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Via Email

Monroe Board of Education
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RE: Unconstitutional Sale of School Property and Request for Public Records

Dear Monroe Board of Education,

We are writing on behalf of concerned Monroe citizens regarding the Monroe Local School District Board of Education's proposed plan to effectively give away a parcel of school district property valued at over a million dollars to a Christian church. The Board discussed the disposition of the "Old High School" in a September 2014 board meeting. It was first built in 1912 on three tracts of land comprising of 29 acres. The appraised value is around \$1.2 million, but according to the Board's minutes, it would cost this much for the District to abate hazardous asbestos and to demolish the building. The Board considered three options: (1) sell the property to the City of Monroe; (2) the District demolishes the building; or (3) sell the property for \$1 to the Monroe First Church of God. The Church intends to share part of the space with public school after it completes its renovations.

Please be advised that, if the Board chooses the third option, it will be in violation of the Establishment Clause of the First Amendment in an elementary sense, as it would amount to a seven-digit giveaway to a church in an atmosphere that is highly suspicious and lacking in due diligence and transparency. We hereby demand that the Board of Education refrain from selling, transferring or disposing any of the government's property to the First Church of God. Also, pursuant to Ohio Open Records Law, §149.43 et seq., we demand disclosure of the following:

1. All records documenting appraisals of the subject property, or any subsection of the subject property, from January 2011 to present.

2. All records of estimates and appraisals relating to the cost of demolition, asbestos removal, or restoration of the subject property from January 2011 to present.
3. All records upon which Board members relied in claiming that the subject property has a value of \$1.2 million.
4. All records upon which Board members relied in claiming that the costs of asbestos removal and demolition would equal the value of the property.
5. All emails and other correspondences between any Board member and any other parties (including other Board members and members of the First Church of God) relating to the subject property from January 2011 to present.

The Board should understand that a free transfer of a 29-acre property worth over a million dollars, under the undocumented claim that the property requires some cleanup that brings its net value down to zero, is highly suspicious and should require credible documentation. This would include multiple appraisals of both the claimed value and costs. The fact that the transfer would give the property to a church only raises the suspicions higher, especially in light of the fact that one of the Board's members, Tim Carpenter, is known to be an active member of the Monroe First Church of God, and was even a former church board member.

There is no indication that all options for this property have been thoroughly explored so as to ensure that taxpayers are deriving the maximum benefit. Instead, this proposal smacks of a quick sweetheart deal for a local church. Lacking this necessary diligence and transparency to alleviate the numerous concerns that are raised by this potential transaction, your Board must cease any immediate effort to transfer the property to the church.

The American Humanist Association ("AHA") is a national nonprofit organization with over 30,000 members and supporters across the country, including many in Ohio, and an online following of nearly 350,000. The Appignani Humanist Legal Center, the AHA's legal arm, includes a network of cooperating attorneys from around the country, including in Ohio. The center has litigated cases involving church-state separation and the rights of Humanists, other non-theists, as well as Christians, in state and federal courts nationwide. The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring separation of church and state.

The First Amendment's Establishment Clause "commands a separation of church and state." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). It requires the "government [to] remain secular, rather than affiliate itself with religious beliefs or institutions." *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 610 (1989). This means, *inter alia*, that the government must not "promote or affiliate itself with any religious doctrine or organization," *id.* at 590-91, and "must not favor religious belief over disbelief." *Id.* at 593 (citation omitted). Indeed, the Establishment Clause "create[s] a complete and permanent separation of the spheres of religion activity and civil authority." *Everson v. Bd. of Ed.*, 330 U.S. 1, 31-32 (1947). *Accord Engel v. Vitale*, 370 U.S. 421, 429 (1962). Separation "means separation, not something less." *McCollum v. Bd. of Educ.*, 333

U.S. 203, 231 (1948). And in “no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart.” *Id.*

In short, the government “may not place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling nonadherents to support the practices or proselytizing of **avored religious organizations** and conveying the message that those who do not contribute gladly are less than full members of the community.” *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 9 (1989).

To comply with the Establishment Clause, a government practice must pass the *Lemon* test,¹ pursuant to which it must: (1) have a secular purpose; (2) not have the effect of advancing or endorsing religion; and (3) not foster excessive entanglement with religion. *Allegheny*, 492 U.S. at 592. Government action “violates the Establishment Clause if it fails to satisfy any of these prongs.” *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).

By giving away the Old High School property to the First Church of God, the Board of Education has unconstitutionally manifested a religious purpose and impermissibly advanced the Christian faith. *See Larkin v. Grendel’s Den*, 459 U.S. 116 (1982) (an Establishment Clause violation occurred when a government entity delegated part of its power to a religious institution); *Bd. of Educ. v. Grumet*, 512 U.S. 687, 696 (1994) (“Chapter 748, the statute creating the Kiryas Joel Village School District, departs from this constitutional command by delegating the State’s discretionary authority over public schools to a group defined by its character as a religious community, in a legal and historical context that gives no assurance that governmental power has been or will be exercised neutrally.”); *Wirtz v. City of S. Bend, In.*, 813 F. Supp. 2d 1051, 1068 (N.D. Ind. 2011) (below-market-rate transfer of property to religious school had effect of placing “adherents and nonadherents on different footing.”).

