



September 15, 2023

Transmitted via Electronic Mail

Superintendent Bruce Gearing, Ed.D

Leander ISD

204 W. South Street P.O. Box 218

Leander, TX 78646-0218

Bruce.Gearing@leanderisd.org

Re: Leander Independent School District Rejection of United States Constitution and Declaration of Independence as "Political or Religious Material"

Dear Sir,

I am the General Counsel and Director of Legal Operations for Citizens Defending Freedom ("CDF"), a non-partisan 501(c) and non-profit organization that strategically employs county-level chapters across the United States to assist the general public on matters related to education and public policy, among others. Our mission includes the protection of Constitutional rights and liberties guaranteed to the people by the U.S. Constitution, transparency and accountability in local government, and standing for the rule of law.

In accordance with our mission, and on behalf of our Williamson County CDF Chapter, this correspondence is to demand and an immediate redress for Leander Independent School District's ("LISD") unlawful viewpoint discrimination and attempt to suppress protected speech that occurred on September 14, 2023. Ironically, the protected speech suppressed is the distribution of a 4,000 pocket sized copies of the U.S. Constitution and the Declaration of Independence. As a public education institution in the State of Texas, rejecting copies of our foundational documents for use by LISD students is unconscionable, conducted in clear violation of LISDs own policies, and most importantly, a violation of the First Amendment of the U.S Constitution.

17,000 Pocket Constitutions Allocated for Williamson County Middle Schools

The 917 Society is federally recognized, 501(c)(3) nonprofit organization with tax-exempt status. In 2023, the 917 Society is donating 1.3 million pocket Constitutions to middle school students in all 50 states. As a non-partisan organization, the 917 Society does not align with, endorse, or support any particular political candidate, organization, political party, or political platform. The 917 Society Constitution Program was founded to honor and celebrate September 17, 1787, as the date for which delegates to the Constitutional Convention signed our Constitution. Under this educational initiative, they have worked with over 27,000 middle school principals to provide pocket Constitutions to middle school students in communities across the United States.¹

In accordance with the educational mission of CDF, 17,000 pocket Constitutions were provided by the 917 Society for our volunteers to distribute to Williamson County middle school students prior to September 17, 2023 for commemoration of Constitution Day and Citizenship Day and the entirety of Texas Celebrate Freedom Week. All across Williamson County, school districts have been overwhelmingly thankful for the pocket Constitutions for distribution as a valuable and free resource in support of educational programs. The pocket Constitutions do not convey or endorse a particular political message, viewpoint, or advertisement. On the contrary, the pocket size versions of our foundational documents are simply to be used as an educational resource, in furtherance of informing future generations on the importance of preserving our Constitution and fostering an appreciation for our nation. In fact, LISD is the only school district in Williamson County that has outright rejected the pocket Constitutions for distribution in support of Constitution Day and Citizenship Day and Texas Celebrate Freedom Week.

Constitution/Citizenship Day and Texas Celebrate Freedom Week

As LISD is likely not aware, the United States Congress, by joint resolution of February 29, 1952, designated September 17 as “Citizenship Day,” and by joint resolution of August 2, 1956, requested that the President proclaim the week beginning September 17 and ending September 23 of each year as “Constitution Week.”² In 2004, federal legislation was passed stating “[t]he civil and educational authorities of States, counties,

¹ See *Website*, available at <https://www.917society.org/>

² See Joint Resolution of Feb. 29, 1952, Pub. L. No. 261, ch. 49, 66 Stat. 9 (codified as amended at 36 U.S.C. § 106 (2012))

cities, and towns are urged to make plans for the proper observance of Constitution Day and Citizenship Day” in order to instruct citizens of the United States about “their responsibilities and opportunities.”³ Although “urge” is used in the statute, Federal law has been interpreted as requiring all educational institutions that receive any federal funds to arrange appropriate ceremonies for the occasion. In other words, because LISD receives federal funding, the district is required to commemorate and hold an educational program about the U.S. Constitution for its students on September 17.⁴ Moreover, according to the U.S. Department of Education, if Constitution Day and Citizenship Day falls on a weekend; as is the case this year, it should be held in the next week.⁵

In addition to the federal requirements to hold an educational program about the U.S. Constitution on September 17 each year , Tex. Educ. Code § 29.907 and Tex. Admin. Code §74.33 requires Texas public schools acknowledge Celebrate Freedom week and conduct appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence, the United States Constitution, including the Bill of Rights. This instruction is required to educate students about the sacrifices made for freedom in the founding of this country and the values on which this country was founded. Additionally, Tex. Admin. Code §74.33(b)(1) requires:

