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BY E-MAIL, FAX, AND FIRST-CLASS

Eric Treene, Esq.
Special Counsel for Religious Discrimination
Department of Justice, Civil Rights Division
Robert F. Kennedy Building, Room 5531
950 Pennsylvania Ave. N.W.
Washington, DC 20530-2000

Dear Mr. Treene:

Our firm represents Judy and Jonathan Chiel, Professors Jonathan D. Sarna and Ruth Langer, Dr. Jeffrey Kosowsky and Miriam Kosowsky and their children Harry Chiel, Leah Sarna, and Michael Kosowsky, all of whom reside in the area of Boston, Massachusetts. The students attend the Maimonides School in Brookline, Massachusetts, which is a private religious school under Orthodox Jewish auspices. It is fully accredited under Massachusetts law and provides an all-day program of secular and Jewish religious subjects. Graduates of the school have been admitted and attended the leading colleges and universities in the United States.

This year the Mock Trial team of the Maimonides School won the state-wide competition in Massachusetts and has, on that account, qualified for the National High School Mock Trial Championship which is scheduled to be held in Atlanta, Georgia, between May 6 and May 10, 2009. Since the members of the Maimonides School Mock Trial team are Sabbath-observers and would not, for reasons of religious conscience and observance, be able to participate in mock trials between sundown on Friday and nightfall on Saturday, they requested that their qualifying trials be scheduled for a time other than that 25-hour period on May 8 and 9. That request to reschedule 2 of the approximately 100 trials has been denied notwithstanding a letter of April 17 sent by the Anti-Defamation League to the Chair of the National High School Mock Trial Championship. (A copy of the ADL letter is attached.)

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The same situation confronted a Mock Trial team of the Torah Academy of Bergen County, an Orthodox Jewish New Jersey High School, in 2005, and their trials were rescheduled so as not to conflict with the observance of Sabbath. Following that incident, we understand that in October 2005 the Board of the National High School Mock Trial Championship approved a resolution that had been adopted by a one-vote margin at a meeting of the State Mock Trial Coordinators held in May 2005 barring any future revision of the Mock Trial schedule for religious observance. That resolution has been invoked to deny the request made this year by the Maimonides School and the members of its Mock Trial team.

As a result of the Board's vote, the New Jersey State Bar Foundation and North Carolina Academy of Trial Lawyers withdrew from participation in the National High School Mock Trial Championship. The October 2005 action of the Board was also condemned on September 25, 2007, by a unanimous vote of the United States House of Representatives in H. Res. No. 25, which called the decision of the Board "inconsistent with the spirit of freedom of religion or equal protection."

The effect of refusing to reschedule the Maimonides School's trials is effectively to deny the Sabbath-observing students any chance to win the competition *solely on account of their religious observance*. Since, for reasons stated below, the organization that conducts this competition appears to be a "state actor" within the standards of *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288 (2001), and the religious rights being asserted by the parents and students are "hybrid rights," the denial of rights by the National High School Mock Trial Championship violates the United States Constitution, Title IV of the Civil Rights Act of 1964 as amended, 42 U.S.C. §§ 2000c *et seq.*, and 42 U.S.C. § 1983.

There are many indicia in this matter of "state action" under the *Brentwood Academy* standards. Many public schools across the country participate in the Mock Trial competition. (We do not, at this time, know the precise percentage of public-school competitors, but the Department of Justice can surely request and obtain that information.) The Mock Trial competition is traditionally conducted in state courtrooms that are vacated in order to accommodate the competition. We understand there will be a court holiday in Atlanta during the days of the competition. (The Department of Justice can, of course, learn the details of this interaction with local law administration.) Many of the individuals involved in the competition are local judges or other public employees of local legal systems. We do not, at present, know whether public funds sponsor the competition in any manner, but that can be determined by an inquiry to the organization. We do know that many State Bars participate in the program, although the precise details are not publicly available.


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The Civil Rights Division has, in recent years, actively challenged discrimination in education based on religious observance. See, e.g., *Scheidt v. Tri-Creek School Corp.*, N.D. Ind. No. 2:05-CV-204; *Hearn v. Muskogee Public School District 020*, E.D. Okla. No. CIV 03 598-S. The current case is far more significant *nationally* than either of the cited cases; it potentially affects not only students from any State of the Union who observe the restrictions of the Jewish faith but also students and schools that adhere to observances of the Seventh-Day Adventist and Muslim faiths. And they totally disqualify such students from a national competition because of their religious observance.

The burden on the organization conducting the competition is, we submit, minimal. We believe that only 2 trials of approximately 100 need be rescheduled for times other than the 25-hour period when Sabbath is observed. The parents and students have offered to absorb any additional cost incurred because rooms other than courtrooms may have to be set aside for the two trials.

In our view, our clients are being denied rights protected by the Constitution and by United States law. Pursuant to the procedure prescribed by the Civil Rights Division's Educational Opportunities Section we hereby request that the Department initiate an investigation and take such steps as are authorized by law to prevent and remedy the unlawful discrimination that is being perpetrated against our clients.

Respectfully submitted,


Nathan Lewin

Enclosure

cc: Mr. John Wheeler (via e-mail)

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