



# MEMORANDUM

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## Equal Access to Public Facilities for Religious Use

### Introduction

Unfortunately, some municipalities and public facilities administrators mistakenly believe that they are permitted to, or even required to, deny religious organizations the same access to public facilities as other organizations enjoy. But Christians, and other religious adherents, are not second class citizens. When facilities are open for use by community organizations, it is unconstitutional for school administrators to deny an organization or student group the same access to the facility as other groups enjoy simply because the group is religious. Such unequal policies amount to “viewpoint discrimination” and are per se unconstitutional. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828-29 (1995); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

### Religious Organizations May not be Denied Equal Access to Public Facilities

In *Lamb’s Chapel*, argued by Jay Sekulow as lead counsel, a unanimous Supreme Court held that the First Amendment requires religious groups to be treated equally with other groups that use public facilities. The court upheld two principles. First, denying religious organizations equal access to, and use of, public facilities for speech activities violates the Free Speech Clause of the First Amendment. Second, it is *not* a violation of the Establishment Clause (what some people mistakenly call “separation of church and state”) for a school to treat religious organizations equally with other organizations. These principles apply to all public facilities, not just school facilities, which have been opened for use by community organizations.

### What is the *Lamb’s Chapel* case?

The facts in the *Lamb’s Chapel* case were straightforward. An evangelical church desired to rent a school facility for an evening showing of a film series produced by Focus on the Family

ministry. The film series, entitled “Turn Your Heart Toward Home,” dealt with contemporary family issues from a biblical perspective. School administrators denied the church’s request for use because it was “church related.” Although the school facilities were available to community groups for social, civic, and recreational purposes, the rules and regulations specifically prohibited any religious use. The Supreme Court ruled against this prohibition, stating that the religious exclusion was unconstitutional.

### **What is the impact of the *Lamb’s Chapel* case?**

In many cities and counties throughout the United States, local school facilities are the community’s town halls. Access to these town halls is essential for religious adherents who want to have issues addressed from their perspective. Although many in a community may not feel comfortable going to a church to hear a presentation on a contemporary issue, people do feel at ease attending meetings held in community facilities such as school auditoriums and civic centers. The impact of the *Lamb’s Chapel* case is significant. Every government agency, from school boards to city councils, that has access policies in place for its properties must now allow religious organizations to use those facilities as well. We must take advantage of this new openness in the marketplace the *Lamb’s Chapel* case has created.

### **Does *Lamb’s Chapel* only apply to churches?**

No. Although the particular case before the Supreme Court involved the Lamb’s Chapel church, now other community groups that want to address issues from a Christian perspective also have access to government facilities that are open to the public for use. For instance, in Mobile, Alabama, an evangelistic ministry known as “Strike Force International” is now entitled to have an evangelistic crusade at the public school in Alabama because of an access policy that had to be modified in light of *Lamb’s Chapel*. Evangelistic events can now take place in school facilities in the evening as well as in city halls or other government facilities open to general use.

### **Does *Lamb’s Chapel* only apply to school facilities?**

No. The decision in *Lamb’s Chapel* applies to any government facility, whether a town hall, civic center, or city hall, that is open to the general public for social, civic, or recreational uses. We have found that most cities across America have access policies to local government buildings for community use. We have also found that many of these cities specifically prohibit religious groups from utilizing these facilities. This religious exclusion is unconstitutional in light of the *Lamb’s Chapel* decision.

### **What topics can be discussed when using government facilities?**

In *Lamb’s Chapel*, the Supreme Court specifically noted that the purpose of the James Dobson film series was to address contemporary family issues from a Christian perspective. But the decision goes much further. Family issues, baccalaureate services for students, evangelistic events, and discussion of contemporary Christian issues can now take place in government facilities because of the decision in *Lamb’s Chapel*. No longer can the excuse of church/state

separation be utilized to prohibit Christians from obtaining access to this new marketplace for the presentation of ideas.

**Does this mean that the government cannot control the use of their facilities at all?**

No. For example, a school district does not have to allow community groups to use its facilities after hours. The school may simply say, no one is allowed to use our facilities, or in some cases, it may limit the use of the facilities to certain types of content. But, if a school, or the administrator of any other government facility, opens that facility for use by community organizations, they may not exclude religious organizations from the same access that other organizations enjoy.

**What about policies that still prohibit use of government facilities by religious speakers?**

Such intolerant and unconstitutional policies should not be allowed. This will require utilizing the rights that were affirmed by the Court in *Lamb's Chapel*. Unfortunately, many cities are slow to change, and there are still hundreds of policies on the books throughout the United States which specifically prohibit religious groups from utilizing government facilities that are open to the community at large. At The American Center for Law and Justice, we have undertaken a project to have these laws removed and modified so they conform with *Lamb's Chapel*.

The procedure to gain access to a public facility is straightforward. First, if you decide you are going to utilize facilities, you must fill out an application form that is available at the seat of the local city government. Be forthright in the application, and state specifically what purpose you are going to use the facilities for. If the policy still prohibits religious uses, ask the city administrators if they are familiar with the *Lamb's Chapel* case. If they are not, we would be happy to send a letter on your behalf to clarify for the city government what the decision in the Supreme Court means. If you continue to have problems gaining access, we have sent demand letters — letters which state the law and inform the city officials what they must do to comply with the law — to city officials in order to obtain access. Generally, the demand letter resolves the situation. However, if we find that the demand letter is being ignored and your rights are still being denied, we can then proceed immediately to federal court and request an injunction, which will require the city officials to allow you to use the facilities under their control.

We have already seen the fruit from the decision in *Lamb's Chapel*. As noted above, in Alabama the *Lamb's Chapel* decision made it possible for an evangelistic event for teenagers to proceed in a local school facility. In Wisconsin, an organization that wanted to present a six-part series on the Christian heritage of our nation was also allowed to meet after the *Lamb's Chapel* decisions came down. By using government facilities and inviting the public to attend meetings where our view is presented, we gain equal access to an important arena and marketplace where ideas compete for minds and hearts. This is where we need to be, carrying Christianity into the fray where it can go head-to-head with other world views and demonstrate its intellectual and practical superiority.