AMERICANS UNITED
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June 21, 2016

By U.S. Mail & Email
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Ernest Parrey, Jr., Director of Police
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Sheriff John A. Kemler
Mercer County Sheriff's Office
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P.O. Box 8068
Trenton, NJ 08650-0068

Re: *Police sending juveniles violating curfew to church*

Dear Mr. Jackson, Mr. McKithen, Mr. Parrey, and Sheriff Kemler:

We have received a complaint regarding Trenton and Mercer County's plans to send juveniles that violate curfew to church. *See* David Foster, *Trenton police to send kids violating curfew to church starting July 1*, The Trentonian News, June 16, 2016, *available at* http://tinyurl.com/j8k9xfs. This would be a flagrant violation of the Establishment Clause of the First Amendment to the U.S. Constitution. Please do not implement this policy.

The Establishment Clause prohibits governmental entities from taking any action that communicates "endorsement of religion." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 305 (2000). The Clause also guarantees that "government may not coerce anyone to support or participate in religion or its exercise." *Lee v. Weisman*, 505 U.S. 577, 587 (1992). Thus no governmental entity "can force [or] influence a person to go to or remain away from church against his will." *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947). And courts are "particularly vigilant" about enforcing these principles when youths are involved, because the young are impressionable. *Edwards v. Aguillard*, 482 U.S. 578, 583-84 (1987).

The courts have repeatedly ruled that government may not require a criminal defendant or inmate to participate in a religious program as a condition of probation or parole. *See, e.g.*, *Inouye v. Kemna*, 504 F.3d 705, 712 (9th Cir. 2007) ("[R]equiring a [criminal offender] to attend religion-based treatment programs violates the First Amendment."); *Bobko v. Lavan*, 157 F. App'x 516, 518 (3d Cir. 2005) ("The government violates the First Amendment's Establishment Clause when it requires a prisoner to participate in a drug or alcohol rehabilitation program with a religious component."); *Warner v. Orange Cty. Dep't of Probation*, 115 F.3d 1068, 1074–77 (2d Cir. 1997) (county violated Establishment Clause by requiring person on probation to attend religious meetings without offering a secular alternative), *reinstated in full after vacatur and remand*, 173 F.3d 120 (2d Cir. 1999); *Kerr v. Farrey*, 95 F.3d 472, 479–80 (7th Cir. 1996) (prison violated Establishment Clause by use of religious program in treatment approach, where refusal to attend could negatively affect inmate's security-risk rating and consideration for parole); *Griffin v. Coughlin*, 673 N.E.2d 98, 106 (N.Y. 1996) (prison officials violated Establishment Clause by conditioning eligibility for expanded family visitation on participation in religious program). What is unconstitutional with respect to adults is all the more so with respect to children.

The federal courts have also prohibited governmental bodies generally from hosting events or programs in religious settings. *See, e.g.*, *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 853–855 (7th Cir. 2012) (en banc) (prohibiting public school from holding graduation or honors ceremonies in church, because "the sheer religiosity of the space created a likelihood that high school students and their younger siblings would perceive a link between church and state," and the school district impermissibly "direct[ed] students to attend a pervasively Christian, proselytizing environment"), *cert. denied*, 134 S. Ct. 2283 (2014); *Does v. Enfield Pub. Schs.*, 716 F. Supp. 2d 172, 192, 201–02 (D. Conn. 2010) (graduation ceremony in church required students "to undertake the act of entering a place of religious worship" and conveyed that the school district was "closely linked with [the church] and its religious mission"), *appeal dismissed as moot*, No. 10-2247 (2d Cir. Aug. 17, 2010); *Musgrove v. Brevard Cnty. Sch. Bd.*, 608 F. Supp. 2d 1303, 1305-06 (M.D. Fla. 2005) ("[T]o hold a graduation ceremony . . . in a religious institution that has displayed a giant cross is . . . contrary to Supreme Court precedent."); *Reimann v. Fremont Cnty. Joint Sch. Dist. No. 215*, Civil No. 80-4059, 1980 WL 590189 (D.

Idaho May 22, 1980) (same for public-school graduation in Mormon church); *Lemke v. Black*, 376 F. Supp. 87, 89 (E.D. Wis. 1974) (enjoining public-school graduation in church, because "[i]t is cruel to force any individual to violate his conscience in order to participate"); *Lilly v. State*, 337 S.W.3d 373, 383 (Tex. App. 2011) (state violated the Establishment Clause by holding court proceedings in a prison chapel decorated with religious items), *rev'd on other grounds*, 365 S.W.3d 321 (Tex. Crim. App. 2012).

Here the Trenton Police Department and the Mercer County Sheriff's Office have announced that they will unilaterally deposit underage curfew-violators in "houses of worship" to await their parents. This plan is plainly designed to communicate to youthful offenders that they ought to be engaged in religious activity instead of violating curfew. And the minors will be surrounded by religious iconography designed to send proselytizing messages. While we are sensitive to Trenton's difficulties with youth violence, the City and County cannot legally solve the problem by forcing religion upon its youth.

Please do not implement this program. We would appreciate a response to this letter within thirty days to advise us how you plan to proceed. If you have any questions, you may contact Ian Smith at (202) 466-3234 or ismith@au.org.

Sincerely,

Richard B. Katskee, Legal Director
Alex Luchenitser, Associate Legal Director
Ian Smith, Staff Attorney