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Reply to: Orlando

December 5, 2016

Via E-Mail Only

Superintendent Dr. Nicholas D. Wahl
Carmel Clay Schools
5201 E. Main St.
Carmel, IN 46033
nwahl@ccs.k12.in.us

RE: Unconstitutional censorship of Teens for Life poster

Dear Dr. Wahl:

By way of brief introduction, Liberty Counsel is a non-profit litigation, education, and policy organization with an emphasis on religious liberties issues, with offices in Florida, Virginia, and Washington, D.C., with hundreds of affiliated attorneys across the nation. Liberty Counsel frequently represents students in First Amendment matters, and has had particular success in representing students within and outside federal court.

Liberty Counsel represents student members of Carmel Teens for Life (“CTL”), a pro-life student club at Carmel High School (“CHS”). I write because of the decision by CHS administrators to censor, remove and trash CTL’s poster display, on the basis of another student’s complaint that it was “offensive.” As after-the-fact justification, CHS administration later claimed the multi-part poster impermissibly expressed an “ideology,” and was “not approved for display.” The CTL poster was in fact approved for display, as evidenced by approval stamps on each of its component pages, and complied with Club Signage guidelines.

All speech communicates an ideology or viewpoint. If is a First Amendment violation to censor student speech because it communicates an ideological, pro-life viewpoint, and because of “offense” taken by supporters of abortion, especially where CHS permits pro-LGBT and pro-Young Democrats signs. **To avoid legal action, please immediately reverse this decision, and confirm that the school district will respect the private speech of public school students.**

In addition to the facts set forth above, I understand the following facts to be true: Board Policy 4720 states that it “is the policy of the School Board to encourage students **to express opinions and ideas, take stands, and support policies, publicly and privately, orally and in writing.**” (Emphasis added). Students “may be given this opportunity for

expression through established school media. Such expression should not interfere with the educational program or present a health or safety hazard. Students may advocate change of law or school regulations and pursue their advocacy provided they follow administrative guidelines establishing the time, place, and manner.”

Prior to November 17, 2016, administrative guidelines entitled “Club Signage” (attached, hereinafter “Pre-11/17/16 Guidelines”) were given to M.C.Z., CTL Club President, when she sought and received verbal approval from Assistant Principal Brittany Wiseman (“AP Wiseman”) to make a multi-piece poster. Among other requirements (all of which were met by CTL) these guidelines state “You can hang 10 large posters...in each cafeteria.” MCZ explained her idea for a large, multi-piece poster promoting adoption in November, the [National Adoption Month](#). Ms. Wiseman expressed her opinion that this was a great idea. On the basis of these guidelines, and Ms. Wiseman’s approval, the students hand-painted ten posters, which, combined, created a poster for an otherwise-featureless cafeteria wall. Nothing in the Pre-11/17/16 Guidelines prohibit such a combination, or mandate how far apart approved posters must be from one another.

To create the poster, more than 15 students spent over 25 hours hand-painting it, which included 300 individual tiny hearts, each representing 10 lives, to symbolize the written statement “3,000 Lives Are Ended Each Day.” This statement appeared at the top of the poster. See attached picture.

At the bottom, the word “Abortion” was changed to “Adoption,” by striking through the “B” and the “R,” and substituting in their place a “D” and a “P.” Throughout the background of tiny hearts, the hand-painted club name “Carmel Teens for Life” appears, along with the club’s meeting times and location in “F103” from “3:15-4PM.” The effect is eye-catching, and serves multiple purposes, including advertising the club’s existence; stating the time and locations of its meetings; and promoting adoption over abortion, as well as awareness of and respect for unborn human life. All of these purposes are permissible, and well within each of the three variations of the “Club Signage Guidelines.”

Complying with Policy 4720 and the Pre-11/17/16 Guidelines, on November 17th, 2016, the CTL Club President presented the club’s completed ten-part poster, comprised of its 10 separate individual pieces, to AP Wiseman, and watched her personally stamp and approve each component piece. Before AP Wiseman approved the poster, she and her secretary discussed whether the poster was “actionable” or not, since the school apparently allows the only “actionable item” on the sign to be “encouragement to participate in the club or fundraiser,” a nebulous standard. At the time, both AP Wiseman and her secretary agreed that the poster was “not actionable,” and AP Wiseman approved each poster with an individual stamp. No page was modified by CTL after the approval stamps were issued.

Thereafter, CTL club members put up the poster in the main cafeteria on November 17th, after school had ended that day, during non-instructional time. Mrs. Wiseman was informed of the poster location, and as displayed, the poster interfered with nothing in the cafeteria.

