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— DEFENSE FUND —

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July 9, 2018

Via Email

The Board of Directors
Seattle Public Schools
2445 3rd Ave. S.
Seattle, WA 98134

Re: CAIR – Washington State

Dear Members of the Board:

The Freedom of Conscience Defense Fund is a non-profit law firm that defends religious liberty through litigation and education. I write regarding Seattle Public Schools' engagement with the Council on American-Islamic Relations (CAIR) to address anti-Muslim bullying and so-called "Islamophobia."

As I explain below, any public school policy that discriminates in favor of Muslim students or enables CAIR to advance its sectarian agenda in the District would violate both the state and federal constitutions. Further, by working with CAIR, you are entangling the District with a radical sectarian syndicate. Indeed, the United Arab Emirates has designated CAIR as a terrorist organization, and the United States government has identified it as a Muslim Brotherhood front group. Should you continue in these efforts, you risk embroiling the District in both costly litigation and scrutiny from local and national media.

To conclude, we applaud the Board's efforts to protect the safety and wellbeing of the students entrusted to your care, including Muslim students. But we urge you to review and reconsider any District policy that classifies on the basis of religion or empowers outside sectarian organizations to advance their religious agendas in the classrooms. And contrary to what CAIR will no doubt contend, this letter is not motivated by anti-Muslim bigotry but by a sincere belief that all students deserve equal attention, regardless of race or religion. Therefore, we hope you will keep an open mind.

Respectfully,



Daniel J. Piedra, J.D.
Executive Director
Freedom of Conscience Defense Fund

REPORT & RECOMMENDATION

1. Introduction

Seattle Public Schools is a mosaic of diverse cultures and backgrounds. Students from over 145 countries pass through the schoolhouse gates each day, and over 120 languages fill the classrooms, cafeterias, and hallways. As the Board acknowledged last year, “our nation’s and District’s diversity is our greatest strength.” This rich diversity reaffirms the longstanding belief that America is a nation of immigrants, not separated by race or creed but united under the inalienable rights enshrined in our Constitution. One of these rights is equal protection under the law. The Board clearly recognizes this, because it has taken significant steps in recent years to ensure the “provision of safe, welcoming, and inclusive schools for all students without regard to race, religion, national origin, or immigration status.”¹

Despite this commitment to equal protection, however, the District has engaged with CAIR, an Islamic advocacy organization, to adopt and implement programs that focus on Muslim students and addressing “Islamophobia.” In doing so, the District is violating a fundamental First Amendment principle that government cannot “pass laws which aid one religion” or “prefer one religion over another.” *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947). And by collaborating with CAIR, the District is violating the longheld mandate that “[g]overnment may neither promote nor affiliate itself with any religious doctrine or organization.” *Lee v. Weisman*, 505 U.S. 577, 599 (1992) (Blackmun, J., concurring).

To be sure, a school board has a tremendous responsibility to maintain a learning community where all students feel safe and respected, regardless of race or religion. But those responsibilities “must be exercised in a manner that comports with the transcendent imperatives of the First Amendment.” *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 870 (1982). Regrettably, the District’s current course of action is failing to uphold these imperatives.

2. The State and Federal Constitutions Forbid Religious Favoritism.

Washington State. Washington’s constitution declares that public schools “shall forever be free from sectarian influence,” Wash. Const. art. IX, § 4, and that no public money shall be applied to any religious institution or to support any religious establishment. Wash. Const. art. I, § 11. These prohibitions are broad: they do not merely prohibit the State from establishing an official church; they prohibit public funds from supporting *any influence* or *exercise* stemming from a religion. Thus, the Washington Supreme Court has consistently struck down across a broad spectrum both direct *and* indirect support of religion.

Here, the District has crossed the bright line that separates the permissible from the permissible. First, the District discriminates in favor of Muslim students when it expends additional time and resources for exclusive accommodations, advantages, and privileges. No doubt the District may offer

¹ *Resolution Affirming the Provision of Safe, Welcoming, & Inclusive Schools for All Students Without Regard to Race, Religion, National Origin, or Immigration Status*, Seattle School District #1 Board Resolution, Seattle Public Schools Board of Directors (Feb. 15, 2017).

religious accommodations; in fact, they are sometimes required to do so. *See Malyon v. Pierce Cty.*, 131 Wash. 2d 779, 805 (1997). But here the District has singled out one religious denomination for special treatment, placing its imprimatur on the religious views of one sect to the exclusion of others. Likewise, the District's enforcement authority to combat "Islamophobia" confers a substantial benefit on Muslims and not on students of other religious faiths. Taken together, the District is impermissibly supporting religion.

Second, CAIR is using the District's efforts about Muslim bullying as a platform to advance its sectarian agenda. *See Malyon v. Pierce Cty.*, 131 Wash. 2d 779, 816–17 (1997) (Dolliver, J., dissenting). CAIR's objective in its public school programs is to indoctrinate students and create a religious educational environment. Even if CAIR did not explicitly talk about Islam, even *de minimis* use of taxpayer money to help CAIR advance its religious purpose is unconstitutional. To the extent the District's objective is protecting all students from bullying and discrimination, singling out a particular religious group for distinctive treatment is fundamentally opposed to that end and at odds with the state constitution.

