IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

HIS HEALING HANDS CHURCH, a Michigan non-profit corporation, Plaintiff,	§ § §	
v.	§	Case No. _____
LANSING HOUSING COMMISSION, a Michigan municipal entity, Defendant.	§ § §	

PLAINTIFF HIS HEALING HANDS CHURCH'S
MOTION FOR PRELIMINARY INJUNCTION

NOW COMES, Plaintiff, **His Healing Hands Church**, by and through its attorneys, RICKARD, DENNEY, GARNO & ASSOCIATES, and for its Motion for Preliminary Injunction, states as follows:

1. Contrary to the First and Fourteenth Amendments of the United States Constitution, Defendant Lansing Housing Commission ("LHC") refuses to make the community room at its public housing developments available to His Healing Hands Church for religious meetings solely because of the religious content of those meetings.

2. As a result of LHC's refusal, the Church is forced to meet with LHC residents at nearby outdoor open-air settings and with cold Michigan weather approaching, these open-air locations may unnecessarily expose the Church's members and attendees to the harm presented by such cold weather or force them to cancel such meetings.

3. LHC's refusal to allow the Church to use its community rooms:

a) Violates the First Amendment Free Speech and Assembly Clause of the U.S. Constitution, as applied to the State and its sub-entities through the Fourteenth Amendment;

b) Violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution;

c) Violates the Free Exercise Clause of the First Amendment of the U.S. Constitution, as applied to the State and its sub-entities through the Fourteenth Amendment;

d) Violates the Establishment Clause of the First Amendment of the U.S. Constitution, as applied to the State and its sub-entities through the Fourteenth Amendment.

4. Plaintiff His Healing Hands Church lacks an adequate remedy at law to address the denial of its constitutional rights and the potential harm in its members and attendees attending open-air meetings in Michigan's cold weather and the possible need to cancel such meetings.

5. This Court is authorized to issue a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons, and those more fully set forth in the accompanying Brief in Support of Plaintiff His Healing Hands Church's Motion for Preliminary Injunction, Plaintiff His Healing Hands Church requests that this Honorable Court:

1. Enjoin Defendant Lansing Housing Commission to require it during the pendency of this action to allow Plaintiff Church to meet in its community rooms for

meetings containing religious teaching, including but not limited to, Bible-based, Jesus-centered teaching (including teaching of morals from a religious viewpoint) and for religious worship and religious services/programs, on the same terms and conditions as all other community groups, absent any religion-based exclusion;

2. Enjoin Defendant Lansing Housing Commission during the pendency of this action from excluding religious teaching, including but not limited to, Bible-based, Jesus-centered teaching (including teaching of morals from a religious viewpoint) and from excluding religious worship and religious services/programs from Plaintiff's use of the community rooms, except on the same terms and conditions that apply to other community groups, absent any religion-based exclusion;

3. Grant such additional and further relief as this Court deems reasonable and just.

Respectfully submitted,

RICKARD, DENNEY, GARNO & ASSOC.

Dated: October 14, 2015

By:/s/ Timothy W. Denney

Timothy W. Denney (P39990)
Attorney for Plaintiff
110 North Saginaw, Suite 1
Lapeer, MI 48446
(810) 664-0750
tdenney@twdpclaw.com

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a Michigan non-profit corporation,	§	
Plaintiff,	§	
	§	
v.	§	Case No. _____
	§	
LANSING HOUSING COMMISSION,	§	
a Michigan municipal entity,	§	
Defendant.	§	

BRIEF IN SUPPORT OF PLAINTIFF HIS HEALING HANDS CHURCH'S MOTION FOR PRELIMINARY INJUNCTION

ORAL ARGUMENT REQUESTED

RICKARD, DENNEY, GARNO & ASSOC.
Timothy W. Denney (P39990)
Attorney for Plaintiff His Healing Hands Church
110 North Saginaw, Suite 1
Lapeer, MI 48446
(810) 664-0750
tdenney@twdpclaw.com

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I. INTRODUCTION:

Contrary to the First and Fourteenth Amendments of the U.S. Constitution, Defendant Lansing Housing Commission ("LHC") refuses to make the community room at its public housing projects available to His Healing Hands Church for religious meetings which include religious worship, religious services and programs and Bible-based religious teaching, even though it makes the room available for a wide variety of other religious and non-religious community groups. LHC's decision has forced the Church to hold its weekly meetings in outdoor/open air locations near the housing projects. With Michigan's cold weather fast approaching, LHC's unlawful decision needlessly threatens to leave the Church, its members and attendees, including the children, out in the cold. The Church seeks a preliminary injunction to prevent that and to prevent the denial of its fundamental constitutional rights.

II. STATEMENT OF FACTS:

Plaintiff His Healing Hands Church is a church affiliated with the Assemblies of God family of churches and it is incorporated as a non-profit corporation under the laws of the State of Michigan and its principal ministry location is in Lansing, Michigan, Ingham County, Michigan. Exhibit 1 – Dr. Kue Affidavit. Dr. Eleanore Kue, a medical doctor, is the pastor of the church; for approximately 50 hours per week she operates His Healing Medical Clinic, which provides important medical services to the poor in a medically underserved community of Lansing; on Sundays she conducts religious meetings, including meetings serving the occupants of LHC's public housing developments. Exhibit 1 – Dr. Kue Affidavit.

