ACLJ
AMERICAN CENTER
for LAW & JUSTICE

May 16, 2025

VIA EMAIL AND FEDEX

Mike Harper
[redacted]

Re: [redacted] ***Violation of*** [redacted] ***First Amendment Rights***

Dear Mr. Harper,

The American Center for Law and Justice ("ACLJ") represents [redacted], a fifth-grade student at [redacted], a school in [redacted]"). We write regarding a serious constitutional violation that occurred this week when school officials prohibited [redacted] from distributing Bible verses to her peers during non-instructional time.

By way of introduction, the ACLJ is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in several significant cases involving the freedoms of speech and religion.[1]

STATEMENT OF FACTS

[redacted] is a twelve-year-old special needs student who has attended [redacted] since pre-kindergarten. Despite her intellectual challenges, she consistently performs well academically and is well-regarded by the school community. [redacted] has a deep personal

[1] *See, e.g., Pleasant Grove City v. Summum*, 129 S. Ct. 1523 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept counter-monuments when it has a war memorial or Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (unanimously striking down a public airport's ban on First Amendment activities).

faith and, acting on her own initiative, prepared small strips of paper containing Bible verses to share with classmates and staff.

On Monday, May 12, 2025, [redacted] brought these Bible verse strips to school with the intention of distributing them during non-instructional periods (before school, during recess, and after school). When she went to the principal's office and offered one to Principal [redacted] the principal confiscated all the Bible verse strips. [redacted] explained that since the principal was taking the verses, the principal might be able to share them with individuals who might be "having a bad day," but the principal nonetheless refused to return the materials.

On Tuesday, May 13, 2025, Principal [redacted] contacted Ms. [redacted] by telephone and explained that while [redacted] was not in trouble, she would not be permitted to distribute the Bible verses because "parents might be upset." When Ms. [redacted] asserted her daughter's constitutional right to distribute religious literature during non-instructional time, the principal appeared uncertain and stated she would consult with district officials and follow up.

On Wednesday, May 14, 2025, [redacted] attempted to give a Bible verse to her teacher, who sternly instructed [redacted] to stop offering the verses. This interaction left [redacted] feeling frightened and confused as to why her attempt to spread the joy of Jesus was wrong. Ms. [redacted] subsequently emailed the teacher expressing concern about her daughter feeling afraid and requested that the teacher not censor [redacted] religious expression.

The teacher responded via email, claiming that [redacted] had attempted to distribute the verses during instructional time (a claim that contradicts Principal [redacted] The teacher stated she had instructed [redacted] that she could not distribute materials during class but could do so after school.

The morning of May 15, 2025, Principal [redacted] again contacted Ms. [redacted] by telephone and claimed that district policy prohibits [redacted] from distributing Bible verses at any time while on school property.

Principle [redacted] did not provide Ms. [redacted] with the [redacted] ISD policy that required her to prohibit all of [redacted] distribution of Bible verses, but pointed her instead to the [redacted] ISD website. The relevant policy section titled "Non-School Materials From Students" reads as follows:

> Students must obtain prior approval from the principal before selling, posting, circulating, or distributing copies of written or printed materials, handbills, photographs, pictures, films, tapes, or other visual or auditory materials that were not developed under the oversight of the school. 50 To be considered, any non-school material must include the name of the sponsoring person or organization. Approval will be granted or denied within two school days.
> Each campus principal shall designate times, locations, and means by which non-school literature that is appropriate for distribution may be made available by students to students or others at that principal's campus.

STATEMENT OF LAW

STUDENTS, INCLUDING [redacted] ENJOY THE RIGHT TO ENGAGE IN PRIVATE RELIGIOUS SPEECH AND EXPRESSION WHILE IN ATTENDANCE AT PUBLIC SCHOOLS.

