



February 22, 2023

Thomas F. Huse
Chief Counsel
United States Secret Service
245 Murray Ln SW - BLDG T-5
Washington, DC 20223

**RE: Rev. Patrick Mahoney's Peaceful Demonstration Outside the Chinese Embassy
on February 15, 2023**

Dear Mr. Huse:

Rev. Patrick Mahoney has retained the American Center for Law & Justice ("ACLJ") regarding his peaceful demonstration outside the Chinese Embassy on February 15, 2023. The purpose of this letter is two-fold: (1) to explain the incident as described to us by Rev. Mahoney, and (2) to obtain written assurances that Rev. Mahoney is permitted to demonstrate peacefully on the public sidewalk outside the Chinese Embassy. Because Rev. Mahoney intends to revisit the public area outside the embassy on March 2, 2023, we ask that these written assurances be provided to us **no later than 5:00 p.m. on March 1, 2023**.

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 several significant cases involving the freedoms of speech and religion. *See Pleasant Grove City v. Summum*, 555 U.S. 460 (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).

Statement of Facts

Rev. Mahoney, Director of the Christian Defense Coalition, is a longtime civil rights activist in Washington, D.C. For decades, he has demonstrated in public areas throughout D.C. in support of religious liberty, the sanctity of the unborn, and international human rights. Based on this experience, Rev. Mahoney is generally aware of what public locations are available to him in the city to exercise his First Amendment liberties. In fact, he has demonstrated outside the Chinese Embassy on at least 75, and maybe as many as 100, prior occasions.

On February 15, 2023, at approximately 11:55 a.m., Rev. Mahoney went to the public area outside the Chinese Embassy, located at 3505 International Place, N.W. He went with two white balloons and handwritten signs, one of which read, "No to Spying! Yes to Freedom!" Rev. Mahoney was eventually joined by one other individual in his expressive demonstration.

Attached is a map indicating the boundaries of the Chinese Embassy (marked with a blue line) and the location where Rev. Mahoney was standing (marked with a red "X"). This map, including the blue property line, was retrieved from Open Data D.C., a website maintained by the Washington, D.C. government. *See* <https://opendata.dc.gov>. In addition, a tweet from Rev. Mahoney on February 15, 2023, indicates where he was standing vis-à-vis the embassy, i.e., outside its gates. *See* <https://tinyurl.com/revmahoney-tweet>.

When he arrived in the public area outside the embassy, Rev. Mahoney introduced himself to an agent of the U.S. Secret Service, as he typically does when he demonstrates outside such locales – including this specific locale. The agent asked what Rev. Mahoney planned to do at this location. Rev. Mahoney replied that he was going to pray and engage in a peaceful demonstration, making it clear that he would only do so on the public sidewalk.

The agent informed Rev. Mahoney that this would not be permitted. The agent said that Chinese embassy officials told U.S. Secret Service agents that the sidewalk was embassy property. The agent said that because the Secret Service had been told that by Chinese officials, and that because tensions are currently high between the United States and China, the Secret Service would not allow him to engage in his expressive conduct at that location.

Rev. Mahoney explained that the sidewalk outside the embassy is public property and that he had a right to access and engage in expressive conduct in that area just like anyone else. The agent again insisted that the area belonged to the Chinese Embassy and that if Rev. Mahoney did not leave, he would first be given a warning and then arrested.

Rev. Mahoney asked to speak with a supervisor. About 20 minutes later, a captain with the Secret Service, with whom Rev. Mahoney had interacted before, but does not recall his name, arrived on the scene. The captain asked what Rev. Mahoney intended to do and whether a compromise of some sort could be reached. Rev. Mahoney explained that because he was

standing on public property, he would not compromise his First Amendment right to engage in a peaceful demonstration. After some more discussion, the captain finally agreed with Rev. Mahoney that he indeed had a right to be at that location in order to pray and demonstrate. However, the incident has created a concern that agents of the U.S. Secret Service are unaware of Rev. Mahoney's clearly established constitutional rights and another similar incident will likely occur.

Statement of Law

As the Supreme Court has explained, public ways and public sidewalks

occupy a “special position in terms of First Amendment protection” because of their historic role as sites for discussion and debate. *United States v. Grace*, 461 U.S. 171, 180 (1983). These places—which we have labeled “traditional public fora”—“have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Pleasant Grove City v. Sumnum*, 555 U.S. 460, 469 (2009) (quoting *Perry Ed. Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 45 (1983)).