Defendant Lansing Housing Commission ("LHC") is a public housing authority which operates several public housing developments in the Lansing, Michigan area, including but not limited to, the Hildebrandt Park housing facility located at 3122 Turner Street, Lansing,

Michigan and the LaRoy Froh Townhouses located at 2400 Reo Road, Lansing, Michigan. Exhibit 1. Each community has a community center which is used by the administrative staff as well as a community room which is made available to a wide variety of community groups and such community room (estimated size of 24' x 30' each) are amply suitable to seat at least 50 persons and more than large enough to comfortably and safely seat all those coming to His Healing Hands Church's Sunday meetings (approximately 20 to 25 persons at present).

LHC is, pursuant to Michigan statutory law, a "public body corporate" and it was created by ordinance by the City of Lansing and, pursuant to Michigan law, has complete control over all its housing developments including those at issue in this case, and, to the extent not inconsistent with federal law or regulation, state law or local ordinance, it has comprehensive authority to prescribe reasonable rules for the just and effective administration of its local housing projects, including but not limited to, rules concerning the use of common areas. Mich. Compiled Laws, 125.651, et seq., 125.654, 125.662; 125.694b; Exhibit 8 - Ordinance Creating Housing Commission. LHC's commission members are chosen solely by the Mayor of the City of Lansing. Exhibit 2 - LHC Bylaws. The principal offices of LHC are located in Lansing, Michigan in Ingham County, Michigan. Exhibit 2.

When Dr. Kue approached the LHC managers in late August and early September, 2015 about using the community rooms for the Church's meetings, she was repeatedly told there were no written policies governing who may use the room or for what purpose. Exhibit 1 – Dr. Kue Affidavit. However, LHC makes those community rooms at its public housing developments available to a wide variety of religious and non-religious community organizations, including but not limited to other churches and religious ministries, including but not limited to, a Baptist church, a local Catholic church, Youth Haven Ranch (a Christian youth camp ministry who also

sponsors weekly kids club meetings which the Ranch organization indicates involve "teaching verses" and giving children "a message of hope"), the Boy Scouts and Girl Scouts, and various non-religious community groups, including but not limited to, groups sponsoring aerobic classes, various Ingham County Health Department parenting programs concerning being better parents, stress reduction, domestic violence, yoga, budgeting, and a local football team. Exhibit 1 - Dr. Kue Affidavit; Exhibit 3 - LHC website excerpt; Exhibit 9 - Shalamar Griffin Affidavit; Exhibit 7 - Excerpts of flier posted at Hildebrandt Park Community Center advertising Ingham County Health Department programs at Hildebrandt Park community room; Exhibit 15 – Youth Ranch website materials. On its website, LHC openly discloses that "LHC provides meeting space for both Boy and Girl Scouts . . ." Exhibit 3 – LHC website excerpt. The religious and non-religious community groups which have made use of the LHC community rooms have used them for both religious and non-religious activities, and the religious activities have included religious teaching, and singing. Exhibit 1 – Dr. Kue Affidavit; Exhibit 9 - Shalamar Griffin Affidavit.

In response to a Freedom of Information Act request to LHC for all records pertaining to community room use at the two public housing developments in question, LHC disclosed room use by approximately 15 to 18 private users over the last year. Exhibit 10 – FOIA Request; Exhibit 11 – FOIA response documents by LHC; Exhibit 12 – LHC attorney letter. The LHC management also previously authorized Mt. Hope Church's Champion Club to meet in the park in the Hildebrandt development immediately adjacent to the community building where the community room is. Exhibit 16 – Pastor Russell Affidavit. These Champions Club meetings were essentially church services for kids at the LHC development that included Bible teaching, lessons about morality from a Biblical viewpoint, religious worship, and religious singing. Exhibit 16 – Pastor Russell Affidavit.

On behalf of the Church, Dr. Kue approached the LHC management at LHC's Hildebrandt Park housing development and requested that the Church to be able to use the community room at that project and was told there were no written standards for the use of the room, that community groups would use the room and that if the Church used the community room they could feed the housing development residents but were also told "don't say anything about Jesus" and "don't bring any Bibles." Exhibit 1. However, later in August or early September, 2015, the LHC manager at Hildebrandt communicated through her assistant that the community room could not be used at all for religious activities and so the Church could not use the room at all. Exhibit 1.

The Church's meetings held for LHC housing development occupants expressly include the use of Bible-based Jesus-centered teaching (including teaching of morals from a religious viewpoint), religious worship, and typically, on a weekly basis, the Church provides a meal for those who attend; and approximately 20 to 25 people have attended such meetings at each location. Exhibit 1 – Dr. Kue Affidavit.

Because of LHC's refusal to allow the Church to use the community rooms, the Church has been forced to conduct its Sunday religious meetings at Hildebrandt Park in an open-air setting in a vacant field next to a local business. Exhibit 1. Traffic noise has interfered with the ability of attendees to hear the religious teaching. Exhibit 1. Also, recently a neighbor expressing anti-religious comments chose to start up his 3 lawn mowers and park them running next to the meeting location in an effort to disrupt the meeting. Exhibit 1. Dr. Kue has experienced headache pain from having to express her religious teaching over the lawnmower noise. Exhibit 1 - Dr. Kue Affidavit.

At the LaRoy Froh housing project, the Church has been forced to hold its meetings at an open-air park near the project. Exhibit 1 - Dr. Kue Affidavit.

Due to oncoming Michigan cold weather, the outside open-air meetings the Church conducts will become difficult or impossible and risk irreparable damage and/or injury to members and attendees who are forced to stand outside in cold or wet weather or be splintered into smaller sub-groups. Exhibit 1. The Church has no adequate remedy at law to address this damage or injury. Exhibit 1. Already, some parents whose children attended earlier Sunday meetings refused to allow their children to attend later meetings due to colder weather. Exhibit 14.

