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Via facsimile: (352) 333-2199, CMRRR: 7015 1520 0001 0679 2806 and email
Dr. Roger Dearing
Executive Director
Florida High School
Athletic Association
1801 NW 80th Boulevard
Gainesville, FL 32606

RE: FHSAA's Unlawful Viewpoint Discrimination

Dear Dr. Dearing:

Liberty Institute represents Cambridge Christian School (CCS) regarding the Florida High School Athletic Association's (FHSAA's) unlawful censorship of CCS's protected religious speech at last month's Class 2A high school football championship game held December 4, 2015. Please direct all future correspondence on this matter to my attention.

This past fall, the CCS football team earned the right to play for a state football championship within the 2A division of the FHSAA. The game was held Friday, December 4, 2015. As it had at its previous playoff games and every home game in 2015, CCS intended to continue its practice of pre-kickoff prayer over the loud speaker at the state championship football game. Both CCS and its opponent (another Christian school with similar convictions and like dedication to prayer) agreed to pray before the game and made a joint request to you on December 2, 2015. In the request, Tim Euler, Head of School for CCS, offered to provide the prayer or to share the responsibility with a pastor from the opposing team's school.

Within hours you rejected this request, stating, "Although both schools are private and religious-affiliated [sic] institutions, the federal law addresses two pertinent issues that prevent us from granting your request." You claimed that since the venue for the game was a "public facility," it was "'off limits' under federal guidelines and precedent" to the requested prayer. You also claimed that because the FHSAA is a state actor it was impossible for FHSAA to "legally permit or grant permission for such an activity."

Your actions, however, amount to unlawful viewpoint discrimination against the private religious speech of CCS. "[T]here is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 765 (1995) *citing Bd. of Educ. v. Mergens*, 496 U.S. 226 226, 250 (1990) (emphasis original). The proposed prayer was CCS's private speech. Your prohibition of CCS's

private speech constitutes illegal viewpoint discrimination under the First Amendment to the U.S. Constitution. The Supreme Court of the United States has made clear that such viewpoint discrimination, even in a nonpublic forum such as a military base, is prohibited. *See Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 811 (1985) (holding that viewpoint discrimination is prohibited in a nonpublic forum); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983) (same). A government actor may not suppress or exclude the speech of private individuals or entities like CCS for the sole reason that the speech is religious. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Pinette*, 515 U.S. 753; *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981).

CCS has a clearly defined religious mission: "The mission of Cambridge Christian School is to glorify God in all that we do; to demonstrate excellence at every level of academic, athletic and artistic involvement; to develop strength of character; and to serve the local and global community." This mission grows from its founding as a ministry of Seminole Presbyterian Church in 1964. For 50 years, CCS has been training and equipping students in the Tampa area in keeping with this mission.

The Christian heritage of CCS is more than its middle name. CCS hosts weekly chapel services for both its upper and lower schools. Students take a core curriculum that includes instruction on religion, focus upon the Bible, and training in the Christian worldview. Teachers are encouraged to open class lectures with prayer. Coaches can be seen leading their teams in prayer before taking the field for practice or games—a tradition dating to the 1970's. The school has even set aside an entire room next to its chapel in which students, parents, or faculty are welcomed—and encouraged—to come and pray for various requests for prayer posted on the room's walls.

For CCS, prayer is a means to glorify God in all that it does, including football. The CCS athletic department has articulated its own mission statement in keeping with that of CCS:

> The Cambridge Christian School Athletic Department's chief end is to glorify Christ in every aspect of our athletic endeavors while using the platform of athletics to:
>
> **T**each the Principles of Winning
> **E**xemplify Christian Morals and Values in our Community
> **A**chieve Maximum Physical, Moral and Spiritual Character Development
> **M**entor Young Men and Women to Deeper Walk with Jesus

Head football coach Bob Dare recently summarized his team's focus on this mission well: "We are raising godly young men that can make a difference in the world they live in." This is why CCS has committed to praying before every home football game. Prior to kickoff, players, coaches, and fans from both teams pause as a prayer is offered over the loudspeaker. Faculty, parents, and CCS students lead these pre-game, public prayers, reminding each of them of their common mission: "to glorify God in all that we do."

