ACLJ
AMERICAN CENTER
for LAW & JUSTICE

DISTRICT OF COLUMBIA [redacted] TENNESSSEE [redacted] VIRGINIA [redacted]

May 21, 2024

Kelsey Ransom, Recreation Supervisor
Manhattan Beach Parks and Recreation
1400 Highland Avenue,
Manhattan Beach, CA 90266
reservations@manhattanbeach.gov

RE: City of Manhattan Beach Park Policies and Procedures Unconstitutional Prohibition on Religious Uses

Dear Ms. Ransom,

The American Center for Law and Justice (ACLJ)[1] represents [redacted], a resident of City of Manhattan Beach, regarding the City of Manhattan Beach Park Policies and Procedures expressly prohibiting use of public facilities for religious worship or other religious purposes. See Park Rules | City of Manhattan Beach.

The relevant portion of the policy provides as follows:

PURPOSE

[1] By way of introduction, the ACLJ is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion. *See, e.g., Pleasant Grove v. Summum*, 555 U.S. 460 (2009) (holding that the government is not required to accept counter-monuments when it displays a war memorial or Ten Commandments monument); *McConnell v. FEC*, 540 U.S. 93 (2003) (holding that minors have First Amendment rights); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (holding that denying a church access to public school premises to show a film series violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (striking down an airport's ban on First Amendment activities).

> The Facility Reservation Policy governs use of public facilities such as community center rooms, picnic shelters, swimming pools, basketball courts and sports fields that are available to the public for civic, social, educational, athletic, cultural activities and limited commercial use. The purpose of this policy is to provide use regulations and application and scheduling procedures to accommodate residents and individuals who would like to use City facilities. *Facilities will not be used for religious worship or other religious purposes*, political fundraisers, political advocacy or other partisan campaign events, or the sale of goods or services. Candidate or ballot issue forums that present all opposing viewpoints may be accepted.

As explained in more detail below, it is unlawful for a public facility to treat religious groups differently or less favorably than non-religious groups with regard to access to public facilities and meeting spaces. Accordingly, we request that the City immediately revise its policy to comply with the law and to allow [redacted] or others to reserve a community center room, or other space without regard to the nature of their speech and/or purpose of their gathering. A statement of facts and applicable law are provided below.

STATEMENT OF LAW

As the Supreme Court has explained,

> It is an elementary rule that the government may not exclude speech on the basis of its content from either a traditional public forum or a forum created by government designation, unless the exclusion is necessary to serve a compelling state interest which cannot be served by a less restrictive action.

Cornelius v. NAACP Legal Defense & Educ. Fund, 473 U.S. 788, 803, (1985); *see also Widmar v. Vincent*, 454 U.S. 263, 270 (1981) (holding a university policy denying a religious student club access to its facilities on equal terms violated the First Amendment); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (holding that denying a church access to public school premises to show a film series violated the First Amendment);

The City of Manhattan Beach has opened up a wide array of facilities for public use including community center rooms, park areas and sports fields. Some of these facilities may fall under a traditional public forum;[2] others may fall under a limited public forum. Regardless of the forum, the City's current prohibition of the use of these spaces for any and all "religious purposes" violates the First Amendment.

[2] Public parks generally reflect more of a traditional public forum than other publicly owned buildings. *ACLU v. Nev. City of Las Vegas*, 333 F.3d 1092, 1099 (9th Cir. 2003) ("The quintessential public forums are side-walks, streets, and parks.") (citing *United States v. Grace*, 461 U.S. 171, 177 (1983); *see also Hazelwood School Dist.,* 484 U.S. at 267, 108 S. Ct. 562 (government facilities become designated public forums if "by policy or practice school officials have opened those facilities for indiscriminate use by the general public … or by some segment of the public.") (citations omitted).

Courts have explained time and time again that the government is prohibited from engaging in content or viewpoint discrimination in a designated public forum. In *Widmar,* the Supreme Court explained that discrimination based on religion in a public forum constitutes forbidden content-based discrimination. *Widmar,* 454 U.S. at 269-70. There, a student group engaging in prayer, hymns, Bible commentary and religious discussion was prohibited from using the university's buildings, while all other student groups were permitted access to the university for their meetings. The Court held that the university "discriminated against student groups and speakers based on their desire to use a generally open forum to engage in religious worship and discussion." *Id.* at 269; *see e.g., id*. at 269 (explaining further that the "Constitution forbids a State to enforce certain exclusions from a forum generally open to the public, even if it was not required to create the forum in the first place"). Several years later, and in keeping with *Widmar*, the Supreme Court in *Lamb's Chapel* unanimously held that the First Amendment requires religious groups to be treated equally with other groups that use public facilities.

