

7/14/2020

Greetings, MRU School Board.

I, along with many residents in the MRU district, recently submitted a letter to the MRU School Board sharing deep concerns regarding the board's decision to prominently display and endorse Black Lives Matter (BLM) and LGBTQIA+ flags on all public school flag poles throughout the MRU district. A common concern expressed was the clear lack of objectivity in actively promoting controversial political ideas on public school properties. In a remarkably forward-leaning display of support for these two specific causes the MRU School board shrugged off those legitimate concerns, and seemingly abandoning all pretense of neutrality, simply pressed forward with their plan to display and promote these flags on public property in support of two narrow groups, or subsets, of the community. This act is nothing short of political endorsement of specific political groups to the exclusion of others. This sets a dangerous precedent.

It is clear that the Board's decision was driven by noble intent, but, as the saying goes, "*The devil is in the details.*" However noble that original intent may be, flying the flags of these two groups does not represent the totality of the Mill River Community (as do the Vermont and U.S. flags), but instead demonstrates specific endorsement of narrow subsets of that community. This act places the Board's decision on a clear collision course with the Vermont Constitution in two key areas.

Please allow me to explain.

The Vermont Constitution contains two somewhat unusual provisions not found in other State constitutions. The first is often referred to as the "Common Benefits Clause," which, with the preceding article delineating the responsibilities of public servants to their constituents, reads as follows:

**Ch I., Article 6. [Officers servants of the people]**

*That all power being originally inherent in and co[n]sequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them.*

**Article 7. [Government for the people; they may change it]**

*That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal.*

Let's carefully evaluate the board's decision to display two political flags on public school property through the lens of the Common Benefits Clause:

- 1) All public school properties in Vermont, including flag poles, are collectively owned and supported by the entire community by virtue of the taxes paid by the individuals of that community – individuals who represent many different political, philosophical, racial, sexual, and religious views. Those public resources exist solely for the "*common benefit*" of the entire community. Indeed, a public school flag pole is, by any reasonable standard, "prime real estate" – placed prominently at the entrance to school grounds, and legally reserved for the primary

purpose of displaying the flags symbolic of the highest government institutions of our land: Vermont and the United States (16 V.S.A. § 3742). As community property, every public school flag pole is bound by the dictates of the Vermont Constitution, and our elected school board members are likewise bound by the dictates of Ch. I article 6: They are our public servants, and legally accountable to us, as taxpayers and citizens. As legally accountable public servants, they are obligated to subordinate their own personal views and agendas in favor of neutral and faithful execution of their school board duties under Vermont law and school policy.

- 2) Regardless of one's personal views of any given political cause, to provide space on a publicly owned school flag pole for such selective messages to the exclusion of similar (or opposing) groups is to provide a voice – a *"particular emolument or advantage"* - to those preferred groups, thereby excluding others from equal access to this *"common benefit."* This, in effect, would be no different than prominently placing flags for either the Republican Party or Democrat Party to the exclusion of the other – a clear violation of both the letter and spirit of the Common Benefits Clause.
- 3) In the specific case of BLM, the Black Lives Matter official website ([www.blacklivesmatter.com](http://www.blacklivesmatter.com)) makes no discernible public claim of non-profit status, and the 501 (c) 4 status of "Black Lives Matter" of North Carolina was revoked in 2018 as reported by the IRS<sup>1</sup>. Indeed, when donating to BLM, one is redirected to a separate entity – ActBlue, a registered 501 (c) 3 which serves as a nebulous conduit to distribute funds back to BLM, despite BLM's current lack of proof of non-profit status. BLM has remained fiscally opaque, and thus far has failed to respond to any requests for fiscal transparency typical of legitimate non-profit entities<sup>3</sup>. Adding to the confusion is the fact that the BLM movement has no easily discernible structure, and has spawned a confusing "wild-west" of similarly named organizations with overlapping and dubious connections to the original movement, some of which are under active investigation<sup>2</sup>. The aforementioned Black Lives Matter website is, by all appearances, a *for-profit political entity*, and engages in open commercial activity on its web front page ("*Donate*," and "*Shop*") via subtle use of a 3<sup>rd</sup> party non-profit affiliate (ActBlue). The obvious connection between the Black Lives Matter flag and the website of the same name will create an undeniable link between prominent use of Vermont public property and commercial activity (i.e. *"advantage"*) benefitting what appears to be a single *for-profit* political entity that has evaded honest requests for fiscal transparency. Prudence dictates that the MRU School Board should proceed with utmost caution in these areas, lest it be legally implicated as a conduit for the activities of those seeking to profit from the good will of unsuspecting Vermonters.
- 4) To test the merits of my core arguments, imagine if the MRU school board decided to actively display flags promoting the Republican or Democratic parties to the exclusion of their opposition. Clearly, such display would violate the Common Benefits clause (as well as common sense). Similarly, imagine that the School Board agreed to a request from McDonald's Restaurants to display "McDonalds" promotional flags which conflate a social cause with commercial activity, with the clear result of financial gain. Clearly, this would be an unethical

use of public property. The same holds true due to openly commercial aspects of the BLM movement. To continue in such direction is, at best, unseemly.

