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SENT VIA EMAIL AND U.S. MAIL

Re: *Government funding of a religious organization*

Dear Director Mattson:

Alliance Defending Freedom (ADF) is dedicated to defending and advocating for religious freedom and other fundamental rights so that churches and other religious organizations may freely exercise their religion.

Recently, it has come to our attention that Freedom From Religion Foundation (FFRF), on behalf of a local taxpayer, has alleged that Yakima County (County) violated the taxpayer's constitutional rights as a result of providing a grant to Transform Yakima Together (TYT) for the operation of its homeless shelter (Camp Hope).

This information letter analyzes whether the County's grant to TYT violates a local taxpayer's rights under the First Amendment and applicable case law. It is our opinion that there is no constitutional violation of the taxpayer's rights, and on the other hand, a constitutional violation would arise if the County was to deny TYT the grant solely on the basis that it is a religious organization.

I. No Constitutional Violation of Taxpayer's Rights

FFRF contends that the County's grant violates the local taxpayer's rights under the Establishment Clause. FFRF first argues that the County funds are being used directly by TYT to promote religion and advance the church's evangelical mission which violates the taxpayer's rights under the Establishment Clause. We disagree with FFRF's contention.

FFRF cites *Locke*¹ to back its first argument. In *Locke*, the Court upheld a state’s decision not to fund degrees in devotional theology as part of a state scholarship program.² The state’s scholarship program was upheld because the student sought funding for an “essentially religious endeavor.”³ Here, TYT has not used any of its governmental funding to finance religious activities or for an “essentially religious endeavor.” As evidence, the “Homeless Shelter Plan” which governs Camp Hope, does not reference any religious purpose or mission.⁴ Instead, the main purpose of Camp Hope is to “provid[e] unsheltered individuals with a safe, accommodating, and well-managed facility [to] create relief for downtown businesses, ...public spaces such as sidewalks so that these places may be used for their intended purposes.”⁵ Moreover, Camp Hope clearly plans to accomplish this purpose by “provid[ing] coordination of a shelter, meals, and basic needs assistance to homeless individuals and families...”⁶ The “Homeless Shelter Plan” never references religion and there is no evidence that the funding is being used for an “essentially religious endeavor.”

Importantly, the scholarship program in *Locke* did allow the student to use the scholarship to attend a religious school.⁷ This was in alignment with the court in *Nyquist* which stated, “Not every law that confers an ‘indirect,’ ‘remote,’ or ‘incidental’ benefit upon [religion] is, for that reason alone, constitutionally invalid.”⁸ Here, there may be some religious activities that take place at Camp Hope. However, any religious activities are offered by volunteers and are not in any way funded by the government. Therefore, FFRF’s conclusion that the government is funding religious activities is incorrect.

FFRF also argues that it is unconstitutional for Camp Hope to permit any religious activities even if they are voluntary. ADF disagrees.

In the recent *Trinity Lutheran Church* case, which ADF successfully litigated, the church applied for a state grant in order to resurface the playground of its religious preschool, but was denied solely because of its religious status.⁹ The Court held that the state violated the church’s Free Exercise rights under the First Amendment by denying it a public benefit on the sole basis that it is a religious organization.¹⁰ In other words, a state grant to a church for the purpose of resurfacing its playground is not an advancement of religion. Surely, in coming to its conclusion, the Supreme Court of the United States considered that religious activities and discussions would occur on the playground and campus given the preschool’s religious nature and age of the students.

¹ *Locke v. Davey*, 124 U.S. 1307 (2004).

² *Id.*

³ *Id.* at 1313.

⁴ See Homeless Shelter Plan, <http://www.transformyakima.com/teams/ministries-services/homeless-shelter-plan/>.

⁵ *Id.*

⁶ *Id.*

⁷ *Locke*, 124 U.S. at 1308.

⁸ *Comm. For Pub. Ed. & Religious Liberty v. Nyquist*, 413 U.S. 756, 771 (1973).

⁹ *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2015 (2017).

¹⁰ *Id.* at 2025.

Here, County funding received by TYT is clearly being used for the secular purpose of running the homeless shelter which is open to religious and non-religious individuals on an equal basis. Given the Court's ruling in *Trinity Lutheran Church*, it follows that religious activities offered by volunteers, coupled with the fact that participation of "camp attendees" is purely voluntary, does not render the County funding unconstitutional under the Establishment Clause of the First Amendment.

II. Constitutional Violation of TYT's First Amendment Rights

FFRF seems to be attempting to deter the County from considering TYT and other religious institutions for future grants. However, denying TYT or any other religious organization "... a generally available benefit solely on the account of religious identity imposes a penalty on the free exercise of religion."¹¹ In *Trinity Lutheran Church*, the church did not claim any entitlement to a subsidy, rather it asserted its right to participate in a government benefit program without having to disavow its religious character.¹² The government subsequently denied the church a grant it would have otherwise qualified for on the sole basis that it was a church. The Court held that the government violated the church's Free Exercise rights under the First Amendment by denying it a public benefit on the sole basis that it was a religious organization.¹³ As a result of this recent Supreme Court ruling, it is clear that the County would violate TYT's rights if the County were to deny it an otherwise available public benefit because it is a religious organization.

Conclusion

The County has not violated the local taxpayer's constitutional rights by providing TYT funding. However, if the County were to deny future public benefits to TYT and other religious organizations that would be otherwise available to them, such a denial would be a clear violation of their First Amendment rights.

Sincerely,



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¹¹ *Id.* at 2015.

¹² *Id.* at 2022.

¹³ *Id.* at 2025.