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June 1, 2021

VIA EMAIL ONLY

Mr. Mike Berry
General Counsel
First Liberty Institute
2001 W. Plano Parkway, Suite 1600
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Re: Unconstitutional Censorship of Religious Speech

Dear Mr. Berry:

Please be advised that this firm represents the Wayne-Westland Community Schools (“School District”). The School District is in receipt of your letter, which inaccurately summarizes the law relative to free speech rights in the context of student graduation addresses, as well as the underlying facts in this matter. Your misleading portrayal of prevailing legal principles appears calculated to advance your ultimate conclusion – that the School District allegedly violated your client’s First Amendment rights – irrespective of the actual facts. Simply put, Ms. Savannah Lefler was selected to convey her remarks at a school-sponsored event at John Glenn High School (“John Glenn”), with School District control of her speech, and, thus, has not been unconstitutionally censored.

As an initial matter, your characterization of the event at issue is conflicting and inaccurate. Although you have alleged that Ms. Lefler was selected to give a “**graduation speech**,” you later recognize that Ms. Lefler was, in fact, selected to speak at an *honors event*. This apparent conflation diminishes the meaningful difference between the events. The graduation ceremony is an event for all graduating John Glenn students. In contrast, the Honors Convocation is an event for soon-to-be graduates – with high academic achievement – to prepare their graduation paraphernalia and engage in related activities. Both events are related to academics, but the Honors Convocation is necessarily focused on academic achievement and celebration of same. The School District’s pedagogical interests, already apparent in the larger graduation ceremony, are part of the undeniable fabric of the Honors Convocation.

Additionally, the excerpt of the speech reflected in your communication omits significant portions of the language the School District directed Ms. Lefler to revise. At least one version of Ms. Lefler’s draft speech contained the following excerpt:

Mr. Mike Berry

June 1, 2021

Page 2

How can we glorify God? Well, the nature of God and man is simply different. God is holy, good, and just. Man is unholy, bad, and unjust. Good is not an arbitrary word that reflects occasional pleasantness. Goodness is a virtue; moral excellence; perfected well doing. But the Bible reveals that “no one does good, not even one,” and because of this, “the wrath of God is revealed from heaven against all ungodliness and unrighteousness of men, who suppress the truth.” It continues by affirming our knowledge for the existence of God. How? Through creation, and a need for truth, morality, and a god-which is seen in consistent idolatry. However we repress this veracity because the holiness of God condemns us, leaving us with a problem because we’re all unrighteous by nature. How can we fulfill our purpose if we are corrupt?

Not only is God holy, good, and just, but he is also perfectly loving. Romans 5:8 says that “...God shows his love for us in that while we were still sinners, Christ died for us.” Seeing that man is completely unable to achieve perfection, God made a way for us to be reconciled to Him through the perfect life of Jesus Christ, who is God in flesh. He not only lived perfectly, but he was killed on a cross and took the punishment that humans deserve. Then he rose from the dead three days later, thus vindicating His holiness and divinity. This allows us to fulfill our purpose in glorifying God because we can now stand before Him blameless if we repent and trust in Christ and His finished work. May His name be praised forever!

The above excerpt more accurately depicts the substance of Ms. Lefler’s proposed speech. Nearly half of Ms. Lefler’s draft speech was unmoored from any sort of academic or pedagogical interest related to the School District’s Honors Convocation. Rather, it was an attempt to proselytize at a school-sponsored event, with the School District’s imprimatur. Your description of the speech as “focused on encouraging [Ms. Lefler’s] classmates not to waste their lives” is a gross simplification of the speech’s character. Indeed, it is not a speech – it is a sermon.

Moreover, your legal position is without any merit whatsoever. As a preliminary matter, Board Policy 2000.05 (Communication), explicitly provides, “**The School District is a closed forum . . . Where deemed necessary, the School District reserves the right to prohibit communication, by students or others, while observing all applicable legal requirements.**” Similarly, the same Board Policy provides, “**The School District supports and encourages student publications that are part of the School District’s curriculum, including school newspapers, yearbooks and similar publications.**” This list is not exhaustive and would include, as is relevant here, student speeches at graduation or honors ceremonies or other co-curricular events.

