

I. Factual Background

Liberty is a city with an ever-increasing population of immigrants from all over the globe. Restaurants and storefronts exhibit the diversity of the city with signs in many different languages, including Spanish, Tagalog, Yoruba, and Arabic. Like many American cities, Liberty went through a devastating period after the tragic events of September 11, 2001. A great number of its citizens lost family and friends traveling on the planes that crashed, working in the World Trade Center, and working at, or visiting, the Pentagon. Just months after September 11, 2001, the parents and students of a local high school, Libertyville High School, expressed a desire to establish a memorial on school grounds in remembrance of the events of that day and in honor of those who lost their lives. Students put together a petition, and with the help of the Parent Teacher Association, they presented a proposal to the school administrators. Finally, in March 2002, Principal Ahmed Rahim approved the allocation of funds to establish a memorial.

Libertyville High School is one of many high schools in the Liberty Public School System. It is located just on the western border of the city and boasts a student body as diverse as the city itself. The halls and classrooms are filled with students of many religions, colors, and nationalities who often sprinkle their English with familiar words of their native tongues. When Plaintiff, principal of Libertyville High School, approved the allocation of funds, students, parents, and teachers all expressed the desire to have a memorial that reflected the diversity of the school and the community.

Plans were drawn immediately, and in May 2002, the school held a grand unveiling of its memorial. The memorial includes a mural on the façade of the school building with a large American flag as the centerpiece with smaller flags of many nations surrounding the American flag. Also emblazoned across the center of the mural is a message that reads: “To those lost on

9/11...We will always remember you.” A closer look further reveals finer details such as similar messages of memorial and peace in different languages, usually placed near the flag of the nation where the particular language is spoken. Everyone seemed to be most pleased with the memorial, and many people commented as to how they thought it added to the beauty of the school grounds and reflected the diversity of the school and community.

Plaintiff shared this common sentiment, but made just one critique; there was no recognition of any Middle Eastern or Arab nations included in the memorial. Plaintiff commented that Liberty has a burgeoning immigrant population from that sector of the globe, and that Libertyville High School, in fact, had the highest percentage of students of Arabic origins and heritage in the city. He thought it a shame that they were excluded from the memorial, and further commented that such exclusion served only to intensify racial tensions and divide, and to blacklist these students.

Consequently, Plaintiff took it upon himself to have a small addition made to the memorial. In the sea of smaller flags from other nations, a crescent moon and star was added to the memorial. Just as there are small messages accompanying flags of other nations, a small message written in Arabic accompanies the crescent moon and star. Above the crescent moon and star is the word “Shahadah,” the Muslim declaration of faith, and below it is the word “Jihad,” an Arabic word meaning “struggle.” Plaintiff knew that he could not add the flag of every Arabic nation to the mural, but felt that this addition was a viable alternative that served to recognize the Arabic population at Libertyville High School, and in the community at large.

Defendant disagreed, however, and expressed concern that some may find this addition to the mural inflammatory. City Attorneys also warned Defendant that Plaintiff’s addition could amount to an unlawful endorsement of Islam. Defendant eventually decided to politely ask

Plaintiff to remove the Arabic segment from the September 11th Memorial. The Superintendent immediately called Plaintiff, voiced Defendant's concerns, and asked Plaintiff to remove the Arabic segment. Plaintiff adamantly refused. The Superintendent, sensing that the conversation would not end in a resolution, asked Plaintiff to consider Defendant's concerns over the next few days, and also expressed a desire to reach a compromise.

Subsequently, there was much hostility between the faculty and staff of the school. Plaintiff set up an informal meeting at his home with a few friends, some of whom were teachers and parents of students at Libertyville High School, in hopes of restoring unity within the school. A vast number of those present at the meeting had varying opinions regarding the Arabic message. Some felt that the message was not offensive but rather a tribute to people of Middle Eastern background, while others took the same standing as Defendant. The message had indeed caused a strong uproar both within the school and among the community. Plaintiff expected the meeting to be a means of explaining his rationale behind adding the Arabic tribute, but it quickly turned into a conversation regarding school policies.