Many of these same principles apply to limited public forums. Restrictions on access to a limited public forum, such as a library or school facility, must be viewpoint neutral and reasonable. *Faith Ctr. Evangelistic Ministries v. Glover*, 480 F.3d 891, 908 (9th Cir. 2007); s*ee also Concerned Women for America, Inc., v. Lafayette County*, 883 F.2d 32, 34-35 (5th Cir. 1989) (holding that library's auditorium was a forum created by government designation for First Amendment purposes); and *Pfeifer v. City of West Allis*, 91 F.Supp.2d 1253 (E.D. Wisc. 2000) (holding that library's meeting room was a designated public forum for First Amendment purposes). The Supreme Court has explained that access to a limited public forum may not be restricted based on the ideology or the opinion or perspective of the speaker. *Faith Ctr.,* 480 F.3d at 911 (citing *Rosenberger*, 515 U.S. at 289). For example, and as the Ninth Circuit has explained,

> in *Good News Club v. Milford Central School*, the Court held that a school district engaged in viewpoint discrimination when it refused to allow a Christian children's club ("Club") to offer a religious perspective on moral and character development in a school forum that was open to wide community involvement. The school district allowed its facilities to be used for activities "pertaining to the welfare of the community, " and the facilities were available to any group that promoted the moral and character development of children. *See* 533 U.S. at 108. Comparing the circumstances to *Lamb's Chapel*, the Court found that the school district had discriminated on the basis of viewpoint by denying the Club the opportunity to teach moral and character development to children from a religious perspective. *See id.* at 111 ("What matters for purposes of the Free Speech Clause is that we can see no logical difference in kind between the invocation of Christianity by the Club and the invocation of teamwork, loyalty, or patriotism by other associations to provide a foundation for their lessons.").

Id. at 913.

While the court in *Faith Center* upheld a library's restriction on use of its facilities for official "religious services," the court found the restriction was based *not* on the viewpoint/perspective being offered, but strictly on the type of activity - *i.e.* religious services. The court made clear, however, that if the exclusion had been broader, and had it prohibited all religious discussion of topics (such as sharing personal life experiences, discussing social or political issues, or discussing matters of social interest), such a restriction would in fact violate the First Amendment. *Id*. at 914. Indeed, the court held that while the library could prohibit official "religious services" in the library (due to its very narrow limited purpose), the library could *not* restrict Faith Center's use of the library meeting room for all "religious purposes." *Id*. Faith Center would still be permitted to continue to meet and use the library space for religious purposes (i.e. that bible studies, discussions of religious books, teaching, prayer and sharing meals, discussions of the Bible or of social and political issues, etc.)

Importantly, the County in *Faith Center* agreed that its former meeting room policy prohibiting meetings for all religious purposes was overly broad and amended this policy in the middle of litigation to avoid a constitutional violation. *See id*. at 904.

The City of Manhattan Beach's policy is impermissible under *Faith Center*. First, and in stark contrast to *Faith Center*, the City has opened up numerous facilities for public use – not just libraries. Park picnic areas, sports fields and courts, and community centers are all made available to the public for a wide array of "civic, social, educational, athletic, cultural activities and limited commercial use." The forum and the purpose for which the forum has been opened is quite broad. Further, the City's prohibition is much broader in that it prohibits any gathering for any "religious purposes." Here, the City does not distinguish between religious worship and other forms of religious speech or expression – nor could it without violating the Establishment Clause.[3] *All* religious purposes are prohibited.

This is certainly true for [redacted]. When [redacted] described his gathering in an email to Facility Reservations as "sing[ing] worship songs together and then watch a sermon on

[3] Courts interpreting and applying *Faith Center* provide further clarity on the very narrow circumstances under which the government can restrict uses in a limited public forum. Indeed, but for the church's own distinction in *Faith Center* between its afternoon religious worship service (deemed impermissible) and its morning activities (also religious in nature but deemed permissible and in compliance with the limited purpose of the forum), the court would have been ill equipped to distinguish between the two. *Id*. at 918. Courts have explained that neither the government nor the courts could have made this distinction. *Citizens for Cmty. Values, Inc. v. Upper Arlington Pub. Lib. Bd. of Trs.*, 2008 U.S. Dist. LEXIS 85439, at **38-39 (S.D. Ohio Aug. 14, 2008) (noting that "the *Faith Center* court admitted that the distinction is 'challenging' and 'one that the government and the courts **are not competent to make**'" and that "the [library] may not be able to identify whether Faith Center has engaged in pure religious worship, but Faith Center can and did'"). *See also Healing Hands Church v. Lansing Hous. Comm'n*, 160 F. Supp. 3d 1014, 1023-24 (W.D. Mich. 2016) (noting that "in other words, while religious worship services can be distinguished from other forms of religious speech *by the adherents themselves* . . ., this court is not competent to make such distinctions," and that such prohibitions on types of religious speech will thus be met with strict scrutiny).

the television," the City did not classify [redacted] gathering as a worship service. Instead, it simply stated that it " cannot permit the use of our facilities for religious purposes."

CONCLUSION

To ban or limit groups from using public facilities solely because they seek to gather for a religious purpose is unconstitutional. [redacted] has already suffered irreparably injury, and the injury is ongoing until the City amends its policy to remove the unconstitutional provision. *See Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

To resolve this matter efficiently and avoid further legal action, we request receiving in writing the following assurances **on or before Tuesday, May 29, 2024**:

1. The City's facility use policy will be amended to remove the paragraph highlighted below that reads as follows: "Facilities will not be used for religious worship or other religious purposes."

2. [redacted] will be permitted to use the City's facilities under the same terms and conditions that apply to all other non-religious gatherings already permitted.

3. The City will not discriminate against [redacted] or restrict any of his or his group's activities simply because they seek to gather for a religious purpose.

Should we not receive these assurances **by May 29, 2024,** we will pursue appropriate legal remedies. Thank you for your attention to this matter. Should you have any questions regarding the contents of this letter, please do not hesitate to contact me at [redacted].

Sincerely,

AMERICAN CENTER FOR LAW AND JUSTICE

Abigail A. Southerland*
Senior Litigation Counsel
[redacted]
**Admitted in Tennessee*