With respect to any children from the LHC housing developments who attend the Church's Sunday meeting, they do so only after their parent or guardian gives express permission for the children to attend. Exhibit 1 - Dr. Kue Affidavit.

At both housing projects, the Church's meeting is followed by a meal provided to the LHC residents. Exhibit 1. Use of the Church's fixed building location is not feasible for the housing project residents because the Church and the residents lack adequate transportation for the residents to be transported to the Church building and so the Church comes to the residents. Exhibit 1.

The LHC management at both the Hildebrandt and LaRoy Froh housing development facilities have both expressly stated that the Church could not use the room because of its intent to engage in religious activities. Exhibit 1. The published rules of the LHC, available on its public website, reflect no rules concerning use of the community rooms. Exhibit 1. Only after a FOIA request for any written community room use policy did LHC produce a purported community room policy which stated "No Religious services/programs may be held in the

Community Building." See Exhibit 13 – Community room use policy; cf Exhibits 10, 11, 12, and 13.

The Church stands ready to pay the LHC's standard security deposit and fees, if any, for the use of the community room and expressed to LHC its willingness to be flexible in the times on Sunday when the room would be used by the Church. Exhibit 1 – Dr. Kue Affidavit.

In September, 2015, the Church's attorney wrote the Lansing Housing Commission representatives detailing the applicable case law requiring them to allow the Church to use the community rooms, with a copy of the letter to one of the managers going to the Executive Director of the Lansing Housing Commission (its chief executive officer and the officer who has "general supervision over the administration of the Commission's affairs, in accordance with the operation, fiscal and personal, and other policies adopted by the Board . . ." and who is responsible to "carry out all policies adopted by the Board." See Exhibit 3 – LHC Bylaws; Exhibit 4 – Letter to Exec. Director and to LaRoy Manager; Exhibit 5 – Letters to Hildebrandt Park Manager.

In a letter dated September 21, 2015, LHC's attorney stated that "The Lansing Housing Commission has had a long established policy that no religious services/programs may be held in its community buildings, consequently the Housing Commission is not going to allow His Healing Hands Church to use its community center for religious purposes." Exhibit 6 – LHC Attorney Letter.

ARGUMENT

I. The Preliminary Injunction Standard.

Rule 65 of the Federal Rules of Civil Procedure authorizes the district court to grant preliminary injunctive relief at its discretion. McPherson v. Michigan High School Athletic

Ass'n, 119 F.3d 453, 459 (6th Cir. 1997) (en banc). "Under well-developed authority federal district courts balance the following factors in addressing motions for a preliminary injunction: '(1) the likelihood that the movant will succeed on the merits; (2) whether the movant will suffer irreparable harm without the injunction; (3) the probability that granting the injunction will cause substantial harm to others; and (4) whether the public interest will be advanced by issuing the injunction.' *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009) (reviewing a preliminary injunction granted on First Amendment grounds)." Miller v. City of Cincinnati, 622 F.3d 524, 533 (6th Cir. 2010).

II. Strong Likelihood of Success on the Merits.

His Healing Hands Church can demonstrate a strong likelihood of success on the merits.

A. The Exclusion of Plaintiff From the Community Room Forum Violates the Church's Freedom of Speech and Assembly.

1. The Community Room Use Policy Excluding Church Community Room Use Based Solely on Religious Content of Meetings is Unconstitutional Content Discrimination.

LHC"s exclusion of the Church from the community room forum violates its constitutional rights of freedom of speech and assembly under the First and Fourteenth Amendments. As recently as June 2015, in Reed v. Gilbert, 135 S.Ct. 2218, 2226 (2015), the U.S. Supreme Court summarized the pertinent First Amendment principles as follows:

> 'The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws abridging the freedom of speech.' U.S. Const., Amdt 1. Under that Clause, a government, including a municipal government vested with state authority, "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dept. of Chicago v. Mosley, 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972)*. Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *R.A.V. v. St. Paul, 505 U.S. 377, 395, 112 S.Ct. 2538, 120 L.Ed.2d 305*

> *(1992)*; *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 115, 118, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991)*.
>
> Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g., Sorrell v. IMS Health, Inc., 564 U.S. -----, ----- -- -----, 131 S.Ct. 2653, 2663-2664, 180 L.Ed.2d 544 (2011) Carey v. Brown, 447 U.S. 455, 462, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980); Mosley, supra, at 95, 92 S.Ct. 2286*. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. *Sorrell, supra, at -----, 131 S.Ct., at 2664*."

In Reed, the Court held that an ordinance that excluded religiously-oriented roadside directional signs directing the public to a local church but allowed roadside political signs violated the First Amendment and could not be justified under the strict scrutiny test.

"Discrimination against speech because of its message is presumed to be unconstitutional." Rosenberger v. Rector and Visitors of the University of Virginia, 515 U.S. 819, 828 (1995) (exclusion of student publication written from a religious viewpoint from university student group funding program violated First Amendment). As noted in Reed, supra, "a law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech. *Cincinnati v. Discovery Network, Inc., 507 U.S. 410, 429, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993)*." * * * "Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny." Reed, 135 S.Ct. at 2228.

