



April 30, 2009

VIA ELECTRONIC AND U.S. MAIL

Mr. Roy E. Wilson  
Director, Metropolitan Board of  
Parks and Recreation  
Centennial Park Office  
Park Plaza at Oman Street  
Nashville, TN 37201

AMERICAN CIVIL  
LIBERTIES UNION  
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Dear Mr. Wilson,

ACLU-TN has been made aware of a disturbing Metro Parks and Recreation policy that raises significant constitutional concerns. Nashville Metropolitan Department of Parks and Recreation's Policy 3000.2: Use of Facilities by Religious Organizations ("Policy") imposes unconstitutional restrictions on religious groups – and only religious groups – for the use of public parks. The Policy states:

No park facility (including a community center) may be used for a religious activity on a regular or permanent basis during regular operating hours; use will only be granted on an emergency or temporary basis, and only then if sufficient cause is proven such as fire, demolition of building, etc. Religious activities occurring after regular operating hours, as all other after hour reservations, are subject to availability of staff and payment of appropriate usage fee.

I am writing on behalf of our client, the Church on Church Street, a religious organization that holds church services in the park on Church Street. The Church has been in existence since September 2008 and has recently been notified by law enforcement that they are not permitted to meet for worship services in the park without a permit from your office. The Church on Church Street applied for a permit to hold their worship services from 9:30 until 11:00 am on every possible Sunday for the next year. You rejected their request citing the Policy. We believe that this policy is unconstitutional and violates federal law for a variety of reasons and request that you repeal immediately.

The Policy facially violates the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 USCA § 2000cc-1, which provides:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that the imposition of the burden on that person, assembly or institution –

(A) is in furtherance of a compelling government interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

RLUIPA additionally states:

(1) Equal terms

No government shall impose or implement a land use regulation in a manner that threatens a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religion denomination.

(3) Exclusion and limits

No government shall impose or implement a land use regulation that –

(A) Totally excludes religious assemblies from a jurisdiction; or

(B) Unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

The Policy is clearly contrary to the plain text of RLUIPA. The enforcement of this policy violates the rights of this Church, its pastors and its congregants to have equal access to public property. It is wholly improper to single out an organization for disparate treatment solely because of the religious nature of that organization. *Grace Church of North County v. City of San Diego*, 555 F.Supp.2d 1126 (S.D.Cal, 2008).

Additionally, the Policy violates the U.S. and Tennessee Constitutions by burdening the free exercise of religion. When analyzing whether a statute, policy or regulation burdens the free exercise of religion, the courts first look to the nature of the regulation and whether the regulation is facially neutral and of

general applicability. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 113 S.Ct. 2217 (1993); *First Vagabonds Church of God v. City of Orlando*, 578 F.Supp.2d 1353 (Sept. 26, 2008). The plain text of this policy demonstrates that it is only applicable to religious activities, thus it is clearly not neutral nor is it of generally applicability. Instead, it targets religious expression in violation of the Free Exercise clause of the First Amendment.

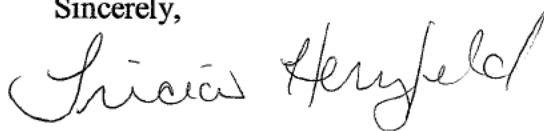
Next, this policy violates the free speech protections of the First Amendment. This policy is content discriminatory on its face. It plainly singles out a particular type of speech—religious speech—for differential treatment. It is doubtful that the government can present a compelling state interest in maintaining such a discriminatory policy. *Capitol Square Review and Advisory Board v. Pinette*, 115 S.Ct 2440 (1995); *Lamb's Chapel v. Center Moriches Union Free School District*, 113 S.Ct 2141 (1993); *First Vagabonds Church of God v. City of Orlando*, 578 F.Supp.2d 1353 (Sept. 26, 2008).

Finally, by disallowing such gatherings, the government is denying the pastors and the congregants the ability to freely associate with others in violation of the First Amendment. *First Vagabonds Church of God v. City of Orlando*, 578 F.Supp.2d 1353 (Sept 26, 2008).

We understand that the next scheduled meeting of the Board of Parks and Recreation is May 5, 2009. We expect that our concerns will be addressed with the Board at that time. Please let us know by **no later than close of business on May 6, 2009** in writing whether you will agree to end this unlawful discrimination against religious groups or we will have no choice but to seek other remedies, including filing a lawsuit for injunctive and declaratory relief and attorneys fees and costs.

We look forward to working together with you to resolve this issue amicably. Please do not hesitate to contact me directly at [REDACTED] or at [REDACTED] if I can be of service in any way to assist in resolving this issue.

Sincerely,



Tricia Herzfeld  
Staff Attorney

Cc: Sue Cain, Director, Metro Legal Department  
Karl Dean, Mayor, Nashville Davidson County