McCullen v. Coakley, 573 U.S. 464, 476 (2014).

In traditional public fora, such as public streets, parks, and sidewalks, “the government’s ability to permissibly restrict expressive conduct is very limited: the government may enforce reasonable time, place, and manner regulations as long as the restrictions ‘are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.’” *United States v. Grace*, 461 U.S. 171, 177 (1983) (citation omitted).

Importantly, for purposes of this letter, a traditional public forum will “not lose its historically recognized character for the reason that it abuts government property that has been dedicated to a use other than as a forum for public expression. Nor may the government transform the character of the property by the expedient of including it within the statutory definition of what might be considered a nonpublic forum parcel of property.” *Id.* at 180.

The fact that tensions might at present be high between China and the United States, as suggested by the Secret Service agent, is immaterial as far as the First Amendment is concerned. Indeed, that is all the more reason why Rev. Mahoney’s free speech rights warrant special protection. *See, e.g., Boos v. Barry*, 485 U.S. 312, 322 (1988) (refusing to uphold a statute that restricted the use of displays critical of foreign governments in front of embassies or consulates in light of a “longstanding refusal to [punish speech] because the speech in question might have an emotional impact on its audience”); *Snyder v. Phelps*, 562 U.S. 443, 444 (2011) (“speech on public issues occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection”).

As the Supreme Court further explained in *McCullen*:

It is no accident that public streets and sidewalks have developed as venues for the exchange of ideas. Even today, they remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site. Not so on public streets and sidewalks. There, a listener often encounters speech he might otherwise tune out. In light of the First Amendment's purpose "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail," this aspect of traditional public fora is a virtue, not a vice.

573 U.S. at 476 (citations omitted).

Application of the foregoing First Amendment principles to the matter at hand is straightforward: because Rev. Mahoney was engaging in protected speech in a traditional public forum, i.e., the public area outside the Chinese Embassy, he had a clearly established right to be at that location—no matter current tensions with China and no matter what a Chinese official told the Secret Service. Any instruction by Secret Service agents or other government officials that he leave that same area in the future, without a narrowly tailored reason for him doing so, would be a violation of his constitutional rights to free speech and the free exercise of his religious beliefs.

Conclusion

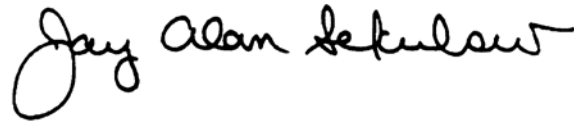
Rev. Mahoney appreciates the Secret Service captain who agreed with him that he had a right to demonstrate peacefully outside the Chinese Embassy on public property. If Rev. Mahoney had not asked to speak with this supervisor to clarify his rights, Rev. Mahoney may have been ultimately arrested simply for exercising his First Amendment liberties in a traditional public forum. Most other citizens would have been chilled from exercising their First Amendment rights following a direct order and warning by armed Secret Service agents.

As mentioned at the outset of this letter, Rev. Mahoney intends to go back to the public area outside the embassy on March 2, 2023, for another peaceful demonstration. In order that Rev. Mahoney may avoid another interruption of his civil liberties, we request written assurances from the Secret Service clearly indicating that Rev. Mahoney is permitted to access the public area outside the Chinese Embassy, to engage in peaceful, law-abiding free speech activities. With such assurances in hand, Rev. Mahoney will be able to inform any unadvised Secret Service agents outside the embassy of his right to be at that location.

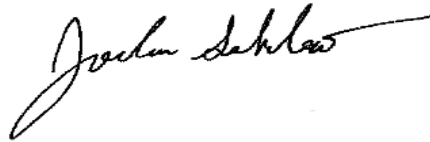
Given that Rev. Mahoney's return to the Chinese Embassy is approximately one week away, time is of the essence. We ask that you provide to us these assurances **no later than 5:00 p.m. on March 1, 2023.**

Thank you for your immediate attention to this matter. Should you have any questions or concerns, please do not hesitate to contact Benjamin Sisney, undersigned counsel for the ACLJ.

Respectfully,

Handwritten signature of Jay Alan Sekulow in black ink.

Jay Alan Sekulow
Chief Counsel

Handwritten signature of Jordan Sekulow in black ink.

Jordan Sekulow
Executive Director

Handwritten signature of Benjamin P. Sisney in black ink.

Benjamin P. Sisney
Senior Litigation Counsel