AMERICAN CIVIL LIBERTIES UNION FOUNDATION
OF CONNECTICUT
330 MAIN STREET
1ST FLOOR
HARTFORD, CT 06106
T/860.523.9146
F/860.586.8900
WWW.ACLUCT.ORG

June 5, 2012

Dr. Joseph Monroe
Wolcott High School
457 Boundline Road
Wolcott, CT 06716

Sent via Facimile and USPS First Class Mail

Re: Seth Groody

Dear Dr. Monroe,

We are writing on behalf of Wolcott High School junior Seth Groody and his parents. He states that Wolcott High School recently sponsored a "Day of Silence," designed, in his understanding, to promote tolerance for alternative lifestyles, including homosexuality. He wore to school that day a tee-shirt that depicted, on one side, a rainbow – the commonly-recognized symbol of gay rights – with a slash through it and, on the other, a male and female stick figure, holding hands, above the legend, "Excessive Speech Day." His purpose in wearing the tee-shirt was to express his dislike for gay marriage and his opposition to the perceived message that was promulgated by the school. He was ordered to remove the shirt, and, under protest, he did so.

To the best of Seth's knowledge and belief, Wolcott High School has no rule or policy that prohibits the wearing of expressive attire. His wearing of the shirt did not "materially or substantially interfere with . . . the operations of the school," or cause "invasion of the rights of others," as these terms have been defined in Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), and its numerous progeny.

The school's actions in requiring Seth to remove his tee-shirt, absent evidence of material and substantial interference, or invasion of the rights of others, violate the First Amendment to the United States Constitution and Article First, Sections 4 and 5, of the Constitution of Connecticut. The present matter is on all fours, not only with Tinker (in that Seth's tee-shirt is indistinguishable from Mary Beth Tinker's anti-war armband), but, even more saliently, with the recent unanimous Seventh Circuit decision in Zamecnik v. Indian Prairie School Dist. No. 204, 636 F.3d 874 (7th Cir. 2011). There, as here, a school – seemingly at the behest of a private gay rights group – sponsored a "Day of Silence" in support of gay rights. The next day, the plaintiff, Zamecnik, and like-minded classmates proclaimed a "Day of Truth," and Zamecnik wore a tee-shirt similar to Seth Groody's: on its front, it bore the motto, "My Day of Silence, Straight Alliance" (emphasis in original), and, on the back, another motto: "Be Happy, Not Gay." A school official inked out the phrase "Not Gay," claiming that it breached a school rule against various kinds of "derogatory" comments.

The Seventh Circuit pronounced the school official's actions unconstitutional under Tinker, because the inked-out phrase was not derogatory, towards individuals, to the point of constituting unprotected "fighting words" – even allowing for a generous definition of the concept in the high school context. In reaching this conclusion, the court both questioned and distinguished a Ninth Circuit ruling, Harper v. Poway Unified School District, 445 F.3d 1166 (9th Cir. 2006), which had allowed school officials to ban a tee-shirt that said,

"Homosexuality is Shameful." As Zamecnik explained, the Harper slogan did constitute personally demeaning fighting words which, as such, were at least arguably invasive of the rights of others. But Zamecnik's slogan personally demeaned no-one – and neither, indeed still less, did Seth Groody's. Since Zamecnik's tee-shirt was protected, so, all the more, is Seth's.

In event of litigation, the school district, if unsuccessful, could be liable for plaintiff's damages and attorneys' fees. In addition, implicated school officials could forfeit their qualified immunity and become personally liable, for damages and attorneys' fees, if they violated clearly established constitutional rules of which they ought to have known. E.g., Doninger v. Niehoff, 642 F.3d (2d Cir. 2011). They could also be assessed punitive damages if a court were to find that they had acted with "reckless or callous indifference" to these rules. Smith v. Wade, 461 U.S. 30, 56 (1983).

In light of these well-settled doctrines, we respectfully request your written assurance that neither Seth Groody, nor other Wolcott High School students, will be forbidden hereafter to wear the tee-shirt at issue, or similar tee-shirts that likewise do not demean individuals on the basis of sexual orientation or other core characteristics. In requesting such assurance, we acknowledge the school's power to protect itself and its students to the full extent permitted by Tinker, Zamecnik, Harper and kindred decisions.

If you or school counsel would like to discuss this matter further, please do not hesitate to call upon us.

Yours truly,

Sandra J Staub

Sandra Staub
Legal Director

Martin B. Margulies
Cooperating Attorney

Cc: Town Attorney Brian Tynan
TYNAN & IANNONE
250 Wolcott Road
Wolcott, CT 06716

SJS/jjs