



**AMERICAN ATHEISTS**

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**Geoffrey Blackwell, Esq.**  
Litigation Counsel

November 4, 2019

***Via Regular Mail & Email (scottmcclure@rhameandelwood.com)***

Scott R. McClure, Esq.  
Portage Professional Center  
3200 Willowcreek Rd., Ste. A  
Portage, IN 46368

**Re: Northern Indiana Atheists' request for use of government property**

Mr. McClure:

On August 8, 2019, Northern Indiana Atheists (NIA), an affiliate of American Atheists, requested permission to use a portion of the Porter County Courthouse (Courthouse) lawn on December 6, 2019. NIA sought to use the property for a winter holiday banner and a table bearing various informational materials about NIA and the atheist community in northern Indiana. While NIA's request was pending, the Porter County Board of Commissioners (Board) received and approved a request by Valparaiso Events to use the Courthouse lawn on the same day. The Board subsequently denied NIA's request on the grounds that use of the property had already been granted to Valparaiso Events. The Board's handling of these requests, as well as public statements made by multiple commissioners, raise serious concerns that the Board violated the First and Fourteenth Amendment rights of NIA and its members.

In order to remedy this violation, the American Atheists Legal Center (AALC), on behalf of NIA, respectfully requests that the Porter County Commission recognize that its decision to permit Valparaiso Events to use the entirety of the Porter County Courthouse grounds was in violation of the notice requirements of the Indiana Open Door Law, Idaho Code § 5-14-1.5-5 (2019), and was therefore invalid. Although the decision was invalid, the AALC and NIA do not ask that Valparaiso Events be denied use of the Courthouse grounds. Rather, we request that the Board approve both requests, permitting NIA to use an appropriate portion of the property to allow for the organization's intended activity, with all the remainder of the property reserved for use by Valparaiso Events.

The Indiana Open Door Law requires that notice of a meeting of a county commission, including the agenda for the meeting, be posted no less than 48 hours before the meeting. § 5-14-1.5-5(a); *see also Pepinsky v. Monroe Cty. Council*, 461 N.E.2d 128, 135-36 (Ind. 1984) (notice provided by the county council informed the public of the subject

of the meeting); *Warren v. Bd. of Sch. Trs. of the Springs Valley Cmty. Sch. Corp.*, 49 N.E.3d 559, 567 (Ind. Ct. App. 2015). Failure to follow these procedures is grounds to invalidate an action that was not properly noticed. § 5-14-1.5-7.

The Porter County Commission did not abide by these requirements prior to approving Valparaiso Events' request to use the Courthouse grounds. Valparaiso Events only submitted its request to use the property on August 12. See Letter from Tina St. Aubin, Executive Director, Valparaiso Events, to Porter County Commissioners (Aug. 12, 2019) (attached hereto as Exhibit "A"). The Commission's consideration of that request therefore could not have been noticed at least 48 hours before the August 13th meeting. In fact, the agenda for the August 13th meeting was not published to the Porter County website until sometime after 2:19 PM on August 12, less than 24 hours before the meeting was scheduled to take place. Agenda, Porter County Board of Commissioners (Aug. 12, 2019, 2:19:01 PM), [https://www.porterco.org/AgendaCenter/ViewFile/Agenda/\\_08132019-1059](https://www.porterco.org/AgendaCenter/ViewFile/Agenda/_08132019-1059). Because the meeting was not properly noticed, NIA was denied the opportunity to be present at the meeting and be heard with regard to the conflicting requests to use the Courthouse grounds.