At the meeting, many of the teachers expressed concerns regarding a lack of office morale and confidence in supervisors. Despite the controversial issue, the teachers felt that the school should unite as one to resolve the issue. Plaintiff attempted to make it clear that his goal was merely to embrace the Arab community and reflect their rich heritage. He stated, "I am angered that the School Board does not even seem to acknowledge that my actions were based on good faith. I feel as if they are turning their backs on me. They didn't even ask me to change it. They said it must be completely removed."

The Superintendent soon heard news of the informal meeting at Plaintiff's home, which finally provoked the Superintendent to deliver Plaintiff an ultimatum. In a brief letter, the

Superintendent again voiced Defendant's concerns and reviewed the recent events. Instead of asking for a compromise, the Superintendent told Plaintiff that he either remove the Arabic segment from the memorial or risk losing his job. Plaintiff promptly called the Superintendent and again refused to remove anything he had added to the memorial, stating, "Children of the Arab nations and the Arabic community are just as deeply hurt and affected by September 11th as anyone else." The Superintendent responded that he had no choice but to terminate Plaintiff, citing Plaintiff's unlawful endorsement of Islam and his insubordination as evidenced by his statements that undermined the efficiency of the School Board as the reasons for Plaintiff's termination. Plaintiff subsequently filed this action challenging his termination.

II. Analysis

Plaintiff firmly asserts that his speech at the meeting was protected by the First Amendment as a matter of public concern and that the Arabic material on the September 11th Memorial was not unlawful government advancement of religion. Defendant, in response, filed a counterclaim seeking a declaratory judgment stating that Plaintiff's Arabic addition to the memorial was in fact a violation of the Establishment Clause of the First Amendment and that Plaintiff's speech was not protected by the First Amendment because his statements involved a matter of private interest, and not public concern.

A. Free Speech

Plaintiff asserts that Defendant violated Plaintiff's First Amendment right to freedom of speech by terminating his employment based on statements he made regarding the School Board. Specifically, Plaintiff contends that his statements are protected by First Amendment guarantees

to speak freely about issues involving public concern. We simply are not convinced that Plaintiff's statements rise to the level of public concern warranting the full protections of the First Amendment, but rather, his statements are merely expressions of private interest. Accordingly, where a public employee is terminated based on statements regarding a private interest, the courts must give deference to the public employer and should not evaluate the reasoning for the termination.

1. Plaintiff's Speech is a Matter of Private Interest Rather than Public Concern.

The First Amendment to the Constitution guarantees that "Congress shall make no law . . . abridging the freedom of speech," U.S. CONST. AMEND. I, and is applied to state actors, such as public high schools, through the Fourteenth Amendment. Accordingly, the Supreme Court has held that teachers and students do not lose their constitutional protections once they enter the schoolhouse doors. *Tinker v. Des Moines Independent School District*, 393 U.S. 503, 506 (1969). Nevertheless, states may regulate speech in the school setting because they have an interest in promoting an orderly and efficient educational environment. *Pickering v. Board of Education*, 391 U.S. 563, 568 (1968). Consequently, "[a] government employer may impose certain restraints on the speech of its employees, restraints that would be unconstitutional if applied to the general public." *City of San Diego, California v. John Roe*, 125 S. Ct. 521, 523 (2004). This applies to public school employees, who are allowed more leeway to speak on matters of public concern, especially government policies that may be of interest to the general public. *Id.* *Pickering* established that the First Amendment protects a teacher's speech regarding issues of public concern. *Pickering*, 391 U.S. at 574.

In determining whether an employee's speech falls under a matter of public concern, courts are to “examine the ‘content, form, and context of a given statement, as revealed by the whole record.’” *City of San Diego*, 125 S. Ct. at 525. (quoting *Connick v. Myers*, 461 U.S. 138, at 146-147 (1983)). In *City of San Diego*, the Court concluded that a matter of public concern is a matter subject to legitimate news interest; meaning it must be an issue of general interest and of value and concern to the public at the time of the incident. 125 S. Ct. at 525.