First Amendment. The United States Supreme Court "has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools." *Edwards v. Aguillard*, 482 U.S. 578, 583–84 (1987). That is because children and their parents have a right to receive a public education that does not threaten their First Amendment rights. *See Sch. Dist. of Abington Township v. Schempp*, 374 U.S. 203, 224 n. 9 (1963). To guard against this threat, the First Amendment mandates a public school district to maintain "a course of neutrality among religions, and between religion and nonreligion." *See Bowen v. Kendrick*, 487 U.S. 589, 607 (1988). If a school district favors a particular religious group, it sends a message to students who are nonadherents that they are outsiders, not full members of the school community. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000). Likewise, it sends a message to adherents that they are insiders, the favored student class. *See id.*

Granting Muslim students preferential treatment creates a clear perception of government endorsement of religion, and it enables CAIR to advance its sectarian agenda in the District. Thus, a District policy that singles out Muslim students for special benefits—no matter how benign—makes a clear statement that it favors one religion over another or religion to nonreligion. Moreover, by exclusively collaborating with CAIR, the District is conveying the unmistakable message that representatives from Islam are favored over other religious organizations. This endorsement cannot possibly be lost on the impressionable schoolchildren entrusted to the Board's care.

In the final analysis, the core purpose of the First Amendment is to protect citizens from government preference for one religion. And nowhere is this more important than in our public schools. There can be no serious question that collaborating with CAIR to "address Islamophobia" overtly advances religion by granting preferential status to Muslims. By doing so, the District strikes at "a principle at the heart of the Establishment Clause, that government should not prefer one religion to another, or religion to irreligion." *Bd. of Ed. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 703 (1994).

3. The Council on American-Islamic Relations: Divisive & Dangerous

“In no activity of the State is it more vital to keep out divisive forces than in its schools.” *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987). CAIR identifies itself as America’s largest Muslim civil liberties organization. In keeping with its religious identity, CAIR “believes the active practice of Islam strengthens the social and religious fabric of our nation.”² As CAIR’s founder, Omar Ahmad said:

Islam isn’t in America to be equal to any other faith, but to become dominant. The Koran, the Muslim book of scripture, should be the highest authority in America, and Islam the only accepted religion on Earth.³

More alarming, Ibrahim Hooper, CAIR’s Director of Strategic Communications, said:

I wouldn’t want to create the impression that I wouldn’t like the government of the United States to be Islamic sometime in the future. But I’m not going to do anything violent to promote that. I’m going to do it through education.⁴

To that end, CAIR has chosen public schools as ground zero to advance its religious mission. Nihad Awad, CAIR’s National Executive Director, testified that “informing the American public about the Islamic faith is a religious obligation,” and the purpose of its “Islamophobia” public school programs is to “create a religious educational environment.”⁵

Despite its appearance as a mainstream, social justice organization, CAIR is notorious in public policy and national security circles for its ties to Islamic supremacism, including its founding by the Muslim Brotherhood and Hamas.⁶ These facts are not anti-Muslim conspiracy theories. Indeed:

- Federal prosecutors have acknowledged that Muslim Brotherhood leaders founded CAIR and that it has conspired with Muslim Brotherhood affiliates to support terrorists.⁷
- In 2007, federal prosecutors named CAIR as an unindicted co-conspirator with the Holy Land Foundation for Relief and Development and five of its leaders for materially

² *About Us*, Council on American-Islamic Relations, <https://goo.gl/bAKXTR>.

³ “American Muslim leader urges faithful to spread Islam’s message” *San Ramon Valley Herald* (July 4, 1998).

⁴ Lou Gelfran, “Reader Says Use of ‘Fundamentalist’ Hurting Muslims,” *Minneapolis Star Tribune* (April 4, 1993).

⁵ *CAIR-Foundation, Inc. d/b/a Council on American-Islamic Relations*, Case 05-RC-186732 (N.L.R.B. Apr. 7, 2017) (decision and direction of election).

⁶ On October 8, 1997, the United States Department of State designated Hamas as a foreign terrorist organization under the Immigration and Nationality Act of 1965 § 219, 8 U.S.C. § 1189 (2013). *See* Designation of Foreign Terrorist Organizations, 62 Fed. Reg. 52650-01 (Oct. 8, 1997).

