



October 2, 2009

Mayor Gayle McLaughlin
Richmond City Hall
450 Civic Center Plaza
Richmond, CA 94804

VIA Certified Mail and Facsimile (510-412-2070)

Re: The City of Richmond's religiously discriminatory facility access policy

Dear Mayor McLaughlin,

Our client, Pastor Ralph Lopez of Refinery Christian Fellowship ("Church"), has been informed by the City of Richmond ("City") that his church may not meet at any of the City's twelve Community Centers because of a City policy prohibiting use of these public facilities by religious groups. This policy is in blatant violation the Church's First Amendment rights. Accordingly, we are writing you to urge you to rescind this policy to avoid requiring the Church to litigate to defend its rights.

By way of introduction, the Alliance Defense Fund ("ADF") is a non-profit legal and educational organization that seeks to educate government officials and others on the subject of constitutional rights, particularly under the First Amendment. When necessary, we do proceed to litigation to protect First Amendment rights.

RELEVANT FACTS

The City allows its many Community Centers to be rented by the general public for most non-commercial uses. At the Point Richmond Community Center, for instance, uses of the facility include classes in cooking, writing, dancing, emotional health, nutrition, yoga, and various forms of martial arts. It also has a class on meditation that provides mystical religious training on issues like "spiritual energy system[s]". According to the City's rental policy for the Community Centers, "[t]he City of Richmond, Recreation Division seeks to provide all applicants a suitable meeting space and community services in all facilities under our care...Community Center facilities may also be leased by non-profit organizations...When not required for the recreation programs or lessee use, may [sic] be rented for meetings and social events."

Religious uses, though, are specifically banned from the Community Centers. The City's application form for Community Centers states on the first page of the application—in all-caps font—that “CONDUCTING RELIGIOUS OR CHURCH SERVICES IS NOT ALLOWED AT ANY TIME IN A COMMUNITY CENTER. THE RICHMOND CONVENTION CENTER MAY BE USED INSTEAD.” On the second page, under the Recreation Division Rental Policy heading, the prohibition on religious uses is repeated, again in all caps: “RELIGIOUS SERVICES OR FOR-PROFIT EVENTS is [sic] not allowed—the use of the Convention center may be used instead.” (change in font size in original). Thus, religious uses are specifically singled out for discrimination under the City's use policy. Notably, while the City does allow religious uses of the Convention Center, the costs for using that location are several times more expensive than the Community Centers.

The Church is currently looking for a location in which to hold its meetings. These meetings would include discussions and teaching on practical, moral, and social issues, discussing matters like personal wellbeing, marriage, finances, and social responsibility. On September 30, 2009, Pastor Lopez contacted Supervisor Ranjana Maharaj of the City's Recreation Department about renting the Point Richmond Community Center for a Bible study on Sunday mornings. Ms. Maharaj informed Pastor Lopez that religious uses of the facility were not allowed and directed his attention to the policy language above. Pastor Lopez then provided Ms. Maharaj a copy of *Faith Center Church Evangelistic Ministries v. Federal D. Glover*, a decision issued this summer by the United States District Court for the Northern District of California. Ms. Maharaj said she would forward the case to the City's legal department for review.

Pastor Lopez then contacted ADF for assistance because it provided legal counsel for the Plaintiffs in the *Faith Center* case.

RELEVANT LAW

Religious meetings are protected under the free speech clause of the First Amendment. *Widmar v. Vincent*, 454 U.S. 263, 269 (“religious worship and discussion ... are forms of speech and association protected by the First Amendment”). The Supreme Court has consistently said that targeting religious groups for unfavorable treatment is viewpoint discrimination and highly unconstitutional. *Good News Club v. Milford Central Sch.*, 533 U.S. 98, 112 (2001). *Good News Club* is an example of this rule. There, a school district's community use policy allowed community groups to use school facilities for any number of secular purposes, but the policy prohibited use “by any individual or organization for religious purposes.” *Id.* at 103. As a result, the school district denied a religious group's request to have weekly after-school meetings. *Id.* at 104. The Supreme Court, in declaring the policy unconstitutional, said it was “quite clear that [the school district] engaged in viewpoint discrimination when it excluded the Club from the afterschool forum.” *Id.* at 109. Similarly, the City's access policies discriminate specifically against religious viewpoints while allowing access to facilities for all other types of expression. For instance, the Recreation Department staff said that singing is allowed in the Community Centers. But if a Christian group attempted to sing religious songs as a part of their religious service, they would be banned from the Community Center. Accordingly, the City's access

policy enforces viewpoint discrimination in violation of the Free Speech Clause of the First Amendment.

The City's access policy also violates the Establishment Clause of the First Amendment. In a case almost identical to this one, Contra Costa County's ban of "religious services" from its public meeting rooms was found to be a violation of the Establishment Clause. *Faith Center Church Evangelistic Ministries v. Glover*, 2009 WL 1765974 (N.D. Cal. 2009). There, the court found that banning "religious services" while allowing forms of religious speech—as the City does with its meditation classes—ended up creating "excessive government entanglement with religion." *Id.* at *8. Similarly, the City has violated the Establishment Clause by unduly entangling itself in religion in trying to parse religious speech from "religious services."

Further, the City's policy to exclude religious groups violates the Church's rights to free exercise of religion under the First Amendment. Laws which discriminate on the basis of religion are presumptively invalid. *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). The government may not impose "special disabilities on the basis of religious views or religious status." *Id.* at 877. Government may only justify policies which burden the free exercise of religion without a compelling government interest when the policy is neutral and generally applicable. *Id.* However, the City's facility access policy is not neutral and generally applicable, since it singles out "religious services" for disparate treatment. Thus, the City's policy violates Church's First Amendment right to free exercise of religion and is unconstitutional.

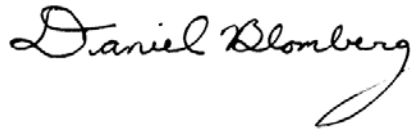
Notably, the City's provision of the alternative forum of the Conference Center for church services does not remove the constitutional defects in its Community Center access policy. Just because a city has provided alternative public locations to meet does not mean it has met its constitutional burden to allow access to a particular public facility. *NAACP v. City of Richmond*, 743 F.2d 1346, 1355 (9th Cir. 1984). Further, where, as here, the alternative facility is significantly and prohibitively more expensive, forcing religious services to meet there is simply another indication of the City's hostility and discrimination against religion.

CONCLUSION

The City's current policy of religious discrimination is clearly unconstitutional. We hope that the City will recognize this problem and fix it immediately to avoid any further violation of the Church's rights. The Church desires to begin renting space at Point Richmond Community Center and looks forward to a voluntary change in the City's rental policy. However, if the City refuses to change its policy, ADF will be required to commence litigation to protect the Church's First Amendment rights.

Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Sincerely,



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