On November 18th, however, the poster was removed by CHS staff, after the lunch hour, after a pro-abortion student complained to administration that other students were offended by the poster. This student told the CTL president that he had complained. Rather than administration calling CTL leadership to retrieve the now-allegedly “nonapproved” multi-piece poster, the poster was simply trashed, thereby destroying the multiple hours of work the club members had poured into it.

On November 22, 2016, the parent of another club member met with Principal Williams and AP Wiseman, querying them about this course of action. In the meeting, Principal Williams and AP Wiseman admitted that the “ideology” of the poster was a motivating factor in its removal from the cafeteria wall: **club signs are not permitted to “interfere with what folks are thinking or feeling comfortable with.”** In addition, citing the revised “Club Signage Guidelines” (hereinafter, “11/22/16 Guidelines”) which they gave to the parent, they also claimed that the removal was *primarily* due to the club’s “failure to comply” with Guidelines for “actionable items:” the sign was **“asking them [students] to, if you cross out part of the B, asking to end abortion and go for adoption, so that’s actionable, and that can’t be displayed on the sign.”** Notably, this version of the Guidelines given to the parent had the inserted additional language that the “only actionable item on the sign or flyer is the encouragement to participate in the club meeting or fundraiser,” and had added “11x17” after “large.” The latter supported AP Wiseman’s additional contention (heard for the first time in this meeting) that the signs she had previously approved were also “too large,” and were appropriately removed.

The parent challenged AP Wiseman and Principal Williams on these inconsistencies, pointing out that other posters, (including Gay Straight Alliance rainbow posters) “promoting an ideology” were in numerous locations throughout the school. Principal Williams demurred, claiming that on those posters, all he saw was “different colors” and “Pride,” and that they didn’t promote an ideology, whereas the pro-adoption, pro-life poster did. In addition, Principal Williams and AP Wiseman continued to claim CTL had allegedly failed to comply with the signage guidelines, and that the poster was “not approved,” and thus they were appropriately **“thrown away in the nurses’ office, so no one could look in the trash and see those,”** to **“ensure our school doesn’t become some battleground for ideologies.”** When queried about whether the CTL club members could put comparable pro-adoption signs on their personal lockers, Principal Williams said they could not, but that the other (gay pride) “signs are fine.” At the end of the day, the CTL club cannot “recruit to change the ideology of folks.”

During the pendency of this letter, CHS administration released a third iteration of the “Club Signage Guidelines,” on 11/28/16, attached. Yet, nothing in this version justifies the administration’s actions here, nor does the CTL poster violate it in any fashion. Moreover, the “actionable” excuse for removing the poster is a red herring. There is nothing in the original poster that violates the purported “actionable” rule, under any of its three variations (i.e., non-existent; partial; supplemented). Under each variation, there is no written standard by which something is judged “actionable” or not, and thus the administrator has unbridled

discretion to determine for herself, in the absence of standards. This is unconstitutional.

Even if CHS administration may properly ban “actionable” items on club signs, which it may not, the CTL poster did not violate this rule. The CTL poster did not call for anyone to do anything, beyond contemplating an idea. It simply made students aware of a political position (support for life and adoption), the *raison d’être* for the club, which was both a statement and a form of eye-catching art. It is no different than the approved CHS Democrats club poster, which contains a depiction of the Democrat Donkey, which is a symbol expressing ideological agreement with every plank in the Democrat Party platform. Moreover, the Democrats sign also contains an “actionable” item, by urging students to call a phone number “if interested in volunteering in elections.” This certainly communicates and expresses an “ideological message,” as do the pro-homosexuality signs stating “Ally” or “Pride” in front of the LGBT rainbow, yet all were approved. Encouraging students to take “Pride” in LGBT status or ideology is a lot more “actionable” than encouraging students to think about the difference between abortion and adoption. By allowing the other posters throughout the school but banning CTL’s poster, the school has engaged in clear, unconstitutional viewpoint discrimination.

The law is clear: the District cannot prevent student clubs from advertising their existence, if they express an “ideology” or statement of values or opinion as defined by school administration. As the District is aware, **“it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.** This has been the unmistakable holding of this [Supreme] Court.” *Tinker v. Des Moines School District*, 393 U.S. 503, 506 (1969). (Emphasis added). “Private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.” *Capital Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). Schools may not enforce a secular or pro-abortion orthodoxy: “If there is any fixed star in our constitutional constellation, it is that **no official, high or petty, can prescribe what shall be orthodox in...religion**, or other matters of opinion, or force citizens to confess by word or act their faith therein.” *West Virginia v. Barnette*, 319 U. S. 624 (1943). (Emphasis added).

