



November 4, 2014
VIA EMAIL, FAX, AND U.S. MAIL

Mr. Bill Lane, School Board Member
Mr. Erik Loeffelholz, School Board Member
Mr. Shannon Hart, School Board Member
Mr. Clay Doyle, School Board Member
Mr. Tim Brown, School Board Member
Mr. Sam Merck, School Board Member
Mr. Jeff Edwards, School Board Member
Azle Independent School District
300 Roe Street
Azle, TX 76020

Dear Members of the Azle School Board:

It has come to our attention that the Freedom from Religion Foundation (“FFRF”) recently requested that the Azle Independent School District cancel a voluntary Seven At Schools assembly, which the District was hosting as part of its anti-bullying, anti-drugs, and character-building education program. We write to inform you that the District’s decision to cancel the Seven At Schools assembly based on the personal religious beliefs of the presenters violates the First Amendment and to request that you remedy this legal violation by immediately rescheduling the assembly. By advocating for the exclusion of people of faith from public life and—in particular—any participation in public schools, FFRF demonstrates that its demands are not based on law but on a blatant hostility to religion that directly conflicts with the First Amendment’s protection of religious free exercise. As explained herein, canceling the Seven At Schools assembly based on the presenters’ religious identity clearly violated the Constitution, as well as the principles of individual liberty it was designed to protect. *See McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (“The Free Exercise Clause categorically prohibits government from regulating, prohibiting, or rewarding religious beliefs as such.”).

Apparently, the District invited Seven At Schools to present a secular program promoting character development and good citizenship. None of the information in the presentation was religious in nature and the program’s content was consistent with the school’s curriculum. But, after it received a letter from

FFRF, the District canceled the assembly due to the Seven At Schools presenters' connection to a Christian ministry.

Canceling the Seven At Schools Assembly Violates the Free Exercise Clause

The Free Exercise Clause prohibits government from “regulat[ing] or prohibit[ing] conduct because it is undertaken for religious reasons.” *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 532 (1993). But that is exactly what the District has done by canceling the Seven At Schools assembly based on the presenters' religious motivations. It has been abundantly clear for decades that “government ... cannot in a selective manner impose burdens only on conduct motivated by religious belief,” such as presenting at public schools, without running afoul “of the rights guaranteed by the Free Exercise Clause.” *Id.* at 543.

Nor may the government condition the receipt of benefits, including the opportunity to sponsor assemblies in public schools, on citizens' surrendering of their First Amendment rights. *See McDaniel*, 435 U.S. at 626 (noting that forcing citizens to choose between the receipt of generally available benefits and exercising their religion unconstitutionally “penalizes the free exercise of [their] constitutional liberties”). “[R]eligious people (or groups of religious people) cannot be denied the opportunity to exercise the rights of citizens simply because of their religious affiliations or commitments, for such a disability would violate the right to religious free exercise.” *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 698 (1994) (plurality opinion). The District is therefore prohibited from “impos[ing] special disabilities on the basis of religious views or religious status.” *Employment Div., Dept. of Human Res. of Ore. v. Smith*, 494 U.S. 872, 877 (1990). Plainly, by canceling the Seven At Schools assembly because of the presenters' religious faith, the District crossed that line.

Permitting the Assembly Comports with the Establishment Clause

To comply with the Establishment Clause, government action must serve a secular purpose, must not have the primary effect of advancing religion, and must not excessively entangle the government with religion. *See Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). Allowing the Seven At Schools assembly would readily satisfy every aspect of this test. Looking first to the secular purpose prong, the United States Supreme Court has explained it is “reluctan[t] to attribute unconstitutional motives to” government officials when they can offer “a plausible secular purpose for” their actions. *Mueller v. Allen*, 463 U.S. 388, 394-95 (1983). The District's secular reasons for allowing the Seven At Schools assembly are clear: it is a free, voluntary program with secular content that advances the District's anti-bullying, anti-drugs, and character-building education program.

Including the Seven at Schools assembly in the District's character-building program also does not have the primary effect of advancing religion, nor does it unlawfully entangle the District with religion. FFRF appears to complain that the assembly presenters are religious and offer religious character-building programs outside of the public school arena. But the actions of private individuals are irrelevant to the question of whether *the District* is unlawfully advancing religion. "For a law to have forbidden 'effects' under *Lemon*, it must be fair to say that the *government itself* has advanced religion through its own activities and influence." *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 337 (1987).

Here, the District has taken no actions that promote religion. It simply planned to offer the Seven At Schools assembly as an optional opportunity for students to receive anti-bullying, anti-drugs, and character-building training. This program furthered the District's curriculum and was only available to students whose parents had consented to their attendance. The District was therefore not advancing religion *at all*. Likewise, the minimal amount of cooperation needed to schedule and run the Seven At Project assembly does not excessively entangle the District with religion. See *Agostini v. Felton*, 521 U.S. 203, 223 (1997) (explaining that "[e]ntanglement must be 'excessive' before it runs afoul of the Establishment Clause.") (emphasis added).

