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**Program on Freedom of
Religion and Belief**

November 18, 2009

Via e-mail and U.S. mail

Gary R. Brochu, Esq.
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One Constitution Plaza
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Re: Use of First Cathedral for Enfield Schools' High-School Graduations

Dear Mr. Brochu:

Since 2007 in the case of Enrico Fermi High School, and 2008 in the case of Enfield High School, the Enfield Public Schools have held their high-school graduations in a house of worship, the First Cathedral. As you may have surmised from the nature of our recent FOIA request, we have been retained to file litigation on behalf of Enfield Schools students and parents to stop the Schools' use of the Cathedral, for such use violates the U.S. Constitution and the rights of religious minorities. But we hope that the information conveyed below will obviate the need for a lawsuit by convincing the Schools to voluntarily abandon the practice. We understand that four of the nine members of the Enfield Board of Education are newly elected and are taking office this month. We also understand that when the Board first approved using the Cathedral for graduations, it was told that the religious items in the Cathedral would be covered for graduations. In fact, this never occurred; indeed, as we explain below, religious symbolism is inherent in virtually every aspect of the Cathedral, and so secularizing the facility for school events would not appear to be possible.

As Enfield High School and Enrico Fermi High School students and family members approach the First Cathedral to attend their high-school graduation ceremonies, they view no less than five large Christian crosses that compose the front facade of the building, as well as another cross that towers over the Cathedral's roof. To enter the Cathedral, they pass under the immense cross in the middle of the facade. They then see in the Cathedral's lobby a fountain in the shape of a cross surrounded by a frame in the shape of a tomb — which together represent the life after death of Jesus Christ. Above them, from the ceiling of the lobby, hangs a large glass sculpture, representing the Holy Ghost descending from the heavens. Numerous religious paintings, including depictions of Jesus, also hang in the lobby. And before entering the Cathedral's sanctuary, where the graduation ceremonies take place, students and parents pass underneath large banners reading: "The Promise is Still Good! For no matter how many promises God has made, they are 'yes' in Christ. —2 Cor. 1:20a"; and "Enter into His gates with thanksgiving, and into His courts with praise. Be thankful to Him, and bless his Name. Psalms 100:4."

After they go into the sanctuary, graduating students walk over images on a carpet that symbolize seven different aspects of Jesus described in parables from the Bible: a fire, a fish, a lion, a shepherd's crook, a lamb, a lily, and the chalice. The students then take their places for the duration of the ceremony underneath and to the left and right of a giant cross in a window at the front of the sanctuary. To the left of the cross, also above many students, hangs a long banner reading in large print, "Jesus Christ is Lord," and in slightly smaller print:

Savior
Redeemer
Deliverer
Truth
Good Shepherd
Great High Priest
Head of the Church
Bread of Life
Lamb of God
King of Kings
Lord of Lords
Prince of Peace

Similarly, to the right of the cross, hanging from above, is another long banner that reads in large print, "I am GOD," and in slightly smaller print:

Jehovah Shammath
"The Lord is Here"
Jehovah Nissi
"Our Banner"
Jehovah Rapha
"Our Healer"
Jehovah Tsidkenu

“Our Righteousness”
Jehovah Yireh
“Our Provider”
Jehovah Shalom
“Our Peace”
Jehovah Tsabbaoth
“The Lord of Hosts”

What is more, as they wait for the ceremony to start, on two jumbo television screens next to each of the banners, as well as on numerous other large screens throughout the sanctuary, a message flashes to students and their guests:

WELCOME TO THE
The First Cathedral
A CHURCH FOR ALL PEOPLE

THIS IS GOD’S HOUSE WHERE **JESUS CHRIST** IS LORD

Aside from the obvious religious messages and symbols, virtually every aspect of the First Cathedral’s architecture has religious significance. The Cathedral itself is built in the shape of a dove, representing the baptism of Jesus. The lower level of the Cathedral represents the earth, while the middle level represents heaven. Thus, students and parents who sit in the lower level of the Cathedral’s sanctuary sit on “earth,” while those in the balcony level sit in “heaven.” The highest level of the building — the Cathedral’s cupola — represents the throne room of heaven, where God is.

