



January 27, 2015

VIA U.S. Mail, Return Receipt Requested

Mr. Richard Armstrong, Esq.
Knox County Law Director
400 Main Street, Suite 612
Knoxville, Tennessee 37902

Dear Mr. Armstrong:

The ACLU Foundation of Tennessee, Inc. (ACLU-TN) represents the Lawyers Education Advocacy Project (LEAP), a nonprofit corporation based in Knoxville, Tennessee. LEAP's purpose is stated in its charter:

The primary purpose of the Corporation is to provide *pro bono* legal advice to parents whose children are charged with truancy in Knox County and *pro bono* legal advice and representation to children who are charged with truancy in Knox County.

This fall, three members of the LEAP Board, all Knox County lawyers, met with Knox County Juvenile Judge Tim Irwin to discuss a *pro bono* representation project for Knox County public school students who are petitioned to the Juvenile Court for the unruly offense of truancy. These cases are prosecuted by the Knox County District Attorney General's Office. In Tennessee, juveniles accused of unruly offenses are not entitled to an appointed attorney.

The project would be staffed by *pro bono* attorneys and University of Tennessee College of Law students, through a course titled "Education Law Practicum." LEAP proposes to staff a small table in the lobby of the Juvenile Court on the days when the Court hears truancy cases (typically on selected Monday mornings). The lawyers and law students staffing the table would distribute "know-your-rights" truancy brochures to interested parents and would offer free legal representation to the student accused of truancy. Despite permitting other nonprofit organizations to provide services in the Knox County Juvenile Court, the Juvenile Judge rejected any proposed *pro bono* representation project of this nature.

In 2008, the Tennessee Supreme Court acknowledged the critical problem of limited access to representation for those without means. To address the growing need, the Court made access to justice its "number one strategic priority"

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and formed the Access to Justice Commission.¹ Through the Rules of Professional Conduct, the Court has emphasized the importance of pro bono work to the bar. Rule 6.1 encourages all lawyers to perform 50 hours of pro bono service per year. The Knox County Juvenile Judge's refusal (thus far) to accommodate a project dedicated to providing access to justice for students accused of truancy runs counter to the express and implied wishes of the Tennessee Supreme Court. More importantly, the perplexing refusal to embrace local lawyers' willingness to donate their time and experience to help those in need of representation violates the Freedom of Speech guaranteed by the U.S. Constitution and by Article 1, § 19 of the Tennessee Constitution.

Offering pro bono legal services is undoubtedly protected speech. See Bates v. State Bar of Arizona, 97 S. Ct. 2691, 53 L. Ed. 2d 810 (1977)(holding advertising of legal services for pecuniary gain is protected free speech). Where speech is implicated, the speaker, such as LEAP, generally has a right to express itself on government properties that are considered public fora. While the common area of the Juvenile Court building is not necessarily considered a traditional public forum, such as the public sidewalks, the county may create a designated or limited public forum through its own actions. See Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 46 (1983).

Allowing other non-profit organizations to offer their services, post materials, and hand out brochures in the court building's common areas creates such a limited public forum. LEAP undoubtedly falls within the parameters of the limited forum, as it too offers services related to the juvenile justice system to children and their parents.

Once the county opens the limited forum, it must respect the lawful boundaries it has set for itself. The county may not exclude speech based on the content of or viewpoint expressed by the speaker. Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384, 392–93 (1993), or favor one speaker's message over another. See Members of City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 804 (1984). Prohibiting LEAP from taking part in the same speech as other non-profits cannot be anything other than content or viewpoint discrimination. Discrimination against speech because of its message is presumed to be unconstitutional. Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 641–43(1994).

¹ See <http://www.tsc.state.tn.us/programs/access-justice> (last visited December 22, 2014).

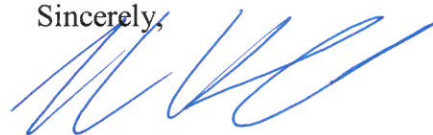
The principal inquiry to determine content neutrality is whether the government seeks to bar speech because it disagrees with the message conveyed. Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). The “fundamental principle” behind content analysis is that “government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.” City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 48–49 (1986).

The court has expressed its disapproval of LEAP’s message. The court’s motives ostensibly are premised on the content of LEAP’s speech. While the court welcomes other non-profits offering services to the same audience, LEAP’s message is disfavored and therefore barred. Moreover, the reasons articulated by the court provide direct evidence on content based discrimination. The Juvenile Judge suggested that solicitation of legal representation runs afoul of the Tennessee Code of Professional Conduct and, thereby, provides the court with a reason to deny LEAP’s desire to offer legal services. TRPC Rule 7.3 clearly allows solicitation for pro bono representation. In fact, solicitation of clients is only prohibited “when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain.” The court’s denial of access to the public forum is premised on the very heart of LEAP’s message – the offer to represent those accused of truancy. The government’s regulation of LEAP’s speech is content and viewpoint based and, therefore, violates the constitution.

LEAP strongly desires to resolve this issue as expediently and amicably as possible. To that end, we request that you schedule a meeting with representatives of LEAP and its counsel to discuss the issues raised in this letter. We request a response to this request by February 5, 2015. If no response is received or our meeting request is denied, LEAP will pursue other recourse to accomplish its goals.

Thank you for your time and attention to this matter. I look forward to your response and to meeting with you to resolve this issue.

Sincerely,



Thomas H. Castelli
Legal Director