



GENTNER DRUMMOND
ATTORNEY GENERAL

August 21, 2026

Dr. Jarod Mendenhall
Superintendent
Muskogee Public Schools
202 W. Broadway St.
Muskogee, Oklahoma 74401

Re: Voluntary Religious Expression on School Property

Dear Dr. Mendenhall:

It is my understanding that the district received a letter on August 11, 2026, from the Freedom From Religion Foundation demanding that Muskogee 6th and 7th Grade Academy cancel a community prayer walk scheduled for the following morning. The district canceled the event, removed the announcements, and notified parents. The First Amendment did not require any of that. I write to explain why, and to offer this Office's assistance the next time the district receives a letter of this kind.

I. The controlling framework changed in 2022.

For decades districts were advised to ask whether a reasonable observer might perceive official approval of religion. That test came from *Lemon v. Kurtzman*, 403 U.S. 602 (1971). The Supreme Court abandoned that framework in *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022).

The Establishment Clause is now construed by reference to historical practices and understandings. A violation requires coercion. Coercion means compulsion by force of law or the threat of penalty. It does not mean that an observer was made uncomfortable by the sight of religious exercise. Offense is not injury.

Much of the advice districts received before 2022 is obsolete. Guidance drafted against the endorsement test should be read with that in mind.

II. The August 11 letter rests on a test the Supreme Court has discarded.

Every decision cited in the Freedom From Religion Foundation's letter was handed down between 1948 and 2000. The most recent is *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000). The letter does not cite the current binding precedent of *Kennedy*. It does not acknowledge that *Lemon* has been abandoned.

The letter's central charge is that the Academy displayed favoritism toward religion over nonreligion and sent an exclusionary message to students who do not share the majority faith. That is the endorsement test, stated in its own terms. It is no longer the law. A district evaluating such a letter

should ask first whether the authority it relies on remains good law. Unfortunately, advocacy groups such as Freedom From Religion Foundation frequently ignore modern precedents when sending demand letters.

III. A district may not suppress private religious expression to avoid a perceived establishment problem.

Kennedy addressed this point directly. The district in that case defended its conduct on the ground that it feared Establishment Clause liability. The Court rejected the defense.

The principle is older than *Kennedy*. In *Widmar v. Vincent*, 454 U.S. 263, 276 (1981), the Court held that a State's interest in achieving greater separation of church and state than the Establishment Clause itself requires is not compelling enough to justify discriminating against religious speech. A district that silences voluntary religious expression to avoid one constitutional problem creates two others. It burdens the free exercise of religion. It discriminates against religious speech.

IV. Excluding a religious group from an open forum is viewpoint discrimination.

Where a district makes its facilities available for community use, it may not withhold them because the intended use is religious. *Widmar v. Vincent*, 454 U.S. 263 (1981); *Board of Education v. Mergens*, 496 U.S. 226 (1990); *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993); *Good News Club v. Milford Central School*, 533 U.S. 98 (2001). Two of these decisions bear directly on the district's situation. *Mergens* draws the line that matters, distinguishing government speech endorsing religion, which the Establishment Clause forbids, from private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect. 496 U.S. at 250. *Good News Club* forecloses the argument that the presence of young children changes the result. The Court held that it has never read the Establishment Clause to bar private religious conduct during nonschool hours merely because it occurs on school premises where elementary students may be present. 533 U.S. at 115. The children in that case were six to twelve years old.

The practical instruction is simple. Adopt a neutral facilities-use policy. Apply it evenhandedly. A district that does so stands on firm ground from baseless attacks from advocacy groups such as the Freedom From Religion Foundation.

V. The August 12 event coerced no one.

The district's instructional calendar establishes that August 12 was a professional development day. It was also the day set for Meet the Teacher and schedule pick-up, an open house at which families come and go as they please. The first day of school for students was not until August 13.

Three consequences follow. First, no student was required to be on campus that day. Second, no student faced any academic consequence for staying away. Third, the walk was set for 11:00 a.m., an hour at which no instructional period existed to interrupt, because instruction had not yet begun.

The event itself was styled a Back to School Community Prayer Walk. It was announced eight days in advance and open to the community at large. Attendance was voluntary in the fullest sense of that word. Any parent or student who preferred not to come simply did not come, at no cost whatever.

On those facts there is no coercion. There is no captive audience. There is no Establishment Clause violation. The analysis tracks *Lamb's Chapel*, where the Court found no realistic danger of perceived endorsement because the event fell outside school hours and was open to the public rather than confined to adherents. 508 U.S. at 395. The district was free to proceed, and I would have said so had the district asked.

Please know that I do not suggest that every setting is the same. Districts should exercise care where students are required to be present, such as during the instructional day or at a mandatory assembly. Nor do I suggest that a school may direct the content of religious exercise or compel anyone to take part. But the line is drawn by compulsion, and by the identity of the speaker. It is not drawn by the presence of religion on public property.

VI. Freedom From Religion Foundation's demand exceeded what the law requires.

The August 11 letter asked the district to ensure that all future school-sponsored events be entirely secular. No court has ever imposed that requirement, and it cannot be squared with the four decisions listed above. Taken literally, it would forbid a district from allowing a religious group to use its facilities on the same terms as a scout troop or a civic club, which is precisely the discrimination the Free Speech Clause prohibits.

The Supreme Court has warned against exactly this dynamic. In *Good News Club*, the Court observed that the danger of children misperceiving endorsement is no greater than the danger that they will perceive hostility toward religion if the group is excluded. 533 U.S. at 118. A district that responds to demands like this one by adopting a blanket rule against religious use trades a phantom problem for a real one. As a result, I caution you from taking the word of advocacy groups like Freedom From Religion Foundation going forward.

VII. This Office is available.

Districts across this State receive letters of this kind, and each faces the same question when one arrives, usually on a deadline measured in hours. Before a district modifies or cancels a program in response to such a letter, it should contact this Office. We will review the matter and provide a prompt assessment at no cost to the district. No superintendent should have to resolve a contested constitutional question alone, on a short deadline, and under pressure from a party whose interests are adverse to the district's.

I would welcome the opportunity to assist Muskogee Public Schools in that manner.

Very truly yours,



GENTNER DRUMMOND
Attorney General