The Enfield Public Schools have been holding their high-school graduations in this religious environment even though there are numerous secular facilities in the area that can host the graduations, some of which compare favorably to the Cathedral in terms of price, seating capacity, and location. We understand that the Cathedral costs approximately \$7,400 to \$8,000 to rent, holds 3,000 people, and is 13.1 miles from Enfield High and 17.6 miles from Enrico Fermi. The alternatives include:

- (1) the high-schools’ sports fields;
- (2) the Enfield Town Green (1.4 miles from Enfield High; 3.7 miles from Enrico Fermi);
- (3) Asnuntuck Community College in Enfield (2.7 miles from Enfield High; 2.4 miles from Enrico Fermi);
- (4) Big E Coliseum in West Springfield, Massachusetts (\$1,500 plus other fees; 5,000 seats; 11.2 miles from Enfield High; 12.3 miles from Enrico Fermi);
- (5) Bushnell Center for the Performing Arts in Hartford (\$16,000 to \$19,000; 2,800 seats; 17.8 miles from Enfield High; 22.3 miles from Enrico Fermi);
- (6) Chase Arena at the University of Hartford (\$18,000 to \$19,000; 4,000 seats; 18.3 miles from Enfield High; 22.8 miles from Enrico Fermi);
- (7) Comcast Theatre in Hartford (\$18,000; 7,500 seats; 15.7 miles from Enfield High; 20.1 miles from Enrico Fermi);

- (8) Connecticut Convention Center in Hartford (\$19,000; 9,500 seats; 17.2 miles from Enfield High; 21.6 miles from Enrico Fermi);
- (9) MassMutual Center Arena in Springfield, Massachusetts (\$10,500 to \$13,000; 7,700 seats; 9.6 miles from Enfield; 10.7 miles from Enrico Fermi);
- (10) Summerwind Performing Arts Center in Windsor (1,500 seats under tent and 2,500 more on lawn; 12.9 miles from Enfield High; 17.4 miles from Enrico Fermi);
- (11) Symphony Hall in Springfield (\$5,500; 2,600 seats; 9.7 miles from Enfield High; 10.8 miles from Enrico Fermi);
- (12) Welte Auditorium at Central Connecticut State University in New Britain (\$3,000; 1,800 seats; 26.5 miles from Enfield High; 31 miles from Enrico Fermi); and
- (13) XL Center in Hartford (16,600 seats; 16.8 miles from Enfield High; 21.1 miles from Enrico Fermi).

(While information about rental fees is based on documents provided by area school districts and newspaper reports from the last several years, we cannot vouch that all of the fee data is current.)

In addition, Enfield High has been using the Cathedral in the face of overwhelming opposition by the high-school's students. Approximately seventy-five percent of the school's 2008 graduating class and approximately ninety percent of the Class of 2009 voted against graduating at the Cathedral. And although a majority of Enrico Fermi High School students have voted in favor of using the Cathedral, a significant percentage of the students there also have opposed the venue.

As our organizations explained in the attached prior correspondence, and as two federal district courts have concluded, holding graduations in a religious environment such as the First Cathedral violates the Establishment Clause of the First Amendment of the U.S. Constitution. *See Musgrove v. Brevard County Sch. Bd.*, 608 F. Supp. 2d 1303, 1305 (M.D. Fla. 2005); *Lemke v. Black*, 376 F. Supp. 87, 89 (E.D. Wis. 1974); *see also Spacco v. Bridgewater Sch. Dep't*, 722 F. Supp. 834, 840-43 (D. Mass 1989). Graduating students, their parents, their older and younger siblings, and their other family members and guests are coercively subjected to religious messages as the price of attending high-school commencement — a seminal event in a student's life. *See, e.g., Lee v. Weisman*, 505 U.S. 577, 595-96 (1992). Students and family members of minority religions, as well as those who do not subscribe to any religion at all, are immersed in a religious environment of a faith not their own. Indeed, Christians themselves have a wide variety of beliefs, and so some Christians may also feel discomfort with the particular religious symbolism at the Cathedral or the conjunction of that symbolism with a secular event (for example, that students walk on top of symbols of aspects of Jesus Christ on the Cathedral sanctuary's carpet in order to get to their seats may cause offense to some).

