EXHIBIT 1

January 24, 2022

(via email)

Patrick Winters, Superintendent
Twin Valley School District
4851 N. Twin Valley Road
Elverson, PA 19520

William Clements, Principal
Twin Valley High School
4851 N. Twin Valley Road
Elverson, PA 19520

RE: Approval of Retire the Raider & No Place for Hate Clubs, and Cessation of Student Speech Suppression

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Pennsylvania

Eastern Region Office
PO Box 60173
Philadelphia, PA 19102
215-592-1513 T
215-592-1343 F

Central Region Office
PO Box 11761
Harrisburg, PA 17108
717-238-2258 T
717-236-6895 F

Western Region Office
PO Box 23058
Pittsburgh, PA 15222
412-681-7736 T
412-681-8707 F

Dear Mr. Winters and Mr. Clements:

The American Civil Liberties Union of Pennsylvania ("ACLU") represents Arden and Sloane Wolfe, who have been advocating to change the Twin Valley School District ("TVSD") mascot and establish school clubs focused on diversity, equity and inclusion issues. We understand that school administrators prevented students from forming a "Retire the Raider" student club and a "No Place for Hate" student club, and repeatedly threatened students with discipline for engaging in protected activism around the TVSD mascot. These actions by the school and the district violate federal law and the United States Constitution. We write to demand that you immediately approve the Retire the Raider and No Place for Hate clubs, remove any information from Arden's disciplinary record related to her activism, and provide assurances that no student will be disciplined for engaging in protected speech moving forward.

The school district's refusal to allow a Retire the Raider club or No Place for Hate student club is patently unconstitutional. Under the First Amendment to the U.S. Constitution, the district must treat the Retire the Raider and No Place for Hate clubs the same as any other non-curricular student club.[1] This means, among other things, that the district may not create a more difficult approval process than the approval process faced by other non-curricular clubs – such as by forbidding faculty involvement or delaying approval for an unspecified period of time despite the satisfaction of all requirements.

[1] *See, e.g., Prince v. Jacoby*, 303 F.3d 1074, 1090 (9th Cir. 2002) (holding that treating one non-curricular club differently than other non-curricular clubs due to the club's purpose violated student free speech rights).

The federal Equal Access Act ("EAA") also requires federally funded secondary schools that permit meetings of non-curriculum-related student groups to provide equal access to all students wishing to form such groups. 20 U.S.C. § 4071. The purpose of the Equal Access Act is to "prohibit discrimination between religious or political groups . . . and other non-curriculum-related groups."[2] Courts consistently uphold the Equal Access Act's protection for students who seek to form student clubs that school administrators disagree with.[3]

We understand that TVSD already allows a number of non-curricular school clubs to operate, including the Ski Club, Mini-THON, and Pride Network. Under the EAA, the District may not deny approval of the Retire the Raider and No Place for Hate clubs based on disapproval of either club's speech, activities, name or student leadership. We also understand that the district prohibited teachers from serving as faculty advisors for either student club, which *de facto* prevents a club's formation. Under the EAA, the District may not subject the club to arbitrary roadblocks that it did not create for other prospective non-curricular clubs, such as forbidding teacher involvement as advisors.[4] As such, the District's actions regarding both the Retire the Raider club and the No Place for Hate club violate the EAA.

In addition to improperly denying students their right to form a club, the school district has also engaged in a pattern of disciplinary actions that "chill" student speech on campus. The Supreme Court has repeatedly held that the threat of sanctions – even if no formal sanctions are ultimately imposed – can be enough to constitute a First Amendment violation, given the vulnerable nature of free speech rights.[5] We understand that the school district has taken all of the following actions to chill Arden's activism regarding the Raider mascot:

- Punishing Arden with an unwarranted Acceptable Use Policy Violation for "spam" after she sent an email about the campaign to the student body.
- Threatening Arden with disciplinary action after she distributed posters about the Retire the Raider campaign.
- Reporting a false "character" violation to the National Honor Society and asking that the organization remove Arden after she spoke to the school board in September regarding the district mascot.

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[2] *See Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 238 (1990).

