



November 23, 2009

Larry R. Capps
Chief Executive Officer
U.S. Space and Rocket Center
Huntsville, Alabama

VIA Facsimile (256-721-7180)

Dear Mr. Capps,

Our client, Vision Forum, contacted the U.S. Space and Rocket Center (“USSRC”) early last week to rent one of USSRC’s publicly available facilities for a private movie screening on this coming Wednesday, November 25th. The USSRC refused to allow Vision Forum to rent the space based upon disapproval of the movie’s content. This refusal is in direct violation of Vision Forum’s First and Fourteenth Amendment rights. We urge you to rescind this decision to avoid requiring Vision Forum to litigate to defend its rights. Because of the time-sensitive nature of this issue, we request that you respond to this letter by **Tuesday, November 24th**.

By way of introduction, the Alliance Defense Fund (“ADF”) is a non-profit legal and educational organization that seeks to educate government officials and others on the subject of constitutional rights, particularly under the First Amendment. When necessary, we litigate to protect our clients’ First Amendment rights.

RELEVANT FACTS

The Vision Forum is Christian educational organization. It has recently produced *The Mysterious Islands*, a documentary of a trip taken by a team of Christian scientists to the Galapagos Islands on the 150th anniversary of Charles Darwin’s publication of *The Origin of Species*. The documentary provides a scientific and religious perspective on the origins of life.

The USSRC is an agency of the state of Alabama and is organized pursuant to Alabama Code § 41-9-430. Thus, the USSRC is a public entity and must respect First Amendment rights.

The USSRC's facilities, including the 3-D Digital Theater ("Theater") of the Davidson Center for Space Exploration, are open to the public for rental after normal working hours. The "Special Events" policy which governs facility rentals does not state any limits on what types of events are allowed there. In fact, the policy advertises the facilities as being an attractive setting "for any type and size of event." In 2008, 153 special events were hosted at USSRC facilities, with events ranging from corporate training sessions to medical fundraisers to political events. One of the USSRC facilities available for rental is the Spacedome IMAX Theater. In recent years, the theater has shown several mainstream movies, including *Star Trek*, *Spiderman 3*, *Harry Potter: Order of the Phoenix*, and *Batman: Dark Knight*. It has also shown scientifically-oriented films like *The Magic of Flight* and *Blue Planet*. Both of the latter films include discussions of Darwinian evolution; *Blue Planet* mentions it throughout the movie and *The Magic of Flight* begins with the statement, "For 100 million years, birds have been developing a feel for the sky." Also, as a part of USSRC's popular space camp program, students are taught about "space biology," which includes teaching on how life began in the universe. Further, the USSRC's 2004 Annual Report includes an "inspirational" quote from Buzz Aldrin in support of evolution: "The urge to explore has been a primary force in evolution since the first water creatures began to reconnoiter the land..."

On Nov. 17, Steve Solid contacted the USSRC to inquire about the availability of the Theater for a private screening of *The Mysterious Islands*. He spoke to Caroline Crackel, the USSRC Special Events Coordinator. Ms. Crackel was enthusiastic about his inquiry and said that the Theater would be available for rental for either Nov. 23rd or Nov. 25th. She also said that the Theater, which normally only seats 360, can have chairs brought in to accommodate the 400 people Mr. Solid was expecting to attend the private viewing. Mr. Solid had to contact Vision Forum before finalizing the rental, so he provided Ms. Crackel with the movie's website and told her he'd be in contact the next day to make the rental. Ms. Crackel sent him an e-mail early the next day reporting that the USSRC would not be "able to host your event next week." Curious about this abrupt change, Mr. Solid contacted Ms. Crackel that same day to see if arrangements could be made for the following week. Ms. Crackel said the issue was not one of timing, but rather that the movie was too "political" for USSRC and thus could not be shown there. When Mr. Solid inquired further, he was directed to speak with Cliff Broderick, who was identified as the individual who had made the decision. When Mr. Solid spoke with Mr. Broderick the following day, Nov. 19th, Mr. Broderick informed him that *The Mysterious Islands* was "inappropriate" for the USSRC because of its content regarding evolution.