⁷ *See* Opp’n to CAIR’s Mot. for Leave to File a Br., etc., *United States v. Holy Land Found. for Relief and Dev.*, Cr. No. 3:04-CR-240-G, 2007 WL 2011319 (N.D. Tex. September 4, 2007), available at <https://goo.gl/MxXoBA>.

supporting Hamas.⁸ Among those convicted in the Holy Land Foundation trial was Ghassan Elashi, the founder of CAIR's Dallas chapter.⁹

- In 2008, the FBI ended formal contact with CAIR because of its ties to terrorism.¹⁰
- In 2014, the United Arab Emirates, as part of a federal law to combat extremism, designated CAIR as a terrorist organization.¹¹

Although CAIR asserts that it is the voice of American Muslims, that claim is undercut by its isolated status within the Muslim community. For example:

- In a 2011 Gallup poll, only 12% of American Muslims surveyed said that CAIR represents their interests.¹²
- Dr. Zuhdi Jasser, founder of the progressive American Islamic Forum for Democracy, stated: "CAIR is a primary obstacle in the effort of many honest American Muslims who recognize our need to own up and lead long-overdue reforms against the root causes of radicalization: Islamism and its separatism."¹³
- Raheel Raza, President of the Council for Muslims Facing Tomorrow, stated: "CAIR's information is marketed and packaged so it seems that they speak for all of us, but they don't speak for me and my group. CAIR does not and has never represented the majority Muslim voices which are as diverse as Muslims in America."¹⁴
- Seifeldin Ashmawy, former publisher of *Voice of Peace*, stated CAIR "champion[s] extremists whose views do not represent Islam. They do not represent moderate Muslims."¹⁵

CAIR is also noted for its opposition to the existence of Israel and its resistance to Jewish advocacy in the United States. The Anti-Defamation League (ADL) published a "Profile" two years ago about CAIR as part of its "Imagine a World without Hate" campaign.¹⁶ According to ADL, "CAIR has a long record of anti-Israel activity."¹⁷ Further:

- "[CAIR's] leadership has accused Israel of being a racist state engaged in genocide and

⁸ See Trial Br. Attach. A, *United States v. Holy Land Found.*, Cr. No. 3:04-CR-240-G (N.D. Tex. May 29, 2007), available at <https://goo.gl/2Y8pKQ>.

⁹ See *United States v. Elashi*, 440 F. Supp. 2d 536 (N.D. Tex. 2006), *aff'd in part, vacated in part, rev'd in part sub nom. United States v. Elashyi*, 554 F.3d 480 (5th Cir. 2008).

¹⁰ See Letter from James E. Finch, Special Agent, FBI, to Muslim Community Outreach Program (MCOP) Invitee (Oct. 8, 2008), available at <https://goo.gl/SpQMHR>.

¹¹ See *UAE Cabinet Approves List of Designated Terrorist Organisations, Groups*, Emirates News Agency (Nov. 15, 2014, 10:34 PM), available at <https://goo.gl/dfmSDX>.

¹² Abu Dhabi Gallup Center, *Muslim Americans: Faith, Freedom, and the Future* (2011), <https://goo.gl/Y6Trw6>.

¹³ Malia Zimmerman, *'They Don't Speak for Me': New Muslim Groups Reject CAIR Representation*, Fox News (Dec. 20, 2015), <https://goo.gl/PoHkDw>.

¹⁴ *Id.*

¹⁵ See *Terrorism: Two Years After 9/11, Connecting the Dots: Hearing Before the Subcommittee on Terrorism, Technology, and Homeland Security of the S. Judiciary Comm.*, 108th Cong. 1 (2003) (statement of Matthew Epstein, Asst. Dir., Investigative Project), <https://goo.gl/oCe8Gx>.

¹⁶ *Profile: The Council on American Islamic Relations*, Anti-Defamation League (2015), <https://goo.gl/H2fySR>.

¹⁷ *Id.* at 3.

Israel supporters in the U.S. of promoting ‘a culture of hostility towards Islam.’”

- “CAIR’s stated commitment to ‘justice and mutual understanding’ . . . is undermined by its anti-Israel agenda.”
- “CAIR chapters continue to partner with various anti-Israel groups that seek to isolate and demonize the Jewish State.”

By collaborating with CAIR, the District is engaging itself with an Islamic advocacy organization with a history of anti-Semitism and radical Islamic beliefs. Allowing representatives from a designated terrorist organization to indoctrinate students in a captive educational environment under the guise of “promoting diversity” *defies common sense*.

4. Conclusion

The status of Muslims in America is a sensitive topic. Touching upon the issue is polarizing, as given by the controversy surrounding President Trump’s travel ban. And this hot-button issue is only magnified when the wellbeing of Muslim children are involved, especially in the context of school bullying. The District’s paramount interest in protecting the health, safety, and welfare of its students, including Muslim students, is commendable. But discriminating in favor of one religion to achieve these ends, however compelling, cannot pass muster under the First Amendment. Indeed, “the public school must keep *scrupulously free* from entanglement in the strife of sects. . . . [f]rom *divisive conflicts* ... [and] from *irreconcilable pressures by religious groups*. . . .” *McCullum v. Bd. of Educ. of Sch. Dist. No. 71*, 333 U.S. 203, 216–17 (1948) (Frankfurter, J., concurring) (emphasis added). Seattle Public Schools would do well to honor the First Amendment.