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By Email
C. Frazier Satterly
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Re: *Satanic Temple request to use Jane Addams Elementary School*

Dear Ms. Satterly:

We have received a complaint from the Satanic Temple regarding your client Moline-Coal Valley Community Unit School District No. 40's denial of access to a limited public forum located in Jane Addams Elementary School for the Temple's After School Satan Club. The district decided that several threats—all of which were investigated and found non-credible—meant that the Temple must be excluded from the forum. *See* Letter from C. Frazier Satterly to June Everett, October 20, 2023. Another religious group—the Good News Club—has been allowed unfettered access to the forum that the Temple was seeking to access. The district offered the Temple access to a different forum—facilities at the Coolidge School—but that is not an adequate solution for the reasons discussed below.

The exclusion of the Temple from the forum is based on a misunderstanding of forum law and constitutes viewpoint discrimination in violation of the Free Speech Clause of the First Amendment to the U.S. Constitution. Please treat the Temple in the same fashion as you are currently treating the Good News Club under the district's facility-use policy.

The government may open a forum for private speech, but if it does so, it must treat all viewpoints, religious and nonreligious, equally. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106 (2001); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 392–94 (1993). When the government denies access to a public forum because it disagrees with the viewpoint of the private speech that will be expressed in the forum, the government has engaged in viewpoint discrimination in violation of the Free Speech Clause of the First Amendment. *Shurtleff v. City of Boston*, 596 U.S. 243, 259 (2022); *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 761 (1995); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828–29 (1995). In a limited public-forum, such as the one created

here, the government may only engage in viewpoint-neutral time, place, and manner restrictions on speech. *Rosenberger*, 515 U.S. at 828-30; *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 806 (1985); *Perry Educ. Ass'n v. Perry Legal Educs. Ass'n*, 460 U.S. 37, 49 (1983).

The school district is not able to avoid First Amendment review by relocating the After School Satan Club from one limited public forum, Jane Addams Elementary School, to a different limited public forum, Coolidge School. *See*, *e.g.*, *Schneider v. Town of Irvington*, 308 U.S. 147, 163 (1939) ("[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."); *Nationalist Movement v. City of Boston*, 12 F. Supp. 2d 182, 191–92 (D. Mass. 1998) (rejecting city's attempt to relocate a parade because "anticipation of a hostile reaction does not permit the City to require that the plaintiff alter or muffle its intended expression any more than it permits the City to prohibit it"). The district appears to think that, as two schools within the same district, Jane Addams Elementary School and Coolidge School together constitute a single forum, and thus that the district is not outright denying the Temple access to the forum. That view misconstrues the definition of "forum" in First Amendment analysis. A forum is a single location or means of communication—"a piece of public property usable for expressive activity by members of the public." *Illinois Dunesland Pres. Soc'y v. Illinois Dep't of Nat. Res.*, 584 F.3d 719, 722–23 (7th Cir. 2009); *see also*, *e.g.*, *Shurtleff*, 596 U.S. at 249–50 (forum defined as the third flagpole at City Hall, not all flagpoles controlled by the city); *Pleasant Grove City v. Summum*, 555 U.S. 460, 478–81 (2009) (forum defined as a single park, not all parks in the city). Once the district opens the doors of a specific elementary school to after-school clubs led by religious groups, it cannot shunt disfavored groups to an entirely different school and claim that it is not discriminating.

Furthermore, the district cannot use the public's negative reaction to the club to justify excluding it from Jane Addams Elementary School. "Listeners' reaction to speech is not a content-neutral basis for regulation." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992); *id.* at 135 ("Speech cannot be financially burdened . . . punished or banned, simply because it might offend a hostile mob."); *United States v. Betts*, 509 F. Supp. 3d 1053, 1061 (C.D. Ill. 2020) ("The heckler's veto doctrine . . . prohibits 'restriction of particular speech due to listeners' actual or anticipated hostility to that speech.'" (quoting *Santa Monica Nativity Scenes Comm. v. City of Santa Monica*, 784 F.3d 1286, 1293 (9th Cir. 2015)); *Pride v. City of Aurora*, No. 23-CV-00259, 2023 WL 3569130, at *24 (N.D. Ill. May 18, 2023) (city may not increase the fees charged to hold a parade "on the ground that those who disagree with the parade might threaten the safety of its participants"). It is a "bedrock First Amendment principle" that "[s]peech may not be banned on the ground that it expresses ideas that offend." *Matal v. Tam*, 582 U.S. 218, 223 (2017).

The First Amendment rule against the heckler's veto holds fast even in cases involving actual threats of violence. *See Zamecnik v. Indian Prairie Sch. Dist. No. 204*, 636 F.3d 874, 879 (7th Cir. 2011) ("Speech that is "met by violence or threats or other unprivileged retaliatory conduct by persons offended by them cannot lawfully be suppressed because of that conduct."); *Bible Believers v. Wayne Cnty., Mich.*, 805 F.3d 228, 234 (6th Cir. 2015) (police violated the First Amendment when they forced Christian evangelists who were "preaching hate and denigration" to leave an Arab cultural festival, even though some of the festival attendees "responded with threats of violence"). Thus, the fact that the district received threats in relation to the After School Satan Club does not justify kicking the club out of a forum available to other groups. Indeed, in a recent case involving the After School Satan Club at a different school, a federal court ruled that the school could not exclude the club from the school because of violent threats. *Satanic Temple, Inc. v. Saucon Valley Sch. Dist.*, No. 5:23-CV-01244-JMG, 2023 WL 3182934, at *16 (E.D. Pa. May 1, 2023). The same reasoning applies here and requires that the district reinstate After School Satan Club at Jane Addams Elementary School.

Prior to illegally denying the Temple access to the forum on the basis of a heckler's veto, the district attempted to deny the Temple access on the basis of an arbitrary attendance threshold recently added to the district's policy. The district decided that it would no longer enforce this restriction after pushback from the Temple. *See* Email from Vincent Gallo to June Everett, September 11, 2023. The district was right not to enforce this policy. It would be unconstitutional to do so.

An attendance threshold would impermissibly discriminate against groups like the Temple that hold minority viewpoints and engage in unpopular speech. The Seventh Circuit has held that "in determining access to a forum the criteria considered must be unrelated to the content of the speech and must not have the effect of excluding unpopular or minority viewpoints." *Southworth v. Bd. of Regents of Univ. of Wisconsin Sys.*, 307 F.3d 566, 593 (7th Cir. 2002); *accord Chicago Acorn v. Metro. Pier & Exposition Auth.*, 150 F.3d 695, 701 (7th Cir. 1998) (state agency "may not discriminate in the terms of access to . . . facilities in favor of established parties and popular politicians"). The district may not deny a group access to speak in a limited public forum because the group is unpopular or has a small number of members.

Given the multiple different excuses and the disparate treatment of the religious viewpoints at issue, it is clear that the district has engaged in unconstitutional viewpoint discrimination. The district must treat the Satanic Temple equally to the Good News Club and to all other groups that access the Jane Addams Elementary facility pursuant to the district's facility-use policy. If the district is unwilling to deal with the consequences of unpopular speech in a public forum that it willingly opened, then the district is fully within its rights to close the forum. But it may not discriminate on the basis of viewpoint, as it has done here. We would appreciate a response to this letter by January 12, 2024 that advises us how you plan to proceed.

If you have questions, you may contact Sarah Taitz at (202) 466-3234 or *taitz@au.org*.

Sincerely,

Sarah Taitz

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