

**HEMMER
■ DEFRANK
■ WESSELS**
ATTORNEYS AT LAW

Todd V. McMurtry
tvmurtry@HemmerLaw.com

Kyle M. Winslow
kwinslow@HemmerLaw.com

October 13, 2015

Via Certified Mail and Email

Larry A. Ryle High School
Matthew Turner, Principal
10379 U.S. Highway 42
Union, Kentucky 41091
Email: Matthew.Turner@boone.kyschools.us

**Re: *Violation of Student's Rights under the First Amendment of the
United States Constitution and Equal Access Act at Larry A.
Ryle High School***

Dear Mr. Turner:

Please be advised that our firm represents Patrick Edwards, a senior at Larry A. Ryle High School ("Ryle") and president of the student group Ryle Students for Life ("Students for Life"); and Students for Life of America ("SFLA"), a national 501(c)(3) not-for-profit organization based in Spotsylvania, Virginia. SFLA is one of the nation's most active pro-life organizations and the largest youth pro-life organization. It is the only national pro-life organization dedicated to training and equipping high school, college, medical and law students to defend the preborn and raise awareness on school campuses.

We write to advise you that you have and continue to violate Patrick's rights under the First Amendment to the United States Constitution and the federal Equal Access Act by banning him from placing posters at Ryle related to Students for Life.

FACTUAL BACKGROUND

As you know, on or around August 14, 2015, you asked Patrick to meet with you to discuss problems you had with posters displayed by Students for Life at Ryle's freshman orientation. You expressed concern with the language contained in the

HEMMER DEFRANK WESSELS PLLC

250 GRANDVIEW DRIVE, SUITE 500, FT. MITCHELL KY 41017-5649 ■ PHONE 859.344.1188 ■ FAX 859.578.3869

October 13, 2015

Page 2

posters, stating that freshmen are a “captive audience” and that students had a right to attend Ryle without “being forced into the conversation.” You demanded that from that point forward, the Students for Life must submit all posters to you for your approval prior to posting them on Ryle’s campus. Further, you restricted the content of Students for Life’s posters to only offering information about the time and place of the club’s meetings.

On August 26, 2015, Patrick requested another meeting with you to discuss your basis for censoring his club. In this second meeting, you clarified your reasons for discriminating against Students for Life. You indicated that the club received higher scrutiny due to its “controversial nature.” You also admonished Patrick that “students have a right to not participate or be exposed to the abortion issue” and that you “did not want a pregnant mother or pro-choice student to feel discriminated against.” Finally, after receiving seven posters for your review, you denied six of them (the “Banned Posters”) by noting your disapproval on a post-it note with the following statement: signs are to communicate information about meetings, not to promote or persuade.¹

At the same time you chose to censor Students for Life, however, you allowed dozens of other student posters to be freely displayed in the high school, including numerous posters of student council candidates and several posters for the Speech and Debate Club. Some of these posters are attached and are plainly exempt from the restrictions imposed on Students for Life.

LEGAL ANALYSIS

The First Amendment to the United States Constitution

Your discrimination against Students for Life and denial of the posters based on the viewpoint expressed in these posters constitutes a violation of Patrick’s rights under the First Amendment to the United States Constitution. In *Tinker v. Des Moines Indep Cmty. Sch. Dist.*, the Supreme Court of the United States affirmed the foundational principle that students “do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”² Under *Tinker*, Ryle may not censor Patrick’s speech absent a showing that it is likely to cause a “material and substantial interference” with the school environment, something that Ryle cannot do.³ “*Tinker* warned that schools may not prohibit student speech because of undifferentiated fear or apprehension of disturbance or a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”⁴ It is also well settled that the government may not discriminate against the viewpoints of one student group when other students are permitted to display posters with different messages and viewpoints of their own choosing in the same time, place, and manner.⁵

¹ See copies of the denied posters with your post-it note enclosed.

² 393 U.S. 503, 506 (1969).

³ *Id.* at 511.