The selection of the Cathedral as a graduation venue further communicates to members of the Enfield Schools community that the concerns of religious minorities are not important to the school district, and that the district favors adherents of the majority religion. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308-10 (2000). Moreover, graduations at the Cathedral improperly entangle the Enfield Schools with religion, as the Schools grant a religious

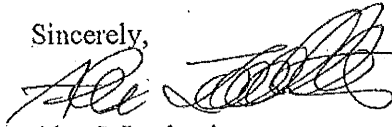
institution control over the physical setting of a school event. *See, e.g., Larkin v. Grendel's Den*, 459 U.S. 116, 126-27 (1982).

All these points are explained in detail in the attached letters, so we will say no more about the law, except to respond to two points raised in prior correspondence from you. First, that the Enfield Schools may have secular reasons for using the Cathedral (such as the price or the physical amenities of the facility) does not render such use constitutional. The Establishment Clause not only prohibits conduct that has a religious purpose, but also conduct that has a religious effect, such as religious coercion, endorsement, or delegation. *See, e.g., Santa Fe*, 530 U.S. at 302, 308, 314; *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). In fact, not even a compelling governmental interest can justify a violation of the Establishment Clause. *See Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 773-74, 783 n.39, 788-89 (1973); *Church of Scientology Flag Serv. Org. v. City of Clearwater*, 2 F.3d 1514, 1539-40 (11th Cir. 1993).

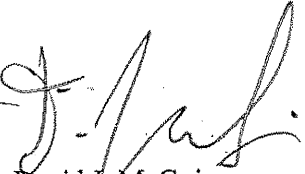
Second, the placement of a disclaimer on school graduation programs cannot cure the constitutional violations. A disclaimer does nothing to prevent or remedy coercive imposition of religion upon students and family members at a graduation ceremony, as we have here. *See Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 984-85 (9th Cir. 2003); *ACLU v. Black Horse Pike Reg'l Bd. of Educ.*, 84 F.3d 1471, 1482 (3d Cir. 1996); *see also Circle Sch. v. Pappert*, 381 F.3d 172, 182 (3d Cir. 2004). Moreover, where, like here, a strong message of endorsement of religion is presented by the government's conduct, a disclaimer cannot neutralize such a message. *See County of Allegheny v. ACLU*, 492 U.S. 573, 600 (1989); *Stone v. Graham*, 449 U.S. 39, 41 (1981); *Cooper v. U.S. Postal Serv.*, 577 F.3d 479, 495-96 (2d Cir. 2009); *Green v. Haskell County Bd. of Comm'rs*, 568 F.3d 784, 808-09 (10th Cir. 2009); *Borden v. Sch. Dist.*, 523 F.3d 153, 177 n.20 (3d Cir. 2008); *Freedom From Religion Found. v. City of Marshfield*, 203 F.3d 487, 495 (7th Cir. 2000); *Smith v. County of Albemarle*, 895 F.2d 953, 958 (4th Cir. 1990); *Kaplan v. City of Burlington*, 891 F.2d 1024, 1029 (2d Cir. 1989); *Am. Jewish Cong. v. City of Chicago*, 827 F.2d 120, 128 (7th Cir. 1987).

Given that the Board of Education's two remaining scheduled meetings for this year are to take place on November 24 and December 8, we will refrain from filing suit if the Enfield Public Schools agree by December 9 to cease holding graduations at the First Cathedral. We urge the Board to respect the rights of religious minorities by moving the graduations to a secular venue, where students and family members of all religious and non-religious persuasions can fully enjoy this seminal event in their lives. Please do not hesitate to contact Alex Luchenitser at 202-466-3234 x207 or luchenitser@au.org if you would like to discuss this matter. Thank you for your consideration.

Sincerely,



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Enclosures:

12/11/2006 ACLU letter
5/12/2009 AU letter



December 11, 2006

Sharon Racine, Chairperson
Enfield Board of Education
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RE: Use of First Cathedral Baptist Church for Graduation Ceremonies

Dear Chairperson Racine:

It has come to our attention that the Enfield Board of Education is planning to hold the 2007 Enrico Fermi High School graduation ceremony at the First Cathedral Baptist Church in Bloomfield. There are numerous alternative, religiously neutral sites where the High School's graduation ceremony could be held. We are writing today to inform you that it is unconstitutional for Enrico Fermi High School to hold its graduation ceremony at the First Cathedral Baptist Church as planned.

