

FREEDOM FROM RELIGION *foundation*

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August 1, 2013

SENT VIA MAIL & EMAIL TO jhawkins@troy.edu

Dr. Jack Hawkins, Jr.
Chancellor
Troy University
216 Adams Administration Building
Troy, AL 36082

Re: Constitutional concern over faith-based dormitories

Dear Dr. Hawkins:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a constitutional concern occurring at your university. FFRF is a nationwide nonprofit organization with more than 19,000 members across the country, including more than 150 in Alabama, and a local chapter, Alabama Freethought Association. Our purpose is to protect the constitutional principle of separation between state and church.

It is our information and understanding that Troy University will open a 376-bed dormitory, the Newman Center, specifically for religious students.¹ We understand preference goes to Christian students, and non-Christian students only receive consideration “if there [is] space available.”² The Newman Center will feature 2,300 square feet of space reserved for and operated by the Catholic Diocese of Mobile.³ According to reports, the dormitory “will include a common area for meetings, a facility for a priest and a chapel.”⁴ In addition, the facility “will also host three Catholic and three Baptist resident advisers.”⁵ Residents of the Newman Center “[m]ust be respectful of diversity,” and students who “maintain an active spiritual lifestyle and maintain an active engagement in a campus faith based organization” will receive preference in Newman Center housing assignments.⁶

Giving preferential treatment to Christian and religious students in housing decisions violates provisions of the Alabama Fair Housing Law, as well as corresponding provisions of the federal Fair Housing Act. Ala. Code § 24-8-1 (2013); 42 U.S.C. § 3601 (2012). In Alabama it is illegal “[t]o *discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with it*, because of race,

¹ Evan Belanger, *Is Faith-Based Housing the Next Big Thing for Public Colleges? Troy University Thinks So*, al.com, July 23, 2013, http://blog.al.com/wire/2013/07/is_faith-based_housing_the_nex.html.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Troy University Housing and Residence Life: Newman Center Faith Based Housing, <http://trojan.troy.edu/housing/dorms/newman.html>.

color, *religion*, sex, familial status, or national origin.” Ala. Code § 24-8-4(2) (emphasis added); *See also* 42 U.S.C. § 3604(b). Giving housing preference to religious students, and specifically Christian students, Troy University discriminates against non-religious and non-Christian students.

Alabama law further states:

It shall be unlawful . . . To make, print or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates *any preference, limitation, or discrimination* based on race, color, *religion*, sex, handicap, familial status, or national origin or an intention to make the preference, limitation, or discrimination. Ala. Code § 24-8-4(3); *See also* 42 U.S.C. § 3604(c).

Troy University’s housing website advertises the Newman Center as faith-based housing, and says, “Preference will be given to students who maintain an active spiritual lifestyle and maintain an active engagement in a campus faith based organization.”⁷ This advertisement evidences a preference for religious students at the expense of non-religious ones, a violation of state and federal housing laws.

Giving preference to religious students is a constitutional violation

Even the preference given to religious students over non-religious students is illegal. At first glance this may appear inclusive, but the First Amendment “requires the state to be a neutral in its relations with groups of religious believers and non-believers . . .” *Everson v. Board of Ed.*, 330 U.S. 1, 18 (1947). Multiple Supreme Court cases establish this point:

- “[T]his Court has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another.” *Abington School District v. Schempp*, 374 U.S. 203, 216 (1963).
- “The fullest realization of true religious liberty requires that government . . . effect no favoritism among sects or between religion and nonreligion.” *Id.* at 305 (Goldberg, J., concurring).
- “At one time it was thought that this right merely proscribed the preference of one Christian sect over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism. But when the underlying principle has been examined in the crucible of litigation, the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all. This conclusion derives support . . . from the conviction that religious beliefs worthy of respect are the product of free and voluntary choice by the faithful, and from recognition of the fact that the political interest in forestalling intolerance extends beyond intolerance among Christian sects-or even intolerance among ‘religions’-to encompass intolerance of the disbeliever and the uncertain.” *Wallace v. Jaffree*, 472 U.S. 38, 52-54 (1985) (footnotes omitted).

⁷ *Id.*

- In *Texas Monthly, Inc. v. Bullock*, the Court explicitly stated that the “government may not favor religious belief over disbelief.” 489 U.S. 1, 27-28 (1997) (separate opinion concurring in judgment).
- “We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally . . . pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.” *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961).