Government discrimination among viewpoints—or the regulation of speech based on "the specific motivating ideology or the opinion or perspective of the speaker"—is a "more blatant" and "an egregious form of content discrimination." *Rosenberger v. Rector and Visitors of Univ.*

of Va., 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). Reed, 135 S.Ct. at 2230 (cite omitted). "[I]t is well established that '[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.' *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 530, 537, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980)." Reed, 135 S.Ct. at 2230. "Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." Reed, 135 S.Ct. at 2230. Further, '"[w]here the State has opened a forum for direct citizen involvement,' exclusions bear a heavy burden of justification." Widmar v. Vincent, 454 U.S. 263, 268 (1981) (cite omitted).

The fact that the Church's speech is religious speech entitles it to no less protection under the Free Speech clause because "[p]rivate religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression." Capitol Square Review & Advisory Bd v. Pinette, 515 U.S. 753, 760 (1995) (plurality opinion). For example, in Widmar v. Vincent, 454 U.S. 263 (1981), the U.S. Supreme Court struck down a university (UMKC) policy that allowed meeting rooms to be used by a wide variety of student groups but excluded a student religious group:

> "Here UMKC has discriminated against student groups and speakers based on their desire to use a generally open forum to engage in **religious worship and discussion**. These are forms of speech and association protected by the First Amendment."

Widmar, 454 U.S. at 269 (emphasis added).

The U.S. Supreme Court has noted that "'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.'" Santa Fe

Independent School District v. Doe, 530 U.S. 290, 302 (2000) (quoting Board of Ed of Westside Community Schools v. Mergens, 496 U.S. 226, 250 (1990) (O'Connor opinion).

Religious speech is not second class speech and LHC should not be permitted to treat it as such. The Church does not request special access to the community rooms, only equal access on the same basis as other community groups, without any religion-based exclusions.

LHC's exclusion of the Church from its community room access based solely on the religious content of its meetings is a content-based speech regulation that violates the First Amendment. Reed, supra; Rosenberger; Pinette, supra. LHC has no compelling interest to justify this kind of presumptively unconstitutional content-based discrimination. Rosenberger, 515 U.S. at 828.

2. The Community Room Use Policy Does Not Survive Scrutiny Under Public Forum Analysis.

The same result is reached based on public forum analysis. LHC's policy of excluding community groups, whose meetings include Bible-based, Jesus-centered teaching, teaching of morals from a religious viewpoint, religious worship, and religious services or programs violates the constitutional restrictions applicable to the public forum involved here. The level of First Amendment protection for particular speech depends on the forum involved. Restrictions on speech in a traditional public forum (such as public parks and sidewalks) receive strict scrutiny, the government may only exclude a speaker from such a forum "when the exclusion is necessary to achieve a compelling state interest and is narrowly drawn to achieve that interest.'" Cornelius v. NAACP Legal Defense & Educ Fund, Inc., 473 U.S. 788, 800 (1985) (cite omitted).

The second type of forum is a "designated public forum." The government creates a designated public forum when it opens a piece of public property to the public at large, treating it

like a traditional public forum. Parks v. Finan, 385 F.3d 694, 695-696 (6th Cir. 2004) (state capitol grounds opened by state for expressive purposes); see also Miller v. City of Cincinnati, 622 F.3d 524, 534 (6th Cir. 2010) (citing Church of the Rock v. City of Albuquerque, 84 F.3d 1273, 1278 (10th Cir. 1996) as an example of a designated public forum – where Church of the Rock case involved use of a city-owned senior center for public communicative purposes). "Government restrictions on speech in a designated public forum are subject to the same strict scrutiny as restrictions in a traditional public forum." Pleasant Grove City, Utah v. Summum, 555 U.S. 460, 469-470 (2009) (cite omitted). In a designated public forum, "a speaker may be excluded from a forum only when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest." Cornelius, 473 U.S. at 800. The Church submits that LHC's community room forum is a designated public forum with a religion-based exclusion; no community groups are excluded except based on the religious content of their meetings. This conclusion is similar to that reached by many courts in cases involving similar public buildings and similar access rules which open access to virtually all community groups except those whose meetings have religious content. See e.g., Church of the Rock v. City of Albuquerque, 84 F.3d 1273 (10th Cir. 1996) (city-owned senior center); Grace Bible Fellowship, Inc. v. Maine School Administrative Dist #5, 941 F.2d 45 (1st Cir. 1991) (public school); Gregoire v. Centennial School District, 907 F.2d 1366 (3rd Cir. 1990) (public school).

The third type of public forum is a limited public forum, where the government creates a forum limited by use by certain groups or dedicated solely to the discussion of certain subjects. Summum, 555 U.S. at 470. In a limited public forum, the government may restrict speech if the restrictions do not restrict speech on the basis of viewpoint and are reasonable in light of the purpose served by the forum. Summum, 555 U.S. at 470.

The fourth type of public forum is a non-public forum, which is not by tradition or government designated a forum for public communication. Helms v. Zubaty, 495 F.3d 252, 256 (6th Cir. 2007). The government may limit access to a nonpublic forum based on the subject matter and speaker as long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral. Cornelius, 473 U.S. at 800.

LHC's exclusion policy cannot survive constitutional scrutiny no matter what type of public forum it has created for community room access. Courts have repeatedly struck down municipal access policies where a public forum was created for community groups' access to public facilities but religious groups were excluded based on the religious content of their meetings. For example, in Lamb's Chapel v. Center Moriches Union Free School District, 508 U.S. 384 (1993), the local school made its facilities open for use by a wide range of community group uses (including, like here, the Boy Scouts and Girl Scouts) but refused to allow the showing of a family-oriented movie from a Christian perspective which focused on the teaching of traditional Christian family values.[1] The Supreme Court struck down the denial as unconstitutional viewpoint discrimination because the denial was based on "the fact that the presentation would have been from a religious perspective." Lamb's Chapel, 508 U.S. at 393-394.