- 5) There are additional serious concerns related to BLM and its parent organization, *Thousand Currents*, which demand closer scrutiny. The board position of Vice Chair is currently filled by none other than Susan Rosenberg, a militant Marxist with numerous ties to violent extremists and a former member of the terrorist group *May 19<sup>th</sup> Communist Organization* which “*openly advocated the overthrow of the U.S. government through armed struggle and the use of violence.*” May 19<sup>th</sup> happens to be the birthday of Ho Chi Minh, the leader of the brutal Communist Viet Cong. Rosenberg was on the FBI most wanted list, and implicated in numerous robberies, attempted police assassinations and bombings of Government buildings resulting in the deaths of at least two police officers and a guard. She was finally arrested in 1984 in possession of a “large cache of explosives and firearms;” 740 pounds of explosives, to be exact. Rosenberg was sentenced to 58 years in prison, but pardoned by Pres. Bill Clinton on his last day of office in 2001, prompting vigorous condemnation from police.<sup>4</sup> Unrepentant, Rosenberg penned numerous works from prison, including a manifesto in which she openly declared her continued resolve to wage war against “*the dominance of bourgeois ideology, individualism and opportunism*” and continued to defend her efforts “*to build armed clandestine organization*” to “*learn how to fight, to become guerrillas with communist theory and practice, to consolidate a revolutionary resistance, go on every day in every decision, in every action we take.*”<sup>5</sup> Such facts are now common knowledge among right-wing media, but this information is readily available to any who look. It is important to note that Ms. Rosenberg did not choose the noble path of non-violent protest as did Martin Luther King, but instead deliberately sought wanton destruction and the murder of innocents to achieve her goals. She has yet to offer anything resembling an apology or contrition for her violent past and resulting deaths. It is unsettling to think that one can draw a straight line between the MRU promotion of BLM flags and Ms. Rosenberg’s murderous philosophies and actions. As Vice Chair of *Thousand Currents*, it is difficult to believe that BLM is *not* influenced by Mr. Rosenberg’s core philosophies, and it has been observed that the Directors’ bios have been recently removed from the *Thousand Currents* website due to increased scrutiny over this very issue. Regardless of the worthiness of BLM’s core message, these combined facts are anything but reassuring to a nervous public watching violence spill across U.S. cities. Does the MRU School Board really wish themselves and our schools to be associated with such controversial images in the public eye?
- 6) To fully satisfy the Common Benefits Clause, the MRU School Board would be obligated to allow display of any and all political messages, *or none*. I hold the view that *none* is the only choice in accordance with the dictates of our Vermont Constitution *and* the 1<sup>st</sup> Amendment of the U.S. Constitution. I strongly feel a court will agree.

It is important to note that the spirit of the Common Benefits Clause nobly and openly demands equal treatment for all under the law. It is that spirit of equality which was invoked via the Common Benefits Clause in passing Act 60 (*Brigham vs. State, 1997*) as well as the Vermont Supreme Court decision that

paved the way for Civil Unions (*Baker vs. State, 1999*). It is that same spirit of inclusion and equal treatment for all under the law that is the focus of this appeal.

The LGBTQIA+ flag is a special case in that it presents an additional, more nuanced problem also addressed elsewhere in the Vermont Constitution. Here again, our Constitution is unique among states in its declaration of education as a constitutional right:

**Ch. II, Article 68. [LAWS TO ENCOURAGE VIRTUE AND PREVENT VICE; SCHOOLS; RELIGIOUS ACTIVITIES]**

*Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth. All religious societies, or bodies of people that may be united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the general assembly of this state shall direct.*

Note the clear linkage between 1) “*encouragement of virtue and prevention of vice and immorality*,” 2) *public schools* and 3) “*instruction of youth*.” Webster’s unabridged informs us that the essential meaning of virtue is:

1. *Moral excellence; goodness; righteousness.*
2. *Conformity of one’s life and conduct to moral and ethical principles; uprightness; rectitude.*
3. *Chastity; virginity*

With these fundamental facts in view, let’s now respectfully consider the specific case of bisexuals, the “B” group specified in the LGBTQIA+ list .

- 1) A bisexual claims a “sexual identity” which is defined as attraction to both physical genders.
- 2) Under current U.S. law, there is no legal or marital construct in any state which provides a right to marry a spouse of either (both) physical genders.
- 3) To act upon one’s bisexual attractions would necessarily involve extra-marital sex. This obvious, undeniable fact is readily observed in numerous articles, interviews, etc:

*“In a culture that still values monogamy as the ideal in relationships, it is hard to get past the issue that all bisexuals who act on their sexual attraction are guilty of infidelity”...“How do you commit to one person if you must give up 50 percent of who you are?”* Some bisexuals cope with this reality by developing small circles of friends committed to “polyamory,” (literally “many loves”) which is larger mixed-gender groups in “committed” multi-relationships. “The Messy Realities of Bisexuality,” *Psychology Today*<sup>6</sup>