For reasons already laid out, the Newman Center is also a violation of the Alabama Constitution. Article I states “that no preference shall be given by law to any religious sect, society, denomination, or mode of worship . . .”⁸ Troy University, through the statements of its officials and the act of building a religious dorm, indicates a preference for Christians and religious students.

Giving preference “to students who maintain an active spiritual lifestyle and maintain an active engagement in a campus faith based organization” is unconstitutional. This amounts to Troy University making a determination of how religious a person is, and then discriminating among students based on that determination. It is unconstitutional for government entities to make such a determination, as it creates an “excessive entanglement between government and religion.” *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

Troy University cannot legally evaluate the sincerity of students’ religious beliefs to determine which students are “religious enough” to deserve a room in Newman Center. The government has no business deciding whether a student “maintain[s] an active spiritual lifestyle.” Courts have rejected government attempts to scrutinize the content and sincerity of citizens’ religious beliefs. *See United States v. Lee*, 455 U.S. 252, 263 (1982) (the government cannot enter “the business of evaluating the relative merits of differing religious claims. The risk that governmental approval of some and disapproval of others will be perceived as favoring one religion over another is an important risk the Establishment Clause was designed to preclude.”); *Widmar v. Vincent*, 454 U.S. 263, 272 n. 11 (1981) (University risks greater “‘entanglement’ by attempting to” determine level of religiosity); *Tony & Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290, 305 (1985) (listing authorities citing “government surveillance” of religious beliefs poses “an intolerable risk of government entanglement with religion.”); *Lemon*, 403 U.S. at 625 (“religion must be a private matter for the individual, the family, and the institutions of private choice.”)

Publicly owned religious buildings raise constitutional concerns

The state may not own, operate, or subsidize a church or other space dedicated to religious purposes. A publicly owned and operated religious dorm, and particularly space dedicated to “a priest and a chapel” and Catholic diocese, are illegal. The Supreme Court in *Committee for Public Education and Religious Liberty v. Nyquist* held unconstitutional a New York program that paid for “maintenance and repair” of religious school buildings, due to its “primary effect that advances religion in that it subsidizes directly the religious activities of sectarian elementary and secondary schools.” 413 U.S. 756, 774 (1973). The same day, in *Hunt v. McNair*, the Court

⁸ Ala. Const. art I, § 3.

held that government “[a]id normally may be thought to have a primary effect of advancing religion,” and therefore be unconstitutional, “when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting.” 413 U.S. 734, 743 (1973). *See also Tilton v. Richardson*, 403 U.S. 672 (1971) (unanimous holding that government construction subsidies are unconstitutional if the buildings are ever used for religious activities).

The Newman Center is “an institution” for which “a substantial portion of its functions are subsumed by [its] religious mission,” and therefore cannot be built, owned, operated, endorsed, or maintained by Troy University.

Students who wish to live in the Newman Center are required to “be respectful of diversity,” but the facility itself is not respectful of diversity. Its sole purpose is to create a space for devoutly religious, thereby excluding the nonreligious and religious students who are not devout enough (do not “maintain an active spiritual lifestyle” or “maintain an active engagement in a campus faith based organization”). The dorm suppresses diversity and encourages uniformity.

College is the time for students expand their horizons beyond their comfort zones, to meet new people from different backgrounds, to collide with new ideas that challenge and stimulate. This is arguably the most valuable facet of a college education – so valuable that it is memorialized in the Troy University Creed: “I acknowledge that Openness promotes new concepts and ideas, I celebrate our differences Justly and respectfully.”⁹ The University’s decision to establish the Newman Center as a religious dorm betrays this principle and undermines the lesson. Institutes of higher learning should not be seeking to create insular, monastic communities, just the opposite.

The best practice is for Troy University to open up the Newman Center to all students regardless of religious belief. The Newman Center should be a dorm like any other, with resident advisors not chosen based on their religion. May we hear from you, in writing, at your earliest convenience regarding the steps Troy University is taking to address these constitutional concerns? Thank you in advance for your time and attention to this matter.

Sincerely,



Andrew L. Seidel
Staff Attorney
ALS:rgd

⁹ Troy University, *Oracle: Student Handbook*, 2011-2012, p. 2, available at http://www.troy.edu/pdfs/why_troy/traditional/1112_oracle.pdf.