If this Court finds that the speech is a matter of public concern, then it must apply the balancing test established in *Pickering*. The proper test is to balance the “employee's interest in making the statement against the interest of the State in promoting the efficiency of the public services it performs through its employees.” *Rankin v. McPherson*, 483 U.S. 378, 388 (1987) (quoting *Pickering*, 391 U.S. at 568). However, if the Court finds the speech to be a matter of private interest rather than public concern, the *Pickering* balancing test no longer applies. When addressing speech of private concern, it is not necessary for the court to analyze the reasons for discharge. *Connick*, 461 U.S. at 146.

“[W]hen a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee’s behavior.” *Id.* at 147. (citing *Bishop v. Wood*, 426 U.S. 341, 349-50 (1976)).

Plaintiff contends that his statement was a matter of public concern and that the *Pickering* balancing test therefore applies. He avers the statement was made concerning a public matter in the presence of members of the community. Defendant counters that the statement was one of private interest and therefore the Court need not review the decision and reasoning for

terminating Plaintiff. The Court finds that the statement at issue was one of private interest rather than public concern.

Plaintiff made the statement outside of the school and in the privacy of his own home. The meeting took place in a private forum rather than a public setting and was not open to the general public. It did not take place in a school setting and only a few members of the faculty and public were invited to join. It was not equivalent to a PTA meeting, in which all members of the public and the school system are entitled to be present. Plaintiff specifically invited people with whom he wished to discuss his concerns to be present at the meeting. Further, his statements made during the meeting primarily dealt with the operation of the school system. It clearly regarded an issue essential only to the employees of the School Board. The statements made during the meeting were not of public interest or concern. Plaintiff's complaints about his termination were not of significance to the public. He merely held the meeting to voice his concerns about his possible termination, and his negative attitude towards the School Board was likely to cause unrest among employees. The instant matter is similar to *Connick* and *City of San Diego* where the Supreme Court held that an employer may terminate an employee for statements of private interest that nonetheless undermine the functioning of the organization. *Connick*, 461 U.S. at 146.

“When a government employee personally confronts his immediate supervisor, the employing agency's institutional efficiency may be threatened not only by the content of the employee's message but also by the manner, time, and place in which it is delivered.” *Givhan v. Western Line Consolidated School District*, 439 U.S. 410, 624 (1979) (citing *Pickering*, 391 U.S. at 572-573). While Plaintiff here did not directly confront his supervisor, he clearly communicated his outrage regarding their actions to his co-workers and subordinates. His

general negative sentiment towards the School Board, his employer, was likely to cause conflict among the school employees. The School Board need not tolerate an employee's speech that interferes with the school's integral function of maintaining efficiency. By speaking negatively about the School Board to other employees and parents, Plaintiff undermined the School Board's integrity and authority. Therefore, Plaintiff's speech made during the meeting is of private interest, not public concern, and thus the Court need not review the reasoning for Plaintiff's termination or apply the *Pickering* balancing test. The Court does not have the authority to interfere with the School Board's reasons for terminating Plaintiff, as his statements do not concern the public interest, and are not afforded First Amendment protections under the free speech clause.

B. The Establishment Clause

Defendant, in seeking to uphold Plaintiff's termination, asserts that the Arabic segment violates the Establishment Clause of the First Amendment and that Plaintiff unconstitutionally used the government's power to further the interests of the Islamic faith. The First Amendment strictly forbids such conduct.

The Establishment Clause provides that "Congress shall make no law respecting an establishment of religion," and has been applied to state and local government action through the Due Process Clause of the Fourteenth Amendment. U.S. CONST. AMEND. I; *see Everson v. Board of Education*, 330 U.S. 1 (1947). The purpose of the Establishment Clause is to prevent the intrusion of the state into the church and likewise the intrusion of the church into the state. *Lemon v. Kurtzman*, 403 U.S. 602, 614 (1971).