⁴ *Morse v. Frederick*, 551 U.S. 393, 408 (2007).

⁵ *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995) “In the realm of private speech or expression, government regulation may not favor one speaker over another”); *Good*

Here, you banned Patrick's expression based solely upon its specific message and viewpoint without any evidence that the message would create a material and substantial disruption at school. Indeed, the discrimination is made all the more evident by the fact that you approved one of Patrick's posters while censoring the others based on your subjective opinion that the Banned Posters were too controversial. In factually similar circumstances, courts have routinely ruled against schools that engage in such censorship. For example, in *Burch v. Barker*, the Ninth Circuit Court of Appeals struck down a policy that gave school officials broad discretion to censor students' written materials, including "expression attacking or promoting discrimination against ethnic, religious, social or handicapped groups or females and males as a group."⁶ A group of students who had distributed an unauthorized student-written newspaper were reprimanded after teachers complained that they were "emotionally upset" by the contents of the paper, including articles that had "mocked" the teachers. Finding that the distribution "caused no violence or physical damage, nor did it interfere with classes,"⁷ the court held that "a policy which subjects all non-school-sponsored communications to predistribution review for content censorship violates the first amendment."⁸ By censoring Patrick's speech due to the "controversial nature" of the pro-life views expressed in the posters, you clearly violated his First Amendment rights.

The Equal Access Act

Your actions also violated Patrick's rights under the federal Equal Access Act ("EAA"). Under the EAA, it is "unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum 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."⁹ A public secondary school has a limited open forum "whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time." Simply put, once the limited open forum is open to one non-curricular club, then *all* non-curricular clubs must be treated equally, even if the clubs they wish to form are religious or political.

Under this standard, Ryle has opened its club forum to many non-curricular clubs. As such, Ryle may not subject a pro-life club to any conditions that do not apply to all other non-curricular clubs. Yet, you did this by placing different requirements on Students for Life's posters than on other groups' posters. Your actions constitute unlawful differential treatment under the EAA.

News/Good Sports Club v. Sch. Dist. Of City of Ladue, 28 F.3d 1501, 1505-1507 (8th Cir. 1994) (ban on religious expression by student club in junior high school is unconstitutional where student secular expression was allowed).

⁶ 861 F.2d 1149, 1151 (9th Cir. 1988).

⁷ *Id.*

⁸ *Id.*

⁹ 20 U.S.C. § 4071.

October 13, 2015
Page 4

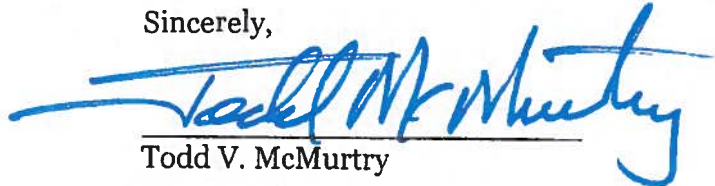
DEMAND

On Wednesday, October 7, Patrick emailed you in a final attempt to resolve this issue without involving his attorneys. However, you refused to respond to his request that you reconsider your decision to censor his club.

Based on your actions, we have advised our clients of their right to seek relief in court. However, we prefer to resolve this matter amicably. To that end, if you share our desire, please inform us in writing by 5:00 p.m. on Tuesday, October 20, 2015, with written assurance that the Ryle Students for Life club will immediately be permitted to hang their posters containing a pro-life message, including but not limited to, the Banned Posters, in the same areas as other student groups. If we do not receive a response by the requested date, we will move forward with litigation to protect the fundamental rights of students at Ryle High School.

We look forward to hearing from you with your cooperation.

