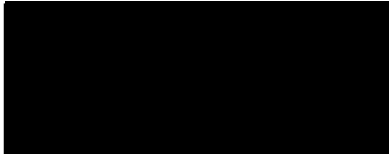




April 26, 2018

VIA FED-EX & EMAIL



Re: The [REDACTED]'s obligations under the federal Fair Housing Act with regards to homeowners' access to Club facilities

To Whom It May Concern,

The American Center for Law & Justice ("ACLJ") represents homeowner [REDACTED] regarding [REDACTED] facially discriminatory policy prohibiting homeowner use of Club facilities for religious events and the Club's recent denial of [REDACTED] to use Club facilities for an Easter sunrise gathering on April 1, 2018.

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 Pleasant Grove City v. Summum*, 129 S. Ct. 1523 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept counter-monuments when it has a war memorial or Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote 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) (unanimously striking down a public airport's ban on First Amendment activities).

In the subsequent pages, the facts of this matter are set forth and analyzed under applicable federal law. This letter explains that [REDACTED] policy violates federal law, specifically the Fair Housing Act (FHA), as written and as applied to [REDACTED] homeowners.

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STATEMENT OF FACTS

██████████ is a homeowner in the ██████████ Community and maintains sub-membership rights in the Club pursuant to the Community Membership Agreement. Membership, and payment of membership dues is a term attached to purchase of any home in the ██████████ Community. On March 10, 2018, ██████████ contacted the Club to inquire of the availability of Club facilities – specifically the amphitheater – for a sunrise Easter gathering that she and another Club member wished to host on April 1, 2018, at 6 am. ██████████ Club Manager, informed ██████████ that the Club could not “sanction” any religious events. On March 31, 2018, at 10:30 am – less than 24 hours before the event was to take place – ██████████ contacted ██████████ and informed her that, due to complaints he had received, she would not be able to hold the event on any Club property. Later that same day, ██████████ met with ██████████ and ██████████ to discuss the matter further. The Club maintained its position and reiterated that the Club does not allow any religious events. A review of Club rules and regulations reveals that it is Club policy to restrict the use of Club facilities for religious services and activities. *See* ██████████ Rules and Regulations, at p. 2. Similar non-religious organized events and activities, however, are permitted. *Id.* ██████████ was forced to change the location of the event at the last minute and hold it on green space located near ██████████. Approximately 200 attended the event, including several homeowners within the community. We understand that the Club’s actions in this particular matter, as well as the Club’s policy excluding religious events and activities from Club facilities, are concerning to many homeowners in the community.

STATEMENT OF LAW

A PROHIBITION OF RELIGIOUS EVENTS AT NEIGHBORHOOD OR CLUB FACILITIES WHILE PERMITTING SIMILAR NON-RELIGIOUS EVENTS VIOLATES THE FEDERAL FAIR HOUSING ACT (FHA).

The federal Fair Housing Act (“FHA”), 42 U.S.C. § 3601, *et seq.*, makes it unlawful “[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . religion” 42 U.S.C. § 3604(b). The United States Department of Justice (“DOJ”) has explained that the FHA’s prohibition on religious discrimination “covers instances of overt discrimination against members of a particular religion as well [as] less direct actions” Importantly, and particularly relevant here, courts have affirmed that § 3604(b) of the FHA applies to “post-acquisition discrimination,” including governance by homeowner’s associations. *See Bloch v. Frischholz*, 587 F.3d 771, 779 (7th Cir. 2011) (citing *Cox v. City of Dallas*, 430 F.3d 734, 746 (5th Cir. 2005)); *Committee Concerning Community Improvement v. Modesto*, 583 F.3d 690 (9th Cir. 2009); *Neals v. Mortg. Guar. Ins. Corp.*, 2011 U.S. Dist. LEXIS 53183, *10 (W.D. Pa. April 2011). Accordingly, the FHA’s protections, under § 3604(b), are not left on the doorstep as owners enter their new homes.

In *Bloch*, for example, plaintiff homeowners brought suit under the FHA against the condo association following the association's refusal to allow the owners to display a mezuzah on their exterior doorpost. The Blochs alleged that the Board discriminated against them in wielding its power. *Bloch*, 587 F.3d at 771. The Seventh Circuit upheld the Blochs' claims under the FHA and explained that because they purchased a dwelling subject to the condition that the condo association can enact rules that restrict the buyer's rights in the future, § 3604(b) applies to prohibit the association from discriminating against the Blochs through its enforcement of the rules, even facially neutral rules. *Id.* at 780. Simply put, the FHA prohibits associations from applying regulations or guidelines to the owner's use of his/her property and/or the use of neighborhood association facilities and common areas in a manner that discriminates against religion.

The Ninth Circuit affirmed the *Bloch* court's holding in *Comm. Concerning Cmty. Improvement*, stating:

[T]he inclusion of the word "privileges" implicates continuing rights . . . there are many "services or facilities" provided to the dwelling associated with the occupancy of the dwelling. Under this natural reading, the reach of the statute encompasses claims regarding services or facilities perceived to be wanting after the owner or tenant has acquired possession of the dwelling.

583 F.3d at 713. The FHA "embrace[s] claims about problems arising after the tenant or owner has acquired the property." *Id.* (noting further that "in common parlance, issues relating to . . . 'services or facilities associated with a dwelling' tend to be issues arising after the tenant or owner has come into possession of the dwelling and sought out maintenance, repair or services.").

On its website, the DOJ has reiterated these legal principles and has made quite clear that the FHA prohibits apartment complexes, condominiums, associations and the like from preventing residents or homeowners from using common rooms and HOA facilities for religious events or activities where similar non-religious events or activities are permitted.¹ "When condominiums or apartments have a common room that can be reserved by residents for private activities like parties or book studies, residents seeking to hold a Bible study or other private religious activity may not be discriminated against."²

In light of the foregoing legal authority, it is undeniable that the Club's operations are subject to the FHA, and that the Club is engaged in overt discrimination in violation of the FHA. Not only is the Club's policy discriminatory on its face (as written) in violation of the FHA, each time the Club applies its rules and regulations in an inconsistent manner to deny a Club member

¹ DOJ, Civil Rights Div., Combating Religious Discrimination and Protecting Religious Freedom, <https://www.justice.gov/crt/combating-religious-discrimination-and-protecting-religious-freedom-5> (last visited February 19, 2018).

² *Id.*

use of the facilities for a religious purpose, the Club engages in a separate violation of the FHA. Accordingly, and in order to bring itself into compliance with federal law, the Club must revise its rules and regulations to allow members to use Club facilities for religious and non-religious events or activities, alike, and permit all Club members the same access to its facilities without regard to religion.

CONCLUSION

It is our hope that this matter can be resolved amicably. In light of the importance attached to these issues, we request that the Club make the necessary changes requested above, and provide a response to the ACLJ no later than **May 7, 2018**, to affirm that these changes will be made to avoid any future violations of the FHA. We also request your assurances that [REDACTED] will not be harassed and/or retaliated against for the exercise of her rights under federal law. Should you have any questions in this regard, please feel free to contact me directly at [REDACTED]
[REDACTED]

Very truly yours,



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cc: Client