

FREEDOM *of* CONSCIENCE

— DEFENSE FUND —

CHARLES S. LIMANDRI*
PAUL M. JONNA
JEFFREY M. TRISSELL
B. DEAN WILSON

*BOARD CERTIFIED CIVIL TRIAL ADVOCATE
ADMITTED TO THE CALIFORNIA BAR
ADMITTED TO THE D.C. BAR
ADMITTED TO THE NEW YORK BAR
ADMITTED TO THE U.S. SUPREME COURT

MAILING ADDRESS:
P.O. Box 9520
Rancho Santa Fe, CA 92067

TELEPHONE: (858) 759-9948
FAX: (858) 759-9938
WEBSITE: www.fcdflegal.org

OFFICE ADDRESS:
16236 San Dieguito Rd.
Bldg. 3, Ste. 3-15
Rancho Santa Fe, CA 92091

DANIEL J. PIEDRA
Executive Director

May 29, 2019

By email: cherrera@wnyschools.net

Ms. Clara Brito Herrera, Superintendent
West New York School District
6028 Broadway Ave.
West New York, NJ 07093

Re: Unconstitutional Ramadan Posters at Memorial High School

Dear Ms. Brito Herrera:

The Freedom of Conscience Defense Fund is a legal team of First Amendment advocates. As part of our mission, we educate school administrators, families, and the local community about religion in public schools. We write to express our concern about two school-sponsored Ramadan posters currently displayed in the hallways of Memorial High School.

More to the point, Memorial High's endorsement of these posters violates the Establishment Clause of the First Amendment. For example, proclaiming "May Allah Continue to Shower You Love and Wisdom" with "Warm Greetings from Memorial High school [sic]" clearly sends an impermissible message that West New York School District exalts Islam. And because they explicitly promote Ramadan, the posters also have the primary effect of advancing Islamic practices.

Regrettably, you should consider this letter a warning. Please know that we understand school administrators must continuously make difficult decisions in drawing dividing lines between religious expression and public education. Nonetheless, your district's policy is clear: "[T]he Superintendent shall ensure ... [a]ny acknowledgment of a religious holiday neither advances nor inhibits any particular religious sect or religion consistent with the governing principles of the First Amendment of the United States Constitution."¹ For this reason, if you do not order Memorial High administrators to remove the posters immediately, then parents and students will have a legal cause of action against you and the West New York School District.

¹ Religious Holidays, Dist. Policy 2270 (2008).

I. THE POSTERS



II. THE POSTERS VIOLATE THE ESTABLISHMENT CLAUSE

The Supreme Court has been “particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools.”² School officials therefore must ensure that no school policy “conveys a message that a particular religion, or a particular religious belief, is ‘favored’, ‘preferred’, or ‘promoted’ over other beliefs.”³ Families likewise condition their trust on public school teachers to educate their children “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.”⁴ As discussed below, the District’s Ramadan posters raise the specter of impermissible government endorsement of religion.

The Supreme Court has set forth three tests for determining whether governmental action violates the Establishment Clause: the “coercion test,” the “*Lemon* test,” and the “endorsement test.”⁵ Although the Ramadan posters violate all three, they utterly flunk the endorsement test. Under the endorsement test, “[w]hat is crucial is that a government practice not have the effect of communicating a message of government endorsement or disapproval of religion.”⁶ The question is whether a “reasonable observer familiar with the history and context of the [posters] would perceive [them] as a government endorsement of religion.”⁷ The government’s purpose for its actions is irrelevant; instead, the focus is on the reasonable observer’s perception.⁸

² *Edwards v. Aguillard*, 482 U.S. 578, 585 (1987).

³ *Cty. of Allegheny v. ACLU*, 492 U.S. 573 (1989).

⁴ *Edwards*, 482 U.S. at 584.

⁵ *Borden v. Sch. Dist. of Twp. of E. Brunswick*, 523 F.3d 153, 175 (3d Cir. 2008).

⁶ *Lynch v. Donnelly*, 465 U.S. 668, 692 (1984) (O’Connor, J., concurring).

⁷ *Borden*, 523 F.3d at 175.

⁸ *See id.*

To be sure, schools navigate a narrow passage between honoring diverse cultures and religious beliefs without offending the fundamental rights of others. Here, however, by sponsoring posters calling upon “Allah to shower” Memorial High students “with love and wisdom,” the District is unmistakably endorsing religion in a constitutionally impermissible way. This message of endorsement cannot possibly be lost on the young, impressionable, easily influenced schoolchildren whom the law entrusts to you, *in loco parentis*, for the entire school day. Moreover, the District’s “[e]ndorsement 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.”⁹ Regardless whether a passing student supports or objects to the Ramadan posters, a reasonable student would unquestionably see them as “stamped with her school’s seal of approval.”¹⁰

III. CONCLUSION

We understand the Ramadan posters’ purpose is not to indoctrinate students into Islam. They do, however, have the effect of sending a message to a reasonable student that West New York School District endorses Islamic beliefs and practices. The District therefore has likely violated the Establishment Clause. Please notify us within **two business days** that you have instructed District administrators to remove the Ramadan posters from Memorial High School. If we do not receive a response by then, we may take legal action, by which we will seek injunctive relief, damages, and attorneys’ fees. Please feel free to contact our office if you have any questions about this matter.

Sincerely,



Daniel J. Piedra, J.D.
Executive Director
Freedom of Conscience Defense Fund

Cc: Scott Wohlrab, Principal
Memorial High School
swohlrab@wnyschools.net

⁹ *Lynch*, 465 U.S. at 688.

¹⁰ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000).