

February 11, 2014

via email, facsimile, and regular mail

Wilson High School
Dan Besett, Principal
Shane Sliva, Vice Principal
1202 N. Orchard St.
Tacoma, WA, 98406
dbesett@tacoma.k12.wa.us
ssliva@tacoma.k12.wa.us
Facsimile: 253-571-6162

Re: Violation of students' right to freely promote pro-life group and to plan activities

Dear Principal Besett and Vice Principal Sliva:

We represent Mr. Bryce Asberg, a student at Wilson High School and head of Wilson Students for Life, and Students for Life of America (“SFLA”), a national 501(c)(3) not-for-profit organization based in Manassas, Virginia. SFLA is one of the nation’s most active pro-life organizations and its largest youth pro-life organization. SFLA is the only national pro-life organization dedicated to training and equipping high school, college, medical, and law school students to defend the preborn and raise awareness on campuses.

In Fall of 2013, Mr. Asberg and Wilson Students for Life were denied permission by Wilson High administrators to hold a day of silence, to hold a candlelight vigil, or even to hang certain pro-life posters. The purported reasons for these denials were conveyed to Mr. Asberg in a meeting with administrators at Wilson High School, where he was informed that the group’s desired activities allegedly violate school policies, including the flyer and poster policy:

Acceptable posters do not offend staff or students, put others down if they have a different belief/opinion, or otherwise cause disruption. Posters that promote meetings, service projects, events, are the most common at school.

Based on our review, it appears that other posters hung in the school, including those hung by the Gay Straight Alliance (“GSA”), include messages which could “offend staff or students, put others down if they have a different belief/opinion, or otherwise cause disruption”—such as symbols depicting homosexual unions and criticizing those who don’t agree that this sort of “love” should “have no limits.” Yet these posters were approved by the administration while posters containing a message in favor of the pro-life cause were not permitted. (Please see the attached two sample approved posters and two denied posters.)

Moreover, we understand that Wilson High allows the GSA to hold a “day of silence” yet denies the right to the very same “day of silence” to Wilson Students for Life. We understand that Mr. Asberg was informed that the GSA’s event is deemed by the Administration to be “non-controversial” while the identical Wilson Students for Life event is deemed by the Administration to be “controversial.” Certainly, there is even less reason to ban the group’s candlelight vigil, which would be significantly shorter in duration and far less disruptive to the educational atmosphere of the school than a full day of silence.

Wilson High School’s refusal to treat Wilson Students for Life equally to all other groups constitutes a violation of Mr. Asberg and his fellow club members’ rights under both the federal Equal Access Act and the First Amendment to the United States Constitution.

Under the federal Equal Access Act (“EAA”), it is “unlawful for any public secondary school which receives Federal financial assistance . . . to deny equal access *or a fair opportunity to, or discriminate against*, any students who wish to conduct a meeting . . . on the basis of the religious, political, philosophical, or other content of the speech at such meetings.” 20 U.S.C. § 4071 (emphasis added). More than merely guaranteeing a student group can hold meetings on school grounds, this Act guarantees equal treatment of all extracurricular student groups and equal access to all groups to promote their messages on school grounds.

Schools may not subject a pro-life club to any conditions that do not apply to all other non-curricular clubs. Placing requirements on the posters, leaflets, or announcements of a pro-life group that differ from those for other groups is unlawful differential treatment. *See Straights & Gays v. Osseo Area Schools - District No. 279*, 540 F.3d 911, 912 (8th Cir. 2008) (upholding a permanent injunction which granted the group “the same access for meetings, avenues of communication, and other miscellaneous rights that are afforded” by the school to other groups); *Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2002) (holding that all non-curricular student groups must be given equal access, particularly noting that all groups must be given equal access to the bulletin boards).