Similarly, in Widmar v. Vincent, 454 U.S. 263 (1981), the Supreme Court struck down a public university policy allowing room use by a wide range of student groups while excluding a group wanting to use the room for "religious worship and discussion." Id. at 269. Noting that "religious worship and discussion" "are forms of speech and association protected by the First Amendment," and concluding that a limited public forum had been established, the Court

[1] The Lamb's Chapel case does not expressly indicate which type of public forum was involved.

determined there was no showing that the regulation was necessary to serve a compelling interest narrowly drawn to achieve that purpose. Id. at 269-270, 277. The Widmar Court gave a detailed defense of the proposition that religious speech (including religious worship) is entitled to First Amendment Free Speech protection:

> "The dissent argues that "religious worship" is not speech generally protected by the "free speech" guarantee of the First Amendment and the "equal protection" guarantee of the Fourteenth Amendment. If "religious worship" were protected "speech," the dissent reasons, "the Religion Clauses would be emptied of any independent meaning in circumstances in which religious practice took the form of speech." *Post*, at 282. This is a novel argument. The dissent does not deny that speech *about* religion is speech entitled to the general protections of the First Amendment. See *post*, at 281-282, and n.2, 283. It does not argue that descriptions of religious experiences fail to qualify as "speech." Nor does it repudiate last Term's decision in *Heffron v. International Soecity for Krishna Consciousness, Inc.*, which assumed that religious appeals to nonbelievers constituted protected "speech." Rather, the dissent seems to attempt a distinction between the kinds of religious speech explicitly protected by our cases and a new class of religious "speech act[s]," *post*, at 282, constituting "worship." There are at least three difficulties with this distinction.
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> > First, the dissent fails to establish that the distinction has intelligible content. There is no indication when "singing hymns, reading scripture, and teaching biblical principles," *post*, at 281, case to be "singing, teaching, and reading"—all apparently forms of "speech," despite their religious subject matter—and become unprotected "worship."
> >
> > Second, even if the distinction drew an arguably principled line, it is highly doubtful that it would lie within the judicial competence to administer. Cf. *Fowler v. Rhode Island*, 345 U.S. 67, 70, 73 S.Ct. 526, 527, 97 L.Ed. 828 (1953). Merely to draw the distinction would require the university—and ultimately the courts—to inquire into the significance of words and practices to different religious faiths, and in varying circumstances by the same faith. Such inquires would tend inevitably to entangle the State with religious in a manner forbidden by our cases. *E.g., Walz v. Tax Comm'n*, 397 U.S. 664, 668, 90 S.Ct. 1409, 1411, 25 L.Ed.2d 697 (1970).
> >
> > Finally, the dissent fails to establish the *relevance* of the distinction on which it seeks to rely. The dissent apparently wishes to preserve the vitality of the Establishment Clause. See *post*, at 282. But it gives no reason why the Establishment Clause, or any other provision of the

> Constitution, would require different treatment for religious speech designed to win religious converts, see *Heffron, supra*, than for religious worship by persons already converted. It is far from clear that the State gives greater support in the latter case than in the former."

Widmar, 454 U.S. at p. 265-270, n. 6.

Similarly, in Good News Club v. Milford Central School, 533 U.S. 98 (2001), the Court struck down as viewpoint discrimination in violation of the First Amendment a public elementary school's room use exclusion of a religious children's club based on a policy which prohibited use "by any individual or organization for religious purposes", even though groups such as the Boy Scouts were permitted to meet. Id. at 103, 108 and 120. The Club's meeting included prayer, singing of songs, learning Bible verses, a Bible story and Bible memorization. Id. at 103. Citing Lamb's Chapel and Rosenberger, the Court found that a limited public forum had been established and that the "exclusion of the Good News Club based on its religious nature indistinguishable from the exclusions in these cases" (i.e., *Widmar* and *Lamb's Chapel*) and held it to be "impermissible viewpoint discrimination." Good News Club, 533 U.S. at 107, 112 (parenthetical clause added for clarity). The Court noted that "Like the church in *Lamb's Chapel*, the club seeks to address subjects otherwise permitted under the rule, the teaching of morals and character, from a religious standpoint" and concluded that "speech discussing otherwise permissible subjects cannot be excluded from a limited public forum on the ground that the subject is discussed from a religious viewpoint." Id. at 109 and 112 (cite omitted).

A clear majority of U.S. Circuit Court of Appeals have also concluded that exclusion of churches and other religious groups from public room forum use where the room or forum is generally available to other community groups and the exclusion was based on the religious nature of their meetings was a Free Speech violation, even if "religious worship" was involved;

Church of the Rock v. City of Albuquerque, 84 F.3d 1273 (10th Cir. 1996) (use of city-owned senior center for sector instruction and religious worship). Gregoire v. Centennial School Dist, 907 F.2d 1366, 1382 (3rd Cir. 1990) (use of school for religious worship and literature distribution) ("Attempting to draw a line between religious discussion and worship would only exacerbate establishment clause concerns, requiring [the school] to entangle itself in what would almost certainly be complex content-determinations . . . the neutrality interest of the school is best served where the government is content-neutral.") (bracketed phrase added for clarity); Badger Catholic, Inc. v. Walsh, 620 F.3d 775 (7th Cir. 2010) (university's exclusion of religious student group request for participation in funding forum due to content of meetings including prayer, singing, religious instruction, spiritual counseling, religious worship, religious services, and proselytization violated First Amendment); cf Good News/Good Sports Club v. School Dist of Ladue, 28 F.3d 1501 (8th Cir. 1994) (holding unconstitutional a school use policy that prohibited an adult-run student Bible club from meeting during times the Boy Scouts could meet) (note reference to this case in Good News Club, 533 U.S. at 106); cf Grace Bible Fellowship, Inc. v. Maine School Admin. Dist #5, 941 F.2d 45 (1st Cir. 1991) (holding the school was required to permit church use of school for free Christmas community dinner); cf Fairfax Covenant Church v. Fairfax County School Board, 17 F.3d 703 (4th Cir. 1994) (school regulation allowing churches to be charged higher rental rate than other community violated First Amendment).

