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Via U.S. Mail and E-mail

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Re: Fee Waiver for Religious Event

Dear Mr. Baum and members of the City Council:

We have received a complaint that the City of Longmont has provided a fee waiver to “Worship and the Word Movement, Inc.” for the administrative and operational costs that will be incurred by the Longmont Police Department for the group’s event “Heaven Fest 2010,” an event that is being held in Longmont this week and next. We understand that other groups seeking to hold events in Longmont do so under a contract that requires them to provide payment for such costs. We write to inform you that it is unconstitutional for the City to provide a benefit, such as a fee waiver, to a religious organization when the City does not provide the same benefit to other organizations.

The Establishment Clause of the First Amendment to the U.S. Constitution “mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *McCreary County v. ACLU*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)); *see also Larson v. Valente*, 456 U.S. 228, 244 (1982) (“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”). Government aid must thus be “allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion.” *Mitchell v. Helms*, 530 U.S. 793, 813 (plurality op.), 846 (O’Connor, J., concurring) (2000) (both quoting *Agostini v. Felton*, 521 U.S. 203, 231 (1997)).

The federal courts have thus repeatedly struck down as unconstitutional government programs or actions that have provided special benefits to religious groups in general, or to specific religious entities in particular. *See Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989) (striking down tax exemption granted to religious periodicals but not to comparable secular periodicals); *Bd. of Educ. v. Grumet*, 512 U.S. 687, 702, 705 (1994) (invalidating creation of school district that matched boundary of religious enclave, partly because district “extend[ed] the benefit of a special franchise” to religious group); *Foremaster v. City of St. George*, 882 F.2d 1485, 1489 (10th Cir. 1989) (striking down electricity subsidy to Church of Latter Day Saints, in

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part because city “gave no other church such a subsidy” and thus “conveyed a message of City support for the LDS faith”); *Barnes-Wallace v. Boy Scouts of America*, 275 F. Supp. 2d 1259, 1276 (S.D. Cal. 2003) (holding that city violated Establishment Clause by leasing city property at nominal rate to the Boy Scouts — which the court found was a religious organization — because the city only negotiated with the Scouts; no secular groups were given a similar opportunity to obtain the lease), *aff’d in part on other grounds sub nom. Barnes-Wallace v. City of San Diego*, 530 F.3d 776 (9th Cir. 2008) (affirming with respect to standing and certifying merits questions to California Supreme Court), *cert. denied*, 130 S. Ct. 2401 (U.S. May 3, 2010) (No. 08-1222); *ACLU of Louisiana Found. v. Blanco*, No. 07-4090, 2007 WL 2915092, at *3 (E.D. La. Oct. 5, 2007) (enjoining “non-neutral legislative appropriations” to two churches because, among other things, “the appropriations evidence[d] a legislative preference for two specific houses of worship over others”). Here, the City of Longmont has run afoul of the Constitution by providing a special benefit for a religious event that is not extended for non-religious events.

Accordingly, we ask that you take steps to ensure that this fee is either applied equally to all events, religious and non-religious alike, or that it is not applied to any event. If you take the former route, you would need to rescind the waiver and collect all applicable fees for “Heaven Fest 2010.” We would appreciate a response to this letter within thirty days. You may contact Ian Smith at (202) 466-3234 or at ismith@au.org if you have any questions.

Very truly yours,


Ayesha N. Khan, Legal Director
Ian Smith, Staff Attorney

cc: Eugene Mei, City Attorney (eugene.mei@ci.longmont.co.us)
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