In one study, self-identified bisexuals were asked if they had been sexually involved with both men and women during the past 12 months. **About two-thirds said yes (66% of the men, 70% of women).** About one-third said they had been simultaneously involved with both genders. “The Continuing Controversy Over Bisexuality,” *Psychology Today*<sup>7</sup>

*“Vanessa Dillon, 41, is a bisexual woman marrying Bob Bissonnette, 36, a bisexual man. Each has dated*

*people of more than one gender in the past. Not adhering to monogamy, they might continue to do so after they are married. But at their wedding, to outsiders they appear straight.” “Our Marriage Looks Straight. We’re Not.” NY Times, 2019<sup>8</sup>*

- 4) Even today, the culture of the United States is clear in its strong disapproval of extra-marital sexual relations: In a 2003 poll 91% of respondents agreed that it is “*morally wrong*” to engage in such behavior (<https://news.gallup.com/poll/8704/Current-Views-Premarital-Extramarital-Sex.aspx>). Americans also hold similar negative views on polygamy, the nearest heterosexual analog to a bisexual relationship (i.e. three or more persons).
- 5) The MRU School Board is tasked with crafting formal school policies to grapple with the complexities of educating our vulnerable youth in today’s modern world. To illustrate the complexity of the aforementioned problem, since the MRU board has now legally and formally endorsed bisexuality, I formally request that the MRU School Board articulate to the public a formal policy demonstrating how MRU Schools will factually explain bisexuality – the “B” in the LGBTQIA flag - in the context of accepted marital norms to a 1<sup>st</sup> grader. I emphasize that this policy must adhere to the aforementioned dictates of the Vermont Constitution.

I certainly do not seek to denigrate bisexuals or any other group. But regardless of one’s personal views on bisexuality, the logical conclusion regarding the lifestyle choices specific to bisexuals is clear: Under current societal norms, bisexual extra-marital conduct would be considered “*morally wrong*,” and therefore the opposite of “*virtuous*” by the vast majority. Acceptance and tolerance of differing and diverse views are essential to humanity, order and civil inclusion. But in the clear language of the current Vermont Constitution, “*vice and immorality*” are to be rigorously discouraged, not celebrated and actively promoted on a public school flag pole. Until our culture embraces such relationships through a sanctioned marital construct or civil unions, such relationships lie outside of accepted legal and cultural norms. I emphasize that in light of the Vermont Constitution, school boards have no legitimate business actively promoting such lifestyles to children as young as 4 years of age. It is right and proper to acknowledge that there is a spectrum of human sexuality and that we must be respectful in our acceptance and tolerance of these facts and affected individuals. However, to leverage public school property to selectively promote a particular range of sexual conduct *also* violates the demand for neutrality enshrined in the Vermont Common Benefits Clause with its clear mandate to ensure fully equal treatment under the law. Since heterosexuals are conspicuously missing from the LGBTQIA list, if the MRU School Board chooses to display the LGBTQIA+ flag, then simple logic and fairness dictate that an equivalent heterosexual message must also be promoted with equal enthusiasm to be in compliance with the Common Benefits Clause.

Some will read these arguments and suggest that the language in Ch. 2 Article 68 is antiquated – an opinion which is certainly their prerogative. However, until the Vermont Constitution is lawfully changed, it remains the law today, and Ch. 2 Article 68 is just as deserving of enforcement as the remainder of the Constitution.

In closing, I wish to stress that I hold no malice or ill will toward any individuals or groups involved in this discussion. Indeed, I personally find many of the non-violent aspects of the BLM movement worthy of

our sincere attention, sympathies and support, and I fully recognize the appeals for human dignity ensconced in the LGBTQIA message. But the primary issue is not whether these movements are considered good causes by some, but rather whether formally leveraging public property to advocate such selected political movements is in accord with Vermont Law and its inclusive spirit of equality.

It is not.

I seek only to persuade the MRU School Board that, despite the Board's obviously good intentions, their decision violates the clear intent of two separate portions of our own Vermont Constitution, and as such, the MRU Board is legally obligated to reverse course, and disallow such flags to be formally promoted on public school property.

In light of the information provided herein, I formally request a public re-vote on the MRU policy in question in full accordance with Vermont's Open Meeting Laws. Further, in accordance with Vt. Constitution Ch.1 Article 6, I additionally request a formal roll-call vote to ensure transparency of the actions of the Board, as they are elected public servants and therefore "*at all times, in a legal way, accountable.*"

If the MRU School Board chooses to ignore these lawful requests and move forward and display the BLM and LGBTQIA+ flags, then, consistent with my constitutional rights to equal access of the "common benefit" of MRU flag poles, I will formally request identical display and endorsement of a separate message on a flag of my own. I have included the prototype below for consideration by the MRU School Board.

With Deepest Respect,

Todd Fillmore  
Shrewsbury

#### References:

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**BLACK** — Lives Matter ✓  
**ASIAN** — Lives Matter ✓  
**NATIVE** — Lives Matter ✓  
**WHITE** — Lives Matter ✓  
**UNBORN** — Lives Matter ✓

**Don't All Lives Matter?**