It is well-settled law that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 506 (1969). As the Supreme Court has noted,

> School officials do not possess absolute authority over their students. Students in school as well as out of school are persons under our Constitution. They are possessed of fundamental rights which the state must respect, just as they themselves must respect their obligations to the state. In our systems, students may not be regarded as closed-circuit recipients of only that which the state chooses to communicate. They may not be confined to the expressions of those sentiments that are officially approved.

Id. at 511. While school officials may apply "reasonable regulation[s] [to] speech-connected activities in carefully restricted circumstances," they may not censor student expression unless the speech "impinge[s] upon the rights of others" or creates a material and substantial disruption to the school's ability to fulfill its educational goals. *Id.* at 509, 513. The law is quite clear, however, that "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Id.* at 508.

In cases involving student-initiated speech, *Tinker* provides the appropriate standard for reviewing speech and its suppression by school officials. In the case at hand, the decision to prohibit [redacted] from sharing religion is patently unreasonable and cannot stand under *Tinker.* As the Supreme Court stated,

> Boards of Education . . . have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

Tinker, 393 U.S. at 507 (quoting *West Virginia v. Barnette*, 319 U.S. 624, 637 (1943)). This principle has been specifically extended to protect students' rights to distribute religious literature on school grounds.

Concern that a substantial disruption *could* occur as a result of permitting students to exercise their First Amendment rights is an insufficient reason to restrict student speech:

> But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from

> absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. *But our Constitution says we must take this risk . . . .*

Id. at 508–9 (citing *Terminiello v. Chicago*, 337 U.S. 1 (1949) (emphasis added). Thus, school officials must be able to affirmatively establish that they have a substantial reason to interfere with [redacted] First Amendment rights:

> In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit, said, school officials cannot suppress "expressions of feelings with which they do not wish to contend."

Id. at 511 (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966)). While Principal [redacted] retains the ability to regulate her school, she must do so in a manner that complies with the First Amendment.

Moreover, Savannah possesses constitutional rights throughout the school day:

> A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects . . . if he does so without "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others.

Id. at 512–13 (quoting *Burnside v. Byars*, 363 F.2d at 749).

Within *Tinker*'s framework, students are free to express their religious views while at school. Such expression certainly includes communicating the basis of that religious faith to others, evangelizing to other students based on religious belief. It is well settled that religious speech is protected by the First Amendment and may not be singled out for disparate treatment. *See Good News Club*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Capitol Square Review & Advisory Board v. Pinette*, 515 U.S. 753 (1995); *Mergens,* 496 U.S. 226; *Widmar v. Vincent*, 454 U.S. 263, 269 (1981) (citing *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981); *Neimotko v. Maryland,* 340 U.S. 268 (1951); *Saia v. New York,* 334 U.S. 558 (1948)).

[redacted] right to express her religious views to her classmates is fully protected by the First and Fourteenth Amendments to the United States Constitution. Complaints about the content of a student's speech, alone, does "not rise to the level of a 'disruption' much less a 'material or substantial interference'" warranting censorship or suppression of the student's speech. *K.D. v. Fillmore Central Sch. Dist.*, 2005 U.S. Dist. LEXIS 33871, at 21 (W.D.N.Y. 2005) (upholding student's right to wear a t-shirt proclaiming that "Abortion is Homicide" despite student complaints that they found the message offensive and disruptive); *Alabama & Coushatta Tribes v. Trustees of Big Sandy Indep. Sch. Dist.*, 817 F. Supp. 1319, 1334. (E.D. Tex. 1993) (Native

American students have right to wear long hair in classroom because it would not disrupt the educational process.).

In particular, under the federal guidelines (updated by the Biden administration) on distribution of religious materials, which the school is obligated to certify its compliance with, the requirements are clear: "Public school students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curricula or activities." *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools*, Dep't of Education, https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html (last visited May 15, 2025).