[3] *See, e.g.*, *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135 (N.D.N.Y. Mar. 29, 2011); *Straights and Gays for Equality v. Osseo Area Schools-Dist. No. 279*, 540 F.3d 911 (8th Cir. 2008); *Gay-Straight All. of Yulee High Sch. v. Sch. Bd of Nassau Cnty.*, 602 F. Supp. 2d 1233 (M.D. Fla., March 11, 2009); *Gonzalez v. Sch. Bd. of Okeechobee Cnty.*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008); *White Cnty. High Sch. Peers Rising in Diverse Educ. v. White Cnty. Sch. Dist.*, No. 2:06-CV-29WCO, 2006 WL 1991990 (N.D. Ga. July 14, 2006); *Donovan v Punxsutawney Area Sch. Bd.,* 336 F.3d 211 (3d Cir. 2003), *cert denied*, 540 U.S. 813 (2003); *Boyd Cnty. High Sch. Gay Straight All. v. Bd. of Educ. of Boyd Cnty.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003); *Franklin Cent. Gay/Straight All. v. Franklin Twp. Cmty. Sch. Corp.*, No. IP01-1518 C-M/S, 2002 WL 32097530 (S.D. Ind. Aug. 30, 2002); *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000); *East High Gay/Straight All. v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp. 2d 1166 (D. Utah 1999); *Pope v East Brunswick Bd. of Educ.*, 12 F.3d 1244 (3d Cir. 1993). The First Amendment's free-speech and assembly clauses also favor the students' right to form political, religious and other clubs, but courts tend to rule under the EAA because application is so straightforward.

[4] *See* 28 U.S.C. § 4071(a).

[5] *See Laird v. Tatum*, 408 U.S. 1, 11 (1972); *N.A.A.C.P. v. Button*, 371 U.S. 415, 433 (1963).

- Restricting Arden's and Sloane's ability to comment on the Twin Valley School District Instagram account.

These actions create a real and imminent fear of sanctions for students who wish to speak out concerning the mascot, in violation of the First Amendment of the U.S. Constitution. Moreover, the suppression of a citizen's comments on a government social media account because the citizen expressed criticism of the government's actions (or lack thereof) is viewpoint-based censorship that also violates the First Amendment.[6]

Please provide us with assurances **no later than Friday, February 4** that (1) the proposed Retire the Raider and No Place for Hate student clubs have been approved; (2) any restrictions on Arden and Sloane's ability to comment on TVSD social media posts are lifted; (3) any speech-related infractions have been expunged from Arden's disciplinary record; and (4) the school district will adopt and follow policies to ensure that students are not disciplined for engaging in protected speech moving forward. If TVSD fails to provide these assurances by the deadline, absent a compelling explanation conveyed to us, we will consider all available legal option, including seeking a federal court injunction ordering the District to comply with our request. Any request for legal redress will include a request that TVSD pay our attorneys' fees. Please do not hesitate to let us know if you have any questions or concerns. If you have questions or wish to discuss our demand, please contact me at 215-592-1513 x116 or sloney@aclupa.org. We look forward to hearing from you.

Sincerely,

Stephen Loney
Senior Supervising Attorney

Connor Hayes
Legal Fellow

[6] *See, e.g., Davison v. Randall*, 912 F.3d 666, 688 (4th Cir. 2019), *as amended* (Jan. 9, 2019) (holding that chair of a county board of supervisors violated First Amendment by banning plaintiff from the chair's Facebook page after plaintiff made comments alleging government corruption); *Robinson v. Hunt Cty., Tex.*, 921 F.3d 440, 445 (5th Cir. 2019) (holding that sheriff unconstitutionally prevented plaintiff from speaking by deleting her comment and banning her account from his Facebook page); *Windom v. Harshbarger*, 396 F. Supp. 3d 675, 683-84 (N.D.W. Va. 2019) (state representative blocked plaintiff after plaintiff criticized a bill that the representative supported); *One Wis. Now v. Kremer*, 354 F. Supp. 3d 940, 956 (W.D. Wis. 2019) (officials blocked plaintiff due to plaintiff's liberal perspective); *Dingwell v. Cossette*, 2018 WL 2926287 (D. Conn. 2018) (city unconstitutionally blocked resident from posting on the police department's Facebook page, in retaliation for public criticism of the department). *See also Attwood v. Clemons*, 526 F. Supp. 3d 1152, 1173 (N.D. Fla. 2021) (noting that although plaintiff had other social media accounts that were not blocked, blocking of one account still constituted an unconstitutional restriction on speech). *Cf. Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) ("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."); *Pittsburgh League of Young Voters Educ. Fund v. Port Auth. of Allegheny Cnty.*, 653 F.3d 290, 296 (3d Cir. 2011) ("[I]f the government allows speech on a certain subject, it must accept all viewpoints on the subject even those that it disfavors or that are unpopular.") (internal citations omitted).

CC: Leah Rotenberg, Esq. (via email, rotenberg@mcr-attorneys.com)