity. Barber seeks to engage in private prayer in her personal capacity outside of her workday—the same time when other teachers are engaging in personal activity.

Even the very cases Defendants cite recognize that it is the *official* conduct of teachers that may be legally limited. For example, *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 404 n. 4 (5th Cir. 1995), concerned official conduct: "if while acting in their official capacities, DISD employees join hands in a prayer circle or otherwise manifest approval and solidarity with student religious exercises, they cross the line." It is exactly that official/personal "line" the Court should apply.

Defendants cite cases regarding the voluntary cessation of wrongful conduct. But the

language of the policy at issue here *still prohibits Barber from praying where a student might see her*, just as much as the original language did: "[N]othing prevents a teacher or other employee from praying or reading religious materials during a time when students are not present." Pl.'s Ex. A at 26. Defendants have never given Barber assurances that she can engage in this personal prayer before her workday *when students are present*, even after being asked for such assurances. Pl.'s Compl. ¶¶ 41, 45.

Defendants argue that Barber's rights will not be limited going forward. Defs.' Resp. at 18, but Defendants do not dispute that current policy bars her from praying in the presence of students. They certainly do not dispute that she is barred from praying privately at the school flagpole on her personal time, having argued extensively in favor of that ban. Barber was reprimanded, Complaint ¶ 27-29, for praying where students could see her. The fact that she has complied with that instruction, ceasing her regular Bible study and avoiding any prayer where students might see, is not an indication that an injunction is unnecessary, but a demonstration that Defendants' policy has the ongoing effect of chilling her religious speech. Nothing indicates that the unlawful conduct has ceased. The requested injunction is not merely asking Defendants to follow the law in a vacuum, as Defendants are currently *violating* the law. Instead, Barber requests a specific order that Defendants must specifically stop forbidding Barber from exercising her right to engage in religious speech (praying at the flagpole or in classrooms outside school hours) just because a student may be present.

Finally, Defendants argue the School District cannot be held liable pursuant to *Monell*, due to their assertion that their employee handbook does not constitute official school district "policy." Defs.' Resp. at 5-8. However, *Monell*'s requirement for an official government policy to pierce qualified immunity does not apply to injunctive relief, but only insofar as a plaintiff seeks damages.

"Qualified immunity shields public officials from money damages only." *Morse v. Frederick*, 551 U.S. 393, 400 n. 1 (2007). Defendants do not cite any case contradicting this principle or applying *Monell* to injunctions. For example, *McClelland v. Katy Indep. Sch. Dist.*, 63 F.4th 996, 1012 (5th Cir. 2023), upon which Defendants rely, discusses only damages. This "policy" requirement does not apply to Barber's request for an injunction.

CONCLUSION

For these reasons, Plaintiff Staci Barber respectfully requests that the Court issue a preliminary injunction protecting her constitutional right to personal religious speech.

Dated: May 12, 2024.

Respectfully submitted,

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**Not admitted in this jurisdiction; application for pro hac vice admission forthcoming

CERTIFICATE OF SERVICE

I hereby affirm that a true and correct copy of the foregoing document was served upon all counsel of record through the Court's e-filing system on May 12, 2024.

/s/ Nathan J. Moelker
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