There are a few minority cases to the contrary, but they have since been rendered obsolete by a recent U.S. Supreme Court ruling. See e.g., Bronx Household of Faith v. Community School Dist No. 10, 127 F.3d 207 (2nd Cir. 1997) cert den 523 U.S. 1074 (1998) and 650 F.3d 30 (2d Cir. 2009) cert den 132 S.Ct. 816 (2011); Faith Center Church Evangelistic Ministries v.

Glover, 480 F.3d 891 (9th Cir. 2007) abrogated in part on other grounds by Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7 (2008). In addition, the Church submits that the Bronx Household of Faith cases and the Faith Center case are no longer good law in light of the U.S. Supreme Court's recent ruling in Reed v. Town of Gilbert, Arizona, 135 S.Ct. 2218 (2015) because, under Reed, content-based exclusion of the entire subject matter of religious speech triggers the nearly always fatal application of the strict scrutiny test and there is no compelling interest justifying the exclusion. See also Bronx Household of Faith v. Board of Education of the City of New York, 331 F.3d 342 (2d Cir. 2003) (upholding preliminary injunction against public school for denying access to church for singing, teaching of adults and children from the viewpoint of the Bible and social interaction of the members of the church in order to promote their welfare and the welfare of the community where Scout group allowed to use facility for the teaching of morals and character development).

The fact that LHC is engaging in viewpoint discrimination is reinforced by the fact that a host of other religiously based community groups with religiously-rooted programs have been permitted to use the community rooms, including various churches, a religious camp (Youth Haven Ranch) and the Boy and Girl Scouts. While Plaintiff applauds LHC for allowing the Scouts to use the community rooms, courts have well documented that the Scouts "espouse religious views and require or encourage members to endorse those beliefs." Child Evangelism Fellowship of New Jersey, Inc. v. Stafford Twp School Dist., 386 F.3d 514, 529-530 (3rd Cir. 2004); see also Scalise v. Boy Scouts of America, 265 Mich.App. 1 (2005) lv den 473 Mich 853 (2005) (noting the religious elements of the Boy Scout programs). As noted by Judge Alito (now Justice Alito) in the Child Evangelism Fellowship of New Jersey, Inc. case:

> "The Boy Scouts describes itself as "an organization with strong religious tenets." JA 514. The stated mission of the Boy Scouts is to "prepare young people to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath and Law." JA 516. The well-known Boy Scout Oath begins with the words "On my honor I will do my best / To do my duty to God and my country." JA 517. In describing this portion of the Oath, official Boy Scout literature states: "Our nation is founded on showing reverence to a higher faith. In these words, the Scout promises to recognize, to honor and to respect his religious faith. And in the Boy Scouts of America, he is given an opportunity to grow in that faith and to respect the beliefs of others." *Id*. And though the Boy Scouts of America is a nonsectarian group, it still "maintains that no child can develop to his or her fullest potential without a spiritual element in his or her life." *Id*.
>
> The Girl Scout Promise includes a commitment to "serve God." JA 524. The group takes the view that God can be "interpreted in a number of ways" and permits the word "God" in the Promise to be replaced by "whatever word [a girl's] spiritual beliefs dictate." *Id*."

Child Evangelism Fellowship of New Jersey, Inc., 386 F.3d at 529-530.

Allowing access to the Boy and Girl Scouts to a public forum and denying it to church groups based on the religious nature of the Church's teaching is unconstitutional viewpoint discrimination. Child Evangelism Fellowship of New Jersey, 386 F.3d at 529-531; See also Bronx Household of Faith v. Board of Education of the City of New York, 331 F.3d 342 (2d Cir. 2003) (upholding preliminary injunction against public school for denying access to church for singing, teaching of adults and children from the viewpoint of the Bible and social interaction of the members of the church in order to promote their welfare and the welfare of the community where Scout group allowed to use facility for the teaching of morals and character development). The U.S. Supreme Court and the 6th Circuit have both concurred that "[I]f the State refused to let religious groups use facilities open to others, then it demonstrates not neutrality but hostility toward religion." Bd of Educ of The Westside Community Sch v. Mergens, 496 U.S. 226, 248 (1990); Rusk v. Crestview Local School District, 379 F.3d 418, 423 (6th Cir. 2004) (concluding

that allowing public elementary school to exclude religious groups from program where community group fliers were handed out to elementary school students could be perceived as not neutrality but hostility toward religion) (citing Mergens, 496 U.S. at p. 248).

LHC has opened its community room doors to a host of community groups to teach relevant life training for parenting, stress reduction and teaching of moral values. To exclude community groups like the Church from the rooms because its teaching is religiously and Biblically grounded is unconstitutional viewpoint discrimination. Lamb's Chapel, supra; Good News Club, supra; Widmar, supra. It is viewpoint discrimination for LHC to allow the Scouts groups to teach moral values to young people in the community room and to allow the teaching of moral values by Mt. Hope Church in the open-air park in the development but to exclude His Healing Hands Church from teaching Biblically-based moral values to residents in the community room. Good News Club, supra; Lamb's Chapel, supra.