“Each school district shall require that, during Celebrate Freedom Week....students in Grades 3 - 12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

Rejection of United States Constitution by Leander Independent School District

On September 14, 2023, the LISD School and Community Relations department sent an email to a CDF volunteer responsible for liaising with LISD schools rejecting the pocket Constitutions because; “The materials contain advertisements that would prevent the district from maintaining a position of neutrality on political or religious issues or would create an appearance of favoritism on political or religious issues." *See Exhibit A.*

³ See Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, § 111, 118 Stat. 2809, 3344-45 (2005) (codified as amended at 36 U.S.C. § 106 (2012)).

⁴ See LIBR. OF CONGRESS, *supra* note 3 (“[E]ach educational institution which receives Federal funds should hold a program for students every September 17th.”).

⁵ See *Website*, available at <https://www2.ed.gov/policy/fund/guid/constitutionday.html>

The rejection by the LISD School and Community Relations office was apparently based upon policy GKDA (Local) policy, which includes language identical to the emailed reason for rejection of the pocket Constitutions. *See Exhibit B.* Interestingly, the policy provides that only organizations that are nonprofit entities shall be allowed to distribute non-school literature that with the caveat that the literature shall be submitted to the school or community relations office for prior review. With this, LISD has created a Constitutionally protected forum with an objective standard with time, place, and manner provisions for the lawful distribution of non-school literature by non-profit entities.

Similar to the 917 Society, the Leander Educational Excellence Foundation (LEEF) is another federally recognized, 501(c)(3) nonprofit organization with tax-exempt status. Accordingly, it would be equally inappropriate if the LEEF aligned with, endorsed, or supported any particular political candidate, organization, political party, or political platform within the Leander Independent School District. Although it could appear that LEEF does not conduct transactions at an arm's length with LISD based on public record organizational charts, or that the activity between LEEF and LISD is closely intertwined, it is unlikely the non-profit has been subjected to the same type of scrutiny as the 917 Society for distribution of non-school literature. In fact, in 2017, LEEF provided \$70,500 of funding across all 29 Leander ISD elementary schools for 20,000 books.⁶ Additionally, Leander ISD, in a close partnership with LEEF provided non-school literature to the district that it does not produce or control including all levels of books and genres, including chapter books, picture books, non-fiction, and books of fiction.⁷

It is commendable that LEEF conducts book drives, accepts new and gently used non-school literature, and utilizes LISD property as distribution locations, all a matter of public record. However, as a nonprofit entity, one does wonder if LEEF or any other non-profit entity so closely intertwined to LISD is required to submit to the school or community relations office a review in a consistent manner for approval for every item of non-school literature prior to distribution? Are the reviews conducted in a viewpoint neutral manner?

Certainly, assuming reviews are conducted in a viewpoint neutral manner, the public records of the likely tens of thousands of reviews conducted by the LISD School and Community Relations office would be available as a record of strict compliance with LISD GKDA (Local) policy along with a robust viewpoint neutral analysis.

⁶ See Website, available at <https://leefx.org/leef-increases-the-number-of-leveled-books-for-lisd-elementary-schools/>

⁷ See Website, available at <https://leefx.org/leef-supports-summer-reading-4-all/>

Constitutional Protections for Disseminating U.S. Pocket Constitutions

As LISD GKDA (Local) policy provides, the district has opened school facilities specifically to non-profit entities for the distribution of non-school literature. In legal terms, LISD has created a limited public forum—through your policy and practice. See *Pounds v. Katy Indep. Sch. Dist.*, 517 F. Supp. 2d 901 (S.D. Tex. 2007).

If the District creates a forum for the distribution of non-school literature, the time, place, and manner regulations on speech must be reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. See *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 103 S. Ct. 948 (1983) In this case, because the LISD GKDA (Local) policy allows non-school-sponsored materials in school facilities by non-profits, the Free Speech Clause of the First Amendment to the U.S. Constitution limits the district's ability to refuse to allow distribution based solely on the viewpoint expressed in the materials. In layman's terms, any review by LISD must be viewpoint neutral. In this case, the viewpoint expressed in the material includes the Free Speech Clause of the First Amendment to the U.S. Constitution. The only explanation for rejection of the U.S. Constitution must be due to a review that was not viewpoint neutral.