The Supreme Court, in *Lemon v. Kurtzman*, established a test for determining when government action exhibiting public displays of religious symbols violates the Establishment Clause. 403 U.S. 602 (1971). Despite challenge and critique, this test still stands as the appropriate test. *E.g.*, *McCreary County, Kentucky v. American Civil Liberties Union of Kentucky*, 125 S. Ct. 2722, 2734 (2005) (reaffirming the significance of the *Lemon* test and denying invitation to abandon its purpose test). Under the *Lemon* test, public displays including religious symbols or religious speech violate the Establishment Clause if they: (1) have no secular purpose, (2) advance or inhibit religion, or (3) foster excessive government entanglement with religion. *See Lemon*, 403 U.S. at 612-613 (citing *Walz v. Tax Commission*, 397 U.S. 664, 674 (1970); *Board of Education v. Allen*, 392 U.S. 236, 243 (1968)). A court need only find that a particular government action satisfies one prong of the *Lemon* test to declare that action unconstitutional.

Defendant argues that the Arabic segment of the September 11th Memorial violates the Establishment Clause because it has no secular purpose, advances religion, and fosters excessive government entanglement with religion. The Court agrees that the Arabic segment of the September 11th Memorial advances religion. It can be said that a public display with religious content advances religion when it “would cause a reasonable observer to fairly understand it in its particular setting as impermissibly advancing or endorsing religion.” *Lamberth, et al. v. The Board of Commissioners of Davidson County, North Carolina*, 407 F.3d 266, 271 (4th Cir. 2005) (citing *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 598-600 (1989)). The determination of whether a public display unconstitutionally advances or inhibits religion turns upon the context in which the contested object appears, and as such, each display must be

judged in its own unique circumstances. *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 595 (1989).

The Court finds that the Arabic segment of the mural contains objects with religious meaning. The crescent moon and star is widely known and recognized as a symbol of Islam. While the Court recognizes that all Muslims do not accept or use the crescent moon and star as a symbol of their faith, the crescent moon and star is nonetheless associated and viewed as a symbol of Islam across the globe. The sight of the crescent moon and star sparks thoughts of Islam in one's mind just as images of the "Red Star" reminds viewers of communism. It is also indisputable that the words "*Shahadah*" and "*Jihad*," which accompany the crescent moon and star on the mural, are symbols with religious meaning. *Shahadah* is one of the five pillars of Islam and is the Muslim declaration of faith. *Jihad* is an Arabic word meaning "struggle," and in Islam there are four recognized *jihads*- jihad of the heart, tongue, hand and sword.

Despite Plaintiff's assertions that the Arabic segment simply recognizes the Arabic nations in the same manner as the other nations are recognized in the Memorial and does not advance the Islamic religion, it is undeniable that a reasonable observer viewing the mural could not help but interpret the Arabic segment as an advancement of Islam. While Plaintiff's efforts to recognize the Arabic heritage shared by many of the Libertyville High School students, parents, teachers, staff, and members of its community are noteworthy, the Arabic segment of the memorial still contains heavy Islamic undertones and explicitly makes reference to fundamentals of Islamic faith.

As previously stated, when a reasonable observer looks at the memorial and sees the crescent moon and star, she is almost certain to think of the Islamic faith. One might even dare to say that the symbol is synonymous with the religion. In the instant matter, it is even more

likely that seeing this crescent moon and star would put forth thoughts of Islam in a reasonable observer's mind as the mural is a memorial to the tragic events of September 11, 2001.¹ The terrorists who hijacked the planes and crashed into the World Trade Center and the Pentagon are alleged to be of the Islamic faith. If reflecting upon the events of the day alone do not drum up thoughts of Islam, surely the sight of this crescent moon and star on the Libertyville High School September 11th memorial would drum up such thoughts.²