Also, since LHC opens its community rooms to secular groups to address the fundamentals of good parenting and "stress reduction," it cannot exclude those like the Church ready to address those issues from a religious Biblical viewpoint. Daily v. New York City Housing Authority, 221 F.Supp.2d 390 (E.D.N.Y. 2002) (allowing use of housing project community room for secular community room personal enrichment/instruction while excluding religiously based Biblical counseling was discriminatory and constituted viewpoint discrimination); see also Badger Catholic Inc. v. Walsh, 620 F.3d 775, 777-778 (7th Cir. 2010) ("having decided that counseling programs are within the scope of the activity fee, the University cannot exclude those that offer prayer as one means of relieving the anxiety that many students experience"). The Church's teaching is based on the Bible which teaches as follows about anxiety and stress in Philippians 4:6-7 ("Do not be anxious about anything, but in every

situation, by prayer and petition, with thanksgiving, present your requests to God and the peace of God, which transcends all understanding, will guard your hearts and your minds in Christ Jesus") (NIV). Exhibit 1.

Public housing development cases specifically dealing with use of community or common area facilities in public housing developments likewise hold that those public facilities violate the First Amendment if they exclude religious activities when the facilities are otherwise made available to a variety of other secular community uses. See e.g., Crowder v. Housing Authority of City of Atlanta, 990 F.2d 586, 591-592 (11th Cir. 1993) (refusal to allow use of common areas for Bible study was unconstitutional); Daily v. New York City Housing Authority, 221 F.Supp.2d 390 (E.D.N.Y. 2002) (citing housing authority's decision to deny use of housing development's community center for Bible study/counseling session based on policy not allowing use of center for "religious services" was viewpoint discrimination in violation of First Amendment). As noted in Daily, with respect to use of a community center at a public housing development, "permitting secular uses but not religious ones is discriminatory." Id. at 401. In addition, after rehearsing the U.S. Supreme Court rulings in various cases, including the Good News Club and Lamb's Chapel cases, the Daily Court observantly concluded as follows:

> "First, the Standard Procedure and NYCHA's resistance to allowing religious groups to use the WCC and other community centers carries an implication of hostility toward religion. In the light of the Supreme Court's consistent approval of the use of government property by religious groups (within certain parameters), any such hostility is unsupported. In addition, any reluctance toward allowing "purported religions" to use community centers is inherently discriminatory and an untenable reason for the restrictions."

Daily v. New York City Housing Authority, 221 F.Supp.2d 390, 405 (E.D.N.Y. 2002).

LHC has no compelling interest in excluding community groups from use of the community rooms based on the religious nature of their meetings. The courts have

overwhelmingly rejected the usual justifications for religious-based exclusions from public facilities. For example, the argument that it would violate the Establishment Clause of the First Amendment to allow a religious group to use a public room or public program pursuant to a policy under which any community group can use it under an equal access policy has been repeatedly rejected. Widmar v. Vincent, 454 U.S. 263, 273-274 (1981) (student use of university rooms); Lamb's Chapel, 508 U.S. at 395 (after-school use of school to show religiously oriented film) ("the posited fears of an Establishment Clause violation are unfounded"); Good News Club, 533 U.S. at 113-119 (after-school use of elementary school for religious club for young children did not violate Establishment Clause); Rosenberger v. Rectors and Visitors of the Univ. of Virginia, 515 U.S. 819 (1995) (university student funding for religious student groups did not violate Establishment Clause); Bd. of Education v. Mergens, 496 U.S. 226, 248 (1990) (allowing religious students room access and access to public meeting announcements on PA system—did not violate the Establishment Clause); Rusk v. Crestview Local School District, 379 F.3d 418 (6th Cir. 2004) (based on an equal access policy to all community groups, upholding elementary school policy of handing out to elementary school students fliers for religious groups advertising religious meeting with "games, Bible stories, crafts, and songs that celebrate God's love!").

If the U.S. Supreme Court can find no Establishment Clause violation where the school allows public school students to meet for religious meetings on school grounds and to advertise its meetings to other students required to attend school due to compulsory attendance laws and the 6th Circuit finds no such violation where public school hands out a religious community group's fliers to elementary age students inviting them to meetings about Bible study and God's love, there certainly can be no Establishment Clause problem to allow the Church to use a

community room where children come only with parental permission and attend a meeting conducted behind a closed door. Mergens, supra; Rusk, supra.

The other typical justification that adults or children might misperceive state approval or endorsement of religion and trigger or cause an Establishment Clause violation in situations where religious groups have been given equal access to a public facility or forum has been thoroughly and soundly rejected. Good News, 533 U.S. at 114-119; Lamb's Chapel, 508 U.S. at 395-396. Courts have accurately observed the more likely effect is that exclusion of religious groups from a public forum open to others will be perceived as not neutrality but hostility toward religion. Mergens, 496 U.S. at 248; Rusk, 379 F.3d at 423.

B. LHC's Policy Violates the Free Exercise of Religion Clause.

A government violates the Free Speech Clause if they "impose special disabilities on the basis of religious views or religious status." Employment Division, Dept of Human Resources of Oregon v. Smith, 494 U.S. 872, 877 (1990). Government regulations that target or discriminate on their face against religion are subject to the almost always fatal strict scrutiny test which requires the government to demonstrate that the regulation is based on a compelling state interest and is narrowly drafted to achieve that interest. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993); Smith, 494 U.S. at 886, n. 3.