Additionally, the U.S. Constitution, particularly during an official federal and state recognized commemoration day or week, is an issue of public concern. The United States Supreme Court has held that activities such as distributing literature, displaying signs, petitioning for change, and disseminating information concerning issues of public concern are protected by the First Amendment. *Schenck v. Pro-Choice Network*, 519 U.S. 357, 117 S. Ct. 855 (1997) (recognizing leafletting and commenting on matters of public concern as protected speech. In *Good News Club v. Milford Cent. Sch.*, the Supreme Court held that a School District shall not discriminate against speech on the basis of viewpoint, and any restriction must be reasonable in light of the purpose served by the forum. *Id at 533 U.S. 98, 121 S. Ct. 2093 (2001)*. In this case, LISD rejected the ability for a non-profit to provide and distribute non-school literature, with no apparent reason. As a result, LISD violated the Constitutional viewpoint neutral standard set by the US Supreme Court. Additionally, the Fifth Circuit has held that administrative decisions based on impermissible viewpoint discrimination would violate clearly established rights. *Morgan v. Swanson*, 659 F.3d 359 (5th Cir. 2011) (en banc).

Conclusion and Demand

On September 14, 2023 the LISD School and Community Relations office rejected the lawful request to provide 4,000 copies of the United States Constitution and Declaration of Independence by a federally recognized 501(c)(3) nonprofit organization with tax-exempt status. This action was inconsistent with district policy and not conducted in a viewpoint neutral standard, as evidenced by considering the U.S. Constitution as “political material.” By definition and in accordance with the 917 Society’s legally recognized status as a non-profit, they do not endorse, or support any particular political candidate, organization, political party, or political platform. Leander ISD has made the argument, in writing I might add, that the US Constitution are materials that contain advertisements that would prevent the district from maintaining a position of neutrality on political or religious issues or would create an appearance of favoritism on political or religious issues. *See Exhibit B.*

I am giving LISD the benefit of the doubt on this issue, perhaps chalking it up to someone having a bad day, a lack of communication with the legal department, or a basic misunderstanding of the Constitutional standards of a limited public forum and viewpoint neutrality. Regardless, this correspondence is a **DEMAND** for reconsideration and an immediate expedited appeal of the unlawful and unconstitutional position LISD had taken. LISD has until **5:00 PM on Friday, September 15, 2023** to contact myself, or the CDF volunteer that attempted to coordinate with the LISD School and Community Relations office to organize the receipt and distribution of the 4,000 pocket Constitutions at a time, place, and manner consistent with other non-profits that are closely aligned with LISD. Should the pocket Constitutions be received and provided with an opportunity for distribution, I will consider this matter resolved.

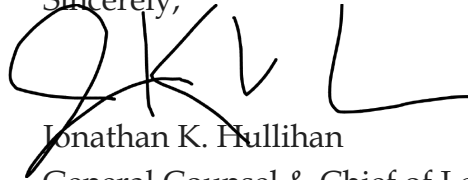
Please understand that due to Constitution/Citizenship Day and Texas Celebrate Freedom Week beginning on Monday, September 18th, this is a time is of the essence demand for violation of the Free Speech Clause of the First Amendment to the U.S. Constitution. *See Baughman ex rel. Baughman v. Freienmuth*, 478 F.2d 1345 (4th Cir. 1973) (striking down a prior review requirement in part because it did not provide for prompt administrative response).

If this demand is not met or simply ignored, please consider this a notice of preservation to prevent the spoliation of evidence in anticipation of litigation. Please advise the custodians of the documents in control of the LISD School and Community Relations office including all electronically-stored information (“ESI”) to preserve

potentially relevant evidence related to the review, approval, and communications regarding distribution of non-school literature of non-profit and other similarly situated organizations. Preserve all emails, communications, memorandums, text messages, and other documentation regarding this matter between LISD employees, administrators, elected officials.

Govern yourself accordingly.

Sincerely,



Jonathan K. Hulihan

General Counsel & Chief of Legal Operations

Citizens Defending Freedom

jhulihan@ccdfusa-law.com

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NONSCHOOL USE OF SCHOOL FACILITIES
DISTRIBUTION OF NONSCHOOL LITERATURE

GKDA
(LOCAL)

**Distribution of
Nonschool Literature
Permitted**

Written or printed materials, handbills, photographs, pictures, films, tapes, or other visual or auditory materials not sponsored by the District or by a District-affiliated school-support organization shall not be sold, circulated, distributed, or posted on any District premises by any District employee or by persons or groups not associated with the District, except in accordance with this policy. Except as provided at GKB(LOCAL), only organizations that are nonprofit entities shall be allowed to distribute nonschool literature in accordance with this policy.