Moreover, the Arabic segment is unconstitutional because it *advances* or endorses Islam not merely through the symbol of the crescent moon and star, but also through the written words surrounding the symbol. *Shahadah* is a pillar of Islamic faith, and *Jihad* is another foundation of Islamic faith. It is the amalgamation of all elements comprising the Arabic segment that advances Islam. Our duty in analyzing the Arabic segment of the memorial is to determine the effect this visual art has on the reasonable observer. See *Lamberth v. The Board of Commissioners of Davidson County, North Carolina*, 407 F.3d 266, 271 (stating that the second prong of the *Lemon* test assesses the effect of government actions and inquires whether it in fact conveys a message of endorsement or disapproval of religion) (citing *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985)). “Noncoercive government action within the realm of flexible accommodation or passive acknowledgement of existing symbols does not violate the Establishment Clause unless it benefits religion in a way more direct and more substantial than practices that are accepted in our national heritage.” *Allegheny*, 492 U.S. at 662-63 (Kennedy, A., concurring in part, dissenting in part).

¹ “[T]he reasonable observer in the endorsement inquiry must be deemed aware of the history and context of the community and forum in which the religious speech takes place.” *Good News Club v. Milford Central School*, 533 U.S. 98, 119 (2001).

² The Court finds further reinforcement in this assertion as many parents expressed outrage upon the addition of the Arabic segment. Many people commented that they found it horribly disrespectful that one would even think it permissible to include symbols of Islam in a September 11th memorial. Such emotional outrage and irrational response is evidence of the inescapable link between the Arabic segment and Islam, as well as reaction of the reasonable observer upon seeing the Arabic segment in the mural.

When one looks at a symbol internationally recognized as a symbol of Islam, the crescent moon and star, alongside a word such as *jihad*, one cannot think but that there is an endorsement of Islam before their eyes. Indeed, as Defendant asserts, the American public has become quite familiar with the term *jihad* since the events of September 11th. While their understanding may not completely encompass the comprehensive meaning of the term in the Islamic faith, it is the reasonable observer's perception of the word in the memorial that is the focus of our inquiry. Moreover, the presence of the word "*Shahadah*" is a glaring piece of evidence demonstrating the Arabic segment's endorsement of Islam. *Shahadah* is the Muslim declaration of faith. The Court is troubled to find how a reasonable observer could find the Arabic segment of the memorial to be anything but an endorsement of religion. Accordingly, the Arabic segment represents nothing more than Plaintiff's effort to abuse the coercive power of government and proselytize; conduct strictly forbidden by our Establishment Clause.

Plaintiff contends that Defendant has mischaracterized the Arabic segment of the memorial. It asserts that the crescent moon and star is not a religious symbol but a geographic symbol intended to represent the Arab world no more than the Star of David represents Israel. This contention does not fall on deaf ears as the Court recognizes that the flags of many Arab nations do include the crescent moon and star. Nevertheless, First Amendment jurisprudence lends us no choice but to adhere to the appropriate standard in looking at the effect that this display has on the reasonable observer. While perhaps not Plaintiff's intention to advance Islam, the primary effect of the display on the reasonable observer still is one that advances the religion. Accordingly, the Court finds that the Arabic segment is unconstitutional and violates the Establishment Clause because it endorses Islam.

CONCLUSION

In summary, Plaintiff's motion for summary judgment is **DENIED**, and Defendant's motion for summary judgment is **GRANTED**.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE MOOT CIRCUIT**

AHMED RAHIM,	:	
	:	
Appellant,	:	
	:	
	:	
v.	:	No. Moot APP-3030-05
	:	
LIBERTYVILLE BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

July 31, 2005

MEMORANDUM AND ORDER

**Before Judge Cordero, Judge Parker,
Judge Holmes, Circuit Judges.**

HOLMES, Chief Judge.

INTRODUCTION

This case comes on appeal from the United States District Court for the Eastern District of Moot. Appellant, Principal Ahmed Rahim (the “Principal”) filed an action challenging his termination from his position as Principal of Libertyville High School. Appellee, Libertyville Board of Education (the “School Board”) terminated the Principal claiming that his statements caused disruption in the school environment and that his addition to the school’s mural unconstitutionally advanced religion, namely Islam, on government property. The Principal moved for summary judgment asserting that his speech at the meeting was a matter of public concern protected by the First Amendment and that the mural did not advance religion, and therefore did not violate the Establishment Clause. The School Board concurrently moved for summary judgment on both claims. The district court found in favor of the School Board on both motions, and the Principal now requests that the Court reverse the ruling of the lower court.