RELEVANT LAW

A state agency that makes its facilities available for use by other groups may not deny specific groups equal use because of the content of their speech. Public facilities become designated public fora when "authorities have by policy or practice 'opened those facilities for

indiscriminate use by the general public,' . . . or by some segment of the public. . . .” *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 267 (1988) (citation omitted) (emphasis added). By policy, the USSRC has opened its facilities to an unlimited variety of groups and, by practice, those groups have been allowed to use USSRC facilities for educational, recreational, civic, commercial, and social activities. This broad level of access conclusively establishes the USSRC Theater as a designated public forum. Vision Forum’s screening of *The Mysterious Islands* would qualify for access under all of the permissible uses which the USSRC has historically allowed.

Government officials may not discriminate against otherwise eligible speakers in designated public fora solely on the basis of the content of their speech unless the selective restriction “is necessary to serve a compelling state interest and . . . is narrowly drawn to achieve that end.” *Widmar v. Vincent*, 454 U.S. 263, 270 (1981) (citation omitted). *Accord, Perry Ed. Ass’n v. Perry Local Educ. Ass’n*, 460 US. 37, 46 (1983). In fact, content-based censorship in all but the most exceptional circumstances will be flatly unconstitutional under the Court’s strict scrutiny:

[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content The essence of this forbidden censorship is content control

Police Dep’t v. Mosley, 408 U.S. 92, 95-96 (1972) (citations omitted). The USSRC has engaged in content-based discrimination against Vision Forum by denying it the right to access a publicly available building based upon the “inappropriate” content of *The Mysterious Islands*. Given that the USSRC invites the public to see such fare as *Batman: The Dark Knight*, *Star Trek*, and *The Magic of Flight* at its facilities, there is no compelling reason why a family-friendly private screening of a scientifically-oriented movie must be prohibited from the USSRC. Thus, the USSRC’s content-based discrimination is unconstitutional.

Since the USSRC has allowed events or statements supporting biological evolution—including *The Magic of Flight*, *Blue Planet*, portions of its space camp classes, and statements in its annual reports—its denial of access to an event which takes a contrary view because of that view is viewpoint discrimination. At its core, the First Amendment forbids the government from regulating speech “in ways that favor some viewpoints or ideas at the expense of others.” *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993). Accordingly, viewpoint discrimination is presumptively unconstitutional:

When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The

government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.

Rosenberger v. Rector and Visitors of the Univ. of Virginia, 515 U.S. 819, 829 (1995) (citations omitted). Thus, the USSRC's denial of Vision Forum's ability to share a different viewpoint on evolution than those it has already allowed at its facilities is profoundly unconstitutional.

Finally, the USSRC's action in this matter is unconstitutional because it is not based upon any clear existing policy but rather upon the unhindered discretion of USSRC officials. The Due Process Clause of the Fourteenth Amendment requires that regulations "provide explicit standards for those who apply them" in order to prevent application "on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972). Similarly, the First Amendment prohibits regulations from giving unbridled discretion to government officials charged with licensing or regulating speakers because it "gives a government official or agency substantial power to discriminate based on the content or viewpoint of speech." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988). Here, the USSRC has identified no policy language which gives it the authority to determine that the religious and scientific content of *The Mysterious Islands* is "inappropriate." If anything, the policy seems to suggest that "any type" of event is welcome. Thus, the USSRC appears to be making *ad hoc* decisions regarding what type of speech is permissible within its publicly available facilities, which is a violation of the Fourteenth Amendment's guarantee of due process and the First Amendment's protection of free speech.

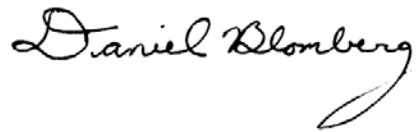
CONCLUSION

The USSRC's refusal to allow Vision Forum to access a publicly available facility is clearly unconstitutional. We hope that the USSRC will recognize this problem and reverse course immediately to avoid any further violation of Vision Forum's rights. Vision Forum desires to use the Theater on November 25th and looks forward to a voluntary change in the USSRC's position.

But if the USSRC refuses to change its policy by **3:00 PM, EST, on Tuesday, Nov. 24th**, ADF will commence litigation to protect Vision Forum's First and Fourteenth Amendment rights. This deadline has been chosen because Vision Forum will need to have access, at least of an investigatory nature, to the Theater by this time in order to begin the process of preparing for its private screening of *The Mysterious Islands* at 6:00 PM on Nov. 25th.

We look forward to hearing from you immediately.

Sincerely,

A handwritten signature in black ink that reads "Daniel Blomberg". The signature is written in a cursive style with a long, sweeping tail on the letter 'g'.

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