The Establishment Clause of the First Amendment to the United States Constitution prohibits all government entities—including public schools—from taking any action that a reasonable observer would interpret as endorsing a particular religion, or endorsing the practice of religion generally. See, e.g., County of Allegheny v. ACLU Greater Pittsburgh Chapter, 492 U.S. 573, 593–94 (1989); Altman v. Bedford Cent. Sch. Dist., 245 F.3d 49, 75 (2d Cir. 2001). As the Supreme Court explained, endorsement of religion is repugnant to the Constitution “because it sends . . . [a] message to members of the audience who are nonadherents ‘that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.’” Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 309–10 (2000) (citations omitted). Such favoritism is precisely what the Establishment Clause is designed to prohibit.

These concerns are especially poignant in the context of elementary and secondary schools, where courts have “heightened concerns with protecting freedom of conscience from subtle coercive pressure” since the influential minds of children and young adults are involved. Lee v. Weisman, 505 U.S. 577, 592 (1992); see also Skoros v. City of New York, 437 F.3d 1, 49–50 (2d Cir. 2006).

Thus, courts have severely restricted the use by public schools of religiously-owned facilities. Most notable for present purposes, public schools cannot use religiously-owned facilities that display religious symbols and iconography without offending the Establishment Clause. See Porta v. Klagholz, 19 F.Supp. 2d 290, 303 (D.N.J. 1998) (allowing public school to lease rooms from religious organization because there is no “religious iconography,” and students use a “separate entrance from the church’s main entrance”); Thomas v. Schmidt, 397 F.Supp. 203, 207 (D.R.I. 1975) (same), *aff’d without opinion*, 539 F.2d 701 (1st Cir. 1976); see also Walker v. San Francisco Unified Sch. Dist., 46 F.3d 1449, 1456 (9th Cir. 1995) (mobile classrooms parked on parochial-school property permissible because of lack of religious symbols); Pulido v. Cavazos, 934 F.2d 912, 919–20 (8th Cir. 1991) (same); Spacco v. Bridgewater Sch. Dep’t, 722 F.Supp. 834, 842–43 (D. Mass. 1989) (granting preliminary injunction because, although religious iconography in classrooms was covered, other religious iconography throughout school grounds “communicates to a reasonable observer . . . that the public school and the . . . Church are closely linked . . . [and that Church members] are preferred”). The message of these cases is simple and clear: the only time public schools may even consider using religious facilities is if the religious nature of such facilities—both inside and outside of the building—are removed or covered. The religious facility must be religiously neutral to be permissible. A church is obviously not a religiously neutral facility.

“Everyone knows that in our society and in our culture high school graduation is one of life’s most significant occasions.” Lee, 505 U.S. at 595. For this reason, the Supreme Court finds any situation which makes “religious conformity from a student . . . the price of attending her own high school graduation” to be especially repugnant to the Constitution. Id. at 596. In Lee, the Supreme Court found that an invocation by a member of the clergy at a high school graduation ceremony was unconstitutional. Id. at 584–86. Holding the Enrico Fermi High School graduation ceremony in the First Cathedral Baptist Church creates precisely the type of situation disfavored in Lee. It unequivocally tells Christian students, especially those who are Baptist, that they are “insiders, favored members of the political community”; those who are of a different religion, or of no religion at all, are told they are “outsiders.” See Santa Fe, 530 U.S. at 309–10. Non-believers must choose whether to forego their conscientious beliefs and participate in this religious setting, or to forego “one of life’s most significant occasions.” See Lee, 505 U.S. at 595. This is an impermissible choice that violates the Establishment Clause of the Constitution.

For the foregoing reasons, the planned 2007 graduation ceremony at the First Cathedral Baptist Church is not constitutionally permissible. Accordingly, we ask you to immediately secure a religiously neutral location for the graduation ceremony, and that you do the same for any other schools in the district that may be planning to hold graduation ceremonies in religious institutions. Because of the serious nature of this issue, we ask that you inform us of your plan by January 4, 2007.