I. Free Speech

The district court erred in determining that the speech at issue was a matter of private interest rather than public concern. The Principal's speech was based on a matter that affected the community and sparked interest among the public. Evaluating the context in which the statement was made, it is clear that the issue was a newsworthy event. As such, we find that the speech in question was a matter of public concern thus requiring further analysis of the speech under the balancing test set forth in *Pickering v. Board of Education*, which requires the court to weigh the interest of both parties to determine whether the termination was lawful. 391 U.S. 563 (1968).

A. The Principal's Speech was a Matter of Public Concern Rather than Private Interest.

Freedom of speech may not be hindered by Congress, as it is a right that is embedded in our Constitution. U.S. CONST. AMEND. "[S]tatements must be protected to give freedom of expression the breathing space it needs to survive, so statements criticizing public policy and the implementation of it must be similarly protected." *Rankin v. McPherson*, 483 U.S. 378, 387 (1987) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). The Supreme Court has long upheld the right of the people to speak freely; however, as noted in the district court opinion, this right is limited in the school context, particularly where the speech is of private interest and not public concern. *Pickering*, 391 U.S. at 571-572. As set forth by the Court in *Connick v. Myers*, 461 U.S. 138 (1983), the appropriate test is to examine the content, context, and form of the given speech in determining whether it is a matter of public concern. If a public employee's speech is an issue of private concern, the court need not review the school's

reasoning for terminating the employee. *Connick*, 461 U.S. at 146. However, if the speech regards a matter of public interest, the court must weigh the interest of the parties. *Pickering*, 391 U.S. at 568. While the school has an interest in maintaining efficiency, this interest must still be balanced against the interests of its employees. We find that under the circumstances, the speech was a matter of public concern.

The Principal's speech is a matter of public concern because it was related to an issue pertinent to the community. While his speech itself was not entirely about issues of public concern, the circumstances under which the speech was made is also relevant. The Principal's termination, and speech regarding this termination, was based upon a matter that was relevant to the public. The speech regarded the mural, a Memorial constructed to foster harmony in the community in light of the events of September 11, 2001. Not only were the events of September 11th a highly discussed topic within the community, the events had an undeniable effect on the United States as a nation, and on the world as a whole. Discussion of this tragedy is inescapable.

Further, the context of the speech was based on community sentiments and was of interest to the general public. The controversial mural, and the discussions surrounding, were a newsworthy event of interest to the public. The mural affected all members of the community and thus was of strong value to the public. Although the statements of the Principal were not specifically about a public issue, the basis and reasoning for his statements supports the finding that it was a public rather than private matter. Had the Principal's termination been based on a matter that did not involve the public and was merely an internal School Board issue, then his complaints about the matter would not be of interest to the public. However, here, where the termination was based on a mural that was made for and directed to the public community, the statements made during the meeting were relevant to the public.

Moreover, the fact that the Principal made the speech during a private meeting does not alone support the conclusion that it was not an issue of public concern. The district court found that the speech was a matter of private interest because it took place in a private setting and was not open to the general public. However, the court failed to address the context under which the speech was made. The speech was made during a meeting with people the Principal chose to invite, however, the meeting was based upon an issue that was of interest to the public. The Supreme Court has held that “a teacher’s public criticism of his superiors on matters of public concern may be constitutionally protected and may, therefore be an impermissible basis for termination of his employees.” *Perry v. Sindermann*, 408 U.S. 593, 598 (1972) (citing *Pickering v. Board of Education*, 391 U.S. 563 (1968)). The reasoning behind his possible termination was an interest of public concern in light of the circumstances. As stated earlier, the mural was more than just a school issue, but rather a current newsworthy event in the community. Based on the foregoing, we hold that the speech is a matter of public concern and the interests of the parties must be balanced.

