



May 3, 2017

Dr. Lawrence Mussoline, Superintendent  
Downingtown Area School District  
540 Trestle Place  
Downingtown, PA 19335  
**VIA EMAIL:** [lmussoline@dasd.org](mailto:lmussoline@dasd.org)  
**TELEFACSIMILE: (855-329-3273) AND U.S. MAIL**

RE: Lauren and Conner Haines

Dear Dr. Mussoline,

The Alliance Defending Freedom (ADF) has been retained by William and Dawn Haines on behalf of their daughter and son, Conner and Lauren, to pursue legal claims arising from your school district's unlawful denial of the constitutional right to speak in a traditional public forum.

By way of introduction, ADF is a not-for-profit, public interest law and educational group. Our organization advocates for the right of people to freely live out their faith. We provide representation to a significant number of people in situations similar to the one the Haines family now faces.

In the following pages, the particular facts of this matter are set forth. Following the fact statement is a discussion of relevant law. After reviewing this letter, you and the School District will need to take steps to ensure your employees do not violate the constitutional rights of the Haines family and similar speakers opposed to abortion.

### **I. Statement of Relevant Facts**

On April 21, 2017 at around 2:30 in the afternoon Conner Haines (age 16) and his sister Lauren (age 19) went out to expose the Holocaust of abortion and to engage the students with the Gospel of Jesus Christ. They had 3 signs opposing abortion – one of which contained a genuine picture of an aborted baby. Lauren and Conner had initially planned to stand on the sidewalk in front of Downingtown West High School because the school had a Holocaust Symposium that same day. On their walk from the car they stopped at Downingtown STEM Academy (right down the street from Downingtown West) because school was letting out and they hoped to engage the students and share the Gospel.

They stayed on the public sidewalk at all times. As they were speaking peacefully, the Vice Principal in charge of Student Life at Downingtown STEM Academy, Dr. Zach Ruff, repeatedly ordered them to stop speaking, and cursed at them. While hollering at them, he willfully,

intentionally, and aggressively approached within inches of Conner’s face and eventually attempted to rip a sign out of his hands. The incident lasted about 18 minutes. Ruff was acting in his official capacity as an employee of the Downingtown Public School District. Since April 21, many Downingtown Public School students (and parents) have followed Ruff’s example – sending Conner and Lauren hundreds messages indicating they completely misunderstand the concept of Free Speech. In fact some of those comments were threatening and vulgar. This hostility to the First Amendment by the next generation may be even more dangerous than that of a school official.

## II. Statement of Relevant Law

### A. SPEAKING, DISPLAYING SIGNS, AND DISTRIBUTING LITERATURE IS PROTECTED SPEECH PURSUANT TO THE FIRST AMENDMENT.

Oral communication, literature distribution, and displaying hand-held signs are protected activities and classic forms of speech that lie at the very “foundation of free government by free men.” *Schneider v. New Jersey*, 308 U.S. 147, 151 (1939); *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995); *United States v. Grace*, 461 U.S. 171, 176 (1983). The First Amendment’s prohibition on governmental restrictions of free speech applies to governmental entities like Downingtown Area School District via the Fourteenth Amendment’s protection of fundamental personal rights and liberties. *Lovell v. City of Griffin*, 303 U.S. 444, 450 (1938); *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940). To deny this fundamental axiom would be to destroy the very essence of free speech and religious freedom under the First Amendment.

“[S]peech on public issues occupies the highest rung on the hierarchy of First Amendment values, and is entitled to special protection,” *Snyder v. Phelps*, 131 S. Ct. 1207, 1215 (citations omitted), and laws burdening it are “subject to strict scrutiny,” *Citizens United v. F.E.C.*, 558 U.S. 310, 340 (2010). While Conner’s and Lauren’s speech may be controversial to some, this does not exclude it from First Amendment protection. *Snyder*, 131 S. Ct. at 1219 (“[S]peech [on a matter of public concern] cannot be restricted simply because it is upsetting or arouses contempt.”). Indeed, offensive speech needs the most protection, *City of Houston v. Hill*, 482 U.S. 451, 462 n.11 (1987).