Please also find enclosed a request pursuant to section 210 of the Freedom of Information Act seeking information related to the Board’s decision to hold graduation ceremonies at the First Cathedral Baptist Church.

We look forward to your response.

Sincerely,

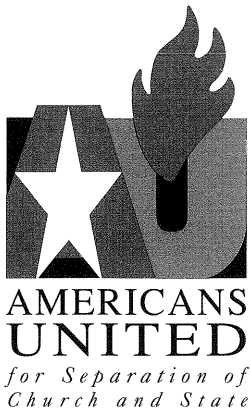


Sam Brooke
Staff Attorney

Enclosure

cc: Dr. John Gallacher, Superintendent, Enfield Public Schools
27 Shaker Road, Enfield, CT 06082-3100

Paul Newton, Principal, Enrico Fermi High School
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May 12, 2009

By U.S. Mail and E-mail

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Board of Education

Enfield Public Schools

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Enfield, CT 06082

Re: Enfield High School Graduation in a Church

Dear Mr. Gallacher, Mr. Duffy, and Board members:

We have received a complaint that Enfield High School will hold its 2009 graduation ceremonies at First Cathedral Church in Bloomfield. First Cathedral's sanctuary, where the ceremony will be held, features a large stained glass representation of a cross that hangs directly above where graduation speakers will stand and where graduates will receive their diplomas. Large banners featuring religious phrases also hang in the sanctuary, flanking the cross. We write to inform you that holding a public-school graduation ceremony in a house of worship violates the Establishment Clause of the First Amendment to the U.S. Constitution.

"It is beyond dispute that, at a minimum, the constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Lee v. Weisman*, 505 U.S. 577, 587 (1992). This constitutional guarantee applies with enhanced force in the public-school setting, where there are "heightened concerns with protecting freedom of conscience from subtle coercive pressure." *Id.* at 592. These concerns are particularly salient with respect to graduation ceremonies. Although attendance may be technically voluntary, graduations are once-in-a-lifetime events of immense civic and social importance to students and their families: "to say a teenage student has a real choice not to attend her high school graduation is formalistic in the extreme." *Id.* at 595. Accordingly, the Supreme Court has held that conditioning attendance at public-school graduations on exposure to unwanted expressions of religion is prohibited: "The Constitution

forbids the State to exact religious conformity from a student as the price of attending her own high school graduation.” *Id.* at 596.

Holding a public-school graduation ceremony in a house of worship is inconsistent with this principle. Just as the government cannot exact participation in a religious exercise as the price of graduation attendance, neither can it require students to receive their diplomas in church, because no government entity “can force [or] influence a person to go to or remain away from church against his will.” *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947). Even when no formal religious worship service is underway, a church’s sanctuary remains an inherently religious setting — the physical embodiment of the faith community it shelters, and a sacred space which serves the express purpose of facilitating and fostering religious worship. Indeed, to treat a church sanctuary as just another public space “would be an affront . . . to all those for whom” presence in the sanctuary necessarily involves “an essential and profound recognition of divine authority.” *Cf. Lee*, 505 U.S. at 594. For nonbelievers, compelled presence within such a sacred space — and participation in a ceremony within that space — involves an equally profound but entirely unwanted recognition of, and submission to, the authority of a religious viewpoint contrary to their own.

This coercive effect is magnified when — as at First Cathedral, where a huge cross, flanked by religious banners, towers over the space where the graduates receive their diplomas — the sacred space is replete with sectarian iconography. It is beyond dispute that religious iconography sends a religious message. *See Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (holding that Christian cross sends an expressive message); *County of Allegheny v. ACLU*, 492 U.S. 573, 598, 600-01 (1989) (finding that crèche sends a religious message); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 632 (1943) (noting that “the church speaks through the Cross, the Crucifix, the altar and shrine, and clerical r[a]jiment”). And it is equally well-settled that the Establishment Clause prohibits public schools from forcing such messages on students — especially during a graduation ceremony. *See Lee* 505 U.S. at 596.