Canceling the Assembly Also Violated the Establishment Clause

FFRF's view of the Establishment Clause is highly antagonistic to religion. As a private organization, FFRF is free to hold that view. But by adopting that viewpoint as its own and canceling the Seven At Schools assembly due to the presenters' religious identity, the District has exhibited "a pervasive bias or hostility to religion [that] undermine[s] the very neutrality the Establishment Clause requires." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 846 (1995). This it cannot lawfully do.

Such blatant religious discrimination is plainly barred by the Establishment Clause. As a plurality of the Supreme Court once explained, "[t]he Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities." *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 248 (1990). Yet it is exactly this type of religious hostility that groups like FFRF demand and which the District acceded to in this case.

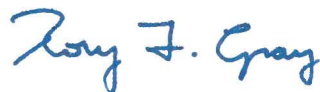
Far from FFRF's vision of mandatory religious discrimination, the Supreme Court has made it clear that the Constitution does not "require complete separation of church and state; it affirmatively mandates accommodation, not merely

tolerance, of all religions, and *forbids hostility* toward any.” *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (emphasis added). The Establishment Clause is vindicated, not violated, by the District offering the Seven At Schools assembly as a voluntary contribution to its character-building education program. Indeed, the Supreme Court has repeatedly “held that the guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.” *Rosenberger*, 515 U.S. at 839. In banning the Seven At Schools presenters from campus based on their religious identity, the District plainly misinterpreted the law.

Conclusion

The First Amendment categorically prohibits the government from excluding individual or groups from public life based on their religious faith. When faced with FFRF’s claims regarding another Seven Project assembly several years ago, the Northwest Independent School District’s attorney—whose letter is attached—responded by noting that the fact that “a presenter at a curriculum-based program has sincerely held religious beliefs is ... insufficient to cancel the assembly and/or bar the presenter.” As explained above, we hope your District will reject the unreasonable mandate of FFRF and choose not to deprive your students of the important information they would receive at the Seven At Schools assembly. We request that you **respond to this letter in writing by November 18, 2014** informing us whether the District will remedy its violation of the Constitution by rescheduling the Seven At Schools assembly immediately, or whether it will continue to adhere to FFRF’s unconstitutional demands.

Sincerely,



Rory T. Gray, Litigation Staff Counsel
Jeremy D. Tedesco, Senior Legal Counsel
J. Matthew Sharp, Legal Counsel

Enclosure

cc: Dr. Ray Lea, Superintendent

ABERNATHY
ROEDER
BOYD &
JOPLIN P.C.

1700 Redburn Boulevard, Suite 300 - P.O. Box 1210 • McKinney, Texas 75070-1210
Metro 214.544.4000 • Fax 214.544.4040

ATTORNEYS AT LAW

CHARLES J. CRAWFORD

ccrawford@abernathy-law.com
Direct Dial 214.544.4009

October 12, 2011

VIA FACSIMILE: (606) 204-0422

Mr. Patrick Elliott
Staff Attorney
Freedom From Religion Foundation
P. O. Box 750
Madison, WI 53701

Re: Seven Project Assembly at Byron Nelson High School

Dear Mr. Elliott:

This firm represents Northwest Independent School District. I write in response to your October 6, 2011 letter addressed to NWISD's Superintendent, Dr. Karen Rue, regarding the "Seven Project" assembly scheduled for October 12, 2011 at Byron Nelson High School. In your letter you state that "[g]iven the overtly religious nature of this program, Northwest ISD must refrain from hosting these types of assemblies." You also request that the District notify you in writing of the steps it has "taken to remedy this matter."

Although NWISD appreciates your concern that the District not violate the Establishment Clause, the assembly at Byron Nelson High School has a secular educational purpose that is consistent with the school's curriculum - - promoting good citizenship and character. This is not a religious program that gives the appearance that NWISD is endorsing or promoting a religious message. Simply because a presenter at a curriculum - based program has sincerely held religious beliefs is, in the District's view, insufficient to cancel the assembly and/or bar the presenter.

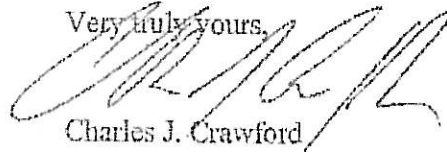
The District has done its due diligence and has confirmed with both the school's PTSA and with Youth Alive North Texas in writing that none of the information presented at the assembly is religious or faith based in any way and that there will be no religious proselytizing. Prior programs presented by the Seven Project within NWISD has further confirmed that the program is entirely secular and consistent with school district curriculum. Based on these written confirmations, the District does not believe the assembly poses the Establishment Clause concerns identified in your letter and therefore declines your request that the assembly be cancelled.

Mr. Patrick Elliott
Page 2
October 12, 2011

Notwithstanding the above, please be advised that the District intends to have an official present at the assembly who is authorized to step in and immediately stop any (unlikely) attempt by any presenter to cross the line and venture into religion or proselytizing. The District is taking this action to ensure that the Establishment Clause concerns in your letter do not arise at the assembly.

Again, the District appreciates your concerns and will monitor the assembly in an appropriate manner consistent with the Establishment Clause.

Very truly yours,



Charles J. Crawford

CJC/ea

cc: Dr. Karen Rue
Linda Parker
Richard Abernathy