Courts have long recognized that public expression touching on the issue of abortion is deemed “protected speech.” *Frisby v. Schultz*, 487 U.S. 474, 479 (1988). This is true even of signs using strong images to convey a message. *United States v. Marcavage*, 609 F.3d 264, 283 (3d Cir. 2010) (recognizing that signs bearing “various vivid depictions of mutilated fetuses” were protected speech); *Arlington County Republican Comm. v. Arlington County, Virginia*, 983 F.2d 587, 593 (4th Cir. 1993) (“[C]ommunication by signs and posters is virtually pure speech.”); *Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Dept.*, 533 F.3d 780 (9th Cir. 2008) (protecting signs graphically depicting aborted babies).

Accordingly, the speech Lauren and Conner engaged in outside of Downingtown STEM Academy was protected by the First Amendment.

**B. THE HAINES' CONSTITUTIONAL RIGHT TO SPEAK EXTENDS TO THE PUBLIC SIDEWALKS OUTSIDE OF SCHOOLS.**

“Streets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely.” *Carey v. Brown*, 447 U.S. 455, 460 (1980).

Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public, and time out of mind, have been used for the purposes of assembly, communicating thoughts between citizens, and discussing public questions.

*Hague v. C.I.O.*, 307 U.S. 496, 515 (1939). This includes the sidewalks outside public schools like the one Lauren and Conner were speaking on.

[W]e think it clear that the public sidewalk adjacent to school grounds may not be declared off limits for expressive activity by members of the public. . . .

. . . .

Without interfering with normal school activities, daytime picketing and handbilling on public grounds near a school can effectively publicize [a person’s views] to pedestrians, school visitors, and deliverymen, as well as to teachers, administrators, and students.

*Grayned v. City of Rockford*, 408 U.S. 104, 117-19 (1972).

**C. DR. RUFF ASSAULTED AND BATTERED CONNER AND LAUREN.**

In addition to the constitutional violations, Ruff’s willful, aggressive attempt to intimidate Lauren and Conner and keep them from speaking by attempting to take their sign constitutes assault and battery under Pennsylvania law. “Assault is an intentional attempt by force to do an injury to the person of another, and a battery is committed whenever the violence menaced in an assault is actually done, though in ever so small a degree, upon the person.” *Renk v. City of Pittsburgh*, 537 Pa. 68, 76, 641 A.2d 289, 293 (1994), quoting *Cohen v. Lit Brothers*, 166 Pa. Super. 206, 209, 70 A.2d 419, 421 (1950) (where a minor stated a case for assault and battery when a store employee grabbed her brief case and then took her by the elbow). Moreover, Ruff is taller and heavier than both Conner and Lauren. His aggressive language within inches of Conner’s face was an attempt by physical menace to put them in fear of imminent serious bodily injury. That is criminal assault. See PA ST 18 Pa.C.S.A. § 2701.

**DEMAND**

It is imperative that this situation be corrected immediately because the violation of an individual’s constitutional rights, even for a moment, results in irreparable injury. *Elrod v. Burns*, 427 U.S. 347 (1976). This correction should include the following steps:

1. A memorandum to school employees, parents, and students explaining the rights of citizens like Lauren and Conner to speak on the sidewalks around the school about abortion;
2. A letter from the School District and Dr. Ruff to Lauren and Conner acknowledging their rights were violated and assuring them that such violation will not occur if they speak in the public forums near Downingtown Area Schools in the future;
3. Communication with a representative of the Haines family as part of your investigation of Dr. Ruff.

My clients also request an opportunity for Lauren and Conner to address interested students about abortion and answer their questions at an after-school assembly.

We would appreciate a response from you by the end of business on Friday, May 14, 2017, outlining your position regarding the matters referenced herein.

Please understand that we will advise the Haines family to take immediate legal action against the Downingtown Area School District and Vice Principal, Dr. Zach Ruff, if their rights are not immediately restored.

Sincerely,



Kevin Theriot,  
VP, Center for Life

cc: Randall L. Wenger (local counsel)  
Independence Law Center  
23 North Front Street, Second Floor  
Harrisburg PA 17101