



November 14, 2014
VIA EMAIL, FAX, AND U.S. MAIL

Mrs. Lydia Miller, President
Ms. Mary Kay Martin, Vice President
Mr. Jackie Caughenbaugh, Board Member
Mrs. Kim Christian, Board Member
Mrs. Lucinda Wills, Board Member
Licking Valley Local School District
1379 Licking Valley Road, N.E.
Newark, OH 43055

Re: FFRF's Letter Regarding the Jubilee Gang Assembly

Dear Members of the Licking Valley Board of Education:

It has come to our attention that the Freedom from Religion Foundation (“FFRF”) recently requested that the Licking Valley Local School District cancel a Jubilee Gang assembly, which the District was hosting as part of its character-building education program. We write in support of the District’s decision not to prohibit school assemblies that contribute to its educational program based on the personal religious beliefs of the presenters. 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. Canceling the Jubilee Gang assembly based on the presenters’ religious identity would clearly violate the Constitution, as well as the principles of individual liberty it was designed to protect. *See, e.g., 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.”).

Our understanding is that the District invited Jubilee Gang to present a secular program promoting character development and good citizenship to kick off Licking Valley Intermediate School’s Renaissance Program, which rewards students for meeting certain behavioral and academic goals. None of the information in the presentation was religious in nature and the program’s content was consistent with the school’s curriculum. The assembly taught students to set goals, be a good example, make good choices, and persevere when you fail. But, after hearing about

the assembly, the FFRF sent the District a letter demanding that it ban assemblies “by overtly religious organizations and ministries in the future,” regardless of the assemblies’ content. In response, the District has rightly refused to discriminate against community members, like the Jubilee Gang presenters, who are connected to a Christian ministry.

Canceling the Jubilee Gang Assembly Would Have Violated 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 FFRF demands that the District do by prohibiting Jubilee Gang assemblies 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.” *Emp’t Div., Dept. of Human Res. of Ore. v. Smith*, 494 U.S. 872, 877 (1990). Plainly, forbidding the Jubilee Gang assembly because of the presenters’ religious faith would have crossed that line and the District was right to reject that course.

Permitting the Jubilee Gang Assembly Comported 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). Permitting the Jubilee Gang assembly readily satisfied 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 Jubilee Gang assembly are clear: it is a free

program with secular content that advances the District's character-building education program.

Including the Jubilee Gang 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 complains 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 offered the Jubilee Gang assembly as one means for students to receive training that would promote character building and good citizenship. The District was therefore not advancing religion *at all*. Likewise, the minimal amount of cooperation needed to schedule and run the Jubilee Gang 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 Would Also Have 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 a Jubilee Gang assembly due to the presenters' religious identity, the District would have 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). The District was right to refuse to do so.

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 refused to accede to here.

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 Jubilee Gang assembly as a 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.

Conclusion

The First Amendment categorically prohibits the government from excluding individuals or groups from public life based on their religious faith. When faced with FFRF’s claims regarding a similar 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.” Your District was right to reject FFRF’s unjustified demands and to provide students with the important information communicated at the Jubilee Gang assembly. If you should have any questions related to the participation of religiously-affiliated, private speakers in school events, please do not hesitate to contact us. We would be happy to speak with you or your counsel and offer any assistance we could provide.

Sincerely,



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

Enclosure

cc: Mr. David Hile, Superintendent