The District shall not be responsible for, nor shall the District endorse, the contents of any nonschool literature distributed on any District premises.

[See CPAB regarding use of the District's internal mail system and FNAA regarding distribution of nonschool literature by students]

**Limitations on
Content**

Nonschool literature shall not be distributed on District property if:

1. The materials are obscene, vulgar, or otherwise inappropriate for the age and maturity of the audience.
2. The materials endorse actions endangering the health or safety of students.
3. The materials promote illegal use of drugs, alcohol, or other controlled substances.
4. The distribution of such materials would violate the intellectual property rights, privacy rights, or other rights of another person.
5. The materials contain defamatory statements about the District, or any other political entity, or about any public or political figure or others.
6. The materials advocate imminent lawless or disruptive action and are likely to incite or produce such action.
7. The materials are hate literature or similar publications that scurrilously attack ethnic, religious, or racial groups or contain content aimed at creating hostility and violence, and the materials would materially and substantially interfere with school activities or the rights of others.
8. There is reasonable cause to believe that distribution of the nonschool literature would result in material and substantial interference with school activities or the rights of others.
9. The materials contain political advertisements, except as provided at GKB(LOCAL).

NONSCHOOL USE OF SCHOOL FACILITIES
DISTRIBUTION OF NONSCHOOL LITERATURE

GKDA
(LOCAL)

10. The materials contain advertisements that would prevent the District from maintaining a position of neutrality on political or religious issues or would create an appearance of favoritism on political or religious issues.

Prior Review

All nonschool literature intended for distribution on school campuses or other District premises under this policy shall be submitted to the school/community relations office for prior review in accordance with the following:

1. Materials shall include the name of the person or organization sponsoring the distribution.
2. Using the standards found in this policy at Limitations on Content, the school/community relations office shall approve or reject submitted materials within five school days of the time the materials were received.
3. Materials shall include the following disclaimer: "Approval of distribution of these materials shall in no way be a promotion of such services, activities, and/or products by the District."

Exceptions to Prior Review

Prior review shall not be required for distribution of nonschool literature in the following circumstances:

1. Distribution of materials by an attendee to other attendees at a school-sponsored meeting intended for adults and held after school hours;
2. Distribution of materials by an attendee to other attendees at a community group meeting held in accordance with GKD(LOCAL) or a noncurriculum-related student group meeting held in accordance with FNAB(LOCAL); or
3. Distribution for electioneering purposes during the time a school facility is being used as a polling place in accordance with state law [see BBBA].

All nonschool literature distributed under these exceptions shall be removed from District property immediately following the event at which the materials were distributed.

Even when prior review is not required, all other provisions of this policy shall apply.

Time, Place, And Manner Restrictions

Each campus principal shall designate times, locations, and means by which nonschool literature that is appropriate for distribution, as provided in this policy, may be made available or distributed to students or others at the principal's campus.

NONSCHOOL USE OF SCHOOL FACILITIES
DISTRIBUTION OF NONSCHOOL LITERATURE

GKDA
(LOCAL)

The Superintendent or designee shall designate times, locations, and means for distribution of nonschool literature at District facilities other than school campuses, in accordance with this policy.

Violations of Policy

Failure to comply with this policy regarding distribution of nonschool literature shall result in appropriate administrative action, including but not limited to confiscation of nonconforming materials and/or suspension of use of District facilities. Appropriate law enforcement officials may be called if a person refuses to comply with this policy or fails to leave the premises when asked. [See GKA]

Appeals

Decisions made by the administration in accordance with this policy may be appealed in accordance with the appropriate District complaint policy. [See DGBA, FNG, or GF]



Heather Neds

to Me

Today, 10:01 AM



After reviewing the pocket constitution you dropped off for us, we cannot allow you to distribute them at our schools. It is against our policy.

"The materials contain advertisements that would prevent the District from maintaining a position of neutrality on political or religious issues or would create an appearance of favoritism on political or religious issues."

While we appreciate your desire to support our schools, we simply cannot approve this donation.

—
Heather Neds
Community Relations Coordinator
School & Community Relations, Leander ISD

Adaptability~Responsibility~Connectedness~Positivity~Empathy