LHC has no compelling interest that justifies excluding the Church from its community rooms. The usual justification—that allowing the Church to meet there would violate the Establishment Clause--has been repeatedly rejected. The key cases are described in Section II-A of this Brief and need not be rehearsed here again.

The Church's religious beliefs are sincere and the burden on its free exercise substantial. See Smith, supra, Church of the Lukumi Babalu Aye, supra (test for free exercise claim). As cold

Michigan weather arises, the Church's outdoor religious meetings will literally leave its pastors, its members and its attendees out in the cold and will likely require cancellation of such meetings. While, absent a possible noise ordinance violation, the private landowner neighbor's anti-religious hostility in trying to drown out the Church's meetings with lawnmower noise may even be protected conduct, LHC's anti-religious hostility is not. Such religious hostility is barred by the Free Exercise Clause and not required by any other constitutional provision. Smith, supra; Lukumi, 508 U.S. at 534 ("The Free Exercise Clause protects against government hostility which is masked, as well as overt."); Zorach v. Clauson, 343 U.S. 306, 314 (1952) ("we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.").

"The principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause." Church of the Lukumi, 508 U.S. at 543. LHC has singled out only those with religiously-motivated conduct to bear the burden of its exclusion. That violates the Free Exercise Clause. LHC has opened its community room doors to a variety of religious organizations, but has shut them to the religious group that offers Bible-based, Jesus-centered religious teaching and religious services and programs. In the face of such religious preference, the Court is required to apply strict scrutiny in judging its constitutionality. Church of the Lukumi, supra. No compelling state interest can justify this religious preference. As noted earlier in Section II-B of this Brief, when a public forum for use of the community room was open for community groups, it was not necessary to close it to religious groups to prevent an Establishment Clause violation. Lamb's Chapel, supra.

C. LHC's Exclusion of the Church from Community Room Use Violates The Church's Right to Equal Protection of the Law.

LHC's exclusion of the Church from its community rooms violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Equal protection of the laws "is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). "Content-based restrictions also have been held to raise Fourteenth Amendment equal protection concerns because, in the course of regulating speech, such restrictions differentiate between types of speech." Burson v. Freeman, 504 U.S. 191, 197 n.3 (1992). The "Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives" and discriminatory treatment "must be tailored to serve a substantial governmental interest." Police Dept of the City of Chicago v. Mosley, 408 U.S. 92, 99, 101 (1972); cf Castorina v. Madison County School Board, 246 F.3d 536, 541-542 (6th Cir. 2001) (applying Mosley in case involving student free speech rights).

Discrimination against religiously-based speech that excludes religious groups from a public forum has been held to be unlawfully invidious as well, in violation of the Equal Protection Clause. Niemotko v. Maryland, 340 U.S. 268 (1951) (discriminatory exclusion of Jehovah's Witness groups from use of park due to dislike of their views violated equal protection).

LHC's content-based exclusion of the Church from the community rooms violates the Equal Protection Clause. Speech-based access classification based on the religious content of the Church's meetings violates Equal Protection. No compelling state interest can justify this exclusion.

D. LHC's Exclusion of the Church Violates the Establishment Clause.

Under the Establishment Clause of the First Amendment of the U.S. Constitution, government action passes muster only if:

(1) The challenged government practice [has] a secular legislative purpose;

(2) Its principal or primary effect neither advances nor inhibits religion; and

(3) It does not foster excessive entanglement with religion.

Doe v. Porter, 370 F.3d 558, 562 (6th Cir. 2004) (underlining and bracket added); Lemon v. Kurtzman, 403 U.S. 602, 612-613 (1971) (underlining added).

The Establishment Clause, applicable to the states through the Fourteenth Amendment, clearly bars government from officially preferring one religious group over another. Larson v. Valente, 456 U.S. 228, 244-246 (1982); Adland v. Russ, 307 F.3d 471, 479 (6th Cir. 2002). While the Free Speech Clause forbids such discriminatory exclusion, the Establishment Clause also prohibits inhibiting religion in this way. Larson, supra.

III. The Church Will Suffer Irreparable Injury If The Injunction Is Not Granted:

The Church will suffer irreparable injury if the injunction is not granted. The Church is currently forced to meet outside. Colder weather in Michigan is already arriving. This weather will risk harm to the Church's people or may even require them to cancel or splinter off their meetings into sub-groups at times. Some parents whose children have already attended prior meetings have already refused to allow them to attend later meetings due to colder weather. Exhibit 14. Also, there is clear authority that "even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief." Newsom v. Norris, 888 F.2d 371, 378 (6th Cir. 1989).

IV. Issuance of Preliminary Injunction Will Cause No Substantial Harm to Others:

Issuance of the preliminary injunction will also cause no substantial harm to others. No one is going to be hurt because one more community group uses community rooms already widely used by other community groups.

V. A Preliminary Injunction Will Serve the Public Interest:

The public interest will be well-served if a preliminary injunction is issued. When a constitutional violation is ongoing, "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." Connection Distributing Co. v. Reno, 154 F.3d 281, 288 (6th Cir. 1998).

RELIEF REQUESTED

Plaintiff's requested relief is set forth in the relief requested section of its Motion.

Respectfully submitted,

RICKARD, DENNEY, GARNO & ASSOC.

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By:/s/ Timothy W. Denney

Timothy W. Denney (P39990)
Attorney for Plaintiff
110 North Saginaw, Suite 1
Lapeer, MI 48446
(810) 664-0750
tdenney@twdpclaw.com