The Supreme Court of the United States has repeatedly protected private, religious speech at public facilities. *See, e.g., Pinette*, 515 U.S. at 760 ("Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression."). The First Amendment "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." *Mergens*, 496 U.S. at 248 (*quoting McDaniel v. Paty,* 435 U.S. 618, 641 (1978)). The correct approach is for the state or a state actor to remain neutral with regard to private religious speech. *See Rosenberger*, 515 U.S. at 839 ("We have 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."); *Chandler v. James*, 180 F.3d 1254, 1261 (11th Cir. Ala. 1999), *vacated by Chandler v. Siegelman,* 530 U.S. 1256 (2000), *reinsated by Chandler v. Siegelman*, 230 F.3d 1313, 1314 (2000) ("It is true that government must be neutral with respect to religion."); *see also Hills v. Scottsdale Unified Sch. Dist.*, 329 F.3d 1044, 1055 (9th Cir. 2003) (quoting *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1299-1300 (7th Cir. 1993) ("Free speech, free exercise, and the ban on establishment are quite compatible when the government remains neutral and educates the public about the reasons.").

The Supreme Court has also considered whether a state actor may prohibit a person from using government resources solely because of the person's religious viewpoint or speech. In *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993), the school district implemented a policy that "school premises shall not be used by any group for religious purposes." *Lamb's Chapel*, 508 U.S. at 387. Lamb's Chapel, an evangelical church, applied for permission to use school facilities to show a Christian film on child rearing. The school district denied the request because Lamb's Chapel sought to use the school facilities for a religious purpose. The Supreme Court found the school district's unlawful actions clearly violated the First Amendment:

> There is no suggestion … that a lecture or film about child rearing and family values would not be … otherwise permitted [by the school district's policy]. That subject matter is not one that the District has placed off limits to any and all speakers. Nor is there any indication … that the application to exhibit the particular film series involved here was, or would have been, denied for any reason other than the fact that the presentation would have been from a religious perspective. In our view, denial on that basis was plainly invalid under our holding in *Cornelius* . . . [that] the government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.

Lamb's Chapel, 508 U.S. at 393–94 (internal cites and quotes omitted). *See also Good News Club*, 533 U.S. at 107 (holding that the government "must not discriminate against [private] speech on the basis of viewpoint").

Here, the FHSAA banned our client's private speech because of its religious viewpoint. As the Supreme Court has determined again and again, prohibiting such speech on the basis of its religious viewpoint is a violation of the First Amendment. *See, e.g., Good News Club*, 533 U.S. 98; *Rosenberger*, 515 U.S. 819; *Pinette*, 515 U.S. 753; *Lamb's Chapel,* 508 U.S. 384; *Widmar*, 454 U.S. 263. The Court, in fact, characterizes such unlawful viewpoint discrimination as "an egregious form of content discrimination." *Rosenberger*, 515 U.S. at 829; *see also id.* at 828 (finding that "[i]t is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys"); *id.* at 829 ("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."); *Cornelius*, 473 U.S. at 806 ("[T]he government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject."); *Perry Educ. Ass'n*, 460 U.S. at 46 (government may not "suppress expression merely because public officials oppose the speaker's view").

The FHSAA's appeals to the Establishment Clause are likewise unavailing. *See, e.g., Good News Club*, 533 U.S. at 113 (questioning "whether a State's interest in avoiding an Establishment Clause violation would justify viewpoint discrimination"); *id.* at 114 ("Because allowing the Club to speak on school grounds would ensure neutrality, not threaten it, [the school] faces an uphill battle in arguing that the Establishment Clause compels it to exclude the Good News Club."). In this regard, any reliance upon *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), is misplaced because the speech at issue was by two *private* schools to which the Establishment Clause does not apply. In *Santa Fe* the Supreme Court concluded only that a public school's policy providing for a pre-game invocation failed to convert the prayer from government speech to private speech. *See Santa Fe*, 530 U.S. at 310 ("The delivery of such a message -- over the school's public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school policy that explicitly and implicitly encourages public prayer—is not properly characterized as "private" speech."). *Santa Fe* did not address genuinely *private* speech in a similar venue like that of CCS's prayer.