It matters not that some may find the promotion of adoption and respect for unborn life to be “offensive.” Discrimination against speech on the basis of viewpoint is unconstitutional. *Good News Club v. Milford School District*, 533 U.S. 98 (2001). “It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. . . **In the realm of private speech or expression, government regulation may not favor one speaker over another. Discrimination against speech because of its message is presumed to be unconstitutional.** . . .Viewpoint discrimination is thus an egregious form of content discrimination. **The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.**” *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 828-29 (1995). (Emphasis added).

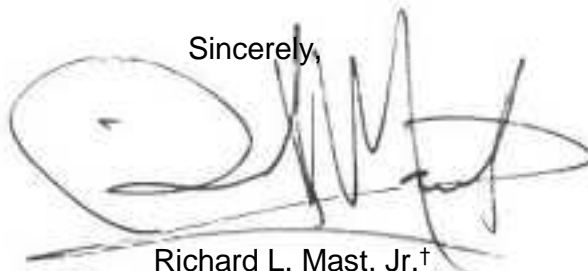
Here, the District has opened a “forum” for the expression of ideas, in the form of

posters for the purposes of inviting students to club meetings. The posters have the universe of artistic ideas available for communicating their message and attracting fellow students. The District permits secular messages to be artistically communicated on posters throughout the school, using colors, symbols, and yes, "words," otherwise known as "speech," all of which are protected by the First Amendment. Where this is true, the District cannot censor artwork and "speech" selected by Carmel Teens for Life on the grounds that they contain the forbidden word "abortion," or are "ideological" in nature, all the while offering excuses as purported justification.

Simply put, no District official may censor the speech of student clubs on the basis that it contains a religious, pro-life, anti-abortion, or pro-adoption message. District officials may not require clubs to blandly announce their existence based on the standardless "standard" of being "non-ideological." Therefore, I hereby request that you **respond in writing** that the District has **1) disavowed and reversed CHS administration's decision to censor, remove and trash CTL's pro-life poster display, on the basis that it was "offensive" or "actionable," or that it impermissibly expressed an "ideology;"** and **2) approve CTL's request to replace it with a similar multi-part poster at their earliest convenience.**

If I do not receive the requested response by Monday, December 12, 2016, I will conclude the District is indifferent to the concerns outlined above, and Liberty Counsel will take additional steps to prevent irreparable harm to the rights of our clients.

Sincerely,



Richard L. Mast, Jr.†

Attachments

CC Via Email:

