



May 23, 2018

Dr. Carol L. Kilver, Superintendent,

Scott Sullivan, Principal,

Scott Vogler, President

Matt Zimmerman, Vice-President

Lee Moore, Secretary

Sherrie Weaver, Board Member

Lisa Butterfield, Board Member

Matt Mencil, Board Member

David Geltmacher, Board Member,

***Sent via Email as indicated above
and Certified Mail RRR#7017 1450 0000 9914 8338:***

RE: Unconstitutional Censorship of Sam Blackledge

Dr. Kilver:

Sam Blackledge retained First Liberty Institute to represent him in this matter. Please direct all communications regarding this matter to me.

As you know, Sam Blackledge earned the position of co-valedictorian of the West Prairie High School class of 2018. As such, school officials informed him Thursday, May 17, 2018, that he would deliver a valedictory address at graduation two days later. Around 1:30 p.m. on the day of graduation, Sam provided a copy of his speech to Principal Scott Sullivan. *See Exhibit 1.*

Mere minutes prior to the beginning of the graduation ceremony on Saturday, May 19, 2018, Principal Sullivan informed Sam that, because his speech made reference to his religious beliefs, it was inappropriate for the setting. Moreover, Principal Sullivan, after consulting with Superintendent Kilver, gave Sam the untenable choice of deleting several paragraphs from his speech or not giving the speech at all.

Sam was devastated. After years of diligent study, days of preparing his valedictory address, and, now, just moments prior to the only high school graduation he would ever have, Sam found himself shoved from the podium because he refused to hide the most central element to his success as a student and person: his Christian identity.

During the ceremony, Sam was announced as co-valedictorian. As his co-valedictorian delivered her speech, Principal Sullivan reluctantly permitted Sam, now in

tears, to acknowledge his position as co-valedictorian from the stage so long as he spoke respectfully and censored any religious viewpoints. But, the damage was done and Sam's graduation ceremony ruined by the unnecessary censorship of school officials at West Prairie High School.

Student Remarks at Graduation

More than two centuries since the adoption of the First Amendment to the United States Constitution, one would think the question of whether a student's graduation remarks are protected as private speech would hardly be controversial. After all, as the Supreme Court of the United States has explained, it is a fundamental principle that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 506 (1969). Neither do they shed such freedoms at the graduation ceremony.

This is neither novel, nor academic. Under most circumstances, such as here, a graduation speaker's words are his own, not the government's. A student's remarks are not attributable to the state simply because they are delivered in a public setting or to a public audience. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000); *Board of Ed. v. Mergens*, 496 U.S. 226, 248-50 (1990).

The U.S. Constitution protects Sam's words and forbids school officials from insisting that they be censored of any viewpoint that the government unilaterally finds objectionable. See *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

In short, a student's private, religious speech is entitled to full First Amendment protection.

WPSCD Censors Only Speech from a Religious Viewpoint

The unconstitutional, censorial actions of the West Prairie Community School District 103 ("WPSCD") school officials is especially evident in light of the fact that school officials only censored Sam's valedictory address because of its religious viewpoint. Other speakers at graduation provided their secular speeches unimpeded and without censorship. "Schools may not prohibit their pupils from expressing ideas. And no arm of government may discriminate against religious speech when speech on other subjects is permitted in the same place at the same time." *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1297 (7th Cir. 1993) (citations omitted).

Schools admit their fear of religious language and doubt the ideals of the First Amendment when they needlessly censor student remarks of any religious content. This need not be so. "School districts seeking an easy way out try to suppress private speech. Then they need not cope with the misconception that whatever speech the school permits, it espouses. Dealing with misunderstandings--here, educating the students in the meaning of the Constitution and the distinction between private speech and public

endorsement--is, however, what schools are for.” *Id.* at 1299. Like the school in *Hedges*, WPSCD would rather declare “that because misconceptions are possible it may silence its pupils, that the best defense against misunderstanding is censorship.” *Id.*

But, as Judge Easterbrook, writing for the United States Court of Appeals for the Seventh Circuit, explained in *Hedges v. Wauconda Community Unit Sch. Dist. No. 118*, that is the wrong lesson to teach students. Judge Easterbrook explains the approach favored by the Constitution:

Far better to teach them about the first amendment, about the difference between private and public action, about why we tolerate divergent views. Public belief that the government is partial does not permit the government to become partial. Students therefore may hand out literature [or, in Sam’s case, give a speech] even if the recipients would misunderstand its provenance. *The school’s proper response is to educate the audience rather than squelch the speaker.*

Id. (emphasis added)

In sum, Sam’s speech was private speech and the school censored his speech because of its religious viewpoint. Such actions are a violation of the First Amendment.

