



August 25, 2015

Youth Alive  
1445 N. Boonville Ave.  
Springfield, Missouri 65802

Re: Letters from the Freedom From Religion Foundation

To whom it may concern:

Liberty Institute is the largest law firm dedicated solely to preserving religious liberty in the United States. We are a non-profit, public interest law firm that provides all of our advice and representation *pro bono*. Our clients range from students who are discriminated against because of their religious beliefs to street preachers to entire state governments who seek our advice as to where the Constitution places limits on the interactions between the government and religious activity.

Youth Alive asked Liberty Institute to review letters that the Freedom From Religion Foundation (“FFRF”) has sent to school districts that have invited The Seven Project to speak at school assemblies, in some cases causing the districts to revoke their invitation to The Seven Project. These letters conflate The Seven Project’s program with another program and imply that because some of the speakers associated with The Seven Project are pastors that there may therefore be problems with their speaking only from a secular perspective on character building, substance abuse, peer pressure, and bullying at the assemblies.

Speaking on these important topics in public school assemblies is constitutional, regardless of the religious beliefs of the speakers or whether they are pastors. In fact, if a school district refuses to allow The Seven Project merely because the speakers have religious beliefs or are pastors, that itself is a violation of the First Amendment to the Constitution.

Students also maintain constitutional rights to express their faith both individually and through student clubs if the school allows non-curricular student clubs. If a school district treats a student club in a discriminatory fashion because of its religious character, the school is subject to losing its federal funding under the Equal Access Act.

The following is our legal analysis of FFRF’s letters and the Constitutional rights and limits imposed on The Seven Project and public school districts:

## Legal Analysis

The fundamental theme in U.S. Supreme Court cases applying the Establishment Clause in the school context is that the government may not actively promote religion, but it also may not oppose or be hostile to religion. Additionally, the government may not violate other First Amendment rights in its attempt to avoid running afoul of the Establishment Clause.

That public schools may not actively promote religion or oppose or be hostile to religion is found among the earliest Supreme Court cases applying the Establishment Clause in the public school context. In *School District of Abington Township v. Schempp*, 374 U.S. 203, 225 (1963), the Supreme Court noted that, while a public school may not open with prayer and a reading from the Bible, the Court “agree[s], of course that the State may not establish a ‘religion of secularism’ in the sense of affirmatively opposing or showing hostility to religion, thus ‘preferring those who believe in no religion over those who do believe.’” (quoting *Zorach v. Clauson*, 343 U.S. 306, 314 (1952)).

Banning The Seven Project from participating in the assembly because of the religious beliefs of some of the speakers or their being pastors, when they have agreed not to include any religious content in their message or to proselytize at the assembly, is the sort of hostility to religion that the Establishment Clause prohibits. In another context, the Supreme Court said, “[T]he Constitution ... affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any. Anything less would require the callous indifference we have said was never intended by the Establishment Clause. Indeed, we have observed, such hostility would bring us into war with our national tradition as embodied in the First Amendment’s guaranty of the free exercise of religion.” *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (internal cites and quotes omitted).

Similarly, permitting students to form clubs while banning student clubs solely because they are religious is an impermissible hostility to religion that likewise violates the Establishment Clause. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001) (holding that a public school district may not discriminate against an after-school club merely because it is religious, even when state law permitted schools to prohibit purely religious clubs); 20 U.S.C. § 4071 (prohibiting secondary schools that discriminate against after-school clubs merely because they are religious from receiving federal funding).

Furthermore, in the public school context, the Supreme Court has warned that such hostility to religion may impress upon students the idea that the school district is opposed to religion—itsself a violation of the Establishment Clause. As the Supreme Court said in *Good News Club*:

First, even if we were to inquire into the minds of schoolchildren in this case, we cannot say the danger is any greater than the danger that they would perceive a hostility toward the religious viewpoint if the

[religious club] were excluded from the public forum. ...We cannot operate, as [the school district] would have us do, under the assumption that any risk that small children would perceive endorsement should counsel in favor of excluding the [religious club's] religious activity. We decline to employ Establishment Clause jurisprudence using a modified heckler's veto, in which a group's religious activity can be proscribed on the basis of what the youngest members of the audience might misperceive. ... And, we have already found that those rights have been violated, not merely perceived to have been violated, by the school's actions toward the [religious club.]

*Good News Club*, 533 U.S. at 119.

### **Conclusion**

Ultimately, the FFRF has mischaracterized The Seven Project and conflated it with another program altogether. Any assertions by the FFRF that public school districts should not permit The Seven Project to participate in their assemblies because of the religious affiliations of their speakers—when those speakers have not provided any indication of an intent to proselytize the students—advocates hostility to religion, and any school district that follows that advice may be subject to a lawsuit from the speakers for a violation of their Constitutional rights.

If you have any questions about this letter, feel free to call me at (972) 941-4444 or email me at [jbutterfield@libertyinstitute.org](mailto:jbutterfield@libertyinstitute.org).

Sincerely,



Justin Butterfield  
Senior Counsel and  
Director of Research and Education  
LIBERTY INSTITUTE