John Williams, Principal, Carmel HS

Brittany Wiseman, Asst. Principal, Carmel HS

jwilliam@ccs.k12.in.us

bwiseman@ccs.k12.in.us

School Board

Layla Spanenberg – President

Pamela Knowles – Vice President

Michael Kerschner - Member

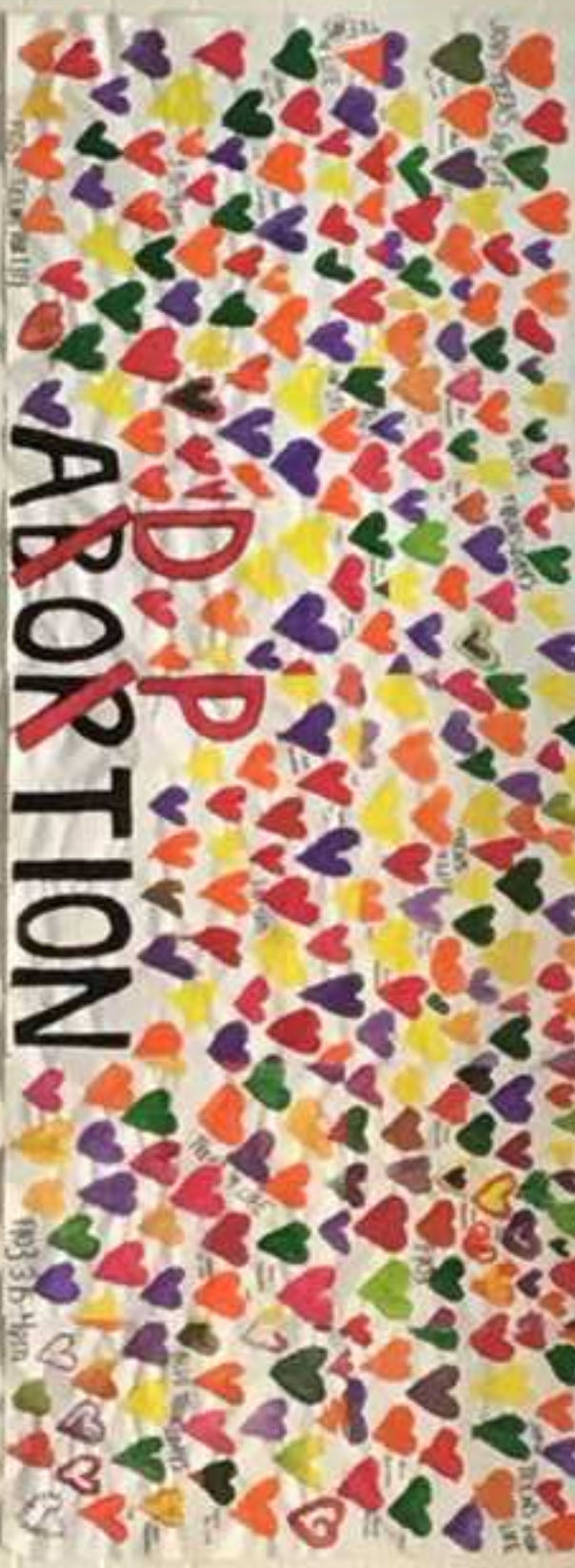
Tricia Hackett - Member

Kathie Freed – Member

ccsboard@ccs.k12.in.us

† Licensed in Virginia
RLM:ajr

3,000 Lives Are Ended Each Day...



~~ABORTION~~

THE LIFE LINE

1993 3-14-93







CHS Democrats Meeting(s)

Dates: 11/03/16 and 11/17 (every other Thursday)

Time: 3:15

Location: Room B224

Remind 101: Text @carmeldems to 810-10

If interested in volunteering for elections: (317) 922-9842









GIVE YOUR HANDS TO THE FUTURE



Eileen Yan

MAYAN KIDS NEED YOUR HELP

WANNA JOIN? CONTACT: BELLALAYMAN@GMAIL.COM



Contact Abby Leonard for more info

IT'S ON

US

Sexual Assault
is our problem

Be the solution.

Take the pledge at itsonus.org

Club Signage

- 1.) You must put signs *INSIDE* the cafeteria. They cannot be outside the cafeteria area. (No hallways, bathrooms etc.) **Only blue painters tape can be used in the cafeterias.**
- 2.) You can hang 10 large posters OR 15 8 ½ by 11 signs in each cafeteria.
- 3.) A CHS Student Activities stamp must be on ALL signs. Please drop off the signs in student services. They will be stamped as soon as possible, and can be picked up on the student drop off desk. All signs without a stamp will be removed and not returned.
- 4.) Please remove your signs on or before the date stamped on the sign.
- 5.) You can hang any approved sign inside a classroom with permission from the teacher that uses the room.

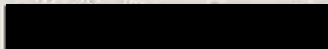
Questions? See Mrs. Wiseman

copy given to

[REDACTED]
prior to Nov 17th

by Mrs. Wiseman

copy given to



11/22/16.

ca

Club Signage

- 1.) You must put signs **INSIDE** the cafeteria. They cannot be outside the cafeteria area. (No hallways, bathrooms etc.) Only blue painters tape can be used in the cafeterias.
- 2.) You can hang **10** large posters 11 x 17 OR **15** flyers 8 1/2 by 11 signs in each cafeteria. - size - regular?
- 3.) A CHS Student Activities stamp must be on ALL signs. Please drop off the signs in student services. They will be stamped as soon as possible, and can be picked up on the student drop off desk. All signs without a stamp will be removed and not returned.
- 4.) Please remove your signs on or before the date stamped on the sign.
- 5.) You can hang any approved sign inside a classroom with permission from the teacher that uses the room.

Questions? See Mrs. Wiseman

Notes from Club Leader meetings:

- *Only actionable item on the sign or flyer is the encouragement to participate in the club meeting or fundraiser.
- *Please remind members to include the specific place and time of the club meeting.

Club Signage

***Remember, only the club name, description, and location/time can be on the club sign. The only actionable item should be to attend a meeting. If you are concerned about a sign approval, feel free to email me before you print copies/make posters. ***

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2.) You can hang **10** large posters 11 x 17 OR **15** flyers 8 ½ by 11 signs in each cafeteria.

3.) A CHS Student Activities stamp must be on **ALL** signs. Please drop off the signs in student services. They will be stamped as soon as possible, and can be picked up on the student drop off desk. All signs without a stamp will be removed and not returned. You may **NOT** modify the sign after the approval stamp.

4.) Please remove your signs on or before the date stamped on the sign.

5.) You can hang any approved sign inside a classroom with permission from the teacher that uses the room.

Questions? See Mrs. Wiseman.