Sincerely,



Todd V. McMurtry



Kyle M. Winslow

Enclosures

cc: Patrick Edwards

Kristina Hernandez
Students for Life of America
9900 Courthouse Road
Spotsylvania, Virginia 22553

J. Matthew Sharp
Alliance Defending Freedom
1000 Hurricane Shoals Road NE
Suite D-1100
Lawrenceville, Georgia 30043

October 13, 2015

Page 5

Dr. Randy Poe, Superintendent

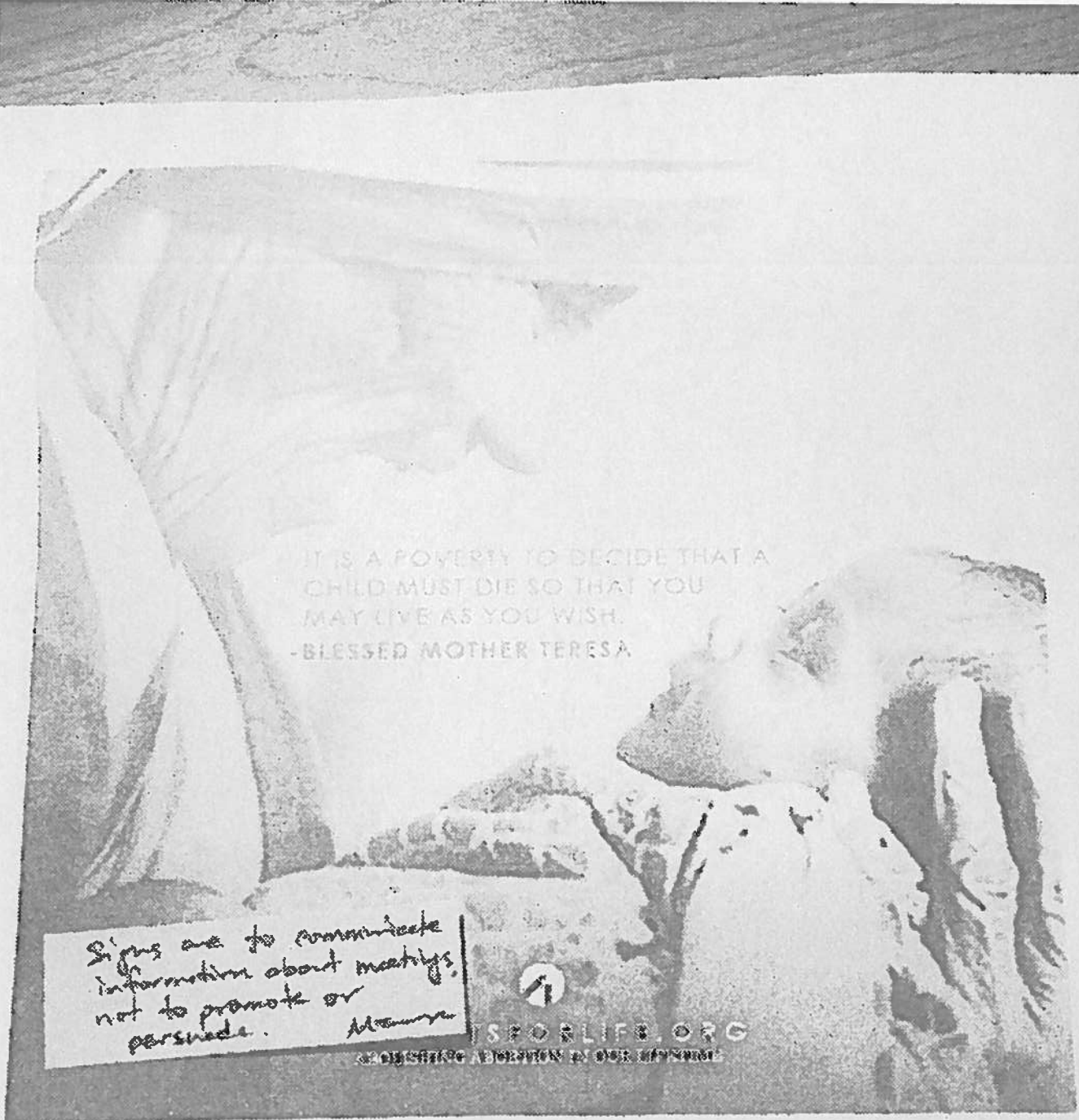
Ed Massey, Division 1

Dr. Maria Brown, Division 2

Steve Templeton, Division 3

Bonnie Rickert, Division 4

Karen Byrd, Division 5



IT IS A POVERTY TO DECIDE THAT A
CHILD MUST DIE SO THAT YOU
MAY LIVE AS YOU WISH.
-BLESSED MOTHER TERESA

Signs are to communicate
information about meetings,
not to promote or
persuade. *M. L.*