In addition to violating the Indiana Open Door Law, the Board's actions violated the free speech, free exercise, and equal protection rights of NIA and its members. NIA and its members are seeking to engage in expressive activity on the Courthouse grounds on December 6, 2019. The Board denied them that right by subjecting their request to different, more onerous requirements than it has imposed on similar requests by other organizations. The First Amendment does not permit a "heckler's veto." *Reno v. ACLU*, 521 U.S. 844, 880 (1997); *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133-36 (1992). The Board, by both placing more onerous requirements on NIA than it placed on others seeking to use public property and approving Valparaiso Events' request without abiding by statutory requirements, prevented NIA from engaging in expressive activities because at least two of the commissioners disagreed with the message NIA intended to express. This constitutes viewpoint discrimination, "an egregious form of content discrimination," in violation of the First Amendment. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995); *see also Iancu v. Brunetti*, 588 U.S. \_\_\_\_ (2019), No. 18-302, (June 24, 2019).

The Board's action in subjecting NIA to different requirements than Valparaiso Events was neither neutral, nor an action of general applicability and therefore violated the rights of NIA and its members under the Free Exercise Clause of the First Amendment. *Employment Div. v. Smith*, 434 U.S. 872, 878-81 (1990); *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 542-43 (1993). Furthermore, the statements of Commissioners Good and Biggs at the October 8, 2019, Board meeting are unequivocal evidence of animus toward Mr. Moss, Mr. Dick, and NIA because of their beliefs

regarding religion. Governmental decisions motivated by animus toward a particular religious viewpoint violate the Free Exercise Clause. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 1719, 1732 (2018).

Discrimination against members of religious minorities, like discrimination against individuals in other suspect classes, violates the Equal Protection Clause unless it can withstand strict scrutiny. Government actions “directed at particular religious . . . minorities” would trigger such review because such classifications implicate “prejudice against discrete and insular minorities . . . , which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect [them].” *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938); *see also New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). By engaging in a series of actions clearly designed to deprive NIA and its members of access to a generally available government benefit, the Board violated the Equal Protection Clause of the Fourteenth Amendment.

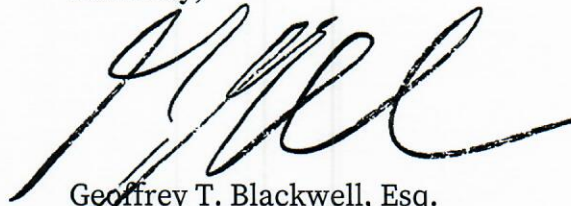
For all these reasons, the AALC respectfully requests that the Board recognize that its prior grant of the use of the entirety of the Courthouse grounds on December 6, 2019, to Valparaiso Events was invalid and, in order to remedy the conflict it created through this invalid action, the Board should:

1. Grant NIA’s request to use a portion of the Courthouse grounds large enough for NIA to engage in its intended expressive activities on December 6, 2019; and
2. Grant the request of Valparaiso Events to use remainder of the Courthouse grounds for its Holly Days event on December 6, 2019.

If the Board fails to take these straightforward, remedial actions, the AALC intends to assist NIA in enforcing its rights under the Open Door Law, the First and Fourteenth Amendments of the U.S. Constitution, and any other appropriate causes of action.

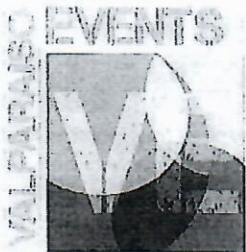
Thank you for your time and attention to this matter.

Sincerely,



Geoffrey T. Blackwell, Esq.  
Litigation Counsel  
American Atheist Legal Center  
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Exhibit "A"



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Valparaiso Events is a non-profit organization dedicated to enhancing our community by delivering distinctive events and experiences.

**ValparaisoEvents.com**

August 12, 2019

Porter County Commissioners  
155 Indiana Ave.  
Valparaiso, IN 46383

Dear Commissioners:

Valparaiso Events' "Holly Days" is on Friday, December 6, 2019 from 5:30-7:30pm.

We would like to request the use of the Courthouse grounds that Friday from 2:00-8:00pm to use for all of our holiday activities.

Thank you in advance for your consideration.

Sincerely,

Tina St. Aubin  
Executive Director  
Valparaiso Events