



December 30, 2013

Charlie Norwood VA Medical Center
Attn: Robert U. Hamilton, Medical Center Director
950 15th Street Downtown
Augusta, GA 30904

Re: The Performance of Religious Christmas Music at the Medical Center

Dear Mr. Hamilton:

It has come to our attention that the Charlie Norwood VA Medical Center (the “Medical Center”) recently decided that religious Christmas music is banned from being performed at the Medical Center. According to local media reports, a group of students from Alleluia Community School were told that they could not sing religious carols in the public areas of the Medical Centers as students from the school had done for the past several years. Instead, students were given the option of singing from a list of 12 approved secular songs or of singing their original program (which included religious songs) in the Medical Center’s chapel. Medical Center spokesman Brian Rothwell confirmed that the policy was designed to protect residents from “unwelcomed religious material.”

We write to explain that every federal court to examine the issue has determined that permitting religious Christmas carols to be sung at public facilities like the Medical Center fully complies with the First Amendment. Many of these court decisions upheld the ability of public school students to sing such carols as part of their school’s Christmas concerts. If students can sing religious Christmas carols at a public school concert (where the courts have said Establishment Clause concerns are sometimes heightened because of the presence of minors), then visitors can certainly sing such songs at a government-run hospital that primarily serves adult veterans. To put it simply, the Medical Center is prohibiting a group of students from singing the very songs that courts have said are constitutionally permissible at public high school concerts. The Medical Center’s policy appears to be nothing more than political correctness run amok, and we thus urge you to immediately rescind the new policy instituted by the Medical Center’s administration.

Federal courts have acknowledged that the vast majority of high-quality choral music is religious in nature.¹ The law thus clearly recognizes that “[a] position of neutrality towards religion must allow choir directors to recognize the fact that most choral music is religious” in nature.² Because singing a wide variety of religious songs—particularly during the holiday season—is simply a result of “the dominance of religious music in this field,” courts have never considered this fact to

¹ See, e.g., *Bauchman v. West High Sch.*, 132 F.3d 542, 554 (10th Cir. 1997) (considering it well “recognized that a significant percentage of serious choral music is based on religious themes or text”); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 407 (5th Cir. 1995) (crediting testimony that approximately “60-75 percent of serious choral music is based on sacred themes or text”).

² *Duncanville*, 70 F.3d at 408 (emphasis added).

either unconstitutionally advance or endorse religion.³ To the contrary, they have recognized for many years that Christmas “carols have achieved a cultural significance that justifies their being sung” in public facilities.⁴

What the First Amendment does require is that the Medical Center remains neutral towards religion and refrains from demonstrating an unconstitutional hostility toward songs with religious origins.⁵ The Supreme Court has consistently condemned viewpoint discrimination regardless where it occurs.⁶ Viewpoint discrimination is an “egregious” form of discrimination that occurs “[w]hen the government targets not subject matter, but particular views taken by speakers on a subject.”⁷ When this happens, “the violation of the First Amendment is all the more blatant” because “[t]he 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.”⁸ Viewpoint based restrictions on speech are presumptively unconstitutional.⁹

When the government excludes speech from a forum on an otherwise includible subject because of its perspective, it engages in viewpoint discrimination.¹⁰ And the U.S. Supreme Court has repeatedly ruled that excluding a religious perspective on an otherwise permissible subject is an obvious form of viewpoint discrimination.¹¹ Here, there is little question that government officials have opened up a forum for speech on a particular topic—the singing of Christmas music in public areas of the Medical center—yet have singled out and forbidden religious viewpoints (i.e., religious carols) about this topic. Thus, the Medical Center’s policy of excluding religious music likely violates the Free Speech Clause of the First Amendment.

As the United States Court of Appeals for the Fifth Circuit has explained, “[l]imiting the ... religious piece[s] of music [that] can be sung is tantamount to censorship and does not send students a message of neutrality.”¹² “[D]isqualif[ing] the majority of appropriate choral music simply because it is religious” necessarily “require[s] hostility, not neutrality, toward religion.”¹³

We request a response to our letter by **January 10, 2014**, confirming that the Medical Center will right this wrong by immediately rescinding the new policy put in place by the Medical Center administration and permitting religious music to be included among the many secular songs performed by local school children and other well-wishers for the benefit of all of our brave veterans at the Medical Center.

³ *Id.*; see also *Bauchman*, 132 F.3d at 556 (“[A] reasonable observer would conclude the selection of religious songs from a body of choral music predominated by songs with religious themes and text ..., without more, amount to religiously neutral educational choices”).

⁴ *Florely v. Sioux Falls Sch. Dist.*, 619 F.2d 1311, 1316 n.5 (8th Cir. 1980).

⁵ See *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 846 (1995) (“[F]ostering a pervasive bias or hostility to religion ... undermine[s] the very neutrality the Establishment Clause requires.”).

⁶ *Arkansas Educ. Television Com’n v. Forbes*, 523 U.S. 666, 682 (1998); *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788, 806 (1985).

⁷ *Rosenberger*, 515 U.S. at 829.

⁸ *Id.*

⁹ *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992).

¹⁰ *Cornelius*, 473 U.S. at 806.

¹¹ *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 464 U.S. 263 (1981).

¹² *Duncanville*, 70 F.3d at 408.

¹³ *Id.*

Cordially,

A handwritten signature in blue ink, appearing to read "J. D. Tedesco". The signature is stylized with a large, sweeping initial "J" and a horizontal line above the letters "D." and "T".

Jeremy D. Tedesco, Senior Legal Counsel
J. Matthew Sharp, Legal Counsel