



October 17, 2011

Via email and Overnight Mail

Dr. Patrick Martin
Superintendent
Township of Union Public School District
2369 Morris Avenue
Union, NJ 07083
(908) 851-6400
(908) 851-9688 (fax)
pmartin@twpunionschools.org

Re: Viki Knox's Investigation

Dear Dr. Martin:

We write to express our concern regarding the Township of Union Public School District's investigation of teacher Viki Knox. We are attorneys who work with the Alliance Defense Fund (ADF), a nationwide legal alliance of more than 2,000 attorneys. ADF's work focuses on constitutional law, particularly on issues concerning free-speech and free-exercise-of-religion rights under the First Amendment to the United States Constitution. Our experience with these legal issues is directly relevant to the School District's investigation of Ms. Knox.

We learned of this situation from the New Jersey Family Policy Council, and from what we have been told, it appears that the School District is considering whether to take adverse action against Ms. Knox simply because she expressed her opinion about a matter of public concern on her personal Facebook page. We write to inform you that punishing Ms. Knox under these circumstances—in retaliation for expressing her views—would violate her rights under the First Amendment and subject the School District to liability under Sections 1983 and 1988 of Title 42 of the United States Code, which would require the School District not only to compensate Ms. Knox for all the damages and harm she would suffer by its actions, but also to pay all Ms. Knox's attorneys' fees and litigation costs. Depending on the circumstances, this could be an overwhelming financial burden on the School District, costing the taxpayers tens (if not hundreds) of thousands of dollars.

Government employees, including public-school teachers, have a constitutional right not to be punished or subjected to other adverse actions for exercising their constitutional rights. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (“[The government] may not deny a benefit to a person,” even if the “person has no ‘right’ to [that] valuable government benefit,” “on a basis that infringes [her] constitutionally protected interests—especially, [her] interest in freedom of speech.”). In particular, a public employee has “a constitutional right to speak on matters of public concern without fear of retaliation.” *McKee v. Hart*, 436 F.3d 165, 169 (3d Cir. 2006) (quoting *Brennan v. Norton*, 350 F.3d 399, 412 (3d Cir. 2003)). And thus “public employers cannot silence” or otherwise punish “their employees simply because they disapprove of the

content of [their] speech.” *Brennan*, 350 F.3d at 412 (quoting *Baldassare v. New Jersey*, 250 F.3d 188, 194 (3d Cir. 2001) (alterations omitted).

Ms. Knox, as we understand it, wrote her religious and personal beliefs about homosexual behavior on her individual Facebook page. While noting the Bible’s teaching that homosexual conduct is sinful, Ms. Knox discussed her “friends and loved ones who are practicing/living as homosexuals” and emphasized how she “love[s]” and “care[s] about them.” She also stressed that, of course, she does not mistreat persons who engage in homosexual behavior, and in fact, she communicates “love” to them. Ultimately, then, Ms. Knox did what many other teachers regularly do—and, indeed, what the Constitution guarantees them the right to do—she respectfully communicated through a personal channel of expression her views on a public matter. This expression is fully protected by the First Amendment, and the School District cannot punish Ms. Knox for it. To do so is flatly prohibited by the Constitution.

Please feel free to contact us if you, your legal counsel, or any member of the School Board wishes to discuss this situation further.

Sincerely,

Ada A. Davis
DAVIS LAW GROUP LLC
110 Cambridge Avenue
Jersey City, NJ 07307
Tel: 201-743-9354
Fax: 201-781-7846
adavis@davislawgroupllc.com

Brian W. Raum
Byron J. Babione
James A. Campbell
ALLIANCE DEFENSE FUND
15100 North 90th Street
Scottsdale, AZ 85260
Tel: 480-444-0020
Fax: 480-444-0028
braum@telladf.org
bbabione@telladf.org
jcampbell@telladf.org

cc: Mr. James J. Damato, School Board Attorney (via email to jdamato@twpunionschools.org)