



26 September 2013

Via U.S. Mail & Electronic Mail at
fairview.library@buncombecounty.org

Ms. Abby Moser
Fairview Library
1 Taylor Road
Fairview, North Carolina 28730

Re: Unconstitutional Censorship of the Constitution Week Display

Dear Ms. Moser:

One of your patrons recently contacted us with concerns that you had unconstitutionally censored a religious message included in the Constitution Week display that a local community organization had placed in the library's display case. We write to inform you that your actions were illegal and to request that you remedy the situation immediately by restoring the "God Bless America" sign that you removed.

By way of introduction, Alliance Defending Freedom is an alliance-building, non-profit legal organization that advocates for the right of people to live out their faith freely. We are dedicated to ensuring that citizens who desire to do so may publicly celebrate our nation's religious heritage without having their expression restricted or silenced. We seek to resolve disputes by educating public officials about the constitutional rights of our clients, but we also litigate to secure those freedoms.

FACTS

According to our best information, Fairview Library ("Library") maintains a display case in its entryway that community groups may reserve on a first-come, first-served basis to showcase a wide variety of items. Past displays have included materials students collected in a nature hike and some examples of a local citizen's smocking, and future displays include a local craftsman's birdhouses. The Library maintains no written policies governing the content of what community members may display in this case.

In early September, a private organization in the community set up a Constitution Week display in this case. This display featured a variety of patriotic materials, including American flags, Betsy Ross flags, and similar items. It also featured a sign that simply said, "God Bless America."

But a few days later, the "God Bless America" sign had disappeared. When our concerned citizen inquired about the change, you admitted that you had removed it and said that it could not be displayed. When she asked if anyone had complained about the sign, you said that no one had done so, but that someone might.

LEGAL ANALYSIS

By allowing individuals and groups in the Fairview community to use this display case on a first-come, first-served basis, the Library has created a forum for private speech. As the Library has not limited who can reserve this case or the topics these displays may address, this case represents designated a public forum.¹ Thus, any content-based restrictions on displays in this case must survive strict scrutiny, meaning they must be “necessary to serve a compelling state interest” and “narrowly drawn to achieve that end.”² But regardless of the precise type of forum, the Library may not restrict displays based on the viewpoints they express.³

For over thirty years, the Supreme Court has clearly stated that the First Amendment protects religious speech⁴ and that government officials engage in content discrimination when they exclude religious speech from a public forum.⁵ Sadly, this is what you did when you removed the “God Bless America” sign from the Constitution Week display, and you had no “compelling state interest” for doing so.

For at least twenty years, the Supreme Court has repeatedly ruled that when government officials engage in unconstitutional viewpoint discrimination when they exclude from a forum speech on an otherwise permissible topic due to its religious perspective.⁶ Indeed, “[w]hen the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.”⁷ Here, you removed a religious expression of patriotism—the “God Bless America” sign—while allowing other expressions of patriotism to remain on display, a textbook example of viewpoint discrimination.

Nor is there any constitutional justification for your decision to remove that sign. Even possible complaints from other patrons would not authorize you to censor the display. After all, “the point of all speech protection . . . is to shield just those choices of content that in someone’s eyes are misguided, or even hurtful.”⁸ Offended patrons could “effectively avoid further bombardment of their sensibilities simply by

¹ *Child Evangelism Fellowship of Md., Inc. v. Montgomery Cnty. Pub. Schs.*, 457 F.3d 376, 381–82 (4th Cir. 2006).

² *Id.* (quoting *Perry Educ. Ass’n v. Perry Local Educators Ass’n*, 460 U.S. 37, 45 (1983), and citing *Int’l Soc’y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678–79 (1992)).

³ *Id.* at 384 (“[E]ven in a nonpublic forum, government regulation must be . . . viewpoint neutral.”); *Child Evangelism Fellowship of S.C. v. Anderson Sch. Dist. 5*, 470 F.3d 1062, 1067 (4th Cir. 2006) (“The ban on viewpoint discrimination is a constant.”); see also *Burnham v. Ianni*, 119 F.3d 668, 675–76 (8th Cir. 1997) (finding university efforts to restrict use of a departmental display case constituted viewpoint discrimination, which is unconstitutional in any forum).

⁴ See, e.g., *Widmar v. Vincent*, 454 U.S. 263, 269 (1981); *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995).

⁵ *Widmar*, 454 U.S. at 269–70.

⁶ See, e.g., *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393–94 (1993); accord *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 830–32 (1995); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 107–12 (2001).

⁷ *Rosenberger*, 515 U.S. at 829.

⁸ *Hurley v. Irish-Am. Gay, Lesbian, & Bisexual Group of Boston*, 515 U.S. 557, 574 (1995).

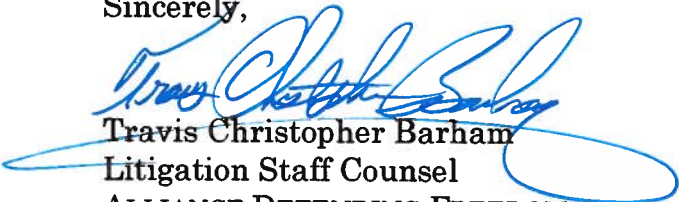
averting their eyes.”⁹ But government officials, like yourself, are not empowered “to cleanse public debate to the point where it is . . . palatable to the most squeamish among us,” or to the most hypersensitive among us.¹⁰

Nor is there any danger that including a “God Bless America” sign in a private group’s patriotic display would violate the Establishment Clause. For the Supreme Court has only ruled at least seven times in the last thirty two years that the government does not violate the Establishment Clause when it allows religious speakers equal access to a forum for private speech.¹¹ After all, “there 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 Exercises Clauses protect.”¹²

CONCLUSION

Like the concerned citizen who contacted us, we are gravely concerned at your willingness to ignore decades of clearly established First Amendment precedent by censoring the religious expression of a community organization. Thus, we respectfully insist (1) that you take immediate action to restore the “God Bless America” sign to the Constitution Week display, (2) that you apologize to the organization whose speech you censored, and (3) that you ensure that other library personnel do not repeat these illegal actions for other community displays. Please inform us in writing by the close of business on October 4, 2013 as to whether you will be willing to take these reasonable steps to remedy the situation.

Sincerely,



Travis Christopher Barham
Litigation Staff Counsel
ALLIANCE DEFENDING FREEDOM

Cc: Ms. Deborah J. Dewart, Attorney at Law
620 East Sabiston Drive
Swansboro, North Carolina 28584

⁹ *Cohen v. California*, 403 U.S. 15, 21 (1971).

¹⁰ *Id.* at 25; *accord Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”); *Snyder v. Phelps*, 131 S. Ct. 1207, 1220 (2011) (“Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and . . . inflict great pain. . . . [W]e cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”).

¹¹ *See Zelman v. Simmons-Harris*, 536 U.S. 639, 662–63 (2002); *Good News Club*, 533 U.S. at 112–20; *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 233 (2000); *Rosenberger*, 515 U.S. at 842–46; *Lamb’s Chapel*, 508 U.S. at 395; *Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 253 (1990); *Widmar*, 454 U.S. at 273–76.

¹² *Pinette*, 515 U.S. at 765 (quoting *Mergens*, 496 U.S. at 250 (opinion of O’Connor, J.)).