B. The Principal’s Interest in Maintaining Free Speech Outweighs the School’s Interest in Efficiency.

The Principal’s interest in free speech outweighs any governmental interest in hindering that speech. He relies on *Rankin*, in which a deputy constable was terminated for commenting about a presidential assassination attempt, to support his claim that his interests outweigh the school’s interest in efficiency. The Court held the termination improper because the speech did not affect the function of the agency. “When a teacher speaks publicly, it is generally the content of his statements that must be assessed to determine whether they in any way impede the proper

performance of his daily duties in the classroom or interfere with the regular operation of the schools generally.” *Givhan v. Western Line Consolidated School District*, 439 U.S. 410, 415 (quoting *Pickering*, 391 U.S. at 572-573). There is no evidence that the speech in anyway impeded on the efficiency of the school. The Principal merely stated his views regarding the ongoing situation in the community. His actions did not alter any working relationships among the employees of the school. Likewise, there is no evidence that his speech in any way disrupted the general operation of the school. Rather, the speech seemed to bring light to an issue that most of the teachers recognized as a serious problem. The speech had no effect on the school’s goal of providing education to the children.

By punishing the Principal for speaking on such issues, the school board is sending the message that any person who disagrees with them is subject to termination. If teachers are not free to discuss issues that affect them and the community, how can they be expected to fully perform their duties? Resolving issues within the school board is a necessary tool in maintaining efficiency, and this can only be done through listening and remedying the concerns of the teachers and staff. The Principal in no way undermined the authority or efficiency of the School Board based on his statements. He merely stated his disappointment and frustration in the School Board’s handling of the situation. The Principal’s statements in no way affected his ability to function as an effective principal, and his role as a leader of the school was not hindered by his statements.

II. The Libertyville High School September 11th Memorial does not violate the Establishment Clause.

The district court erred in granting summary judgment in favor of the School Board, and in declaring that the crescent moon and star and the accompanying Arabic words (“the Arabic segment”) imposed on the September 11th Memorial unconstitutionally advanced Islam. The Constitution does not require complete separation of church and state, and the Supreme Court has warned that callous indifference between the two was never the intention of the framers in drafting the Establishment Clause. *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984); *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). The Constitution affirmatively mandates more than mere tolerance, but accommodation of all religions, and forbids hostility towards any religion. *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984).

With that being said, we agree with the district court in that the *Lemon* test is appropriate for determining whether the Arabic segment of the Libertyville High School September 11th Memorial is unconstitutional. *Lemon* explains that Government action contravenes the Establishment Clause when it has no secular purpose, advances or inhibits religion, and fosters excessive government entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971). “A religious display’s constitutionality depends on whether a reasonable observer, considering the context in which it is presented, would likely perceive it as a governmental imprimatur to religion.” *Clever v. Cherry Hill Township Board of Education*, 838 F.Supp. 929 (D. N.J. 1993) (citing *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 595-96 (1989)).

We disagree that a reasonable observer viewing the Arabic segment of the September 11th memorial would necessarily view it as an endorsement of religion. As the Principal argues,

the crescent moon and star is more than just a symbol of the Islamic faith. The flags of a number of Arab nations include the crescent moon and star or some variation of the two symbols. These flags are not religious endorsements, but instead geographic symbols. It was the intention and desire of the school to create a memorial that reflected the diversity of its community, and in doing so, contains the flags of various nations around the world. Nevertheless, the School Board has only challenged the addition of a symbol recognizing the Arabic nations, despite the fact that both parties agree that the community has a growing immigrant population from the Middle East and Libertyville High School has a great number of students from Arabic nations and of Arabic heritage.

“[T]he reasonable observer in the endorsement inquiry must be deemed aware of the history and context of the community and forum in which the religious speech takes place.” *Good News Club v. Milford Central School*, 533 U.S. 98, 119 (2001). Accordingly, we find that the district court failed to thoroughly look at the Arabic segment in the context of its community and forum. It is illogical that a reasonable observer in the Libertyville community looking at this symbol, alongside flags from many other nations, would see the Arabic segment as an endorsement of religion instead of recognition of a particular geographical region. We believe that a reasonable observer would be aware not only of the Arabic population in the community, but also the school’s desire to create a memorial that reflects its diversity.