Furthermore, an “undifferentiated fear or apprehension of disturbance” is not a ground for silencing student speech. *Tinker v. Des Moines Independent Sch. Dist.*, 393 U.S. 503, 508 (1969). School authorities may not silence student expression unless they reasonably forecast, based on evidence and not vague fears, that the student expression would lead to either a substantial disruption of the school environment or an invasion of the rights of others. *Id.* at 512.

The school may not engage in viewpoint discrimination by concluding that certain messages are “inherently disruptive” and therefore should be silenced. *Chandler v. McMinnville Sch. Dist.*, 978 F.2d 524, 530-31 (9th Cir. 1992). More than that, even significant disruption in the community or school is not enough to justify squelching the group, as long as the group members are not themselves causing the disruption. *Boyd County High School Gay/Straight Alliance*, 258 F. Supp. 2d 667 (rallies with thousands of people and a boycott by half the student body were not sufficient disruption to silence student group). Wilson High School’s undifferentiated fear that putting up posters, holding a candlelight vigil, or chalking the sidewalks will cause other members of the school community to cause a disruption is not a constitutionally permissible reason to silence this group’s message.

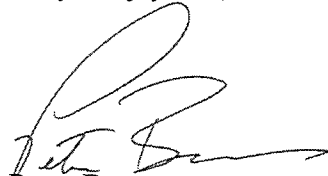
Additionally, the school's policy, which permits the person responsible for approving posters to discriminate based on whether he or she personally feels the message would "offend" or "put others down" is unconstitutional viewpoint discrimination, as there is no compelling reason for the school to have such a policy. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 55 (1983) (holding that the government must advance a compelling interest to restrict speech on the basis of viewpoint). The official responsible for this decision holds unfettered discretion to determine what is and what is not permissible—based solely on his or her own private value system. The Supreme Court has strongly spoken against such limitless discretion over speech in similar contexts. *Shuttlesworth v. Birmingham*, 394 U.S. 147 (1969) (holding a permit scheme for public assemblies unconstitutional because it gave "unfettered discretion" to the official granting the permit).

Discussion of controversial topics and distribution of material relating to political issues in public high schools are not prohibited. Instead, students have the "undoubted freedom to advocate unpopular and controversial views in schools and classrooms," balanced only against society's countervailing interest in teaching students the boundaries of socially appropriate behavior. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986).

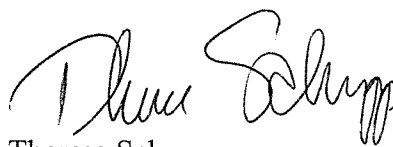
Please reverse your Administration's opposition to the requests of Mr. Asberg and his fellow club members to post flyers, hold a day of silence, hold a candlelight vigil, chalk the sidewalks, and otherwise publicize and run Wilson Students for Life on the same terms as any other club at Wilson High. Should Wilson High School persist in its violation of the EAA and the group's First Amendment rights, we are prepared to pursue the matter in court.

We respectfully request that you respond to this demand within two weeks, by February 25, 2014. Thank you for your attention to this matter.

Very truly yours,



Peter Breen
Vice President & Legal Counsel
Thomas More Society



Theresa Schrempp
co-counsel for Mr. Asberg
Sonkin and Schrempp, PLLC



Love
knows no
Limits.

WILSON
GSA

City Budget Alliance

FIRST MEETINGS WILL BE
MONDAY 11/13
ROOM 105
2:15-3:00

WILSON

GSA

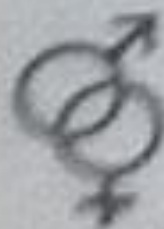
(Gay Straight Alliance)

FIRST MEETING WILL BE

MONDAY 11/18

ROOM 105

2:15-3:00



SINCE
Roe v. Wade
1/3 of **our**
GENERATION
has been **ABORTED.**



I'VE NOTICED
THAT EVERYONE
WHO IS FOR
ABORTION
IS ALREADY
Born.

Ronald Reagan

-RR-

STUDENTSFORLIFE.ORG