Where, as here, the government promotes an “intrinsically religious practice,” it “cannot meet the secular purpose prong.” *Jager v. Douglas County Sch. Dist.*, 862 F.2d 824, 829-30 (11th Cir. 1989). *See also Stone v. Graham*, 449 U.S. 39, 41 (1980); *Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff’d* 472 U.S. 38 (1985); *North Carolina Civil Liberties Union v. Constangy*, 947 F.2d 1145, 1150 (4th Cir. 1991). A religious purpose may be inferred in this instance since “the government action itself besp[eaks] the purpose . . . [because it is] patently religious.” *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 862-63 (2005). In this case, the Board of Education has offered to sell its property, for \$1, to one particular church and no other. It did not make this offer to any other religious congregation let alone any other secular or non-religious enterprise. This compels the conclusion that it was “motivated by a purpose to advance religion.” *Summers v. Adams*, 669 F. Supp. 2d 637 (D.S.C. 2009) (citation omitted).

Even if the Board were able to identify an incidental secular benefit to offloading the property, its use of clearly religious means to do so—i.e., selling the land to one particular Church—would expose such a stated purpose as little more than a sham. “When a state-sponsored activity has an overtly religious character, courts have consistently rejected efforts to assert a secular purpose for that activity.” *Mellen v. Bunting*, 327 F.3d 355, 373 (4th Cir. 2003);

¹ The test is derived from *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

see also *Hall v. Bradshaw*, 630 F.2d 1018, 1020 (4th Cir. 1980) (quoting *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 294 (1963) (Brennan, J., concurring)) (“[T]he States may not employ religious means to reach a secular goal unless secular means are wholly unavailing.”). The choice to make “use of religious means to achieve secular goals where nonreligious means will suffice is forbidden.” *Greater Houston Chapter of ACLU v. Eckels*, 589 F. Supp. 222, 234 (S.D. Tex. 1984), *reh’g denied*, 763 F.2d 180 (5th Cir. 1985), *cert. denied*, 474 U.S. 980 (1985) (citing *Larkin*, 459 U.S. at 123-24).

In *Summers*, the court held that a statute which exclusively enabled the display of a Christian symbol (a cross superimposed on a stained glass window) on the license plates of privately-owned vehicles was “obvious[ly]” motivated by a religious purpose, despite various secular rationales put forward by the government. 669 F. Supp. 2d at 658. The Board’s actions will likewise ensure that a Christian Church—and only a Christian Church—will own the property. Whatever marginal secular benefit the transfer of the property may have cannot offset the unconstitutionally religious purpose at its core. See also *Hall*, 630 F.2d at 1020-21 (quoting *DeSpain v. DeKalb Cnty. Cmty. Sch. Dist.* 428, 384 F.2d 836, 839 (7th Cir. 1967) (“If a state could avoid the application of the first amendment in this manner, ‘any religious activity of whatever nature could be justified by public officials on the basis that it has beneficial secular purposes.’”).

Moreover, even if the purpose prong is not problematic, transferring government property to one particular Christian church without providing any other entity the right to purchase it on the same terms fails *Lemon’s* effect prong. The “effect prong asks whether, irrespective of government’s actual purpose, the practice under review in fact conveys a message of endorsement or disapproval [of religion].” *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985) (quotation marks omitted). This “‘primary effect’ prong must be assessed objectively, in order to measure whether the principal effect of government action ‘is to suggest government preference for a particular religious view or for religion in general.’” *Mellen*, 327 F.3d at 374 (citation omitted). The “prohibition against governmental endorsement of religion ‘preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred.’” *Allegheny*, 492 U.S. at 593 (1989) (citation omitted). Whether “the key word is ‘endorsement’ ‘favoritism,’ or ‘promotion,’ the essential principle remains the same. The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief[.]” *Id.* at 593-94.

Even the “**mere appearance** of a joint exercise of authority by Church and State provides a significant symbolic benefit to religion,” and, therefore, has the impermissible primary effect of advancing religion. *Larkin*, 459 U.S. at 126-27. The Supreme Court has stated that:

an important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices.

School Dist. v. Ball, 473 U.S. 373, 390 (1985) (internal citation omitted). Here, the school board’s actions in giving away its property to the First Church of God produces not just the

“mere appearance” of such joint exercise but rather, an “actual joint exercise of governmental and religious authority.” *Commack Self-Service Kosher Meats, Inc. v. Weiss*, 294 F.3d 415, 431 (2d Cir. 2002). Giving the First Church of God an exclusive offer to purchase the public school property, sends the “unequivocal message that” the public school district, “as an institution, endorses the religious expressions embodied” in the Christian church. *Mellen*, 327 F.3d at 374.