Nor are we convinced that the accompanying words “*jihad*” and “*shahadah*” are that persuasive in conveying the Arabic segment as an endorsement of religion. The Principal points out that there are messages accompanying several flags on the Memorial. These messages are in the native language of the respective country and deliver messages to the members of those communities lost in the tragedy of September 11th, as well as the surviving members of the

community who can pass by and easily view the memorial. Just as the Spanish words “*Que Dios los tenga en su Gloria*” (“may God keep you all within his glory”) alongside the flags of Latin American nations speak to the members of those communities, “*jihad*” and “*shahadah*” speak to the members of the Arabic community. Indeed, the School Board does not attempt to argue that the Spanish language message endorses Christianity. The Principal simply did not use the government’s power to coercively further the interests of Islam. In the context presented, the Arabic segment represents a more passive symbol of religion, if it represents any at all. We find that there is no effort to proselytize in the presence of the Arabic segment in the mural. Moreover, those who do not like or do not disagree with the Arabic segment may simply choose to ignore it.

This is not to say that the Arabic segment does not have religious overtones. The Court recognizes this. But, the district court’s decision appears to be driven more by emotion than by reason. The Arabic segment is not unconstitutional simply because it offends the sensibilities of some viewers. *Accord Clever v. Cherry Hill Township Board of Education*, 838 F.Supp. 929, 940 (1993). That alone does not rise to the level of an unlawful endorsement of religion. Government endorsement of religion “sends a message to non-adherents 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.” *Lynch*, 465 U.S. at 688 (O’Connor, S., concurring) (citing *Abington School District v. Schempp*, 374 U.S. 203 (1963)).

The record is void of any evidence suggesting that the Arabic segment of the mural makes those who do not follow the Islamic faith feel as if they are outsiders and not full members of the political community. We are not inclined to believe, nor does the School Board put forth any arguments, that such is the case. Moreover, the fact that those who oppose the

Arabic segment created such an uproar is further probative that non-adherents to Islam are not likely to feel that they are outsiders. This uproar on the part of non-adherents (those who do not subscribe to the Islamic faith) in response to the Arabic segment is demonstrative of a sentiment of being a part of the political community of Libertyville. Such strong opposition to expressions or government actions incongruent with one's beliefs is more characteristic of an insider since an insider is more accustomed to things in their community reflecting their beliefs. An outsider, on the other hand, is less likely to act in this manner since they are more likely accustomed to seeing things that do *not* reflect their beliefs.

In the absence of such divisiveness, we cannot maintain a finding that the Arabic segment of the September 11th Memorial endorses Islam. An affirmation of the district court would constitute a violation of the Establishment Clause.³ The Principal realized, in making the decision to add and preserve the Arabic segment, and the Court agrees that removing the Arabic segment sends the message to Arabic community members that they are outsiders and not full members of the political community. Accordingly, we reverse the holding of the district court.

³ In explaining that government endorsement of religion sends a message to nonadherents that they are outsiders and a message to adherents that they are insiders, Justice O'Connor added, "[d]isapproval sends the opposite message." *Lynch*, 465 U.S. at 688.

CONCLUSION

In conclusion, we find that the district court erred in granting summary judgment in favor of the School Board on both issues. We accordingly reverse and remand the case to the lower court for further review in accordance with the principles set forth in this opinion.

IN THE SUPREME COURT OF THE UNITED STATES

LIBERTYVILLE BOARD OF EDUCATION,
Petitioner

v.

AHMED RAHIM,
Respondent

October 26, 2005

ORDER GRANTING CERTIORARI

The petition herein for a writ of certiorari to the United States Court of Appeals for the Moot Circuit is granted, in order that this Court may consider all of the questions raised by the record.