The Establishment Clause prohibits government entities, such a public high-schools, from taking any action that “has the purpose or effect of ‘endorsing’ religion.” *Allegheny*, 492 U.S. at 592. Yet the presence of religious symbols and iconography at a site where a public-school event is held does precisely that: It sends the unconstitutional message that the government favors religion or the particular religious views these symbols embody. *See Spacco v. Bridgewater Sch. Dep’t*, 722 F. Supp. 834, 840-43 (D. Mass 1989) (granting a preliminary injunction against the placement of students in a public-school facility leased from a church because the students were exposed to several large crosses and other religious icons and items outside and inside the building).

The Establishment Clause also prohibits excessive entanglement between government and religion. *See, e.g., Agostini v. Felton*, 521 U.S. 203, 232-33 (1997). Excessive entanglement can result from “delegation of state power to a religious body” (*see Hernandez v. Comm’r of Internal Revenue*, 490 U.S. 680, 696-97 (1989) (citing *Larkin v. Grendel’s Den*, 459 U.S. 116 (1982))) or

from governmental intrusions in the affairs of religious organizations, such as inquiries into religious doctrine (*see Hernandez*, 490 U.S. at 696-97; *Lemon v. Kurtzman*, 403 U.S. 602, 618-22 (1971)). Enfield High School cannot hold graduations at First Cathedral without violating one of those two prohibitions. On the one hand, if the school were to permit the church to decide whether to cover or remove religious items that would otherwise be visible to graduates and their guests, the school would have given a religious institution the authority to control the physical setting for a public-school event. In a similar circumstance, where a school district allowed a church to decide whether to cover a cross on the outside of the church building the school used for classes, the court in *Spacco* found improper entanglement of religion and government. *See* 722 F. Supp. at 845-46. On the other hand, if the school were to assert control over First Cathedral's physical space and attempt to cleanse the church of religious symbols in order to hold graduations there, it would have to decide which objects in the church are religious and which are not — exactly the kinds of judgments government officials must not make. *See Hernandez*, 490 U.S. at 696-97; *Lemon*, 403 U.S. at 621-22. Thus, if Enfield High School were to hold graduation at First Cathedral, excessive entanglement would invariably result.

Consistent with these principles, in *Lemke v. Black*, 376 F. Supp. 87 (E.D. Wis. 1974), a federal district court issued a preliminary injunction against the holding of a public-high-school graduation ceremony in a Catholic church. *Id.* at 89. Observing that “[p]erhaps the most obvious purpose of the religion clause of the First Amendment was to protect the rights of religious minorities to live within the dictates of their consciences,” the court concluded that “[i]t is cruel to force any individual to violate his conscience in order to participate” in this once-in-a-lifetime event. *Id.* And more recently, a Florida district court ruled that holding a public-school graduation ceremony in a church would likely be unconstitutional. *Musgrove v. Brevard County Sch. Bd.*, ___ F. Supp. 2d ___, 2005 WL 6269441 (M.D. Fla. May 18, 2005).

The choice of a sectarian venue for graduation not only violates the Constitution but also ignores the religious diversity of Enfield High School's students and their families. As the Supreme Court recognized in *Lee*, and as every student and parent knows, graduation is a momentous rite of passage during which every student should be entitled to feel welcome and comfortable. A commencement ceremony is designed to honor students for their achievements. Yet holding the ceremony at First Cathedral compromises this purpose: those whose faiths forbid them from entering other faiths' houses of worship, and those whose consciences dictate that they avoid religious settings, will feel uncomfortable at best, and unwelcome at worst. Enfield High School would do greater honor to its students and their families by respecting their religious diversity.

We therefore ask that you arrange for this year's ceremony to be held at a secular venue. If it is not possible to move this year's ceremony, then we ask — although this would not cure the constitutional violation, but would only lessen its severity — that you cover all religious iconography at the venue, and that you ensure that next year's ceremony will be held at a secular venue. Because the date of the ceremony is rapidly approaching, we ask that you respond to this letter within ten days.

Please do not hesitate to contact Ian Smith at (202) 466-3234 or ismith@au.org if you would like to discuss this matter.

Very truly yours,

A handwritten signature in black ink that reads "Ian Smith". The signature is written in a cursive style with a large, stylized "I" and "S".

Ayesha N. Khan, Legal Director
Alex J. Luchenitser, Senior Litigation Counsel
Ian Smith, Staff Attorney*

*Admitted to the Tennessee bar. Supervised by Ayesha N. Khan, a member of the D.C. bar.