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June 15, 2021

VIA EMAIL: BGSARON@SUNPRAIRIESCHOOLS.ORG

Dr. Brad Saron  
Sun Prairie Area School District  
501 S. Bird Street  
Sun Prairie, WI 53590

VIA EMAIL: MAYOR@CITYOFSUNPRAIRIE.COM

Mayor Paul Esser  
City of Sun Prairie  
300 E Main Street  
Sun Prairie, WI 53590

Dear Dr. Saron and Mayor Esser:

Wisconsin Institute for Law & Liberty (WILL) is a non-profit public-interest law firm dedicated to the rule of law, individual liberty, constitutional government, and a robust civil society. As part of our mission, we are leading the Equality Under the Law Project. The project utilizes strategic litigation against local, state, and federal governments to enforce the guarantee of equality under the law and the promise of a colorblind society.

On June 11, 2021, WILL became aware of an upcoming event entitled, "Sun Prairie Community Conversations on Race, Equity, and Inclusion." This event is sponsored and organized by the Sun Prairie Area School District (SPASD) and the City of Sun Prairie. The purpose of this event is to advance "racial justice and equity," and according to available materials, public tax dollars have and will continue to be used to sponsor it.

We are writing because this upcoming, government-sponsored event employs racial segregation. According to materials prepared by SPASD employee Jamie Racine, the program will include "a series of intra- and inter-racial conversations" to serve as "effective catalysts for racial justice and racial healing." The sign-up sheet directs participants to "only sign up for the conversation for the race that you identify with," as follows:

- East Indian Affinity Group - June 21, 7-9pm
- Asian Affinity Group - June 22, 5-7pm
- White Affinity Group - Jun 23, 5-7pm
- Black Affinity Group - June 23, 5-7pm
- Latinx Affinity Group - June 28, 5-7pm
- Multiracial Group (all are welcome to participate in this conversation) - June 30, 5-7pm

Our country has endured an exceedingly painful and violent history of racial segregation perpetuated and enforced in large part by school boards and cities from the late 19<sup>th</sup> through the early 20<sup>th</sup> century. In 1954, the U.S. Supreme Court ruled that racial segregation is unconstitutional and, at its core, harmful to all individuals participating in segregated systems.

Since the Supreme Court affirmed American law is, and ought to be, colorblind, many civil rights heroes have fought and died to defend the foundational principles of non-discrimination, racial integration, and equality under the law. In his April 16, 1963, letter from the Birmingham Jail, Dr. Martin Luther King, Jr. roundly rejected any moral argument in favor of racial segregation. Calling segregation a “disease,” Dr. King wrote that segregation turns people into “things” by “distort[ing] the soul and damag[ing] the personality” and by giving “the segregator a false sense of superiority and the segregated the false sense of inferiority.” Dr. King also proclaimed integration “morally right” and criticized those who resisted such an obviously correct position.

American law has uniformly responded to the Civil Rights Movement by prohibiting governments, including cities and school boards, from imposing racial classifications or otherwise treating individuals differently based on race. Title VI of the Civil Rights Act of 1964 broadly prevents discrimination based on race by entities, such as SPASD and the City of Sun Prairie, that receive federal assistance. Since 1978, the Supreme Court has held cities and school boards liable for violating equal protection guarantees under the Civil Rights Act of 1871. Successful litigants may receive money damages as well as attorney fees from local officials who violate these statutes. Furthermore, federal grant recipients that violate non-discrimination laws face the possibility of audit, additional oversight, and grant revocation under the terms of any federal grant.

Some may claim that racially segregated affinity groups are somehow beneficial or benign. Affinity groups, some say, provide a better “opportunity to participate,” make minorities feel “inwardly more secure,” and actually “promote cross-racial understanding.” Anyone who makes such an argument should be aware that segregationists used identical rationale to justify racial segregation in the 1950s. *See generally Fisher v. Univ. of Texas at Austin*, 570 U.S. 297, 323-24 (2013) (Thomas, J., concurring). Segregationists even argued that segregation was necessary to protect “black children from racist white students and teachers.” *Id.* at 329.

Racial segregation is never beneficial, it is never benign, it is always harmful. The Supreme Court has thankfully rejected such justifications for racial discrimination on many occasions. The Court in *Loving v. Virginia* called all racial distinctions “odious to a free people whose institutions are founded upon the doctrine of equality.” Later, *Shaw v. Reno* declared that racial distinctions “threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility.”

Moreover, some may claim that imposing racial distinctions, like affinity groups, is somehow necessary to address “systemic racism.” Discrimination to cure discrimination is antithetical to the principle of equality under the law. Two

federal courts have recently rejected such claims by the government, relying firmly on long-standing Supreme Court precedent. For example, in a decision broadly prohibiting public schools from using race as a tool to cure racial disparities, the U.S. Supreme Court wrote: “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007).

Our Nation rests upon certain foundational principles; chief among these is the principle of equality. Our Wisconsin Constitution begins with the solemn declaration that “[a]ll people are born equally free and independent, and have certain inherent rights.” We know the City of Sun Prairie and SPASD believe in these principles wholeheartedly as both the City’s Ordinances and SPASD’s statement of nondiscrimination roundly conflict with any attempt to segregate the races.

Therefore, in your roles as Superintendent and Mayor, we hope you will take this opportunity to re-dedicate the City and SPASD to the principle of equality and to end all forms of racial segregation immediately. After WILL sent a similar letter to the Madison Metropolitan School District, the District apologized and had since abandoned the use of segregated affinity groups. We call on you to do the same.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Esenberg", with a long horizontal line extending to the right.

Rick Esenberg, President & General Counsel

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