The Eleventh Circuit, however, has addressed prayer at school events and upheld private religious speech. In *Chandler v. James*, 180 F.3d 1254 (11th Cir. 1999) (*Chandler I)*, the Eleventh Circuit invalidated a permanent injunction that would forbid "vocal prayer or other devotional speech in its schools" and require school officials to prohibit "all prayer or other devotional speech in situations which are not purely private, such as aloud in the classroom, over the public address system, or as part of the program at school-related assemblies and sporting events, or at a graduation ceremony." *Id.* at 1257. The *Chandler I* court determined that the permanent injunction forbidding private, religious speech in school buildings was unconstitutional. *Id.* at 1265-66. Following its decision in *Santa Fe* the Supreme Court vacated the Eleventh Circuit's decision and remanded the case for further consideration in light of its decision in *Santa Fe*. *See Chandler v. Siegelman,* 530 U.S. 1256 (2000).

Upon remand, the Eleventh Circuit "reinstate[d] [its] opinion and judgment in *Chandler I*." *Chandler v. Siegelman*, 230 F.3d 1313, 1314 (2000) (*Chandler II*). Reaffirming its previous decision in *Chandler I*, the Court determined that *Santa Fe* prohibited only "State-sponsored,

coercive prayer." *Chandler II,* 230 F.3d at 1316. When, as with CCS, the prayer is offered as *private* speech not sponsored by the government, the government violates the Constitution by prohibiting it. In other words, the Eleventh Circuit twice rejected the notion that a government actor may ban religious speech because of Constitutional concerns:

> The Establishment Clause does not require the elimination of private speech endorsing religion in public places. The Free Exercise Clause does not permit the State to confine religious speech to whispers or banish it to broom closets. If it did, the exercise of one's religion would not be free at all.

Id. at 1316.

Rather than cater to the FHSAA's stated concerns of "tremendous legal entanglements" with the Establishment Clause, *Chandler II* offers a stern warning to a state actor that would restrict basic First Amendment rights. The state must not censor private religious speech—even when conducted on state property, at state sanctioned events, under the supervision of a state actor. *See also Adler v. Duval County Sch. Bd.*, 250 F.3d 1330, 1337 (11th Cir. Fla. 2001) ("No reasonable person attending a [football game] could view that wholly unregulated message as one imposed by the state.) "[A] policy which *tolerates* religion does not improperly *endorse* it." *Chandler II*, 230 F.3d at 1317. "Private speech endorsing religion is constitutionally protected—even in school. Such speech is not the school's speech even though it may occur in the school. Such speech is not unconstitutionally coercive even though it may occur before non-believer students." *Id.*

By rejecting our client's request for pre-game prayer over the loudspeaker because of its religious viewpoint, the FHSAA unlawfully prohibited CCS's private religious speech. The mere fact that the prayer would have taken place within a "public facility" is irrelevant; the prayer was the constitutionally protected private speech of CCS and thus could not be censored or banned because of its religious viewpoint. The FHSAA, however, censored and banned the private speech of CCS precisely because of the religious viewpoint to be expressed. In doing so it violated our client's civil and religious rights under state and federal law, to include without limitation the U.S. Constitution, the Florida Constitution and the Florida Religious Freedom Restoration Act, Fla. Stat. §761.01 *et seq.*

Therefore, we require the FHSAA to issue a written apology to CCS for this gross violation along with written assurances that, in the future, the FHSAA will abide by the U.S. Constitution. If the FHSAA refuses to meet these simple demands by February 25, 2016, our clients are prepared to seek redress in federal court, inclusive of our client's attorney's fees and costs. *See* 42 U.S.C. § 1988; Fla. Stat. § 761.04 ("The prevailing plaintiff in any action or proceeding to enforce a provision of this act is entitled to reasonable attorney's fees and costs to be paid by the government."). Due to the clearly established nature of the law in this matter, any responsible FHSAA actors would likely be denied qualified immunity and subjected to personal liability, as well. *See Hope v. Pelzer*, 536 U.S. 730 (2002).

Thank you for your prompt attention to this matter.

Sincerely,

Hiram Sasser
Deputy Chief Counsel