ISFORLIFE.ORG

© 2000 RYLE STUDENTS FOR LIFE. ALL RIGHTS RESERVED.

Ryle Students for Life

Meeting Every Friday, Mrs. Edmonds' Room 218

Pizza, Drinks, & Cupcakes



Ryle Students for Life

Meeting Every Friday, Mrs. Edmonds' Room 218

Pizza, Drinks, & Cupcakes



SAVE
the
BABY HUMANS



Ryle Students for **Life**

Meeting Every Friday, Mrs. Edmonds' Room 218

Pizza, Drinks, & Cupcakes



STEVE JOBS

"I WANTED TO MEET MY BIOLOGICAL
MOTHER MOSTLY TO SEE IF SHE WAS
OKAY AND TO THANK HER, BECAUSE
I'M GLAD I DIDN'T END UP AS AN
ABORTION."



STUDENTSFORLIFE.ORG
ABOLISHING ABORTION IN OUR LIFETIME

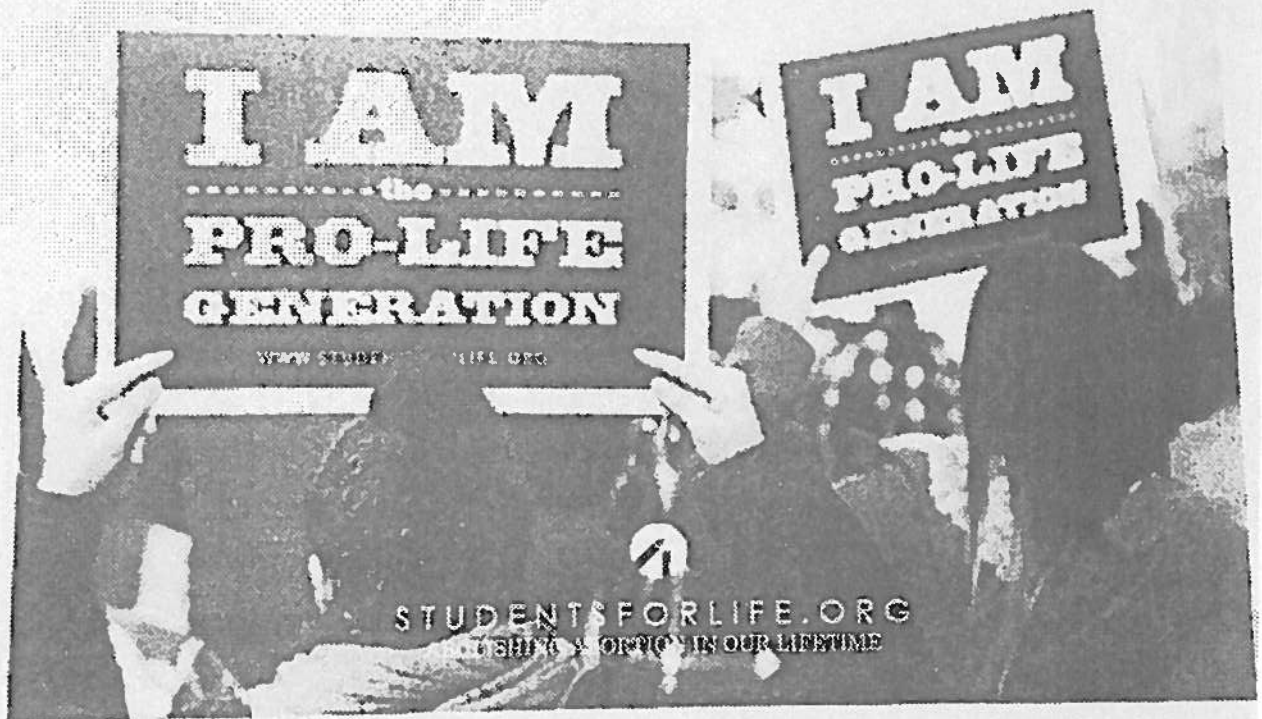
Ryle Students for Life

Meeting Every Friday, Mrs. Edmonds' Room 218

Pizza, Drinks, & Cupcakes

WE ARE NOT COUNTER-CULTURAL.
WE ARE NOT THE MINORITY.
WE ARE NOT LOSING.

[WE ARE THE #PROLIFGEN. AND *WE ARE WINNING!*]



Ryle Students for Life

Meeting Every Friday, Mrs. Edmonds' Room 218

Pizza, Drinks, & Cupcakes

FOR UNTIL ME A MAN CHILD WOULD BE BORN
UNDER THIS CRAZY CIRCUMSTANCE
I KNEW HIS LIFE DESERVED A CHANCE
BUT EVERYBODY TOLD ME TO BE SMART
LOOK AT YOUR CAREER THEY SAID
LAURYN BABY USE YOUR HEAD
BUT ISTEAD I CHOSE TO USE MY HEART

- LAURYN HILL,
NO ZION



Ryle Students for Life

Meeting Every Friday, Mrs. Edmonds' Room 218

Pizza, Drinks, & Cupcakes