The policy given to Ms. [redacted] by Principal [redacted] is a prior restraint on [redacted] speech that vests unfettered discretion in Principal [redacted] to regulate student speech and is therefore unconstitutional. The resolution necessary here is for our client to have her right to distribute her religious materials during non-instructional time to their fellow students, such as before class, after class, during lunchtime and break time, etc. Federal courts have consistently held that public schools may not prohibit students from distributing religious literature during non-instructional time unless such distribution would materially and substantially interfere with school operations. *Hedges v. Wauconda Comm. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1299 (7th Cir. 1993) (so holding and emphasizing that "Students therefore may hand out literature even if the recipients would misunderstand its provenance. The school's proper response is to educate the audience rather than squelch the speaker."); *Morgan v. Swanson*, 610 F.3d 877, 878 (5th Cir. 2010) (Principal not entitled to qualified immunity for banning students from distributing religious materials on elementary school campus, as it "has been clear for over half a century that the First Amendment protects elementary school students from religious-viewpoint discrimination."); *K.A. v. Pocono Mt. Sch. Dist.*, 710 F.3d 99, 113 n. 9 (3rd Cir. 2013) ("No evidence was presented that the flyers were likely to cause K.A. to be held up to ridicule or bullying. Nor was there evidence that distribution of the flyers would disrupt the school environment.").

Prior restraints on speech that vest discretion in public officials are unconstitutional. In *Niemotko v. Maryland*, 340 U.S. 268, 269 (1951), the Supreme Court reversed the conviction for disorderly conduct of people who held religious meetings in a public park without permits and did so unanimously. The Supreme Court emphasized its condemnation of "statutes and ordinances which required that permits be obtained from local officials as a prerequisite to the use of public places, on the grounds that a license requirement constituted a prior restraint on freedom of speech, press and religion, and, in the absence of narrowly drawn, reasonable and definite standards for the officials to follow, must be invalid." *Id.* at 271. In *Niemotko,* there was no official ordinance or statute, "[n]o standards appear anywhere; no narrowly drawn limitations; no circumscribing of this absolute power; [and] no substantial interest of the community to be served." *Id.* at 272.

In this case, [redacted] officials have engaged in precisely the type of viewpoint discrimination that the Supreme Court and federal circuit courts have repeatedly found unconstitutional. The school has not suggested that [redacted] distribution of Bible verses during non-instructional time would cause any disruption to school activities. Rather, officials have imposed a categorical ban on her religious expression based solely on its religious content. The

plain text meaning of the school's "non-school materials" policy necessarily requires a principal to violate the establishment clause in "approving" the material for distribution. Under this policy, the Principal would read Bible verses in order to determine which religious terms are acceptable and which are not, censoring the First Amendment rights of a student by being the only arbiter of what is approved. This inherently jeopardizes the speech of the student. The justification offered by Principal [redacted] – that "parents might be upset" – is constitutionally insufficient to overcome [redacted] First Amendment rights.

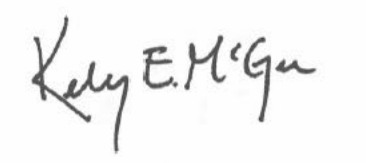
DEMAND

The situation described here is of serious importance, not just to [redacted] but to all students attending the school who are entitled to the full protection of their First Amendment liberties. As you are undoubtedly aware, the violation of an individual's constitutional rights, even for a moment, results in irreparable injury. *Elrod v. Burns,* 427 U.S. 347, 373 (1976).

Given the nature of the rights involved, we request your immediate written assurances that school officials will comply with the requirements of the First Amendment by permitting [redacted] to share religious materials with fellow students. Additionally, we demand that [redacted] ISD policy reflect the rights of all students to exercise their First Amendment rights in a manner appropriate under the law. We trust that this matter can be resolved swiftly. Please direct your response in writing or by phone immediately. If we do not hear from you before COB on May 22, 2025, which we understand to be the end of your school year, we will assume that you intend to resolve this matter through litigation.

Thank you for your prompt attention to this important matter.

Sincerely,



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