



June 21, 2012  
*VIA FACSIMILE AND U.S. MAIL*

Downingtown Area Senior Center  
Lori Deckman, President (on behalf of the Board of Directors)  
William J. Pierce, Executive Director  
983 East Lancaster Ave.  
Downingtown, PA 19335  
Fax: 610-269-4250

**Re: Censorship of Prayer at the Downingtown Area Senior Center**

Dear Ms. Deckman and Mr. Pierce,

Alliance Defense Fund (ADF) sends this letter on behalf of Joan Scalia, a resident of Downingtown, Pennsylvania and a member of the Downingtown Area Senior Center, Inc. (the Center). By way of introduction, ADF defends the rights of citizens to exercise religious liberties, and that includes the right to pray in public. Mrs. Scalia alerted ADF to the religious discrimination taking place at the Center through the enactment of a new policy that prohibits senior citizens from voluntarily praying together before meals at the Center. We write to inform you that this censorship of the religious expression of the seniors is not required by the Constitution, nor by the Center's receipt of government funding.

The relevant facts are that the Center is a non-profit organization that provides meals, activities, classes, and assistance to senior citizens in the greater Downingtown area. The services provided by the Center include daily lunches that are partially funded by grants from the federal government. For many years, senior citizens attending the lunches would begin by jointly reciting the Pledge of Allegiance followed by a prayer spoken by one of the senior citizens in attendance. In April 2012, the Center announced that under a new policy, the attendees were prohibited from offering a prayer at the start of lunch. In its place was instituted a moment of silence during which no public prayer is allowed. The Center attempted to justify its prayer ban by claiming that (1) because the meals are partially funded by the federal government, prayer is prohibited, and (2) someone was offended by the religious speech of another member.

It is our opinion that the Center's belief that it is required to suppress religious speech as a condition of its government funding or because of a complaint is incorrect and unwise. The Establishment Clause states, "*Congress shall make no law respecting an establishment of religion . . .*" U.S. Const. amend. I. The Establishment Clause is a restriction on *government*, not on *private speakers*. Because the Center is a private, non-profit corporation—not a government controlled entity—it is not bound by the Establishment Clause's prohibition on the government endorsement of religion. Indeed, the Center is free to have its staff lead prayers or to

celebrate religious holidays such as Christmas and Easter. And it is certainly free to allow the seniors to lead a prayer before the start of meals.

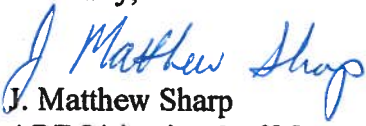
Even if the Center were a government-controlled facility, the Establishment Clause would not require it to censor the private religious speech of senior citizens. As the Supreme Court has explained, “there is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private speech* endorsing religion, which the Free Speech and Free Exercise clauses protect.” *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 250 (1990). The private decision of the senior citizens to pray before the start of meals is “private speech” which may not be restricted by the government. The Establishment Clause does not mandate hostility towards religion (i.e., prohibiting the private prayers of senior citizens); in fact, it “forbids hostility toward any [religions].” *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984). Thus, in *Church on the Rock v. City of Albuquerque*, 84 F.3d 1273, 1280 (10th Cir. 1996), the Tenth Circuit Court of Appeals struck down a policy at a Senior Center that restricted religious speech, holding that “the Establishment Clause does not compel the City to bar sectarian instruction and religious worship from its Senior Centers.”

Additionally, if the Center were considered a state actor, then its anti-religious speech policy violates the Free Speech Clause of the First Amendment by prohibiting speech from a religious viewpoint. The First Amendment protects religious speech, such as the senior citizens’ voluntary prayer before meals. *Widmar v. Vincent*, 454 U.S. 263, 269 (1981) (holding that “religious worship and discussion ... are forms of speech and association protected by the First Amendment”). A government actor cannot restrict speech or expression based on the religious viewpoint of the speaker.

Finally, by silencing religious speech based on the complaint of one of its members, the Center is permitting a heckler’s veto. A heckler’s veto occurs when an audience member objects to the content of the speech and the speech is thereafter prohibited based on the audience member’s objection. Heckler’s vetos are uniformly held constitutionally impermissible. *E.g.*, *NAACP v. Claiborne Hardware*, 458 U.S. 886, 932-34 (1982).

Neither federal law nor the U.S. Constitution require the Center to silence the voluntary prayers of senior citizens prior to meals. The Center is a private, non-profit organization, and it is free to recognize and celebrate religion at the facility. The right thing to do out of respect for the senior citizens—many of whom fought or saw their spouses fight in wars to defend our nation and the freedoms upon which it is built—is to remove the ban on prayer before meals. Given that your justifications for disallowing the prayers are your misunderstanding that you are required to ban them based upon your receipt of government funding and concerns about a single complaint, we hope that this letter will clear up these issues and that you will do away with this terrible policy. We ask that you respond to this letter and provide written confirmation by June 28, 2012 that you have restored the freedom of the senior citizens to publicly pray together before meals.

Cordially,

  
J. Matthew Sharp  
ADF Litigation Staff Counsel