Mr. Mike Berry

June 1, 2021

Page 3

Your letter primarily relies upon U.S. Department of Education guidance.¹ However, the guidance does not support your position. It provides that where private graduation speakers (1) are selected based on content-neutral criteria *and* (2) *retain primary control over the content of their expression*, the expression is the speaker's and cannot be restricted because of its religious content. As to the latter requirement, you represent that same is met in this case because Ms. Lefler **“was instructed to speak from her experiences using her words.”** Accordingly, you have demonstrated a flawed interpretation of the “control” requirement described by the U.S. Department of Education. Ms. Lefler does *not* control the content of her proposed speech as, for example, the speaker did in *Adler v. Duval Cty. Sch. Bd.*, 250 F.3d 1330, 1331 (11th Cir. 2001), an extra-jurisdictional case that you have referenced to ostensibly support your position. Indeed, there is no policy or practice to which you can point whereby the School District has absolved itself of its responsibility to craft the message of student graduation and honors ceremony speeches. The School District exercises control over all the speeches at such events relative to each speaker it has selected to offer remarks.

This prerogative is consistent with the School District's authority to regulate the content of school-sponsored speech, as established in *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988). Any reference to *Hazelwood* is noticeably lacking from your letter, as is the principle in *Lee v. Weisman*, 505 U.S. 577 (1992), that captive audiences at graduation events are entitled to be free from coercive prayer activities. Instead, you rely on United States Supreme Court precedent in inapposite cases. And, although *Adler* pertained to graduation speeches, any similarity to this case ends there, because the school district in that case had a formal policy limiting its control over student graduation speeches. More reflective of the School District's regulation authority are cases such as *Corder v. Lewis Palmer Sch. Dist.*, 566 F.3d 1219 (10th Cir. 2009) (no constitutional violation where school required student to apologize for discussing her religious views during her valedictory speech), *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979 (9th Cir. 2003) (denial of request to include religious proselytizing comments in commencement address did not violate freedoms of religion or speech), and numerous similar decisions.

In sum, *Hazelwood* and its progeny stand for the proposition that the School District may exercise control over Ms. Lefler's speech consistent with its legitimate pedagogical interests. What you describe as cajoling or censoring is more properly characterized as coaching, which is what educators do. Importantly, those seeking to develop students who are globally competitive

¹ More specifically, the Trump administration's January 16, 2020 guidance titled, “Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools.” The guidance is accessible at: https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

MILLER JOHNSON

Mr. Mike Berry
June 1, 2021
Page 4

must also push students to connect with others by thinking beyond their own narrow interests or objectives.

Notwithstanding, despite the demonstrable lack of any legal value to your position, the School District recognizes that, for this year, the ongoing pandemic has created circumstances which are singularly unique, wherein student speakers, including Ms. Lefler, will be offering remarks via pre-recorded video addresses. The medium of communication, unlike a live speech, is more conducive to a comprehensive disclaimer to be viewed by all who elect to observe the pre-recorded presentation.

Accordingly, although the School District is under no obligation to deviate from its practice, the School District will permit a one-time, non-negotiable relinquishment of control over Ms. Lefler's speech. The School District will allow Ms. Lefler to control the content of her speech, provided it is not otherwise inappropriate and comports with reasonable restrictions on the speech. The video of Ms. Lefler's speech will contain a clear disclaimer that the views espoused are Ms. Lefler's alone and receive no endorsement or sponsorship from the School District. The School District's flexibility in this regard is consistent with its educational mission of supporting its students, even when the coursework is completed.

I trust that the plan proposed above will resolve this matter. Accordingly, the School District sees no basis to hold the meeting which was scheduled for tomorrow, June 2nd at 11:30 a.m. As you represent the family in this matter, we are advising you of the cancellation of the meeting; please advise your client accordingly. Arrangements will be made for Ms. Lefler to record her presentation later this week at John Glenn, subject to the above-stated restrictions.

Please contact me should you have any questions or concerns.

Very truly yours,

MILLER JOHNSON

A handwritten signature in blue ink, appearing to read "K. T. Sutton", with a long horizontal flourish extending to the right.

Kevin T. Sutton