By transferring the land in a fashion that peculiarly benefits one particular Christian church, the government has impermissibly advanced its religious views. See *Tilton v. Richardson*, 403 U.S. 672, 682-83 (1971) (statute allowing federally financed facilities built for private sectarian universities to be used for religious purposes had the “effect of advancing religion”); *Summers*, 669 F. Supp. 2d at 663 (statute ensuring the display of Christian symbols on the license plates of some privately-owned vehicles had the “primary effect [of] promot[ing] a specific religion”); *Wirtz v. City of S. Bend, In.*, 813 F. Supp. 2d 1051, 1068 (N.D. Ind. 2011) (below-market-rate transfer of property to religious school had effect of placing “adherents and nonadherents on different footing.”). See also *Paulson v. City of San Diego* 294 F.3d 1124, 1127-28 (9th Cir. 2002) (en banc), cert. denied, 538 U.S. 978 (2003).

In *Paulson*, the court rejected San Diego’s plan to sell a plot of land that was home to a large war memorial cross. *Id.* As a condition of sale, the city told potential buyers that they would have to maintain some type of war memorial on the site. *Id.* Though the city took no official position on whether the existing monument should remain standing, it told would-be purchasers that preserving the cross would satisfy the memorial requirement. *Id.* at 1132. In making this assurance, the court wrote, San Diego had “[given] away for free an economically valuable means of fulfilling the main condition of the sale” to bidders who wanted to keep the cross. *Id.* at 1132. In other words:

[By] establishing a specified use as a condition of sale (the maintenance of a war memorial) and then providing gratis the means to satisfy that condition to only those bidders who supported the preservation of the cross, the City gave a direct, immediate, and substantial economic incentive to advance a sectarian message.

It is apodictic that private citizens have no right to “use the machinery of the State to practice its beliefs.” *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 226 (1963). In *Larkin*, the Supreme Court held that a statute that vested in the governing bodies of schools and churches the power to block the issuance of liquor licenses had “a ‘primary’ and ‘principal’ effect of advancing religion,” and “enmesh[ed] churches in the exercise of substantial governmental powers contrary to our consistent interpretation of the Establishment Clause.” 459 U.S. at 126. In reaching this conclusion, the Court reasoned that the “Framers did not set up a system of government in which important, discretionary governmental powers would be delegated to or shared with religious institutions.” *Id.* at 127. Following *Larkin*, the Court in *Grumet* reaffirmed the basic notion that a “State may not delegate its civic authority to a group chosen according to a religious criterion.” 512 U.S. at 698. Yet that is precisely what the Board has done here, by attempting to give away government property to a group chosen “according to a religious criterion.” This is “prohibited by the Establishment Clause because of the danger that the government’s action will be ‘perceived by [some] as an endorsement of their religious

choices, or by [others] as a disapproval of their own.” *Commack*, 294 F.3d at 431 (citation omitted).

The third *Lemon* prong, the question of excessive government entanglement with religion, is also violated here, as it is obviously inappropriate for a public school to be inexplicably promoting one particular religious congregation in its community. Like the Establishment Clause generally, the prohibition on excessive government entanglement with religion “rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere.” *McCullum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948).²

The fact that the school and the Church intend to share the property after the Church completes its renovations is alone, an unconstitutional entanglement of government and religion. As the Court made clear in *Larkin*, even the “**mere appearance of a joint exercise** of authority by Church and State provides a significant symbolic benefit to religion,” and, therefore, has the impermissible primary effect of advancing religion. 459 U.S. at 126-27. In this situation, “where the underlying issue is the deeply emotional one of Church-State relationships, the potential for seriously divisive political consequences needs no elaboration.” *Comm. for Public Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 797 (1973).

In view of the aforementioned authorities, it is clear that the Board of Education will be in violation of the Establishment Clause if it chooses to proceed with the sale of the property to the Church. If it so chooses, the School Board and its officials may be sued under 42 U.S.C. § 1983 for damages, an injunction, and attorneys’ fees. This letter serves as an official notice of the unconstitutional activity and demands that the Board immediately discontinue its plans for selling the property to the Church. In order to avoid litigation, we kindly ask that you notify us in writing within seven (7) days of receipt of this letter setting forth the steps you will take to rectify this potential constitutional infringement. Thank you for turning your attention to this important matter.

Sincerely,
Monica Miller, Esq.

² See also *Tenafly Eruv Ass’n v. Borough of Tenafly*, 309 F.3d 144, 175 n.36 (3d Cir. 2002) (“‘Entanglement’ still matters, however, . . . in the rare case where government delegates civic power to a religious group.”) (citing *Grumet* and *Larkin*).