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JAMES N. RODBARD

January 12, 2009

Robert Black, Superintendent
South Haven Public Schools
554 Green Street
South Haven, MI 49090

RE: Unlawful Proselytizing in the South Haven Public Schools

Dear Mr. Black:

I am cooperating counsel for the American Civil Liberties Union of Michigan (the "ACLU") on behalf of a family that had a student attending South Haven High School. The family contacted the ACLU in connection with problems its student has with Mr. Dubbink, an outside volunteer/lunch room assistant, who is also a youth minister at the Hope Reform Church in South Haven.

My client advises us that Mr. Dubbink has been permitted by South Haven Schools to come to the middle and high school during classroom hours and solicit students to participate in religious activities through the Hope Reform Church. We are extremely troubled not only by the fact that the South Haven Schools are allowing select ministers to proselytize during school hours, but also that some school administrators are actively participating in these unconstitutional activities.

For example, my client has learned that on one occasion last spring, Mr. Dubbink, with the assistance of South Haven High School Assistant Principal Gumpert, attempted to force a student to pay for a church-based retreat after the student failed to attend the event. Reportedly, Mr. Gumpert and Mr. Dubbink forced the student into a room at school, and pressured the student to explain why the student chose not to attend the event and when the Church would be reimbursed approximately \$90.00. Apart from the patently unlawful conduct of Mr. Gumpert and Mr. Dubbink, the student's parents were apparently never even notified that Mr. Dubbink had signed the student up for the trip.

We urge you take immediate action to assure that all students' constitutional rights are protected by putting an end to the unlawful practice of permitting and/or encouraging religious leaders to proselytize students at South Haven Schools. As we are sure you are aware, public schools must

remain neutral when it comes to matters of religious instruction. They cannot promote one faith over another nor can they promote religion over non-religion. While schools may certainly teach about religion in comparative religion, history or literature classes, the government officials such as teachers and school volunteers must take care not to proselytize students. Decisions about students' religious education are better left to the parents and their clergy outside of the public school setting.

The courts have uniformly rejected attempts by school officials, volunteers or guests to proselytize in school during school hours or at school events. For example, in the landmark case of *Lee v. Weisman*, 505 U.S. 577 (1992), the U.S. Supreme Court held that public schools could not constitutionally invite a member of the clergy to deliver a prayer at high-school graduation ceremony. The Court made clear that a school may not coerce, subtlety or otherwise to support or participate in religion or its exercise. Similarly, in *Doe v. Porter*, 370 F.3d 558 (6th Cir. 2004), a school district was prohibited from permitting volunteer instructors from local Christian college to conduct Bible Education Ministry classes, which taught the Bible as truth, at elementary schools during school day. The U.S. Court of Appeals held that

... the practices challenged in this action resemble paradigmatic cases of unconstitutional entanglement. See *Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 209-10, 68 S.Ct. 461, 92 L.Ed. 649 (1948) ("[T]he use of tax-supported property for religious instruction and ***the close cooperation between the school authorities and the religious council in promoting religious education ... falls squarely under the ban of the First Amendment.***"); *Doe v. Human*, 725 F.Supp. 1503, 1504-1506, 1508 (W.D.Ark.1989) (relying on *McCollum* to invalidate a program in which Catholic, Jewish and Protestant instructors came into classrooms during school hours to teach bible classes), *aff'd.*, 923 F.2d 857 (8th Cir.1990), *cert. denied*, 499 U.S. 922, 111 S.Ct. 1315, 113 L.Ed.2d 248 (1991).

370 F.3d at 564 (emphasis added).

See also *Doe v. Human*, 725 F. Supp. 1503 (W. D. Ark. 1989) (School district could not permit community volunteers, even though they were "lay people" rather than clergy, to teach on-campus Bible class during regular school hours.); *Wiley v. Franklin*, 468 F. Supp. 133 (D.C. Tenn. 1979) (School district could not permit representatives from local "Bible Study Committee," a voluntary citizen organization that raised funds for the payment of Bible teachers, sponsors teacher selections and assignments, prepared the Bible study curricula, and conducted teacher training courses – to teach Bible classes to elementary-school students on campus during the school day.); *Peck v. Upshur*, 155 F.3d 274 (4th Cir. 1998) (enjoining distribution of Bibles and other religious literature at District elementary schools and the sponsorship or endorsement by the school; barring individuals from entering classrooms to announce the availability of religious material, or encouraging or pressuring students to take religious materials).

The Establishment Clause of the First Amendment bars schools from proselytizing students indirectly as well as directly. See *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 77-78 (1990) ("What the First Amendment precludes the government from commanding directly, it also precludes the government from accomplishing indirectly."); *Norwood v. Harrison*, 413 U.S. 455, 465 (1973)

("It is also axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish."); *Nat'l Black Police Ass'n, Inc. v. Velde*, 712 F.2d 569, 580 (D. D.C. 1983) ("Activities that the federal government could not constitutionally participate in directly cannot be supported indirectly through the provision of support for other persons engaged in such activity.")

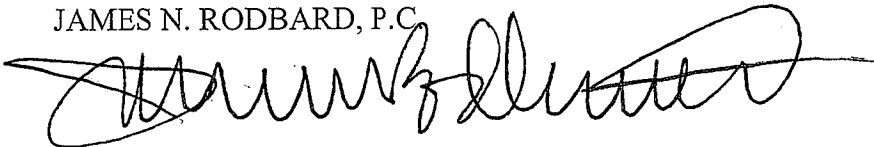
I do not know whether you authorized Mr. Dubbink's religious activities at South Haven High School or whether you were aware of the extent of his proselytizing with the apparent authorization and blessing of high school administrators. In any event, Mr. Dubbink and any other school volunteers should immediately cease and desist proselytizing and recruiting students to participate in Hope Reform Church activities while they are on school premises during the school day.

Such activities directly violate my clients' religious freedom rights under the United States Constitution and the rights of parents to determine their child's religious activities.

I look forward to hearing from you as soon as possible to learn what the South Haven Public Schools intends to do about this matter. Feel free to contact me, or have the school district's counsel contact me, at your earliest convenience. It is our desire to resolve this matter amicably and without the need for litigation.

Very truly yours,

JAMES N. RODBARD, P.C.

A handwritten signature in black ink, appearing to read 'James N. Rodbard', written over a horizontal line.

James N. Rodbard

JNR/dld

cc: Client
Michael J. Steinberg, Legal Director, ACLU of Michigan
School Board Members
Shane Peters, South Haven High School Principal