U.S. Department of Education Guidance

Finally, the WPSCD policy, made evident by the actions of its officials, is even more remarkable in light of published guidance concerning student speakers at graduation ceremonies published by the United States Department of Education and which has remained online and unchanged since *February of 2003*. School officials need not read volumes of case law, nor even consult their attorneys. A brief visit to the U.S. Department of Education’s own website provides the needed clarity:

Where students or other private graduation speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, however, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student or other private speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.

U.S. Dep’t of Ed., Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools, dated February 7, 2003.
(http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html, last accessed on May 22, 2018).

Conclusion

The policy of WPSCD allowing its school officials to demand the editing, controlling, and censoring student speech because of its religious content is unconstitutional. Its application toward Sam caused irreparable injury. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”).

We had hoped to discuss this with you, Superintendent Kilver, in person on May 23, 2018. Regrettably, upon learning Sam had retained legal counsel, you cancelled the meeting you had requested with Sam and his parents. Perhaps that meeting might yet be rescheduled prior to July 1, 2018, and help resolve this constitutional violation without resorting to the courts.

We therefore ask that the WPSCD undertake to resolve this constitutional violation in the following manner: (1) issue a written statement acknowledging its improper actions toward Sam along with its pledge that such censorship will not occur in the future and (2) adopt a written policy protecting student religious speech within its schools consistent with the Department of Education guidance.

Please respond to these requests no later than July 1, 2018.

Sincerely,



Jeremy Dys
Deputy General Counsel
First Liberty Institute

Exhibit 1

Sherlock Holmes and his partner Watson were out camping and after a long night they quickly fell asleep. Awaking in the middle night, Holmes asked Watson what do you see? He responded by saying "I see millions of stars." And Holmes preceded, "Well what does that tell you?" Watson then pondered the question and said, "Astronomically speaking, it tells me there are millions of galaxies and potentially billions of planets, Astrologically, it tells me that Saturn is in Leo, Timewise, it appears to be approximately a quarter past three, Meteorologically, it seems we will have a beautiful day tomorrow, and Theologically, I see that this is a vast universe and we are just a minute part of the great whole." "Why Holmes what do you see?" Holmes was silent for a moment and then speaks, "Watson you idiot, somebody has stolen our tent." We as humans are really good at focusing on useless details all while missing the essentials.

Class of 2018, we are all branching out into our own paths, each in different directions, yet Todos estamos buscando para las mismas cuatro cosas. I am convinced that each of us are in pursuit of same four things. A life Devoid of Evil, Full of Justice, Full of Love, and Full of Forgiveness. Evil, Justice, Love, and Forgiveness.

First, a life Devoid of Evil. Parents, I know that you greatly desire that your graduate's life would be devoid of evil and full of good. No one wants life to consist of unfair circumstances. What do we see in the news almost every day, we see mistreatment, murder, **EVIL**. And why do these things receive so much coverage, I believe that it is because people are obsessed with this longing for goodness.

Second, Justice. If we stay on the topic of news for a second. We realize another reoccurring theme, and that is equality or justice. Race, gender, equal pay, sexual orientation, the list goes on and on. Every person wants to be treated fairly. And graduates, I know that when we leave from here we want a fair shot at life.

And thirdly, Love. I imagine that the next time I see some of you, you will be married, and maybe even have kids. And I know that the driving force of that is love. We all look for love, from our parents, our friendships, and maybe in the future, our spouses.

Finally, I hope that you guys are successful in all that you do, but I'd be mistaken not to notice that we are bound to make mistakes. I find it significant that even the word "Human" has become the definition of messing up and being imperfect. With that in mind, we all need forgiveness.

So, we all want lives devoid of evil; we are looking for justice; we'll miss our families and make new ones because of love; and some of us are going to blow it big time and hope the rest of our peers are willing to forgive us. Evil, Justice, Love, and Forgiveness.

I want you to think for a moment, is there any event in history where these four converged in one place? Where did Evil, Justice, Love, and Forgiveness converge at a moment in History? Can I take you to a hill called Calvary and show you the person of Jesus Christ?

The Cross of Christ shows us our own evil hearts, that we would put an innocent man up to die. Christ came to show us God's justice in dealing with the unfairness of the world. The Cross demonstrates to us the very love of God who died in our place and how we find at the end of the day that without his forgiveness we would never make it.

Graduates, I hope your life is devoid of evil, full of justice, full of love, and full of forgiveness. I think our parents however, could attest that trying to manage this on our own is more than difficult. The most important thing in your life is to find that intimacy with God. He will guide you, he will hold you, and he will take you through safely in your journey. **As you search for Goodness, Justice, Love, and Forgiveness, know that ONLY God is big enough to provide that for you.**

Thank you, Class of 2018, it's been real, it's been good, it's been real good!