

December 17, 2014

VIA EMAIL, CERTIFIED U.S. MAIL, AND FACSIMILE

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Re: Community Connectors Program

Dear Governor Kasich and Superintendent Ross,

It has come to the attention of the American Civil Liberties Union of Ohio Foundation and the ACLU Program on Freedom of Religion and Belief that the Ohio Department of Education has injected religious criteria into its "Community Connectors" program. We are deeply troubled by this development because it raises serious questions about the constitutionality of the mentoring program.

There are "heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." Lee v. Weisman, 505 U.S. 577, 592 (1992). The U.S. Supreme Court and the U.S. Court of Appeals for the Sixth Circuit, accordingly, have "been particularly vigilant in monitoring compliance with the Establishment Clause" of the First Amendment in the public-school context. Edwards v Aguillard, 482 U.S. 578, 583 (1987).

Relationships with community groups can provide an important source of support for public schools. When those relationships involve partnering with churches or faith-based organizations, however, schools must proceed with great caution. See, e.g., McCollum v. Bd. of Educ., 333 U.S. 203, 209-10 (1948) (pointing to "close cooperation between the school authorities and the religious council in promoting religious education" in deeming school partnership with

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religious education council unconstitutional); *Doe v. Porter*, 370 F.3d 558, 564 (6th Cir. 2004) (holding that school district's partnership with Bible Education Ministry to provide Bible classes on campus during school day violated the Establishment Clause).¹

As James Madison, the author of the First Amendment, warned, "an alliance or coalition between Government and religion . . . cannot be too carefully guarded against. . . Every new and successful example therefore of a perfect separation between ecclesiastical and civil matters is of importance . . . in shewing that religion and Government will both exist in greater purity, the less they are mixed together." James Madison, Letter to Edward Livingston (July 10, 1822). The Department of Education's new rule *requiring* participating schools to partner with churches or faith-based organizations is likely to engender the very type of corrosion against which Madison and others have cautioned.

As guardians of the First Amendment in Ohio and across the nation, we intend to launch a full inquiry into this matter. To further our investigation, pursuant to Ohio's open records law,² Ohio Revised Code § 149.43, we are seeking the following records from the Department of Education, the Community Connectors Advisory Panel, and the Governor's office (including records in the possession of all officers, staff, and agents of each entity):

- 1. All agendas, minutes, memoranda or other records referring or relating to any meeting at which partnerships with churches, houses of worship, or faith-based organizations as part of the Community Connectors Program was discussed.
- 2. All records constituting or relating to rules, regulations, manuals, policies, procedures, and guidelines pertaining to the Community Connectors Program, including but not limited to all such materials related to partnerships with churches, houses of worship, and faith-based organization.

¹ See also, e.g., Ams. United for Separation of Church & State v. Prison Fellowship Ministries, 509 F.3d 406, 424-25 (8th Cir. 2007) (holding that state's partnership with religious organization to operate in-prison inmate rehabilitation program violated the Establishment Clause); Community House, Inc. v. City of Boise, 490 F.3d 1041, 1059-60 (9th Cir. 2007) (enjoining worship services and other religious activities at city-owned homeless sheltered managed through partnership with religious group); cf. ACLU of Mass. v. Sebelius, 821 F. Supp. 2d 474, 488 (D. Mass. 2012), vacated on mootness grounds, 705 F.3d 44 (1st Cir. 2013) (holding government partnership with U.S. Catholic Bishops Conference unconstitutional).

² Records are defined to include, without limitation, writings, documents, papers, text files, computer files, emails, audio recordings, photographs, video recordings, annals, archives, journals, logs and/or notes, and drafts of those records. Emails include all pertinent emails sent to or from official or personal email accounts.

- 3. All records constituting or relating to applications, forms, informational or promotional materials, or other records provided to prospective participants or applicants for the Community Connectors Program, including but not limited to all materials distributed to attendees of any formal or informal informational session.
- 4. All records constituting or relating to communications with prospective participants or applicants for the Community Connectors Program.
- 5. All records constituting or referring to communications referring or relating to partnerships with churches, houses of worship, or faith-based organizations as part of the Community Connectors Program, whether sent to or by the Department of Education, the Advisory Panel, or the Governor's office.
- 6. All applications submitted to date for participation in the Community Connectors Program.
- 7. All records constituting or relating to any complaints or objections regarding the actual or potential involvement of churches, houses of worship, or faith-based organizations in the Community Connectors program.
- 8. A copy of the video featuring Governor Kasich, shown at the December 11, 2014, informational session held in Cleveland and a copy of any other video pertaining to the Community Connectors program, whether or not publicly screened.
- 9. All video outtakes, draft and final scripts, and other records relating to the creation of any video produced in response to request number 8.
- 10. All non-privileged records referring or relating to the legality of participation by churches, houses of worship, or faith-based organizations in the Community Partners Program.

Please send the requested records to American Civil Liberties Union of Ohio, c/o Drew Dennis, Litigation Coordinator and Staff Attorney, Max Wohl Civil Liberties Center, 4506 Chester Avenue, Cleveland, Ohio 44103.

We ask that you provide these documents in either physical or compact disc form. We look forward to receiving these documents by U.S. mail, and we understand that we are responsible for any copying and mail costs. Nonetheless, please contact us prior to complying with this public records request to inform us of the anticipated costs. If there are any questions related to this request, please contact us at (216) 472-2220.

Improving educational outcomes within our local communities is an important and worthy goal. But it is one that may not be achieved via unconstitutional means. See, e.g., Karen B. v. Treen, 653 F.2d 897, 901 (5th Cir. 1981) ("The unmistakable message of the Supreme Court's teachings is that the state cannot employ a religious means to serve otherwise legitimate

secular interests."). We recommend that, at a minimum, State officials immediately reconsider the mandatory inclusion of churches and faith-based organizations in this program.

Cc: Community Connector and Mentoring Program Advisory Board via online submission

Sincerely,

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