Bible Study Club

Meets every day after school in room 234

Everyone is welcome to attend!!

IN CASSIDY WE TRUST

VOTE SELMA CARRIC FOR JUNIOR CLASS PRESIDENT!!

PLZ...MY MOM KEEPS TELLING HER FACEBOOK FRIENDS THAT I WON...

JOIN FOC LA

AUG. 31st - SEPT. 11th

ROOMS: 213, 214 & 216

Membership Fees:
\$15 Without Shirt
\$20 With Shirt

I for JU

9/14/15 9

50 RETW

Zach

OH SN

Joelly



RHS CLASS '17
@RyleeHS_17

I am voting Zach Wriedt
for Junior board Vice President!
9/14/15 9:00 AM
50 RETWEETS 300 FAVORITES

Zach Wriedt @ZWriedt
@Mc next time
9/19/15

You do
plan on
Maggie W
for secret



OH SNAP

Joelyn

needs to be
junior board
secretary!

Snap!

#VoteForRoberts



JUST DO IT

#PREZ



Come support
Rylee High School's
FMD classroom!
Eat at Skyline this
Thursday,
September 10th
3p - 9p

Along the way, we will discuss the best way to support our



Vote Brianna for Student



She'll keep you on the edge

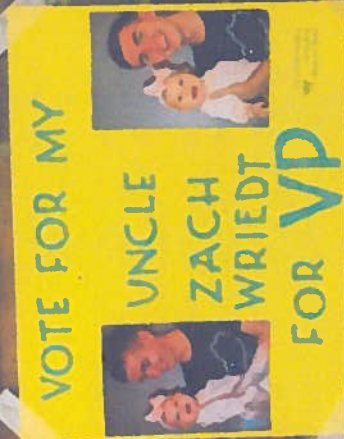
JOELYN IS THE BEST CANDIDATE 4 SECRETARY

WRIEDT IS THE PURRFECT CHOICE FOR VICE PRESIDENT

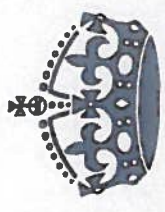
I M the Missing Piece
Vote Maura
Junior Class Treasurer



DONT BE A DWIGHT
Vote for Hannah
#PREZ2015



High School
10379 US
DIVISION, KY 41021



**KEEP
CALM
AND
VOTE
KLAAS**

For Secretary